

## SCHEDULES

### SCHEDULE 18

Section 406

#### TRANSITIONAL PROVISIONS

##### *General*

- 1 (1) This paragraph applies where, at any time before the coming into force of a transfer made by virtue of section 2—
  - (a) any subordinate legislation has been made in the carrying out of the transferred functions by the person from whom the transfer is made; or
  - (b) any other thing has been done by or in relation to that person for the purposes of or in connection with the carrying out of those functions.
- (2) The subordinate legislation or other thing—
  - (a) is to have effect, on and after the coming into force of the transfer, and so far as necessary for its purposes, as if it had been made or done by or in relation to OFCOM; and
  - (b) in the case of subordinate legislation to which section 403 applies when it is made by OFCOM, shall so have effect as if made in accordance with the requirements of that section.
- (3) Where any subordinate legislation, direction, authorisation or notice has effect in accordance with this paragraph—
  - (a) so much of it as authorises or requires anything to be done by or in relation to the person from whom the transfer is made is to have effect in relation to times after the coming into force of the transfer as if it authorised or required that thing to be done by or in relation to OFCOM; and
  - (b) other references in the subordinate legislation, direction, authorisation or notice to the person from whom the transfer is made are to have effect, in relation to such times, as references to OFCOM.

##### *Steps taken in anticipation of passing or coming into force of Act*

- 2 (1) This paragraph applies where the Secretary of State or OFCOM is or are required—
  - (a) by a provision of this Act, or
  - (b) by virtue of an amendment made by this Act,to take steps before exercising a power or performing a duty.
- (2) The requirement is capable of being satisfied by the taking of the steps in anticipation of effect being given to the provision by virtue of which the power or duty is—
  - (a) conferred or imposed on the Secretary of State or OFCOM; or
  - (b) transferred to OFCOM.
- (3) For the purposes of sub-paragraph (2) it is immaterial—

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- (a) that the provision by virtue of which the power or duty is conferred, imposed or transferred had not been enacted, or had not come into force, when the steps were taken; and
  - (b) in the case of steps taken before the enactment of that provision, that the provision the effect of which was anticipated was modified before being enacted.
- (4) In relation to provisions brought into force as mentioned in subsection (1) of section 408 for the purpose of enabling specified functions to be carried out by the Director or the Secretary of State—
- (a) this paragraph has effect in relation to steps taken by the Director or the Secretary of State as it has in relation to steps taken by OFCOM; and
  - (b) subsection (5) of that section applies in relation to steps taken by the Director or the Secretary of State in anticipation of effect being given to those provisions as it would apply to anything done by the Director or the Secretary of State for the purposes of, or in connection with, the carrying out of those functions.
- (5) Where a requirement is satisfied by virtue of this paragraph by steps taken in anticipation of effect being given to a provision—
- (a) representations made to or other things done in relation to OFCOM, or the Director or the Secretary of State, in consequence of the taking of those steps, and
  - (b) any requirements framed by reference to the time at which those steps were taken,
- are to have effect as if the provision in question had come into force before those steps were taken.

*Savings for agreements referring to the termination of a 1984 Act licence*

- 3 (1) This paragraph applies where a term or condition of an agreement in force immediately before the abolition of licensing provides—
- (a) for the agreement, or a provision of it, to cease to have effect,
  - (b) for the agreement to become capable of being terminated,
  - (c) for a requirement to pay or repay an amount (whether liquidated or unliquidated) to arise under the agreement, or to arise earlier than it would otherwise have arisen,
  - (d) for a security to become enforceable, or
  - (e) for rights or obligations of a person under the agreement to be different or to be modified,
- if a person (whether or not a party to the agreement) ceases to hold a licence under section 7 of the 1984 Act, or ceases to do so in a manner or in circumstances described in the agreement.
- (2) Where a person ceases to hold a licence in consequence of the provisions of this Act removing the requirement to hold a licence under section 7 of the 1984 Act—
- (a) the term or condition is not to apply; and
  - (b) the rights and obligations of the parties to the agreement are to be the same (subject to the following sub-paragraphs) as they would have been had the person in question continued to hold such a licence.

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- (3) In relation to times after the abolition of licensing, that term or condition is to have effect as if the reference in that term or condition—
- (a) to a person’s ceasing to hold a licence under section 7 of the 1984 Act, or
  - (b) to his ceasing to do so in a particular manner or particular circumstances,
- were a reference to his becoming subject to a direction under this Act by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service.
- (4) In sub-paragraph (3) the reference to a person’s becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service—
- (a) does not include a reference to his becoming subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
  - (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to the confirmation of a direction that would otherwise have had to be revoked.
- (5) This paragraph does not apply in the case of a term or condition of an agreement if, on an application to the court by one or both of the parties to the agreement, the court directs—
- (a) that this paragraph is not to apply; or
  - (b) that it is to apply with such modifications, or subject to the payment of such compensation, as the court may specify in the direction.
- (6) In determining whether to give a direction under sub-paragraph (5) or what modifications or compensation to specify in such a direction the court must have regard to the following—
- (a) whether either or both of the parties to the agreement contemplated the abolition of the licensing requirements of the 1984 Act when they entered into the agreement; and
  - (b) the extent (if any) to which the provisions of this paragraph represent what it would have been reasonable for the parties to have agreed had they both known at that time what provision was to be made by this Act and when it was to come into force.
- (7) For the purposes of this paragraph—
- (a) references to ceasing to hold a licence include references to its expiring or being revoked; and
  - (b) references to a licence under section 7 of the 1984 Act include references to a licence under that section of a particular description.
- (8) In this paragraph “the court” means the High Court or the Court of Session.
- (9) This paragraph has effect subject to paragraph 14.

*Saving for agreements with special provision for 1984 Act licence holders*

- 4 (1) This paragraph applies in a case to which paragraph 3 does not apply and in which a term or condition of an agreement in force immediately before the abolition of licensing provides for rights or obligations of a person (“the contracting party”) under

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- the agreement to be different or to be modified according to whether or not he or another person (whether or not a party to the agreement)—
- (a) is or has become the holder of a licence under section 7 of the 1984 Act; or
  - (b) is or has become the holder of such a licence in a manner or in circumstances described in the agreement.
- (2) In relation to times after the abolition of licensing, that term or condition is to have effect as if the rights and obligations to which the contracting party is entitled or subject under the agreement were, except in a case falling within sub-paragraph (3), those for which the agreement provides in relation to a case in which the person in question—
- (a) is or has become the holder of such a licence; or
  - (b) is or has become the holder of such a licence in that manner or in those circumstances.
- (3) The excepted case is where that person is subject to a direction under this Act by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service.
- (4) In sub-paragraph (3) the reference to a person's being subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network or electronic communications service—
- (a) does not include a reference to his being subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
  - (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to his being subject to a direction which would have had to be revoked if not confirmed but which has been confirmed.
- (5) This paragraph does not apply in the case of a term or condition of an agreement if, on an application to the court by one or both of the parties to the agreement, the court directs—
- (a) that this paragraph is not to apply; or
  - (b) that it is to apply with such modifications, or subject to the payment of such compensation, as the court may specify in the direction.
- (6) In determining whether to give a direction under sub-paragraph (5) or what modifications or compensation to specify in such a direction the court must have regard to the following—
- (a) whether either or both of the parties to the agreement contemplated the abolition of the licensing requirements of the 1984 Act when they entered into the agreement; and
  - (b) the extent (if any) to which the provisions of this paragraph represent what it would have been reasonable for the parties to have agreed had they both known at that time what provision was to be made by this Act and when it was to come into force.
- (7) For the purposes of this paragraph references to a licence under section 7 of the 1984 Act include references to a licence under that section of a particular description.
- (8) In this paragraph “the court” means the High Court or the Court of Session.

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*General saving for agreements conditional on certain Broadcasting Act licences*

- 5 (1) This paragraph has effect where an agreement in force immediately before the coming into force of a provision of this Act removing a requirement for a relevant Broadcasting Act licence provides—
- (a) for the agreement to cease to have effect, or
  - (b) for it to be capable of being terminated,
- if a party to the agreement ceases to hold a relevant Broadcasting Act licence of a particular description, or so ceases in a manner described in the agreement.
- (2) In this paragraph “relevant Broadcasting Act licence” means—
- (a) a licence under Part 1 of the 1990 Act to provide a satellite television service or a licensable programme service;
  - (b) a licence under that Part to provide the service mentioned in section 49(2) of that Act;
  - (c) a licence under Part 2 of that Act to provide a local delivery service; or
  - (d) a licence under Part 3 of that Act to provide a formerly regulated radio service (within the meaning of section 251 of this Act).
- (3) The agreement is not to cease to have effect, or to be capable of being terminated, by reason only of the coming into force of the provisions of this Act under which the requirement for the licence is removed.
- (4) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a satellite television service or a licensable programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence granted or having effect as if granted as a licence to provide a television licensable content service.
- (5) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide the service mentioned in section 49(2) of the 1990 Act, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide the public teletext service.
- (6) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a licensable sound programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide a radio licensable content service.
- (7) References in this paragraph to a provision having effect if a person ceases to hold a licence include references—
- (a) to a provision having effect if a licence of his expires without being renewed; and
  - (b) to a provision having effect if his licence is revoked.
- (8) Expressions used in this paragraph and in Part 3 of this Act have the same meanings in this paragraph as in that Part.

*Orders under Part 2 of the Deregulation and Contracting Out Act 1994*

- 6 (1) This paragraph applies where, immediately before functions under the Wireless Telegraphy Act 1949 (c. 54) are transferred under this Act to OFCOM, an order is in force with respect to those functions under Part 2 of the Deregulation and Contracting Out Act 1994 (c. 40).

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- (2) The order is to have effect in relation to times after the transfer—
- (a) as if made in exercise of the power conferred by virtue of section 1(7) in relation to such of the functions of OFCOM under that Act of 1949 as are specified in the order;
  - (b) as if any power conferred on the Secretary of State by that order to authorise the exercise by a person of functions under that Act of 1949 were conferred on OFCOM; and
  - (c) as if an authorisation given by the Secretary of State in exercise of that power were an authorisation given under that order by OFCOM.

*Pre-commencement proposals relating to universal service matters*

- 7 (1) Where a proposal for the designation of a person as a universal service provider has been confirmed under regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (S.I. 2003/33), the designation is to have effect after the commencement of section 66 of this Act as a designation in accordance with regulations under that section.
- (2) Where in any person's case a proposal to set a condition has been confirmed under regulation 4(10) or 5(4) of those regulations, that condition is to have effect after the commencement of that section as a condition set by OFCOM under section 45 of this Act and applied to that person.
- (3) Where an appeal under regulation 6 of those regulations against a decision under them has been brought but not concluded before the commencement of section 192 of this Act—
- (a) that appeal is to be stayed or sisted as from the commencement of the section; but
  - (b) the appellant is to have a new right of appeal under the section against the decision (as it has effect by virtue of this paragraph) as if—
    - (i) it were the corresponding decision made by OFCOM under Chapter 1 of Part 2 of this Act; and
    - (ii) it had been made immediately after the commencement of the section.
- (4) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (3), make transitional provision for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of paragraph (b) of that sub-paragraph.

*Local loop notifications*

- 8 (1) This paragraph applies where, as a result of a market power determination made by OFCOM for the purposes of a provision of Chapter 1 of Part 2 of this Act, they conclude that a person who is for the time being LLU notified is no longer a person falling to be so notified.
- (2) OFCOM must give a notification of their conclusion to—
- (a) the Secretary of State; and
  - (b) the notified person.

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- (3) On receiving a notification under sub-paragraph (2) the Secretary of State must withdraw the LLU notification of the person in question.
- (4) For the purposes of this paragraph a person is LLU notified if he is a person who, for the purposes of Regulation (EC) No. 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop, is notified to the European Commission as having significant market power in an identified market, and “LLU notification” shall be construed accordingly.
- (5) Section 192 applies to a decision by OFCOM to give a notification under this paragraph as it applies to a decision by them under Part 2 of this Act.

*Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions*

- 9 (1) This paragraph applies where OFCOM give a continuation notice to the holder of a licence granted under section 7 of the 1984 Act.
- (2) A continuation notice is a notice that a provision contained in a condition of the licence is to have effect, after the abolition of licensing—
  - (a) to the extent specified in the notice; and
  - (b) subject to such modifications (if any) as may be so specified.
- (3) OFCOM are not to give a continuation notice except to the extent that they consider that provision to which it will give effect, as modified by the notice, (“the continued provision”)—
  - (a) regulates the provision of premium rate services; or
  - (b) falls within sub-paragraph (4).
- (4) The continued provision falls within this sub-paragraph in so far as it corresponds to provision of one or more of the following descriptions—
  - (a) provision that OFCOM have power to include in SMP conditions;
  - (b) provision authorised by section 73(2) or (4) for inclusion in access-related conditions;
  - (c) provision relating to matters mentioned in Article 16 of the Universal Service Directive or Article 7 of the Access Directive.
- (5) A continuation notice relating to provision corresponding to anything that OFCOM have power to include in SMP conditions—
  - (a) may identify the market by reference to which an SMP condition replacing the provision would have to be set; and
  - (b) in so far as the provision corresponds to anything that OFCOM have power to include only in SMP apparatus conditions, must do so.
- (6) OFCOM are not to give a continuation notice relating to provision corresponding to anything that OFCOM have power to include only in SMP apparatus conditions except to the extent that it has effect in relation to the supply of electronic communications apparatus of a description supplied in the market identified in the notice as the market by reference to which SMP conditions replacing the continued provision would have to be set.
- (7) The modifications for which a continuation notice may provide—

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- (a) must be confined to modifications for the purpose of securing that the provision to which they relate continues to have effect for so long as the notice is in force; but
  - (b) in the case of provision which is expressed to impose a requirement to be met before the abolition of licensing, may include a modification under which that requirement must continue to be met for so long as the notice remains in force.
- (8) Notwithstanding any repeal or revocation made by this Act—
  - (a) the continued provision,
  - (b) every provision made by a direction, determination or consent given or made for the purposes of the continued provision, and
  - (c) so far as necessary for giving effect to anything mentioned in paragraph (a) or (b), every provision made by or under the licence under the 1984 Act that is not so mentioned,are to remain in force for so long as the continuation notice is in force.
- (9) A continuation notice shall cease to have effect if OFCOM give a notice to that effect to the holder of the licence.
- (10) Where the continued provision is one that OFCOM have power to include only in an SMP apparatus condition, it shall be their duty, as soon as reasonably practicable after giving the continuation notice—
  - (a) to carry out an analysis of the market which, under sub-paragraph (5), is identified in that notice;
  - (b) to take all other steps necessary for enabling them to decide whether or not to set an SMP apparatus condition by reference to that market for the purpose of replacing the continued provision; and
  - (c) to decide whether or not to exercise their power to set such a condition for that purpose.
- (11) In the case of every other continued provision falling within sub-paragraph (4), it shall be OFCOM's duty, as soon as reasonably practicable after giving the continuation notice—
  - (a) to take all steps necessary for enabling them to decide whether or not to set a condition of any other description under Chapter 1 of Part 2 of this Act for the purpose of replacing the continued provision; and
  - (b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.
- (12) It shall be the duty of OFCOM—
  - (a) as soon as reasonably practicable after making a decision required by sub-paragraph (10) or (11), but
  - (b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,to give a notice under sub-paragraph (9) with respect to the continuation notice.
- (13) The duties imposed by sub-paragraphs (10) to (12) apply only where OFCOM have not previously given a notice under sub-paragraph (9) with respect to the continuation notice in question.
- (14) This paragraph has effect in the case of a licence granted under section 7 of the 1984 Act to persons of a particular class as if—



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- (a) references to the holder of that licence were references to the members of that class; and
  - (b) the manner in which a continuation notice or notice under sub-paragraph (9) is to be given to members of that class were by its publication in such manner as, in OFCOM’s opinion, is appropriate for bringing it to the attention of the members of that class who are affected by the notice.
- (15) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.
- (16) In this paragraph “Access Directive”, “electronic communications apparatus”, “the provision of premium rate services”, “SMP condition”, “SMP apparatus condition” and “Universal Service Directive” each has the same meaning as in Chapter 1 of Part 2 of this Act.

*Pre-commencement proposals relating to market power determinations*

- 10 (1) Sub-paragraph (2) has effect where a proposal for—
- (a) the identification of a market,
  - (b) the making of a market power determination, or
  - (c) the setting of conditions by reference to a proposal for a market power determination,
- has been confirmed under regulation 8 of the Electronic Communications (Market Analysis) Regulations 2003 ([S.I. 2003/330](#)).
- (2) If, at any time after the commencement of section 45, OFCOM—
- (a) are satisfied that a procedure has been followed in relation to the proposal that satisfies the requirements of Article 7 of the Framework Directive, and
  - (b) publish a notification to that effect in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the proposal,
- the proposal (with such modifications, if any, as are specified in the notification) is to have effect, from the publication of the notification, in accordance with sub-paragraph (3).
- (3) The proposal is to have effect as follows—
- (a) in the case of a proposal for identifying a market, as an identification of a services market in accordance with and for the purposes of section 79 of this Act;
  - (b) in the case of a proposal for the making of a market power determination, as a market power determination made in accordance with and for the purposes of Chapter 1 of Part 2 of this Act; and
  - (c) in the case of a proposal for setting conditions, as if the conditions were SMP services conditions set under section 45 of this Act and applied to the same person as the condition in the proposal.
- (4) Where an appeal under regulation 11 of those regulations against a decision under them has been brought but not concluded before the commencement of section 192 of this Act—
- (a) that appeal is to be stayed or sisted as from the commencement of the section; but

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- (b) the appellant is to have a new right of appeal under the section against the decision (as it has effect by virtue of this paragraph) as if—
  - (i) it were the corresponding decision made by OFCOM under Chapter 1 of Part 2 of this Act; and
  - (ii) it had been made immediately after the commencement of the section.
- (5) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (4), make transitional provision for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of paragraph (b) of that sub-paragraph.
- (6) Section 192 applies to a decision by OFCOM to publish a notification under this paragraph as it applies to a decision by them under Part 2 of this Act.
- (7) In this paragraph “the Framework Directive” has the same meaning as in Chapter 1 of Part 2 of this Act.

*Savings for licence conditions relating to accounting*

- 11 (1) This paragraph applies where a licence granted under section 7 of the 1984 Act contains conditions which impose requirements with respect to—
  - (a) the keeping of accounts or financial information; or
  - (b) the provision of accounts and financial information to the Director.
- (2) OFCOM may give a notice to the holder of the licence as respects so much of those conditions as relates to—
  - (a) the keeping of accounts for a period current at the time of the abolition of licensing; and
  - (b) the provision of accounts and financial information in relation to any such period or in relation to periods ending before the abolition of licensing.
- (3) In the case of a licence granted otherwise than to a particular person, a notice under this paragraph may be given to the licence holders by being published in such manner as OFCOM consider appropriate for bringing it to their attention.
- (4) Notwithstanding any repeal or revocation made by this Act—
  - (a) the licence under the 1984 Act is to continue in force to the extent that it imposes requirements as respects which a notice has been given under this paragraph; but
  - (b) those requirements, so far as they require the provision of accounts or information to the Director, are to have effect in relation to times after the abolition of licensing, as requirements to provide the accounts or information to OFCOM.
- (5) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.

*Charges under Telecommunications Act licences*

- 12 (1) Where any amount is required by a licence under section 7 of the 1984 Act to be paid to the Director in respect of a period beginning before the abolition of licensing, that liability is to have effect after the abolition of licensing as a liability to pay to

OFCOM so much of that amount as does not relate to times after the abolition of licensing.

- (2) For the purpose of determining how much of an amount payable to the Director relates to times after the abolition of licensing, an apportionment is to be made according to how much of that period had expired before the abolition of licensing.

#### *Enforcement of breaches of licence conditions*

- 13 (1) This paragraph applies to—
- (a) any provision to which effect is given, after the abolition of licensing, by a continuation notice under paragraph 9;
  - (b) conditions in respect of which notices under paragraph 11 have been given;
  - (c) liabilities under paragraph 12; and
  - (d) conditions of a licence under section 7 of the 1984 Act requiring compliance by the licence holder with directions given by the Director under regulation 6 of the Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931).
- (2) Notwithstanding any repeal or revocation made by this Act, after the abolition of licensing, OFCOM are, for the purpose of enforcing anything to which this paragraph applies, to have all the enforcement powers previously exercisable by the Director under the 1984 Act.
- (3) Those powers are to be exercisable in accordance with this paragraph irrespective of whether the contraventions occurred before or after the abolition of licensing.
- (4) For the purpose of exercising those powers, references to the likelihood that a person will again be in contravention of a condition include references to whether he will be in contravention of any equivalent obligation imposed—
- (a) by section 38 of this Act;
  - (b) by conditions set under section 45 of this Act; or
  - (c) by directions under section 190 of this Act.
- (5) OFCOM are not to exercise any powers conferred by virtue of this paragraph if they consider that the exercise of those powers would be incompatible with the requirements of the Directives.
- (6) In this paragraph “enforcement powers” includes—
- (a) the Director’s powers under sections 16 to 18 and 53 of the 1984 Act; and
  - (b) in the case of a licence issued to a particular person, every power of his under the licence to require information for the purpose of computing the amount of the liability to a charge.
- (7) In this paragraph “the Directives” means the Authorisation Directive or any of the following Directives (as defined in Chapter 1 of Part 2 of this Act)—
- (a) the Access Directive;
  - (b) the Framework Directive;
  - (c) the Universal Service Directive.
- (8) In sub-paragraph (7) “the Authorisation Directive” means Directive [2002/20/EC](#) of the European Parliament and of the Council on the authorisation of electronic communications networks and services.

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*Saving for agreements having effect by reference to licensing regime*

- 14 (1) This paragraph has effect where an agreement entered into for the purposes of a condition of a licence under section 7 of the 1984 Act has effect immediately before the abolition of licensing subject to a provision which entitles a party to it to terminate the agreement if he or another party ceases to be a Schedule 2 public operator.
- (2) The right of termination is not to be exercisable by reason of the effect of the coming into force of any provision of this Act if—
- (a) a general condition,
  - (b) an access-related condition, or
  - (c) a provision made by or having effect as if made under an SMP condition, imposes requirements on one or both of the parties to the agreement that correspond to those for the purposes of which the agreement was originally entered into.
- (3) In any such case, the agreement shall have effect in relation to times after the abolition of licensing as if references in the agreement to a Schedule 2 public operator were references to the provider of a public electronic communications network.
- (4) In this paragraph “Schedule 2 public operator” has the same meaning as in Schedule 1 to the Telecommunications (Licence Modifications) (Standard Schedules) Regulations 1999 (S.I. 1999/2450).
- (5) Expressions used in this paragraph and in Chapter 1 of Part 2 of this Act have the same meanings in this paragraph as in that Chapter.

*Fees for approvals for the purposes of licence conditions*

- 15 (1) This paragraph has effect where a general condition set under section 45 of this Act requires apparatus to be approved by reference to a standard previously designated for the purposes of section 24(6) of the 1984 Act.
- (2) The Secretary of State may by order provide for the charging of fees in respect of the giving of approvals for the purposes of the condition.
- (3) Fees charged under this paragraph are to be paid to the person giving the approvals and, to the extent authorised by the Secretary of State, may be retained by that person.
- (4) To the extent that they are not retained by that person, the fees must be paid into the Consolidated Fund.
- (5) Any order made under section 24(13) of the 1984 Act that is in force immediately before the coming into force of the repeal of section 24 of that Act shall have effect after the coming into force of the repeal as an order made under this paragraph.

*Allocated telephone numbers*

- 16 (1) Where immediately before the abolition of licensing telephone numbers are allocated to a person holding a licence under section 7 of the 1984 Act for the purposes of the conditions of that licence, those numbers shall be treated, after the abolition of licensing as allocated to that person for the purposes of general conditions such as are mentioned in section 58 of this Act.
- (2) An allocation having effect by virtue of sub-paragraph (1) may be withdrawn by OFCOM at any time, but only in accordance with section 61 of this Act.

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- (3) An allocation shall only continue to have effect in accordance with this paragraph for so long as the person to whom the allocation was made for the purposes of the licence conditions is a communications provider.
- (4) The power by virtue of section 58 for general conditions to make provision for the making of periodic payments in respect of the allocation of telephone numbers shall be exercisable, at any time after the coming into force of that section, in relation to an allocation having effect by virtue of this paragraph as it has effect in relation to an allocation made under that section.
- (5) Expressions used in this paragraph and in Chapter 1 of Part 2 of this Act have the same meanings in this paragraph as in that Chapter.

#### *Electronic communications code*

- 17 (1) Sub-paragraph (2) applies where, immediately before the coming into force of section 106 of this Act, the telecommunications code set out in Schedule 2 to the 1984 Act applies to a person by virtue of the provisions of his licence under section 7 of that Act.
- (2) That person shall be treated after the commencement of section 106 of this Act as a person in whose case the electronic communications code applies by virtue of a direction given by OFCOM.
- (3) The deemed direction shall be assumed to be one given in relation to so much of any electronic communications network as—
  - (a) was included immediately before the commencement of section 106 of this Act in the telecommunication system which was the operator’s system for the purposes of the application of the code; or
  - (b) which would have been so included if it had been being provided at that time.
- (4) So much of the code in Schedule 2 to the 1984 Act as has effect immediately before the commencement of Schedule 3 to this Act—
  - (a) in relation to telecommunication apparatus, or
  - (b) in relation a telecommunication system,is to have effect after the commencement of that Schedule in relation to so much of the apparatus or system as is electronic communications apparatus or the operator’s network for the purposes of the application of that Schedule to this Act by virtue of this paragraph or section 106(3)(b) of this Act.
- (5) A right which for the purposes of the code in Schedule 2 to the 1984 Act has effect immediately before the commencement of Schedule 3 to this Act as conferred for purposes connected with the provision of a telecommunication service is to have effect after the commencement of that Schedule as conferred for the purposes of the corresponding electronic communications service.
- (6) Any agreement which, immediately before the repeal of the provisions contained in section 10(3A) and (3B) of the 1984 Act or section 189 of the 1990 Act, is a relevant agreement for the purposes of those provisions shall be deemed in relation to times after the coming into force of that repeal to be a relevant agreement for the purposes of paragraph 29 of the electronic communications code.
- (7) In this paragraph “the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act.

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*Saving for guarantees of liabilities of telecommunications code operators*

- 18 (1) This paragraph applies where, immediately before the abolition of licensing, a person holding a licence under section 7 of the 1984 Act (“the operator”) —
- (a) is a person to whom the telecommunications code applies in respect of the running of a telecommunications system by him (“the operator’s system”); and
  - (b) in pursuance of a condition of his licence imposed for the purpose of securing that sufficient funds are available to meet code-related liabilities specified in the licence, is a party to any guarantee arrangements.
- (2) Arrangements are guarantee arrangements for the purposes of this paragraph if they are arrangements under which a person (the “guarantor”) is obliged, in circumstances specified in the arrangements, to make payments in respect of a failure by the operator to meet a code-related liability specified in the licence.
- (3) The guarantor’s obligation to make payments under the guarantee arrangements is not to arise by reason only of the abolition of licensing.
- (4) In relation to times after the abolition of licensing, the guarantee arrangements are to have effect, notwithstanding the operator’s licence having ceased to have effect on the abolition of licensing and subject to sub-paragraph (7), as if the following references continued to have effect—
- (a) references in those arrangements to the code-related liabilities specified in the licence; and
  - (b) (subject to sub-paragraph (5)(a)) references, for the purposes of any provision identifying the circumstances in which payments are to be made under the arrangements, to events specified in the licence.
- (5) In relation to such times, those arrangements are also to have effect—
- (a) as if references (directly or indirectly) to the revocation, or to the expiration without renewal, of the operator’s licence were references to his becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of his network; and
  - (b) as if references to the telecommunications code were references to the electronic communications code.
- (6) In sub-paragraph (5) the reference to a person’s becoming subject to a direction by virtue of which he is prohibited from providing the whole or a part of an electronic communications network—
- (a) does not include a reference to his becoming subject to a direction imposing a prohibition for a fixed period of less than eighteen months or to a direction that will have to be revoked if not confirmed; but
  - (b) except in the case of a direction imposing a prohibition for such a fixed period, does include a reference to the confirmation of a direction that would otherwise have had to be revoked.
- (7) The guarantor is not to be liable in respect of any liability arising in connection with or as a result of activities carried on after the abolition of licensing except in so far as those activities are activities carried on for the purposes of providing the operator’s network.
- (8) In this paragraph “code-related liabilities”, in relation to the operator, means liabilities arising or incurred by him—

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- (a) by reason of the application to him of the telecommunications code;
- (b) by reason of its ceasing to apply to him; or
- (c) otherwise in respect of activities carried on by him in connection with running the operator's system.

(9) In this paragraph—

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act;

“the operator's network” means so much of any electronic communications network provided by the operator as is a network in relation to which the electronic communications code applies in the operator's case by virtue of paragraph 17(3)(a) of this Schedule;

“the telecommunications code” means the code set out in Schedule 2 to the 1984 Act (as it had effect immediately before the abolition of licensing).

#### *Compulsory purchase*

19 Where—

- (a) a compulsory purchase order made under section 34 or 35 of the 1984 Act,
- (b) a vesting order, or an application for a vesting order, made under section 36 of that Act, or
- (c) an authorisation given by the Secretary of State under section 37, 38 or 39 of that Act,

is effective immediately before the commencement of Schedule 4 to this Act, it is to have effect after the commencement of that Schedule as if made or given under that Schedule.

#### *Notices under section 1D of the Wireless Telegraphy Act 1949*

- 20 (1) This paragraph applies to procedures set out in a notice given by the Secretary of State under section 1D of the Wireless Telegraphy Act 1949 (c. 54) and in force immediately before the commencement of sub-paragraph (4) of paragraph 8 of Schedule 17 to this Act.
- (2) In relation to times after the commencement of that sub-paragraph, the procedures are to have effect as if prescribed by OFCOM by regulations under section 1D(3) of the Wireless Telegraphy Act 1949 (c. 54).
- (3) So much of any notice having effect in accordance with this paragraph as authorises or requires anything to be done by or in relation to the Secretary of State is to have effect in relation to times after the commencement of paragraph 8 of Schedule 17 to this Act as if it authorised or required that thing to be done by or in relation to OFCOM.

#### *Notices under regulations under section 3 of the Wireless Telegraphy Act 1998*

- 21 (1) This paragraph applies to procedures set out in a notice issued by the Secretary of State under regulations under section 3 of the Wireless Telegraphy Act 1998 (c. 6) and in force immediately before the commencement of section 167 of this Act.

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- (2) In relation to times after the commencement of section 167 of this Act, the procedures are to have effect as if prescribed by OFCOM by regulations under section 3 of that Act.
- (3) So much of any notice having effect in accordance with this paragraph as authorises or requires anything to be done by or in relation to the Secretary of State is to have effect in relation to times after the commencement of section 167 of this Act as if it authorised or required that thing to be done by or in relation to OFCOM.

*Disputes about interconnection*

- 22 (1) Where—
- (a) before the revocation by this Act of the Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931) a dispute was referred to the Director under regulation 6 of those regulations, and
  - (b) that dispute has not been resolved when the revocation comes into force,
- Chapter 3 of Part 2 of this Act (except sections 189 and 190) is to have effect as if that dispute were a dispute which, immediately after the commencement of section 185 of this Act, was referred to OFCOM under that section.
- (2) Where a dispute—
- (a) has arisen or arises about anything occurring or existing before the time when the revocation of those regulations comes into force (“the relevant time”),
  - (b) relates to matters disputes about which would (before that time) have been referable to the Director under regulation 6,
  - (c) is neither a dispute which was referred to him before that time nor a dispute arising after that time which is referable to OFCOM under section 185, and
  - (d) is referred to OFCOM after that time either during the transitional period or in a case in which OFCOM are satisfied that the circumstances that prevented the making of a reference before the end of that period are exceptional,
- sub-paragraph (1) is to have effect as if the dispute were a dispute arising before the relevant time in the case of which a reference to the Director had been made under regulation 6 before that time.
- (3) Where OFCOM make a determination for resolving a dispute falling to be resolved in accordance with sub-paragraph (1) or (2)—
- (a) their powers on making that determination are to be those which would have been exercisable by the Director under those regulations (instead of those under Chapter 3 of Part 2);
  - (b) conditions of a licence under section 7 of the 1984 Act requiring compliance with directions given by the Director under regulation 6 of those regulations are to continue to have effect as if they also applied to directions given by OFCOM by virtue of paragraph (a); and
  - (c) paragraph 13 of this Schedule has effect as if the reference in sub-paragraph (1)(d) to directions given by the Director under that regulation included a reference to directions given by OFCOM by virtue of paragraph (a) of this sub-paragraph.
- (4) But OFCOM are not to give a direction by virtue of sub-paragraph (3)(a) containing provision which they would have no power to include in—
- (a) a condition set under Chapter 1 of Part 2 of this Act; or



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- (b) a direction under section 190.
- (5) Where the Director gave a direction under regulation 6 of those regulations at any time before the coming into force of their revocation, the direction is to continue, after the revocation comes into force, to have effect (and be enforceable in accordance with paragraph 13 of this Schedule) to the extent that it is continued in force under this paragraph.
- (6) The direction is continued in force under this paragraph only where OFCOM have at any time after the passing of this Act given notice to the persons to whom it applies that it is continued in force.
- (7) OFCOM are to give such a notice only if they consider that the direction makes provision corresponding to that which they have power to include in—
- (a) conditions set under Chapter 1 of Part 2 of this Act; or
  - (b) directions under section 190.
- (8) OFCOM may at any time by notice to the person to whom it applies revoke (in whole or in part) a direction which—
- (a) was given by virtue of sub-paragraph (3)(a); or
  - (b) is a direction to which a notice under sub-paragraph (6) relates.
- (9) Where a direction which OFCOM have power to revoke under sub-paragraph (8) makes provision corresponding to anything that OFCOM have power to include in a condition set under Chapter 1 of Part 2 of this Act, it shall be their duty, as soon as reasonably practicable after giving the direction or as the case may be the notice under sub-paragraph (6)—
- (a) to take all steps necessary for enabling them to decide whether or not to set such a condition for the purpose of replacing the direction; and
  - (b) to decide whether or not to exercise their power to set a condition under that Chapter for that purpose.
- (10) It shall be the duty of OFCOM—
- (a) as soon as reasonably practicable after making a decision required by sub-paragraph (9), but
  - (b) in a case where that decision is a decision to set a condition, not before the coming into force of that condition,
- to give a notice under sub-paragraph (8) revoking the direction in question.
- (11) The duties imposed by sub-paragraphs (9) and (10) apply only where OFCOM have not previously revoked the direction in question.
- (12) Section 192 applies to a decision by OFCOM to give a notice under this paragraph as it applies to a decision by them under Part 2 of this Act.
- (13) In this paragraph “transitional period” means the period which is the transitional period (within the meaning of section 408) in relation to this paragraph.

*Appeals against wireless telegraphy and telecommunications decisions*

- 23 (1) This paragraph applies where—
- (a) a decision was made before the commencement of section 192;

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- (b) the decision has effect after the commencement of a provision of this Act as a decision made by OFCOM, or is a decision not to do something which (if done) would so have had effect; and
  - (c) the decision is one against which an appeal was or could have been brought under—
    - (i) section 1F of the Wireless Telegraphy Act 1949 (c. 54); or
    - (ii) section 46B of the 1984 Act.
- (2) If no such appeal has been brought before the commencement of section 192 of this Act, that section applies to the decision as it applies to decisions by OFCOM under Part 2 of this Act (or that Act of 1949), but as if that section had been in force when the decision was made.
- (3) If an appeal under section 1F of that Act of 1949 or section 46B of the 1984 Act—
- (a) has been brought against the decision, but
  - (b) has not been concluded before the commencement of section 192 of this Act, the court in which it was brought may stay or sist the appeal as from the commencement of that section of this Act.
- (4) If the court stays or sists the appeal under sub-paragraph (3), the appellant is to have a new right of appeal under section 192 against the decision as if (subject to sub-paragraph (7)) it were a decision to which that section applies that had been made immediately after the commencement of that section.
- (5) Tribunal rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (3), make transitional provision—
- (a) for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of sub-paragraph (4); and
  - (b) for enabling the Tribunal in an appeal under sub-paragraph (4) to give directions to OFCOM as to the carrying out of functions of theirs that are the same as or correspond to those in the course of carrying out which the maker of the appealed decision made that decision.
- (6) If, in a case falling within sub-paragraph (3), the court does not stay or sist the appeal—
- (a) it must determine the appeal in the manner in which the Tribunal is required under section 195 of this Act to determine an appeal under section 192; but
  - (b) its powers on determining the appeal include a power to give directions to OFCOM as to the carrying out of any functions of theirs that correspond to those in the course of which the appealed decision was made.
- (7) On an appeal brought or continued under this paragraph against a decision, the court or the Tribunal, in determining what was the appropriate action for the maker of the decision to take, must determine that question according to the law in force at the time when the decision was made.

*Section 94 of the Telecommunications Act 1984*

- 24 (1) Subject to sub-paragraph (2), provisions of Schedule 17 to this Act amending section 94 of the 1984 Act do not affect—

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- (a) the continuation, after the coming into force of the amendment, of any duty of a person previously given a direction under that section to give effect to it; or
  - (b) the power of the Secretary of State after the amendment comes into force to make grants under subsection (6) of that section to such a person.
- (2) A direction under that section which was given to the Director before the relevant transfer date shall have effect in relation to times on and after that date as if it were a direction to OFCOM.
- (3) In sub-paragraph (2) “the relevant transfer date” means the date of the coming into force of the provisions of Schedule 17 to this Act substituting “OFCOM” for “the Director” in section 94(8) of the 1984 Act.

*Competition Commission: specialist panel members*

- 25 The persons who—
- (a) have been appointed as members of the Competition Commission by the Secretary of State under section 13(10) of the 1984 Act, and
  - (b) hold office immediately before the date on which section 194 comes into force,
- shall continue to hold office as members of the Competition Commission as if they had been appointed to that office by the Secretary of State under section 194(1).

*Transitory amendments to telecommunications terms in Broadcasting Act 1990*

- 26 (1) This paragraph has effect, in the case of each of the provisions of the 1990 Act to which it applies, in relation to times between—
- (a) the commencement of Chapter 1 of Part 2 of this Act; and
  - (b) the commencement of so much of this Act (apart from this paragraph) as amends or repeals that provision.
- (2) The provisions of the 1990 Act set out in sub-paragraph (3) shall have effect (subject to sub-paragraph (4)) as if—
- (a) for every reference to a telecommunication system there were substituted a reference to an electronic communications network; and
  - (b) for references to running such a system there were substituted references to providing it.
- (3) Those provisions of the 1990 Act are—
- (a) section 46 (licensable programme services);
  - (b) section 51(1)(a) (procedures for consideration of applications for additional services licences);
  - (c) section 72 (local delivery services);
  - (d) section 75 (procedures for consideration of applications for local delivery licences);
  - (e) section 112 (licensable sound programme services);
  - (f) section 117(1)(a) (procedures for consideration of applications for additional services licences);
  - (g) section 181 (apparatus deemed to be apparatus for wireless telegraphy).

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- (4) Sections 46(2) (licensable programme services), 112(2) (licensable sound programme services) and 201(2) (programme services) of the 1990 Act shall each have effect as if for paragraph (b) there were substituted—
- “(b) a service which satisfies the conditions in section 233(5) of the Communications Act 2003;”.
- (5) In sections 48 and 114 of the 1990 Act (additional services), references to electronic signals shall have effect as references to signals within the meaning of section 32 of this Act.
- (6) Section 75(2) of the 1990 Act (consultation with relevant licensing authorities) shall have effect as if in paragraph (b) for the words “would be required to be licensed” there were substituted “is a system which (but for repeals made by the Communications Act 2003) would have been required to be licensed”.
- (7) In section 181 of the 1990 Act (apparatus deemed to be apparatus for wireless telegraphy), “connected”—
- (a) shall continue to be construed in accordance (notwithstanding its repeal) with section 4 of the 1984 Act; but
- (b) shall be so construed as if, in that section of the 1984 Act, a reference to an electronic communications network were substituted for every reference to a telecommunication system.
- (8) Part 5 of Schedule 2 to the 1990 Act (restriction on holding of licences by operators of public telecommunication systems) and the Broadcasting (Restrictions on the Holding of Licences) Order 1991 (S.I. 1991/1176) shall have effect as if references to a national public telecommunications operator were references to a person who provides an electronic communications network so as to make it available for use by members of the public in the whole, or substantially the whole, of the United Kingdom.

#### *Activities of the Welsh Authority*

- 27 (1) No approval shall be required under section 205 for the continued provision after the commencement of that section of any service that was being provided by the Welsh Authority immediately before the commencement of that section.
- (2) Where any activities are being carried on immediately before the commencement of section 206 by the Welsh Authority, no approval is required under that section in respect of the continued carrying on of the activities by the Authority.
- (3) Where any activities are being carried on immediately before the commencement of section 206 by an S4C company, no approval is required under that section in respect of the carrying on after that commencement by that company or another S4C company of those activities.

#### *Gaelic Broadcasting*

- 28 The persons who are members of Comataidh Craolaidh Gaidhlig immediately before the date on which section 208 comes into force—
- (a) shall continue to hold office as members of Seirbheis nam Meadhanan Gàidhlig as if they had been appointed to that office by OFCOM;

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- (b) shall hold and vacate office in accordance with the terms of their appointment by the ITC;
  - (c) shall hold office for the period for which they were appointed by the ITC; and
  - (d) after the end of that period, shall be eligible for re-appointment as members of Seirbheis nam Meadhanan Gàidhlig.
- 29 (1) The continuance in force of the Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 1996 (S.I. 1996/2758) made under section 32 of the 1996 Act is not affected by the amendment of that section by Schedule 15 to this Act.
- (2) But in relation to times after the television transfer date, that order shall have effect as if—
- (a) the reference in that order to the ITC were a reference to OFCOM; and
  - (b) the reference to the application of section 28 of the 1996 Act to a frequency were omitted.

*Pre-transfer Broadcasting Act licences*

- 30 (1) Subject to any express provision made by this Act in relation to a particular description of Broadcasting Act licence, neither—
- (a) the transfer from a pre-commencement regulator to OFCOM of the function of granting or awarding such licences or of any other power exercisable in relation to such licences, nor
  - (b) any other modification by or by virtue of this Act of the power to grant or award such licences or of a provision having effect in relation to such licences,
- shall affect the continuing validity of a licence by or under which the provision of a service is authorised immediately before the coming into force of the transfer or modification.
- (2) Accordingly, such a licence shall continue to have effect, after the coming into force of the transfer or modification—
- (a) on the same terms and conditions and for the same period as it would have done if this Act had not been passed; but
  - (b) as if, in relation to times after the coming into force of any relevant transfer of functions to OFCOM, every reference in the licence to a pre-commencement regulator were a reference to OFCOM.
- (3) Sub-paragraph (2) is subject to the following provisions of this Act—
- (a) those under which a licence is to have effect as if the period for which it is granted were the period determined under this Act; and
  - (b) those under which the conditions of a licence fall to be varied for the purpose of imposing a condition required by this Act.
- (4) Anything done at any time before the relevant transfer date under or for the purposes of enforcing any provision of a Broadcasting Act licence is to have effect in relation to times on or after that date—
- (a) to the extent that it was done by or in relation to the ITC or Radio Authority, and
  - (b) so far as necessary for preserving its effect or for facilitating the taking of further action by OFCOM,

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as a thing done by or in relation to OFCOM.

- (5) In sub-paragraph (4) “relevant transfer date”—
- (a) in relation to licences under Part 1 of the 1990 Act or Part 1 of the 1996 Act, means the television transfer date; and
  - (b) in relation to licences under Part 3 of the 1990 Act or Part 2 of the 1996 Act, means the radio transfer date.

### *Channels 3 and 5*

31 A determination made by the ITC under or for the purposes of section 14 or 28 of the 1990 Act (Channels 3 and 5) is to have effect on and after the television transfer date as a determination under that section by OFCOM.

### *Saving pending replacement of licences for Channels 3 and 5 and the public teletext service*

- 32 (1) The regulatory regime for a Channel 3 service, and that for Channel 5 and the existing teletext service, shall not include the self-regulation conditions in any case in which the service or (as the case may be) Channel 5 is provided under a licence granted before the television transfer date.
- (2) In sub-paragraph (1) “the self-regulation conditions” means the conditions which (apart from that sub-paragraph) are included by virtue of sections 265 to 269 of this Act in the regulatory regime for Channel 3 services, for Channel 5 and for the public teletext service.
- (3) In relation to a licence granted before the television transfer date for a Channel 3 service, Channel 5 or the existing teletext service, section 263 shall have effect as if the reference in subsection (3)(a) of that section to a corresponding or additional service to be provided in analogue form were a reference to a corresponding or additional service to be provided in digital form.
- (4) In this paragraph “the existing teletext service” means the existing service within the meaning of section 221 of this Act.

### *Digital additional licences*

- 33 (1) This paragraph applies where immediately before the coming into force of section 242 of this Act a person holds a digital additional services licence under Part 1 of the 1996 Act in respect of a digital sound programme service and with a view to the inclusion of the broadcasting of that service by means of a television multiplex service licensed under Part 1 of the 1996 Act.
- (2) The licence is to have effect on and after the coming into force of section 242 of this Act as if it were a national digital sound programme licence or (as the case may be) were comprised in any national digital sound programme licence already held by the licence holder for the service in question.
- (3) Where a licence has effect in accordance with this paragraph, it shall not (to the extent that it so has effect) authorise the broadcasting of the digital sound programme service in question by means of a radio multiplex service.
- (4) In this paragraph—

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“digital additional services licence” has the same meaning as in Part 1 of the 1996 Act; and

“national digital sound programme licence” has the same meaning as in Part 2 of that Act.

#### *Programme quotas*

- 34 Any order which—
- (a) was made under section 16(5)(a) of the 1990 Act (definitions of “qualifying programmes” and “independent productions”), and
  - (b) is in force immediately before the commencement of sections 277 and 309 of this Act and paragraphs 1 and 7 of Schedule 12 to this Act,
- is to have effect in relation to times after the commencement of those sections and those paragraphs as an order made in exercise of the corresponding powers conferred by those sections and those paragraphs.

#### *Continuity in relation to appointed news provider*

- 35 Where a body holds an appointment for the purposes of section 31(2) of the 1990 Act immediately before the date of the commencement of section 280 of this Act—
- (a) that appointment shall have effect in relation to times on and after that date as an appointment for the purposes of arrangements entered into in accordance with conditions imposed under section 280 of this Act;
  - (b) the arrangements under which that appointment was made shall have effect in relation to such times as arrangements so entered into; and
  - (c) so much of the appointment or arrangements, or of any agreement to which the body is a party, as makes provision by reference to the body’s ceasing to be nominated under section 32 of the 1990 Act shall have effect in relation to such times as if references to ceasing to be so nominated were references to becoming a body falling within section 281(2) of this Act.

#### *Networking arrangements*

- 36 (1) Where arrangements approved for the purposes of section 39 of the 1990 Act (networking arrangements) are in force immediately before the commencement of section 291 of this Act, those arrangements are to have effect for the purposes of this Act, and of any conditions imposed under that section of this Act, as approved networking arrangements.
- (2) For the purposes of proceedings in relation to a report under Schedule 4 to the 1990 Act at any time after the commencement of Schedule 11 to this Act, that report is to have effect as if it were a report under that Schedule to this Act.

#### *Determination of qualifying revenue*

- 37 (1) A statement of the ITC that is for the time being in force immediately before the television transfer date for the purposes of—
- (a) Schedule 7 to the 1990 Act (statement of principles for determining qualifying revenue), or
  - (b) Schedule 1 to the 1996 Act (corresponding statement for the purposes of that Act,

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is to have effect on and after that date as a statement by OFCOM.

- (2) On and after the television transfer date a determination by the ITC under paragraph 2 of Part 1 of either of those Schedules is to have effect as a determination under that paragraph by OFCOM, and sub-paragraph (2) of that paragraph is to have effect accordingly.

#### *Rules for political broadcasts*

- 38 Where—
- (a) rules made by the ITC for the purposes of section 36 of the 1990 Act (party political broadcasts on Channel 3, Channel 4 or Channel 5), or
  - (b) rules made by the Radio Authority for the purposes of section 107 of the 1990 Act (party political broadcasts on national radio services),
- are in force immediately before the commencement of section 333 of this Act, those rules are to have effect after its commencement as rules made by OFCOM for the purposes of that section of this Act.

#### *Functions under section 88 of the 1990 Act*

- 39 A requirement imposed or notice given before the radio transfer date by the Radio Authority under section 88 of the 1990 Act (restriction on holding of licences) is to have effect on and after that date as if it were imposed or given by OFCOM.

#### *Notices under section 94 of the 1990 Act*

- 40 A notice given by the Secretary of State or any other Minister of the Crown under section 94 of the 1990 Act (government control over licensed services) is to have effect on and after the radio transfer date as a notice given to OFCOM under section 336 of this Act.

#### *Programme standards: television*

- 41 (1) This paragraph applies as respects times on or after the television transfer date and before the first coming into force, in the case of the holder of a licence under Part 1 of the 1990 Act or Part 1 of the 1996 Act, of conditions imposed under section 325 of this Act.
- (2) Sections 6 to 12 of the 1990 Act (general provisions about the content of licensed services) are to have effect in the case of that licence holder as if references in those sections to the ITC were references to OFCOM.
- (3) A code drawn up by the ITC under section 6, 7 or 9 of the 1990 Act is to have effect as if it had been drawn up by OFCOM.

#### *Programme standards: radio*

- 42 (1) This paragraph applies as respects times on or after the radio transfer date and before the first coming into force, in the case of the holder of a licence under Part 3 of the 1990 Act or Part 2 of the 1996 Act, of conditions imposed under section 325 of this Act.



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- (2) Sections 90 to 96 of the 1990 Act (general provisions about the content of licensed services) are to have effect as if references in those sections to the Radio Authority were references to OFCOM.
- (3) A code drawn up by the Radio Authority under section 90, 91 or 93 of the 1990 Act is to have effect as if it had been drawn up by OFCOM.

#### *Standards code*

- 43 (1) In relation to any time after the commencement of section 319 of this Act, a code in force immediately before its commencement as a code drawn up under section 6, 7, 9, 90, 91 or 93 of the 1990 Act or section 108 of the 1996 Act is to have effect (subject to sub-paragraphs (2) and (3)) as if it were a code issued by OFCOM for the purpose of setting standards under section 319 of this Act.
- (2) A code under the 1990 Act shall have effect by virtue of sub-paragraph (1) in relation only to the following—
  - (a) in the case of the codes under sections 6, 7 and 9, services the provision of which is authorised by licences under Part 1 of the 1990 Act and S4C; and
  - (b) in the case of the codes under sections 90, 91 and 93, services the provision of which is authorised by licences under Part 3 of that Act.
- (3) In the case of the code under section 108 of the 1996 Act, the code shall have effect by virtue of sub-paragraph (1)—
  - (a) in relation only to services provided by the BBC or the Welsh Authority; and
  - (b) to the extent only that it contains provision that applies to those services and, in the case of services provided by the Welsh Authority, relates to matters other than advertising and impartiality.

#### *Local and national radio licences*

- 44 (1) Section 103 of the 1990 Act (restriction on changes of control affecting holders of national licences) is to apply in relation to a pre-transfer national licence as it applies in relation to a national licence within the meaning of Part 3 of the 1990 Act.
- (2) Anything done by or in relation to the Radio Authority under any of sections 98 to 102 or 103A of the 1990 Act, so far as it has been done—
  - (a) before the radio transfer date, and
  - (b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer national licence,is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in connection with or for the purposes of the grant or renewal of national licence (within the meaning of Part 3 of that Act).
- (3) Anything done by or in relation to the Radio Authority under any of sections 104 to 105 of the 1990 Act, so far as it has been done—
  - (a) before the radio transfer date, and
  - (b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer local licence,is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in

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connection with, or for the purposes of, the grant or renewal of local licence (within the meaning of Part 3 of that Act).

- (4) In this paragraph “pre-transfer local licence” and “pre-transfer national licence” each has the same meaning as in section 253 of this Act.

*Section 111B of the 1990 Act*

45 (1) Section 111B of the 1990 Act (power to suspend satellite services) is to have effect in relation to a licence to provide a formerly regulated radio service (within the meaning of section 251) as it applies in relation to a licence to provide a radio licensable content service, but as if the reference in subsection (1)(b) of that section to a condition included in the licence in pursuance of the provisions there mentioned included a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act.

- (2) In relation to any time falling—

- (a) on or after the radio transfer date, and
- (b) before the first coming into force, in the case of the holder of a licence under Part 3 of the 1990 Act or Part 2 of the 1996 Act, of conditions imposed under section 325 of this Act,

section 111B of the 1990 Act is to have effect in relation to a licence to provide a radio licensable content service as if the reference in subsection (1)(b) of section 111B of that Act to a condition included in the licence in pursuance of the provisions there mentioned were a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act.

*Section 185 of the 1990 Act*

46 (1) A determination or nomination made for the purposes of section 185 of the 1990 Act (the national television archive) by the ITC is to have effect on and after the television transfer date as a determination or nomination made by OFCOM.

- (2) Sub-paragraph (1) applies in the case of a determination so far only as it relates to a financial year beginning on or after the television transfer date.

*Section 28 of the 1996 Act*

47 (1) The repeal by this Act of section 28 of the 1996 Act does not affect any power to vary a licence under Part 1 of the 1990 Act which is—

- (a) conferred on the ITC by an order under that section; and
- (b) transferred to OFCOM by this Act.

- (2) Nor does it affect so much of any order under that section in force immediately before the repeal as—

- (a) modifies section 16 of the 1996 Act in its application in relation to the renewal of a licence first granted before the television transfer date; or
- (b) imposes a prohibition on the use of digital capacity reserved before that date;

but so much of any such prohibition as requires the consent of the ITC for the use of any digital capacity shall have effect after the television transfer date as if the consent required were OFCOM’s consent.

- (3) Sub-paragraph (1) only saves the power so far as it is exercisable in relation to a licence granted before the television transfer date.

*Section 48 of the 1996 Act*

- 48 Subsections (4) to (6) of section 48 of the 1996 Act (reservations of capacity for national radio multiplex licences to independent national broadcasters) are to apply in relation to conditions included in pursuance of that section in licences granted before the radio transfer date as they apply in relation to conditions included in licences by virtue of the amendments of that section made by this Act.

*Applications for extension of pre-transfer licences*

- 49 (1) Section 253(4)(a) does not prevent the determination by OFCOM of a day falling less than one year after the making of the determination where—
- (a) OFCOM consider that the day by which they would need to publish a notice is a day which is not more than 15 months after the commencement date; and
  - (b) the determination of that day is made as soon as practicable after the commencement date.
- (2) Where the day determined by OFCOM for the purposes of paragraph (b) of section 253(3) is a day in the period of three months beginning with the day after the determination, that paragraph shall have effect as if for the words “three months before” there were substituted “on”.
- (3) In this paragraph, the “commencement date” is the date on which section 253 comes into force.

*Applications for renewal of licences under 1990 Act and 1996 Act*

- 50 (1) A provision set out in sub-paragraph (2) does not prevent the determination by OFCOM of a date falling less than one year after the making of the determination where—
- (a) OFCOM consider that the relevant date for the purposes of the section in question is a date which is not more than 15 months after the commencement date; and
  - (b) the determination of the relevant date is made as soon as practicable after the commencement date.
- (2) Those provisions are—
- (a) section 53(12) of the 1990 Act;
  - (b) section 103A(12) of the 1990 Act;
  - (c) section 104A(14) of the 1990 Act;
  - (d) section 16(12A) of the 1996 Act;
  - (e) section 58(12A) of the 1996 Act.
- (3) An application which is made before the commencement date in accordance with a provision set out in sub-paragraph (2) shall be treated after that date as if it had been made in accordance with that provision as amended by this Act.

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- (4) Where, in a case where a provision set out in sub-paragraph (5) applies, the relevant date for the purposes of the section in question is a date in the period of three months beginning with—
- (a) the commencement date, or
  - (b) the day after the day on which the relevant date is determined,
- that provision shall have effect as if the words “the day falling three months before” were omitted.
- (5) Those provisions are—
- (a) section 53(2) of the 1990 Act;
  - (b) section 103A(2) of the 1990 Act;
  - (c) section 104A(3) of the 1990 Act;
  - (d) section 16(3) of the 1996 Act;
  - (e) section 58(3) of the 1996 Act.
- (6) In this paragraph, the “commencement date”, in relation to any provision set out in sub-paragraph (2) or (5) is the date on which the provision of Schedule 15 inserting or amending that provision comes into force.

*Listed events rules*

- 51 (1) Subject to sub-paragraph (2), Part 4 of the 1996 Act (sporting and other events of national interest) is to have effect in relation to times on or after the television transfer date as if anything done before that date by or in relation to the ITC had been done by or in relation to OFCOM.
- (2) The code drawn up by the ITC under section 104 of the 1996 Act (code of guidance as to the operation of Part 4) and in force immediately before the commencement of section 301 of this Act is to continue to have effect (notwithstanding the substitutions made by that section of this Act)—
- (a) until the code drawn up by OFCOM under that section comes into force; but
  - (b) in relation to times on or after the transfer date and before the coming into force of OFCOM’s code, as if references in section 104(2) of that Act and in the code to the ITC were references to OFCOM.
- (3) If a provision of sections 300 to 302 of this Act comes into force before the television transfer date, a reference to OFCOM in an amendment made by that provision is to be construed in relation to times before that date as a reference to the ITC.
- (4) On the date on which section 300 of this Act comes into force, the Secretary of State shall revise the list maintained for the purposes of Part 4 of the 1996 Act in order to allocate each event which is a listed event on that date either to Group A or to Group B.
- (5) Where—
- (a) the events listed in the list in force immediately before the Secretary of State revises it under sub-paragraph (4) are treated, for any of the purposes of the code in force under section 104 of the 1996 Act at that time, as divided into two categories, and
  - (b) the Secretary of State’s revision under that sub-paragraph makes the same division,
- section 97(2) of the 1996 Act shall not apply in relation to that revision of that list.

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- (6) In this paragraph “the transfer date” is the date on which paragraph 13 of Schedule 1 comes into force.

*Complaints to the Broadcasting Standards Commission*

- 52 (1) On and after the transfer to OFCOM under this Act of the functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act, that Part is to have effect in relation to a fairness complaint made to, but not disposed of by, the Commission before the transfer as if—
- (a) anything done, or treated as done, by or in relation to the Commission for the purposes of, or in connection with, that complaint had been done by or in relation OFCOM; and
  - (b) those functions had been functions of OFCOM at the time when it was done.
- (2) Where immediately before the commencement of section 327 of this Act a licence to provide a licensed service (within the meaning of Part 5 of the 1996 Act) contains a condition included in that licence by virtue of section 119(7) of that Act (conditions requiring compliance with BSC directions), that condition is to have effect on and after the coming into force of section 327 of this Act as a condition requiring the licence holder to comply with directions given to him by OFCOM.
- (3) In this paragraph “fairness complaint” has the same meaning as in Part 5 of the 1996 Act.

*Codes of practice drawn up by the Broadcasting Standards Commission*

- 53 The code of practice drawn up by the Broadcasting Standards Commission under section 107 of the 1996 Act (code in respect of unjust and unfair treatment and infringements of privacy) is to have effect on and after the transfer under this Act to OFCOM of the Commission’s functions under Part 5 of that Act as if it were the code required to be drawn up under that section by OFCOM.

*Media ownership provisions*

- 54 (1) Part 4 of Schedule 14 to this Act is to have effect—
- (a) in relation to times before the television transfer date as if references to OFCOM were, in relation to licences under Part 1 of the 1990 Act or Part 1 of the 1996 Act, references to the ITC; and
  - (b) in relation to times before the radio transfer date as if references to OFCOM were, in relation to licences under Part 3 of the 1990 Act or Part 2 of the 1996 Act, references to the Radio Authority.
- (2) A determination by the ITC or the Radio Authority under paragraph 2(2) of Part 2 of Schedule 2 to the 1990 Act which is in force immediately before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as a determination under paragraph 15 of that Schedule to this Act.
- (3) Any guidance issued by the ITC and the Radio Authority under paragraph 2(3) of Part 2 of Schedule 2 to the 1990 Act and in force immediately before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as guidance published under paragraph 15(4) of that Schedule to this Act.

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- (4) Anything done under paragraph 15 of Schedule 14 by the ITC or the Radio Authority which is in force immediately before the relevant transfer date is to have effect on and after that date as if done under that paragraph by OFCOM.
- (5) The following powers under enactments in force before the relevant transfer date shall be exercisable by OFCOM at all times on or after that date in relation to a pre-commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act—
- (a) all the powers and duties of the ITC under section 5 of the 1990 Act and section 5 of the 1996 Act;
  - (b) all the powers and duties of the Radio Authority under section 88 of the 1990 Act and section 44 of the 1996 Act; and
  - (c) all the other powers and duties of the ITC or the Radio Authority in relation to contraventions of conditions imposed under section 5 or 88 of the 1990 Act or section 5 or 44 of the 1996 Act.
- (6) For the purpose of determining whether anything occurring after the relevant transfer date is a pre-commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act, references in those Parts of that Schedule to the ITC or to the Radio Authority are to be construed as including references to OFCOM.
- (7) In this paragraph—
- “pre-commencement contravention” means a contravention of a requirement which occurred before the coming into force of the repeal by this Act of the provision by or under which the requirement was imposed; and
  - “the relevant transfer date”—
    - (a) in relation to the ITC, means the television transfer date; and
    - (b) in relation to the Radio Authority, means the radio transfer date.

#### *TV licences*

- 55 A television licence granted under the Wireless Telegraphy Act 1949 (c. 54) before the coming into force of section 363 of this Act is to have effect after the commencement of that section as a licence for the purposes of that section.

#### *Functions under the Enterprise Act 2002*

- 56 (1) This section has effect in so far as, at any time before the coming into force of section 370 of this Act, anything has been done or is treated as done by or in relation to the Director for the purposes of, or in connection with, the carrying out of any of his functions under the Enterprise Act 2002 (c. 40).
- (2) That thing is to have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director, as if—
- (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and
  - (b) the provisions conferring those functions on OFCOM had been in force at the time it was done.

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- (3) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Enterprise Act 2002 (c. 40).
- (4) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not apply to something, that thing is to have effect instead as if done by or in relation to the Office of Fair Trading

#### *Functions under the Competition Act 1998*

- 57 (1) This paragraph applies in so far as, at any time before the coming into force of section 371 of this Act, anything has been done by or in relation to the Director for the purposes of, or in connection with, the carrying out of any of his functions under the Competition Act 1998 (c. 41).
- (2) That thing is to have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director, as if—
  - (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and
  - (b) the provisions conferring those functions on OFCOM had been in force at the time it was done.
- (3) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Competition Act 1998.
- (4) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not apply to something, that thing is to have effect instead as if done by or in relation to the Office of Fair Trading
- 58 (1) Where any regulations made under section 54(4) of the Competition Act 1998 (regulations about concurrent functions of regulators and the Office of Fair Trading) are in force at the coming into force of section 371 of this Act, those regulations—
  - (a) shall, from that time have effect in relation to functions exercisable concurrently by virtue of section 371 of this Act as they have effect in relation to functions exercisable concurrently by virtue of Part 2 of Schedule 10 to the Competition Act 1998; but
  - (b) shall so have effect subject to any amendments or revocations coming into force at or after that time.
- (2) Where, at any time before the coming into force of section 371, anything has been done by or in relation to the Director under or for the purposes of any regulations made under section 54(4) of the Competition Act 1998 that thing is to have effect, so far as necessary for the purposes of paragraph 57 of this Schedule, as if done by or in relation to OFCOM.

#### *Newspaper mergers*

- 59 (1) Chapter 2 of Part 5 and any related repeals shall, subject to sub-paragraph (2), not apply in relation to—

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- (a) a transfer of a newspaper or of newspaper assets (within the meaning given by section 57(2) of the Fair Trading Act 1973 (c. 41)) which has been made before the coming into force of section 373 of this Act; or
  - (b) a proposed transfer of a newspaper or of newspaper assets in relation to which an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made before the coming into force of section 373 of this Act.
- (2) Chapter 2 of Part 5 and any related repeals shall apply in relation to a proposed transfer of a newspaper or of newspaper assets if—
- (a) an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made;
  - (b) the application is expressed to depend on the operation of subsection (3) or (4) of that section;
  - (c) no consent is given by the Secretary of State under subsection (3) or (4) of that section; and
  - (d) no further application has been made for the consent of the Secretary of State under that section before the coming into force of section 373 of this Act.
- 60 Chapter 2 of Part 5 and any related repeals shall apply in relation to any transfer of a newspaper or of newspaper assets which is proposed (and not made) before the coming into force of section 373 of this Act and in relation to which no application has been made for the consent of the Secretary of State under section 58 of the Act of 1973 before the coming into force of that section.
- 61 References in paragraphs 59 and 60 to Chapter 2 of Part 5 do not include references to subsections (2) to (4) of section 389 (powers to make transitional and consequential amendments etc.).
- 62 (1) The Secretary of State may, instead of any or all of the conditions attached to a consent given by him (or treated as so given) under section 58 of the Fair Trading Act 1973 (c. 41)), accept undertakings under this paragraph to take, or refrain from taking, action specified or described in the undertakings.
- (2) If, and so far as, the Secretary of State accepts an undertaking under this paragraph instead of a condition, that condition shall cease to have effect.
- (3) In deciding whether to accept an undertaking under this paragraph, the Secretary of State may, in particular, consult the Office of Fair Trading and OFCOM.
- (4) An undertaking under this paragraph—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Secretary of State.
- (5) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this paragraph.
- (6) Paragraph 10 of Schedule 7 to the Enterprise Act 2002 (c. 40) (order-making power where final undertakings not fulfilled) shall apply in relation to an undertaking under this paragraph as it applies in relation to an undertaking under paragraph 9 of that Schedule to that Act but as if—
- (a) in sub-paragraph (2) the words from “for any” to “66(6)” were omitted; and



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- (b) sub-paragraph (3) were omitted.
- (7) The following provisions of the Enterprise Act 2002 (c. 40) shall apply in relation to an undertaking under this paragraph or an order made by virtue of sub-paragraph (6) as they apply in relation to an undertaking under paragraph 9 of Schedule 7 to that Act or (as the case may be) an order under paragraph 10 of that Schedule to that Act—
- (a) section 90 and Schedule 10 (procedural requirements for certain undertakings and orders);
  - (b) section 91 (register of undertakings and orders);
  - (c) section 92 (duty of OFT to monitor undertakings and orders);
  - (d) section 93 (further role of OFT in relation to undertakings and orders); and
  - (e) section 94 (rights to enforce undertakings and orders).
- (8) Section 402 of this Act shall not apply in relation to the power of the Secretary of State to make an order which is exercisable by virtue of sub-paragraph (6) but supplementary provisions of Part 3 of the Enterprise Act 2002 which relate to the making of an order under paragraph 10 of Schedule 7 to that Act shall apply in relation to the making of an order by virtue of sub-paragraph (6).
- (9) Section 402 of this Act shall not apply in relation to the power of the Secretary of State to make an order under section 91(6)(a) of the Enterprise Act 2002 as applied by virtue of sub-paragraph (7)(b) above but supplementary provisions of Part 3 of the Enterprise Act 2002 which relate to the making of an order under section 91(6) (a) of that Act shall apply in relation to the making of an order under that provision as applied by virtue of sub-paragraph (7)(b) above.

#### *Orders in Council under section 6 of the Continental Shelf Act 1964*

- 63 If an Order in Council made, or having effect as if made, in exercise of a power conferred by virtue of section 6 of the Continental Shelf Act 1964 (c. 29) is in force immediately before the commencement of section 410 of this Act in relation to provisions of—
- (a) the Wireless Telegraphy Act 1949 (c. 54), or
  - (b) the Wireless Telegraphy Act 1998 (c. 6),
- that Order is to have effect after the commencement of section 410 of this Act as an Order in Council made in exercise of the powers conferred by that section of this Act.

#### *Interpretation of Schedule*

- 64 In this Schedule—
- “the 1984 Act” means the Telecommunications Act 1984 (c. 12);
  - “the abolition of licensing” means the coming into force of the repeal by this Act of section 7 of the 1984 Act;
  - “the Director” means the Director General of Telecommunications;
  - “the ITC” means the Independent Television Commission.