



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART I

#### INDEPENDENT TELEVISION SERVICES

#### CHAPTER 1

##### REGULATION BY COMMISSION OF TELEVISION SERVICES GENERALLY

##### *Establishment of Independent Television Commission*

#### **1 The Independent Television Commission**

- (1) There shall be a commission to be called the Independent Television Commission (in this Part referred to as “the Commission”).
- (2) The Commission shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than eight nor more than ten, as he may from time to time determine.
- (3) Schedule 1 to this Act shall have effect with respect to the Commission.

##### *Function of Commission*

#### **2 Regulation by Commission of provision of television services**

- (1) It shall be the function of the Commission to regulate, in accordance with this Part, the provision of the following services, namely—
  - (a) television programme services which are provided from places in the United Kingdom by persons other than the BBC and the Welsh Authority, and
  - (b) additional services which are provided from places in the United Kingdom,

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and to regulate, in accordance with Part II, the provision of local delivery services (within the meaning of that Part) which are so provided.

- (2) It shall be the duty of the Commission—
- (a) to discharge their functions under this Part and Part II as respects the licensing of the services referred to in subsection (1) in the manner which they consider is best calculated—
    - (i) to ensure that a wide range of such services is available throughout the United Kingdom, and
    - (ii) to ensure fair and effective competition in the provision of such services and services connected with them; and
  - (b) to discharge their functions under this Part as respects the licensing of television programme services in the manner which they consider is best calculated to ensure the provision of such services which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests.
- (3) Subsection (2)(a)(ii) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.
- (4) In this Part—
- “additional service” has the meaning given by section 48(1); and
  - “television programme service” means—
    - (a) a television broadcasting service (as defined by subsection (5));
    - (b) a non-domestic satellite service (as defined by section 43(2)); or
    - (c) a licensable programme service (as defined by section 46(1)).
- (5) In this Part “television broadcasting service” means (subject to subsection (6)) a service consisting in the broadcasting of television programmes for general reception in, or in any area in, the United Kingdom, including a domestic satellite service (as defined by section 43(1)).
- (6) Subsection (5) does not apply to any teletext service or any other service in the case of which the visual images broadcast in the service consist wholly or mainly of non-representational images, that is to say visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

### *General provisions about licences*

## **3 Licences under Part I**

- (1) Any licence granted by the Commission under this Part shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as is provided, in relation to a licence of the kind in question, by the relevant provision of Chapter II, III, IV or V of this Part.
- (2) A licence may be so granted for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified.
- (3) The Commission—

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- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
- (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;

and nothing in this Part shall be construed as affecting the operation of this subsection or of section 5(1) or (2)(b) or (c).

- (4) The Commission may vary a licence by a notice served on the licence holder if—
  - (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
  - (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Commission about the variation.
- (5) Paragraph (a) of subsection (4) does not affect the operation of section 41(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 19(1) or 52(1) or in pursuance of any other provision of this Part which applies section 19(1).
- (6) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Commission.
- (7) Without prejudice to the generality of subsection (6), the Commission shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.
- (8) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the Wireless Telegraphy Act 1949 or section 7 of the Telecommunications Act 1984 in connection with the provision of that service.

#### **4 General licence conditions**

- (1) A licence may include—
  - (a) such conditions as appear to the Commission to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act;
  - (b) conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
  - (c) conditions requiring the licence holder to provide the Commission, in such manner and at such times as they may reasonably require, with such information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
  - (d) conditions providing for such incidental and supplemental matters as appear to the Commission to be appropriate.
- (2) A licence may in particular include conditions requiring the licence holder—
  - (a) to comply with any direction given by the Commission as to such matters as are specified in the licence or are of a description so specified; or

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- (b) (except to the extent that the Commission consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified.
- (3) The fees required to be paid to the Commission by virtue of subsection (1)(b) shall be in accordance with such tariff as may from time to time be fixed by the Commission; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Commission to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Commission regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 1 to this Act.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
  - (a) is required by virtue of any condition imposed under this Part to provide the Commission with any information, and
  - (b) in purported compliance with that condition provides them with information which is false in a material particular,
 he shall be taken for the purposes of sections 41 and 42 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **5 Restrictions on the holding of licences**

- (1) The Commission shall do all that they can to secure—
  - (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Commission may accordingly—
  - (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);

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- (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Commission—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if the Commission decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Commission consider necessary or expedient to ensure that where—
- (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,
- the Commission may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.
- (6) The Commission shall not serve any such notice on the licence holder unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body, or
  - (b) any change in the persons having control over or interests in the body,
- being (in either case) a change which is such that, if it fell to the Commission to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

#### *General provisions about licensed services*

## **6 General requirements as to licensed services**

- (1) The Commission shall do all that they can to secure that every licensed service complies with the following requirements, namely—
- (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;

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- (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) The Commission shall—
- (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of subsection (1)(c) in relation to licensed services; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Commission may make different provision in the code for different cases or circumstances.
- (4) Without prejudice to the generality of subsection (1), the Commission shall do all that they can to secure that there are excluded from the programmes included in a licensed service all expressions of the views and opinions of the person providing the service on matters (other than the provision of programme services) which are of political or industrial controversy or relate to current public policy.
- (5) The rules specified in the code referred to in subsection (3) shall, in particular, take account of the following matters—
- (a) that due impartiality should be preserved on the part of the person providing a licensed service as respects major matters falling within subsection (1)(c) as well as matters falling within that provision taken as a whole; and
  - (b) the need to determine what constitutes a series of programmes for the purposes of subsection (2).
- (6) The rules so specified shall, in addition, indicate to such extent as the Commission consider appropriate—
- (a) what due impartiality does and does not require, either generally or in relation to particular circumstances;
  - (b) the ways in which due impartiality may be achieved in connection with programmes of particular descriptions;
  - (c) the period within which a programme should be included in a licensed service if its inclusion is intended to secure that due impartiality is achieved for the

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purposes of subsection (1)(c) in connection with that programme and any programme previously included in that service taken together; and

- (d) in relation to any inclusion in a licensed service of a series of programmes which is of a description specified in the rules—
  - (i) that the dates and times of the other programmes comprised in the series should be announced at the time when the first programme so comprised is included in that service, or
  - (ii) if that is not practicable, that advance notice should be given by other means of subsequent programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole;

and those rules shall, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.

- (7) The Commission shall publish the code drawn up under subsection (3), and every revision of it, in such manner as they consider appropriate.
- (8) Nothing in this section or in sections 7 to 12 has effect in relation to any licensed service which is an additional service other than the teletext service referred to in section 49(2).

## **7 General code for programmes**

- (1) The Commission shall draw up, and from time to time review, a code giving guidance—
  - (a) as to the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes;
  - (b) as to the rules to be observed with respect to the inclusion in such programmes of appeals for donations; and
  - (c) as to such other matters concerning standards and practice for such programmes as the Commission may consider suitable for inclusion in the code;

and the Commission shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.

- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Commission shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be watching the programmes.
- (3) The Commission shall, in drawing up or revising the code under this section, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (4) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

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## **8 General provisions as to advertisements**

- (1) The Commission shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
  - (a) a licensed service must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) a licensed service must not, without the previous approval of the Commission, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 9.
- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Commission for the purposes of section 36.
- (4) After consultation with the Commission the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Commission shall not act as an advertising agent.

## **9 Control of advertisements**

- (1) It shall be the duty of the Commission—
  - (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;

and the Commission may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
  - (a) the Radio Authority;
  - (b) every person who is the holder of a licence under this Part;



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- (c) such bodies or persons appearing to the Commission to represent each of the following, namely—
    - (i) viewers,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products, as the Commission think fit; and
  - (d) such other bodies or persons who are concerned with standards of conduct in advertising as the Commission think fit.
- (3) The Commission shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
- (4) The Commission shall—
  - (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
  - (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Commission may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
- (6) The methods of control exercisable by the Commission for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—
  - (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances, or
  - (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
- (7) The Commission may give directions to persons holding any class of licences with respect to the times when advertisements are to be allowed.
- (8) Directions under this section may be, to any degree, either general or specific and qualified or unqualified; and directions under subsection (7) may, in particular, relate to—
  - (a) the maximum amount of time to be given to advertisements in any hour or other period,
  - (b) the minimum interval which must elapse between any two periods given over to advertisements and the number of such periods to be allowed in any programme or in any hour or day,
  - (c) the exclusion of advertisements from a specified part of a licensed service, and may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- (9) The Commission shall—

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- (a) in drawing up or revising the code, or
  - (b) in giving any directions under subsection (7),
- take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

## **10 Government control over licensed services**

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Commission to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified, with or without visual images of any picture, scene or object mentioned in the announcement; and it shall be the duty of the Commission to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Commission to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter specified in the notice; and it shall be the duty of the Commission to comply with the notice.
- (4) Where the Commission—
  - (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,
 or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

## **11 Monitoring by Commission of programmes included in licensed services**

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Commission may make and use recordings of those programmes or any part of them.
- (2) A licence shall include conditions requiring the licence holder—
  - (a) to retain, for a period not exceeding 90 days, a recording of every programme included in the licensed service;
  - (b) at the request of the Commission, to produce to them any such recording for examination or reproduction;

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- (c) at the request of the Commission, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Commission, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to view such programmes in advance of their being included in such services.

## **12 Audience research**

- (1) The Commission shall make arrangements—
- (a) for ascertaining—
    - (i) the state of public opinion concerning programmes included in licensed services, and
    - (ii) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in the various services licensed thereunder, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (2) Those arrangements shall—
- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Commission; and
  - (b) include provision for full consideration by the Commission of the results of any such research.

### *Prohibition on providing unlicensed television services*

## **13 Prohibition on providing television services without a licence**

- (1) Subject to subsection (2), any person who provides any service falling within section 2(1)(a) or (b) without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Commission, by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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- (5) Without prejudice to subsection (3), compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER II

### TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

#### *Channel 3*

#### **14 Establishment of Channel 3**

- (1) The Commission shall do all that they can to secure the provision, in accordance with this Chapter, of a nationwide system of television broadcasting services to be known as Channel 3.
- (2) Subject to subsection (5), Channel 3 shall be structured on a regional basis, with each of the services comprised within it (“Channel 3 services”) being provided for such area in the United Kingdom as the Commission may determine in the case of that service.
- (3) If it appears to the Commission that it would be appropriate for a particular Channel 3 service to do so, they may determine that the service shall include the provision of different programmes—
  - (a) for such different parts of the area for which it is provided, or
  - (b) for such different communities living within that area,
 as they may determine.
- (4) If the Commission so determine in the case of a particular Channel 3 service, that service shall be provided for a particular area only between such times of the day or on such days of the week (or both) as the Commission may determine.
- (5) If the Commission so determine, a Channel 3 service may be provided for two or more areas for which regional Channel 3 services are provided, but any such service may only be so provided between particular times of the day.
- (6) In this Part—
  - “regional Channel 3 service” means a Channel 3 service provided for a particular area determined under subsection (2); and
  - “national Channel 3 service” means a Channel 3 service provided as mentioned in subsection (5).
- (7) Any reference in this section to an area in the United Kingdom does not include an area which comprises or includes the whole of England or the whole of Scotland.
- (8) In this section and section 15 “programme” does not include an advertisement.

## 15 Applications for Channel 3 licences

- (1) Where the Commission propose to grant a licence to provide a Channel 3 service they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) if the service is to be a regional Channel 3 service, the area in the United Kingdom for which the service is to be provided,
    - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), the different parts of that area, or (as the case may be) the different communities living within it, for which such programmes are to be provided,
    - (iii) if the service is to be provided as mentioned in section 14(4), the times of the day or the days of the week (or both) between or on which it is to be provided, and
    - (iv) if the service is to be a national Channel 3 service, the areas in the United Kingdom for which it is to be provided and the times of the day between which it is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 19(1)(c) if he were granted the licence.
- (2) The Commission shall, when publishing a notice under subsection (1), publish with the notice general guidance to applicants for the licence in question which contains examples of the kinds of programme whose inclusion in the service proposed by any such applicant under subsection (3)(b) would be likely to result in a finding by the Commission that the service would comply with the requirements specified in section 16(2) or (3) (as the case may be).
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) the applicant's proposals for providing a service that would comply with the requirements specified in section 16(2) or (3) (as the case may be);(c) the applicant's proposals for promoting the understanding and enjoyment by—
    - (i) persons who are deaf or hard of hearing, and
    - (ii) persons who are blind or partially-sighted,of the programmes to be included in his proposed service;
  - (d) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons providing programmes for inclusion in that service;
  - (e) if the application is for a licence to provide a regional Channel 3 service, the applicant's proposals as to the use, in connection with his proposed service—

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- (i) of offices and studios situated within the area for which that service would be provided, and
  - (ii) of the services of persons employed (whether by him or by any other person) within that area;
  - (f) the applicant's cash bid in respect of the licence;
  - (g) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and
  - (h) such other information as the Commission may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (e), (g) and (h) of subsection (3).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the following matters, namely—
    - (i) the name of every person who has made an application to them in pursuance of the notice,
    - (ii) the proposals submitted by him under subsection (3)(b), and
    - (iii) such other information connected with his application as the Commission consider appropriate; and
  - (b) a notice—
    - (i) inviting representations to be made to them with respect to any matters published by them in accordance with paragraph (a) (ii) and (iii) above, and
    - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.
- (7) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

## **16 Procedure to be followed by Commission in connection with consideration of applications for licences**

- (1) Where a person has made an application for a Channel 3 licence in accordance with section 15, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 17 unless it appears to them—
- (a) that his proposed service would comply with the requirements specified in subsection (2) or (3) below (as the case may be), and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force,

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and any reference to an applicant in section 17 (except in section 17(12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.

- (2) Where the service to be provided under the licence is a regional Channel 3 service, the requirements referred to in subsection (1)(a) are—
- (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that such news programmes are broadcast at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
  - (b) that a sufficient amount of time is given in the programmes included in the service to programmes (other than news and current affairs programmes) which are of high quality;
  - (c) that a sufficient amount of time is given in the programmes so included—
    - (i) to a suitable range of regional programmes, that is to say, programmes (including news programmes) which are of particular interest to persons living within the area for which the service is provided, and
    - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), to a suitable range of programmes for each of the different parts of that area or (as the case may be) for each of the different communities living within it, being in each case a range of programmes (including news programmes) which are of particular interest to persons living within the relevant part of that area or (as the case may be) the relevant community,and that any news programmes so included in accordance with subparagraph (i) or (ii) are of high quality;
  - (d) that a suitable proportion of the regional programmes included in the service in accordance with paragraph (c) are made within the area for which it is to be provided;
  - (e) that a sufficient amount of time is given in the programmes included in the service to religious programmes and programmes intended for children;
  - (f) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
  - (g) that a proper proportion of the matter included in those programmes is of European origin; and
  - (h) that in each year not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (3) Where the service to be provided under the licence is a national Channel 3 service, the requirements referred to in subsection (1)(a) are such (if any) of the requirements specified in subsection (2) as the Commission may determine to be appropriate having regard to the nature of that service.
- (4) In deciding whether an applicant's proposed service would comply with the requirements specified in subsection (2) or (3) (as the case may be), the Commission shall take into account any representations made to them in pursuance of section 15(6)(b) with respect to that service; and in applying subsection (2)(g) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

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- (5) In subsection (2)(h)—
- (a) “qualifying programmes” and “independent productions” mean, in each case, programmes of such description as the Secretary of State may by order specify for the purpose; and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (6) The Secretary of State may by order amend subsection (2)(h) by substituting a different percentage for the percentage for the time being specified there.
- (7) Before making an order under subsection (5) or (6) the Secretary of State shall consult the Commission; and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section “programme” does not include an advertisement.

## **17 Award of licence to person submitting highest cash bid**

- (1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to the Commission—
  - (a) that the quality of the service proposed by such an applicant is exceptionally high; and
  - (b) that the quality of that proposed service is substantially higher than the quality of the service proposed—
    - (i) by the applicant who has submitted the highest bid, or
    - (ii) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids;
 and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.



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- (5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
  - (a) paying any amounts payable by him by virtue of section 19(1), or
  - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.
- (9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (14)) have effect as if that person had not made an application for the licence.
- (11) Where the Commission have awarded a Channel 3 licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
  - (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—
  - (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Commission that his proposed service would comply with the requirements specified in section 16(2) or (3) (as the case may be);

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- (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission's reasons for the licence having been so awarded; and
  - (d) such other information as the Commission consider appropriate.
- (13) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (14) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if the Commission decide that it would be desirable to publish a further notice under this Part in respect of the grant of a further licence to provide the service in question.

## **18 Failure to begin providing licensed service and financial penalties on revocation of licence**

- (1) If at any time after a Channel 3 licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
  - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,
- then, subject to subsection (2)—
- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 17 shall (subject to section 17(14)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the Commission revoke a Channel 3 licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
- (a) where—
    - (i) the licence is revoked under this section, or

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- (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended, 7 per cent. of the amount which the Commission estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 68(5), be recoverable by the Commission as a debt due to them from any person who controls that body.

## **19 Additional payments to be made in respect of Channel 3 licences**

- (1) A Channel 3 licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 15(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
  - (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
  - (b) in respect of charges made in that period for the reception of programmes included in that service.
- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2)(a), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
  - (a) the licence holder or any connected person, and
  - (b) a person acting as an advertising agent,the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.

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- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A Channel 3 licence may include conditions—
- (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
- (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—
- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
  - (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose “the retail prices index” means the general index of prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.

## **20 Duration and renewal of Channel 3 licences**

- (1) A Channel 3 licence shall (subject to the provisions of this Part) continue in force for a period of ten years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.

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- (2) An application for the renewal of a Channel 3 licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a Channel 3 licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
  - (a) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied—
    - (i) with the conditions included in the licence in pursuance of subsection (1) of section 33 (whether as originally imposed or as varied under subsection (3) of that section), and
    - (ii) with the requirements specified in section 16(2) or (3) (as the case may be); or
  - (b) they propose to grant a fresh Channel 3 licence for the provision of a service which would differ from that provided by the applicant under his licence as respects either—
    - (i) the area for which it would be provided, or
    - (ii) the times of the day or days of the week between or on which it would be provided,or both.
- (5) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of a Channel 3 licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any such application the Commission—
  - (a) shall determine an amount which is to be payable to the Commission by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 15(1)(d)
    - (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 19(1)(c) during the period for which the licence is to be renewed.
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 19(1)(a) if they were granting a fresh licence to provide the Channel 3 service in question.
- (8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
  - (a) the amount determined by them under subsection (6)(a), and
  - (b) any percentage specified by them under subsection (6)(b),and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

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- (9) Where a Channel 3 licence has been renewed under this section—
- (a) any conditions included in it in pursuance of section 19 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(b) above;
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a Channel 3 licence is originally in force; and
  - (c) the reference in section 42(4) to the end of the period for which a Channel 3 licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.
- (10) In this section “the relevant date”, in relation to a Channel 3 licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 15(1) if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the Channel 3 service formerly provided under that licence.

## **21 Restriction on changes in control over Channel 3 licence holder**

- (1) Where—
- (a) any change in the persons having control over—
    - (i) a body to which a Channel 3 licence has been awarded or transferred in accordance with this Part of this Act, or
    - (ii) an associated programme provider,
 takes place within the relevant period, and
  - (b) that change takes place without having been previously approved for the purposes of this section by the Commission,
- then (subject to subsection (4)) the Commission may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.
- (2) In subsection (1)—
- “associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and
- “the relevant period”, in relation to a Channel 3 licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;
- and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a Channel 3 licence has been awarded but not yet granted were the holder of such a licence.
- (3) The Commission shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a)—

- (a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 15(3)(b) by that body (or, as the case may be, by the person to whom the licence was originally awarded), or
- (b) it appears to them that the change would be prejudicial to the provision of Channel 3 as such a nationwide system of services as is mentioned in section 14(1);

and the Commission may refuse so to approve any such change if, in any circumstances not falling within paragraph (a) or (b) above, they consider it appropriate to do so.

- (4) The Commission shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where under subsection (1) the Commission refuse to grant a licence to any body, section 17 shall (subject to section 17(14)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 42 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

## **22 Temporary provision of regional Channel 3 service for additional area**

- (1) Where it appears to the Commission—
  - (a) that (whether as a result of the revocation of an existing regional Channel 3 licence or for any other reason) there will be, in the case of a particular area determined under section 14(2), a temporary lack of any regional Channel 3 service licensed to be provided for that area, but
  - (b) that it would be reasonably practicable for the holder of a licence to provide a regional Channel 3 service for any other such area to provide his licensed service for the area referred to in paragraph (a) as well,the Commission may invite the holder of that licence temporarily to provide his licensed service for that additional area.
- (2) If the holder of that licence agrees so to provide his licensed service, the Commission shall authorise the provision of that service for the additional area in question, during such period as they may determine, by means of a variation of the licence to that effect.

### *Channel 4*

## **23 The Channel Four Television Corporation**

- (1) There shall be a corporation to be called the Channel Four Television Corporation (in this Part referred to as “the Corporation”).
- (2) The Corporation shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Commission; and
  - (b) such number of other members, not being less than eleven nor more than thirteen, as the Commission may from time to time determine.

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- (3) The other members referred to in subsection (2)(b) shall consist of—
  - (a) persons appointed by the Commission; and
  - (b) ex-officio members of the Corporation;
 and the total number of members appointed by the Commission under subsection (2) (a) and paragraph (a) above shall exceed the number of ex-officio members.
- (4) Any appointment made by the Commission under subsection (2)(a) or (3)(a) shall require the approval of the Secretary of State.
- (5) For the purposes of subsection (3) the following persons shall be ex-officio members of the Corporation, namely—
  - (a) the chief executive of the Corporation; and
  - (b) such other employees of the Corporation as may for the time being be nominated by the chief executive and the chairman of the Corporation acting jointly.
- (6) Schedule 3 to this Act shall have effect with respect to the Corporation.

#### **24 Channel 4 to be provided by Corporation as licensed service**

- (1) The function of the Corporation shall be to secure the continued provision (subject to and in accordance with the provisions of this Part) of the television broadcasting service known as Channel 4.
- (2) All the shares in the body corporate referred to in section 12(2) of the 1981 Act (activities to be carried on by subsidiary of Independent Broadcasting Authority) shall vest in the Corporation on 1st January 1993.
- (3) Channel 4 shall be provided by the Corporation under a licence granted to them by the Commission, and shall be so provided for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.
- (4) The licence to be granted to the Corporation by the Commission in pursuance of subsection (3) shall continue in force for a period of ten years beginning with 1st January 1993, and may be renewed by the Commission on one or more occasions for a period of ten years beginning with the date of renewal.

#### **25 Conditions to be included in Channel 4 licence**

- (1) The licence granted to the Corporation in pursuance of section 24(3) shall include such conditions as appear to the Commission to be appropriate for securing not only that Channel 4 complies with the requirements specified in subsection (2) but also—
  - (a) that Channel 4 programmes contain a suitable proportion of matter calculated to appeal to tastes and interests not generally catered for by Channel 3, and
  - (b) that innovation and experiment in the form and content of those programmes are encouraged,
 and generally that Channel 4 is given a distinctive character of its own.
- (2) The requirements referred to in subsection (1) are—
  - (a) that Channel 4 is provided as a public service for disseminating information, education and entertainment;
  - (b) that Channel 4 programmes maintain—



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- (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
    - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast;
  - (c) (without prejudice to so much of paragraph (a) as relates to the dissemination of education) that a suitable proportion of Channel 4 programmes are of an educational nature;
  - (d) that a sufficient amount of time is given in Channel 4 programmes to news programmes and current affairs programmes which are of high quality;
  - (e) that a proper proportion of the matter included in Channel 4 programmes is of European origin; and
  - (f) that in each year not less than the prescribed percentage of the total amount of time allocated to the broadcasting of qualifying programmes on Channel 4 is allocated to the broadcasting of a range and diversity of independent productions.
- (3) In applying subsection (2)(e) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.
- (4) In subsection (2)(f)—
- (a) “qualifying programmes” and “independent productions” have the same meaning as in section 16(2)(h), and “the prescribed percentage” means the percentage for the time being specified in section 16(2)(h); and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (5) The licence referred to in subsection (1) shall also include conditions requiring the Corporation not to be involved in the making of programmes to be broadcast on Channel 4 except to such extent as the Commission may allow.
- (6) In this section “programme” does not include an advertisement.

## **26 Revenue deficits of Corporation to be funded by Channel 3 licensees**

- (1) The Commission shall, before the beginning of the year 1993 and each subsequent year—
- (a) estimate the amount of the Corporation’s qualifying revenue for that year;
  - (b) estimate the amount of the total television revenues for that year; and
  - (c) estimate the Corporation’s prescribed minimum income for that year;
- and the Commission may, on one or more occasions, revise any estimate made by them under this subsection.
- (2) For the purposes of this section—
- (a) the Corporation’s prescribed minimum income for any year shall be 14 per cent. of the total television revenues for that year; and
  - (b) “total television revenues” means, in relation to any year, the aggregate of the qualifying revenues for that year of the following, namely—
    - (i) all holders of Channel 3 or Channel 5 licences;
    - (ii) the Welsh Authority; and

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- (iii) the Corporation itself.
- (3) If, in the case of any year, the aggregate of the following amounts, namely—
- (a) the amount of the Corporation’s qualifying revenue for that year as estimated by the Commission under subsection (1), and
  - (b) any amount which, at the beginning of that year, is for the time being standing to the credit of any such reserve fund as is mentioned in section 27(3),
- is less than the amount of the Corporation’s prescribed minimum income for that year as estimated by the Commission under subsection (1), then (subject to subsection (4)) the amount of the difference shall be raised by the Commission by means of a levy imposed on all persons who are for the time being holders of Channel 3 licences.
- (4) The aggregate amount payable by virtue of any levy under subsection (3) shall not exceed 2 per cent. of the amount estimated by the Commission for the year in question under subsection (1)(b); and the amount to be paid by each of the persons subject to the levy shall be such proportion of that aggregate amount as is determined by the Commission in relation to him (and different proportions may be so determined in relation to different persons).
- (5) Every Channel 3 licence shall include conditions—
- (a) requiring the holder of the licence to pay to the Commission, by monthly instalments, any amount which he is liable to pay by virtue of subsections (3) and (4);
  - (b) authorising the Commission to adjust the instalments payable by the holder of the licence to take account of any revised estimate made by them under subsection (1); and
  - (c) providing for the adjustment of any overpayment or underpayment.
- (6) Any amount received by the Commission by virtue of subsection (5)(a) shall be transmitted by them to the Corporation.
- (7) Where, in respect of any year—
- (a) the Commission have imposed a levy under subsection (3), and
  - (b) the aggregate amount transmitted by them to the Corporation under subsection (6) exceeds the relevant amount,
- the Commission shall notify the Corporation of that fact; and the Corporation shall, as soon as reasonably practicable after receiving such a notification, repay to the Commission the amount of that excess.
- (8) In subsection (7) “the relevant amount” means the amount by which the aggregate of the following amounts, namely—
- (a) the Corporation’s qualifying revenue for the year in question, and
  - (b) any such amount as is mentioned in subsection (3)(b),
- is less than the Corporation’s prescribed minimum income for that year.
- (9) Section 19(2) to (6) shall have effect, with any necessary modifications, for the purpose of enabling the Commission to estimate or determine a person’s qualifying revenue for any year for the purposes of this section.
- (10) The Secretary of State may by order amend subsection (2) or (4) above by substituting a different percentage for the percentage for the time being specified there; but no such order may be made before the end of the year 1997.

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- (11) An order shall not be made under subsection (10) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

## **27 Application of excess revenues of Corporation**

- (1) Where the qualifying revenue of the Corporation for any year exceeds the Corporation's prescribed minimum income for that year, the Corporation shall—
- pay one half of the excess to the Commission; and
  - apply the other half in accordance with subsection (3).
- (2) Where the Commission receive any amount under subsection (1)(a) in respect of any year, they shall distribute that amount (“the relevant amount”) between the holders of Channel 3 licences in such a way that each of them receives such proportion of the relevant amount as corresponds to the proportion of the aggregate amount referred to in subsection (4) of section 26 which he would, in the opinion of the Commission, have been required to pay if a levy had been imposed for that year under subsection (3) of that section.
- (3) Where subsection (1)(b) has effect in relation to any amount—
- half of that amount shall be carried by the Corporation to the credit of a reserve fund established by them under this subsection, and
  - the other half may be applied by the Corporation towards meeting current expenditure incurred by them in connection with the provision of Channel 4, but to the extent that it is not so applied shall be carried to the credit of that fund;
- and (subject to the following provisions of this section) the management and application of that fund shall be as the Corporation may determine.
- (4) Subject to subsection (5), no part of that fund shall be applied otherwise than for the purposes of Channel 4; and no direction may be given by the Secretary of State under that subsection with respect to the application of any amount for the time being standing to the credit of that fund which has been taken into account by the Commission for the purposes of section 26(3)(b) or (8)(b).
- (5) The Secretary of State may, with the approval of the Treasury, give to the Corporation such directions as he thinks fit with respect to the management and application of that fund (including directions requiring the whole or part of it to be paid into the Consolidated Fund); and the Corporation shall comply with any such directions.
- (6) In subsection (1) above the reference to the Corporation's prescribed minimum income for any year shall be construed in accordance with section 26(2); and subsections (2) to (6) of section 19 shall have effect for determining the Corporation's qualifying revenue for any year for the purposes of subsection (1) above as they have effect for determining a person's qualifying revenue for any accounting period of his for the purposes of subsection (1)(c) of that section.

## *Channel 5*

## **28 Channel 5**

- (1) The Commission shall do all that they can to secure the provision of a television broadcasting service for any such minimum area of the United Kingdom as may be

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determined by them in accordance with subsection (2); and any such service shall be known as Channel 5.

- (2) In determining the minimum area of the United Kingdom for which Channel 5 is to be provided the Commission shall have regard to the following consideration, namely that the service should, so far as is reasonably practicable, make the most effective use of the frequencies on which it is to be provided.
- (3) If the Commission so determine, Channel 5 shall be provided under a particular licence only between such times of the day or on such days of the week (or both) as they may determine.
- (4) Where the Commission have granted a licence to provide Channel 5, they may, if it appears to them to be appropriate to do so in view of any lack of facilities available for transmitting the service, dispense with any requirement to provide the service for such part of the area referred to in subsection (2) as they may determine; and any such dispensation shall have effect for such period as they may determine.

### **29 Application to Channel 5 of provisions relating to Channel 3**

- (1) Subject to subsections (2) and (3), sections 15 to 21 shall apply in relation to a Channel 5 licence as they apply in relation to a regional Channel 3 licence.
- (2) In its application in relation to a Channel 5 licence—
  - (a) section 15(1)(b)(i) shall be read as referring to any such minimum area of the United Kingdom as is determined by the Commission in accordance with section 28(2); and
  - (b) section 16(2) shall (except where subsection (3) below applies) have effect with the omission of paragraphs (c) and (d).
- (3) Where the Commission make a determination under section 28(3), section 16(2) shall, in its application in relation to each Channel 5 licence, have effect to such extent as they may determine to be appropriate having regard to the nature of the service to be provided under that licence.

### **30 Initial Channel 5 licensee required to retune equipment susceptible to interference**

- (1) A Channel 5 licence which is in force at the commencement of the provision of Channel 5 shall include conditions—
  - (a) requiring the holder of the licence to make arrangements for any relevant equipment to be retuned or otherwise modified—
    - (i) at the request of the person by whom the equipment is kept (being a request made before such date as is specified in the conditions), and
    - (ii) without charge to that person,
 so far as is necessary to prevent the equipment from suffering interference caused by the transmission of Channel 5;
  - (b) requiring all work falling to be carried out under the arrangements—
    - (i) to be carried out in a proper manner, and
    - (ii) to be completed within such period as is specified in the conditions;
 and

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- (c) enabling the Commission to determine whether work carried out under the arrangements is carried out in a proper manner.
- (2) Any such Channel 5 licence shall also include conditions requiring the holder of the licence to publicise, in such manner as may be approved by the Commission, information with respect to—
- (a) the likelihood of different kinds of equipment suffering interference caused by the transmission of Channel 5;
  - (b) the arrangements which the holder of the licence is required to make by virtue of conditions imposed in pursuance of subsection (1); and
  - (c) the kinds of equipment in relation to which those arrangements are to be so made.
- (3) The holder of a Channel 5 licence shall not be required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment—
- (a) unless the equipment—
    - (i) is, on the date of the making of such a request as is referred to in paragraph (a)(i) of that subsection, kept by the person in question wholly or mainly for domestic purposes, and
    - (ii) was so kept by that person on the commencement date (if that date occurred before the date mentioned in sub-paragraph (i) above); or
  - (b) if the equipment would not be liable to suffer interference caused by the transmission of Channel 5 but for the installation at the place where the equipment is kept of any apparatus for enabling that service to be received there;
- and, where any relevant equipment has been retuned or otherwise modified in accordance with any such conditions, the holder of such a licence shall not be required by virtue of any such conditions to make arrangements on any subsequent occasion for the retuning or other modification of that equipment.
- (4) Any dispute as to when the commencement date occurred in the case of any relevant equipment shall be determined by the Commission.
- (5) Where—
- (a) in accordance with section 28(3), more than one Channel 5 licence is in force at the same time, and
  - (b) each of the licences includes such conditions as are mentioned in subsections (1) and (2),
- the holders of the licences shall each comply with those conditions to such extent as the Commission may determine in relation to him.
- (6) Where the holder of a Channel 5 licence is required, by virtue of conditions imposed in pursuance of subsection (1), to make any such arrangements as are mentioned in that subsection in relation to any relevant equipment, those conditions shall be taken as requiring him in addition to make arrangements for any television set connected to that equipment to be retuned—
- (a) at the request of the person by whom the equipment is kept, and
  - (b) without charge to that person,
- so far as is necessary to enable it to be used in conjunction with the equipment (as retuned or otherwise modified); and subsections (1)(b) and (c) and (2)(b) shall have

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effect in relation to those arrangements as they have effect in relation to any such arrangements as are mentioned in subsection (1)(a).

(7) In this section—

“the commencement date”, in relation to any relevant equipment, means the date when Channel 5 began to be provided for reception in an area which includes the place where the equipment is kept on the date of the making of such a request as is referred to in subsection (1)(a)(i); and

“relevant equipment” means any equipment which is capable of transmitting self-generated electromagnetic signals for reception by a television set connected to it and which is liable, if used without being retuned or otherwise modified, to suffer interference caused by the transmission of Channel 5.

### *Provision of news programmes*

## **31 Provision of news on Channels 3 and 5**

(1) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder—

- (a) to broadcast in the licensed service news programmes of high quality dealing with national and international matters; and
- (b) to broadcast such programmes in that service at intervals throughout the period for which the service is provided, and in particular (except in the case of a national Channel 3 licence) at peak viewing times.

(2) A regional Channel 3 licence shall, in addition, include conditions requiring the news programmes broadcast by the licence holder in compliance with conditions imposed in pursuance of subsection (1) to be programmes provided by a nominated news provider which are—

- (a) presented live, and
- (b) broadcast simultaneously with the broadcasts of news programmes provided by the same nominated news provider which are made by other holders of regional Channel 3 licences in compliance with conditions so imposed.

(3) In subsection (2) “nominated news provider” means a body corporate for the time being nominated for the purposes of that subsection under section 32.

## **32 Nomination of bodies to provide news for regional Channel 3 services**

(1) With a view to enabling them to nominate bodies corporate as nominated news providers for the purposes of section 31(2), the Commission shall invite bodies corporate appearing to them to be qualified for nomination to make applications to be so nominated; and any such invitations shall be issued at a time that is, in their opinion, appropriate for securing that at least one such body is so nominated by the time the first notice is published by them under section 15(1).

(2) Where a body corporate—

- (a) applies to the Commission (whether in pursuance of any such invitation or not) to be nominated under this section as a nominated news provider, and
- (b) appears to the Commission to be qualified for nomination,

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the Commission shall so nominate that body unless they are satisfied that to do so would be likely, in view of the number of bodies already so nominated, to be prejudicial to the provision of high quality news programmes for broadcasting in regional Channel 3 services (taken as a whole).

(3) Subject to subsections (4) and (5), any nomination made by the Commission under this section shall remain in force for a period of ten years, and at the end of that period may be renewed by the Commission for a further period of ten years.

(4) Where the Commission have refused to nominate a body corporate under this section on the ground that they are satisfied as mentioned in subsection (2), the Commission shall from time to time thereafter, at such intervals as they may determine, review the performance as nominated news providers of all of the bodies for the time being nominated under this section; and if on any such review they are satisfied, in the case of such body so nominated as they may determine, that another body corporate which—

- (a) is not a nominated news provider, but
- (b) appears to them to be qualified for nomination,

would offer a better service than the first-mentioned body as respects the provision of high quality news programmes for broadcasting in regional Channel 3 services, they shall (subject to subsection (6)) by notice terminate that body's nomination, and shall nominate the other body under this section in its place.

(5) If at any time the Commission—

- (a) are for any reason dissatisfied in the case of any nominated news provider with the performance of that body as a nominated news provider, and
- (b) are satisfied that to terminate that body's nomination would not be prejudicial to the provision of high quality news programmes for broadcasting in regional Channel 3 services (taken as a whole),

they shall (subject to subsection (6)) by notice terminate that body's nomination.

(6) The Commission shall not terminate a body's nomination under subsection (4) unless they have given the body a reasonable opportunity of making representations to them about the proposed termination of its nomination; and they shall not terminate a body's nomination under subsection (5) unless they have given the body a reasonable opportunity of making representations to them about the matters complained of.

(7) Before nominating, or terminating the nomination of, any body under this section the Commission shall consult every person who is the holder of a licence to provide a regional Channel 3 service.

(8) Any instrument by which a body is nominated under this section shall include conditions—

- (a) imposing limits on the extent to which persons of any specified class or description may be participants in the nominated news provider;
- (b) requiring that body to provide the Commission with such information as they may reasonably require for the purpose of determining whether any of those limits has been exceeded; and
- (c) enabling the Commission to terminate that body's nomination if satisfied that any of those limits has been exceeded;

and any such instrument may provide for any of those limits to apply only after the expiry of a specified period.

(9) The limits imposed in pursuance of subsection (8) shall secure—

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- (a) that no person is a participant with more than a 20 per cent. interest in the nominated news provider; and
  - (b) that any participants in the nominated news provider who are holders of licences to provide regional Channel 3 services, when taken together—
    - (i) hold or are beneficially entitled to less than 50 per cent. of the shares in that body; and
    - (ii) possess less than 50 per cent. of the voting power in it.
- (10) Any limit imposed in accordance with subsection (9)(a) shall have effect in relation to a particular participant as if he and every person connected with him were one person; and for this purpose the following persons shall be treated as connected with a particular participant, namely—
- (a) a person who controls the participant;
  - (b) an associate of the participant or of a person falling within paragraph (a); and
  - (c) a body which is controlled by the participant or by any associate of the participant.
- (11) Subject to the provisions of subsections (9) and (10), the limits imposed in pursuance of subsection (8) shall be such as the Commission may determine.
- (12) A body corporate shall be disqualified for being nominated under this section if, by virtue of any provision in Part II of Schedule 2 to this Act, it would be a disqualified person in relation to any description of licence granted by the Commission; and any reference in this section to a body corporate appearing to the Commission to be qualified for nomination is a reference to a body corporate appearing to them to be both—
- (a) effectively equipped and adequately financed to provide high quality news programmes for broadcasting in regional Channel 3 services; and
  - (b) not disqualified for being nominated under this section by virtue of this subsection.
- (13) In this section—
- (a) references to a nominated news provider are references to a body corporate for the time being nominated under this section; and
  - (b) references to nomination under this section are references to nomination under this section for the purposes of section 31(2);
- and subsections (8) to (10) shall be construed in accordance with Part I of Schedule 2 to this Act.

*Miscellaneous provisions relating to Channels 3, 4 and 5*

**33 Conditions requiring holder of Channel 3 or Channel 5 licence to deliver promised service**

- (1) Any Channel 3 or Channel 5 licence shall include such conditions as appear to the Commission to be appropriate for securing—
- (a) that the service provided under the licence accords with the proposals submitted by the licence holder under subsection (3)(b) of section 15; and
  - (b) the implementation of the proposals submitted by him under subsection (3) (c) and (d), or (as the case may) subsection (3)(c) to (e), of that section.



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- (2) In subsection (1) the reference to section 15 is, in relation to a Channel 5 licence, a reference to that section as applied by section 29.
- (3) Any conditions imposed in pursuance of subsection (1) may be varied by the Commission with the consent of the licence holder (and section 3(4)(b) shall accordingly not apply to any such variation).

### **34 Schools programmes**

- (1) The Commission shall do all that they can to secure that a suitable proportion of the programmes which are included in Channel 3 services and Channels 4 and 5 (taken as a whole) are schools programmes.
- (2) Accordingly, any Channel 3 licence or licence to provide Channel 4 or 5 may include—
  - (a) conditions requiring the licence holder to produce, or finance the production of, schools programmes;
  - (b) conditions requiring the licence holder to acquire schools programmes provided by other persons;
  - (c) conditions requiring the licence holder to ensure that schools programmes included in the licensed service—
    - (i) are of high quality, and
    - (ii) are suitable to meet the needs of schools in the area or areas in the United Kingdom for which the service is provided;
  - (d) conditions specifying the minimum number of hours in term time or within normal school hours that are to be allocated to the broadcasting of schools programmes in the licensed service;
  - (e) conditions requiring the licence holder to provide such material for use in connection with the schools programmes broadcast by him as may be necessary to secure that effective use is made of those programmes in schools; and
  - (f) conditions requiring the licence holder from time to time to consult such bodies or other persons who are concerned with, or have an interest in, schools or the production of schools programmes as the Commission think fit.
- (3) In this section “schools programmes” means programmes which are intended for use in schools.

### **35 Subtitling for the deaf**

- (1) A Channel 3 or Channel 5 licence shall include—
  - (a) conditions—
    - (i) specifying the relevant minimum number of hours in a week for the purposes of this section, and
    - (ii) requiring programmes with subtitling to be broadcast in the licensed service during not less than that number of hours in each week; and
  - (b) conditions requiring the holder of the licence to attain such technical standards relating to the provision of subtitling as are specified in the conditions.
- (2) Subject to subsections (3) and (4), the relevant minimum number of hours in a week for the purposes of this section is—
  - (a) in relation to Channel 3 services—

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- (i) for the year which includes the commencement of this section, such number of hours in a week as the Commission shall determine in order to achieve an increase of at least ten per cent. over the average number of hours in a week during which programmes with subtitling were, during the year immediately preceding that year, broadcast on ITV (as defined by section 10(2) of the 1981 Act); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year; and
  - (b) in relation to Channel 5—
    - (i) for the year which includes the commencement of the provision of Channel 5, such number of hours in a week as the Commission shall determine in order to secure that the proportion of the programmes broadcast on Channel 5 in a week which is represented by programmes with subtitling is the same as that achieved in relation to Channel 3 services by virtue of paragraph (a)(i); and
    - (ii) for each successive year, such number of hours in a week as the Commission shall determine, being a number greater than that for the previous year.
- (3) The Commission shall make such determinations under subsection (2) as are appropriate to secure that, subject to subsection (4), the relevant minimum number of hours in a week for the purposes of this section represents—
  - (a) in the case of Channel 3 services—
    - (i) for the year 1998, 50 per cent. of the average number of hours in a week during which programmes were, during the year 1997, broadcast on Channel 3; and
    - (ii) for the year 1999 and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable; and
  - (b) in the case of Channel 5—
    - (i) for the year which includes the fifth anniversary of the date of the commencement of the provision of Channel 5, 50 per cent. of the average number of hours in a week during which programmes were, during the year preceding that year, broadcast on Channel 5; and
    - (ii) for the year following that year and each successive year, the greatest number of hours in a week that appears to the Commission to be reasonably practicable.
- (4) In the case of—
  - (a) a Channel 3 service provided as mentioned in section 14(4) or (5), or
  - (b) a Channel 5 service provided as mentioned in section 28(3),
 the relevant minimum number of hours in a week for the purposes of this section shall for any year be such number of hours in a week as the Commission shall determine, being such proportion of the number of hours in a week determined by the Commission for that year under subsection (2)(a) or (b) (as the case may be) as appears to them to be appropriate.
- (5) As soon as the Commission have made any determination under this section (other than under subsection (2)(a)(i) or (b)(i))—

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- (a) they shall notify the holder of every licence to which the determination relates of the determination; and
  - (b) every such licence shall have effect as if for the number for the time being specified in the conditions included in the licence in pursuance of subsection (1)(a)(i) there were substituted the new number determined by the Commission.
- (6) Where any week falls—
- (a) partly within one year to which subsection (2)(a) or (b) applies, and
  - (b) partly within another such year,
- that week shall be treated for the purposes of this section as falling wholly within the earlier of those years.
- (7) The holder of a Channel 3 or Channel 5 licence shall not impose charges for providing subtitling in respect of any programme broadcast in his licensed service.
- (8) In this section—
- “on Channel 3” means in Channel 3 services taken as a whole;
  - “on Channel 5” means in the television broadcasting service referred to in section 28(1), taken as a whole;
  - “subtitling” means subtitling for the deaf, whether provided by means of a teletext service or otherwise.

### **36 Party political broadcasts**

- (1) Subject to subsection (2), any regional Channel 3 licence or licence to provide Channel 4 or 5 shall include—
- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Commission may determine.
- (2) Where any determination under section 28(3) is in force, a licence to provide Channel 5 may (but need not) include any such conditions as are mentioned in subsection (1) (a) and (b).
- (3) Without prejudice to the generality of paragraph (b) of subsection (1), the Commission may determine for the purposes of that subsection—
- (a) the political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- (4) Any rules made by the Commission for the purposes of this section may make different provision for different cases or circumstances.

### **37 Announcements of programme schedules**

- (1) Any Channel 3 licence or licence to provide Channel 4 may include conditions requiring the licence holder to include in the licensed service such announcements concerning relevant programme schedules as the Commission may determine.
- (2) In this section “relevant programme schedules” means—

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- (a) in relation to a Channel 3 licence, programme schedules for programmes to be broadcast on Channel 4 and, where any part of the area for which the licensed service is to be provided is in Wales, programme schedules for programmes to be broadcast on S4C; and
- (b) in relation to the licence to provide Channel 4, programme schedules for programmes to be included in any Channel 3 service.

### **38 Promotion of equal opportunities in relation to employment by licence holder**

- (1) Any Channel 3 licence or licence to provide Channel 4 or Channel 5 shall include conditions requiring the licence holder—
  - (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups; and
  - (b) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the Race Relations Act 1976.

### **39 Networking arrangements between holders of regional Channel 3 licences**

- (1) This section has effect with respect to the making of arrangements which—
  - (a) apply to all the holders of regional Channel 3 licences, and
  - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services,
 being arrangements made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of such services which is able to compete effectively with other television programme services provided in the United Kingdom; and any such arrangements are referred to in this section as “networking arrangements”.
- (2) Any application for a regional Channel 3 licence shall, in addition to being accompanied by any such proposals as are mentioned in section 15(3)(b) to (e), be accompanied by the applicant’s proposals for participating in networking arrangements made under this section; and—
  - (a) where a person has duly made such an application, the Commission—
    - (i) shall, as soon as reasonably practicable after the closing date for applications for the licence, send details of his proposals for participating in such arrangements to the Director General of Fair Trading, and
    - (ii) (without prejudice to the operation of section 16(1)) shall not proceed to consider whether to award him the licence as mentioned in that provision unless it appears to the Commission that any such proposals are satisfactory; and
  - (b) section 33 shall apply to any such proposals as it applies to the proposals submitted by the applicant under section 15(3)(c) to (e).
- (3) The Commission may publish, in such manner as they consider appropriate, general guidance to applicants for a regional Channel 3 licence as to the kinds of proposals which they would consider satisfactory for the purposes of subsection (2)(a); but before doing so the Commission—

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- (a) shall consult the Director General of Fair Trading, and
  - (b) if he requests them to make any change in the guidance, shall incorporate the change in the guidance.
- (4) Each regional Channel 3 licence shall include conditions requiring the licence holder to do all that he can to secure—
- (a) (in the case of a licence granted before the relevant date) that, by that date, networking arrangements have been made which—
    - (i) have been entered into by all the holders of regional Channel 3 licences, and
    - (ii) have been approved by the Commission; and
  - (b) (in any case) that, so long as he provides his licensed service, there are in force networking arrangements which have been so entered into and approved (unless there are for the time being in force any arrangements made by the Commission under subsection (5)).
- (5) If—
- (a) no such arrangements as are mentioned in subsection (4)(a) are made by the relevant date, or
  - (b) any such arrangements are so made but cease to be in force at any time before 1st January 1995,
- the Commission may themselves draw up such networking arrangements as they consider appropriate; and, if they do so—
- (i) they shall notify all the holders of regional Channel 3 licences of those arrangements, and
  - (ii) those arrangements shall (subject to subsection (6)) come into force on a date determined by the Commission;
- and each regional Channel 3 licence shall include conditions requiring the licence holder to give effect to any arrangements made by the Commission under this subsection as for the time being in force.
- (6) No arrangements made by the Commission under subsection (5) shall come into force at any time after 31st December 1994.
- (7) Where—
- (a) any such arrangements have come into force in accordance with subsection (6), but
  - (b) any networking arrangements are subsequently—
    - (i) entered into by all the holders of regional Channel 3 licences, and
    - (ii) approved by the Commission,
- the arrangements referred to in paragraph (a) shall cease to have effect on the coming into force of the arrangements referred to in paragraph (b).
- (8) Where any arrangements have been approved by the Commission under subsection (4) or (7)(b), no modification of those arrangements shall be made by the holders of regional Channel 3 licences unless it too has been so approved.
- (9) Where any arrangements have been made by the Commission under subsection (5), they may (whether before or after the date specified in subsection (6)) make such modification of those arrangements as they consider appropriate; and, if they do so—
- (a) they shall notify all the holders of regional Channel 3 licences of the modification, and

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- (b) the modification shall come into force on a date determined by the Commission.
- (10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4), (7)(b) or (8), the Commission shall refuse to do so if they are not satisfied that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be appropriate for the purpose mentioned in subsection (1).
- (11) Where the Commission have—
- (a) approved any arrangements or modification under subsection (4), (7)(b) or (8), or
  - (b) given with respect to any arrangements or modification the notification required by subsection (5)(i) or (9)(a),
- they shall, as soon as reasonably practicable after giving their approval or (as the case may be) that notification—
- (i) publish details of the arrangements or modification in such manner as they consider appropriate, and
  - (ii) comply with the appropriate requirement specified in subsection (12) (a) or (b).
- (12) The appropriate requirement referred to in paragraph (ii) of subsection (11) is—
- (a) in the case of any such arrangements as are referred to in paragraph (a) or (b) of that subsection, to refer those arrangements to the Director General of Fair Trading, and
  - (b) in the case of any such modification as is so referred to, to inform him of that modification;
- and Schedule 4 to this Act shall have effect with respect to any reference made under paragraph (a) above and matters arising out of any such reference, including the subsequent modification of the arrangements to which it relates.
- (13) In this section “the relevant date” means the date which the Commission determine to be that by which any such arrangements as are mentioned in subsection (4) would need to have been made by the holders of regional Channel 3 licences in order for the arrangements to be fully in operation at the time when those persons begin to provide their licensed services.

### *Enforcement of licences*

#### **40 Power to direct licensee to broadcast correction or apology or not to repeat programme**

- (1) If the Commission are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence, and
  - (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or apology (or both) under this subsection,
- they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or apology (or both) in such form, and at such time or times, as they may determine.

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- (2) The Commission shall not give any person a direction under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the holder of a licence includes a correction or apology in the licensed service in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (4) If the Commission are satisfied that the inclusion by the holder of a Channel 3 or Channel 5 licence of any programme in the licensed service involved a failure by him to comply with any condition of the licence, they may direct him not to include that programme in that service on any future occasion.
- (5) This section shall apply in relation to Channel 4 as if any reference to a Channel 3 licence were a reference to the licence to provide Channel 4.

#### **41 Power to impose financial penalty or shorten licence period**

- (1) If the Commission are satisfied that the holder of a Channel 3 or Channel 5 licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
  - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission; or
  - (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a)—
  - (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 19(2) to (6)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Commission may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (5) It is hereby declared that any exercise by the Commission of their powers under subsection (1) of this section in respect of any failure to comply with any condition

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of a licence shall not preclude any exercise by them of their powers under section 40 in respect of that failure.

- (6) This section shall apply in relation to Channel 4 as if—
- (a) any reference to a Channel 3 licence were a reference to the licence to provide Channel 4; and
  - (b) subsection (1)(b) were omitted.

## **42 Power to revoke Channel 3 or 5 licence**

- (1) If the Commission are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,
- they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—
- (a) stating that the Commission are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Commission will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Commission are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on that person a notice revoking his licence.
- (4) If the Commission are satisfied in the case of any Channel 3 or Channel 5 licence—
- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If the Commission are satisfied—
- (a) that the holder of a Channel 3 or Channel 5 licence provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.



- (7) If it appears to the Commission to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) The Commission shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

## CHAPTER III

### SATELLITE TELEVISION SERVICES

#### 43 Domestic and non-domestic satellite services

- (1) In this Part “domestic satellite service” means a television broadcasting service where the television programmes included in the service are transmitted by satellite from a place in the United Kingdom—
  - (a) on an allocated frequency, and
  - (b) for general reception in the United Kingdom.
- (2) In this Part “non-domestic satellite service” means—
  - (a) a service which consists in the transmission of television programmes by satellite—
    - (i) otherwise than on an allocated frequency, and
    - (ii) for general reception in the United Kingdom or in any prescribed country (or both),where the programmes are transmitted from a place in the United Kingdom; or
  - (b) a service which consists in the transmission of television programmes by satellite—
    - (i) from a place which is neither in the United Kingdom nor in any prescribed country, but
    - (ii) for such reception as is mentioned in paragraph (a) (ii),if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him).
- (3) For the purposes of this Part non-domestic satellite services shall be regarded as provided by the following persons—
  - (a) a service falling within subsection (2)(a)—
    - (i) shall, if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him), be regarded as provided by that person (whether the programmes are transmitted by him or not), but
    - (ii) shall otherwise be regarded as provided by the person by whom the programmes are transmitted; and

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- (b) a service falling within subsection (2)(b) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.

(4) In this section—

“allocated frequency” means a frequency allocated to the United Kingdom for broadcasting by satellite;

“prescribed country” means any country specified in an order made by the Secretary of State for the purposes of this subsection.

#### **44 Licensing etc. of domestic satellite services**

(1) The Commission may grant such licences to provide domestic satellite services as they may determine.

(2) Without prejudice to the generality of section 3(2), a licence to provide a domestic satellite service may authorise the provision of a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies.

(3) Subject to subsection (4), the following provisions, namely—

- (a) sections 15 to 20,
- (b) section 33, and
- (c) sections 38 and 40 to 42,

shall apply in relation to a licence to provide a domestic satellite service as they apply in relation to a licence to provide a Channel 3 service.

(4) In its application in relation to a licence to provide a domestic satellite service—

- (a) section 15(1) shall have effect with the omission of paragraph (b);
- (b) section 16 shall have effect as if the licence were a licence to provide a regional Channel 3 licence, but with the omission of paragraphs (a) to (f) of subsection (2);
- (c) section 18 shall have effect with the omission of subsections (3) to (5); and
- (d) section 20 shall have effect—
  - (i) with the substitution in subsection (1) of “fifteen years” for “ten years” in both places where those words occur, and
  - (ii) with the omission of subsection (4)(b).

#### **45 Licensing etc. of non-domestic satellite services**

(1) An application for a licence to provide a non-domestic satellite service shall—

- (a) be made in such manner as the Commission may determine; and
- (b) be accompanied by such fee (if any) as they may determine.

(2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1).

(3) Section 44(2) shall apply to a licence to provide a non-domestic satellite service as it applies to a licence to provide a domestic satellite service.

(4) Any licence granted by the Commission to provide a non-domestic satellite service shall (subject to the provisions of this Part) continue in force for a period of ten years.

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- (5) Subject to subsections (6) and (7), sections 40 to 42 shall apply in relation to such a licence as they apply in relation to a licence to provide a Channel 3 service.
- (6) In its application in relation to a licence to provide a non-domestic satellite service, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall instead be £50,000.
- (7) Section 42 shall apply in relation to such a licence with the omission of subsection (7).
- (8) The Secretary of State may by order amend subsection (6) by substituting a different sum for the sum for the time being specified there.
- (9) Any order under subsection (8) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER IV

### LICENSABLE PROGRAMME SERVICES

#### 46 Licensable programme services

- (1) In this Part “licensable programme service” means (subject to subsection (2)) a service consisting in the provision by any person of relevant programmes with a view to their being conveyed by means of a telecommunication system—
  - (a) for reception in two or more dwelling-houses in the United Kingdom otherwise than for the purpose of being received there by persons who have a business interest in receiving them, or
  - (b) for reception at any place, or for simultaneous reception at two or more places, in the United Kingdom for the purpose of being presented there either to members of the public or to a group or groups of persons some or all of whom do not have a business interest in receiving them,whether the telecommunication system is run by the person so providing the programmes or by some other person, and whether the programmes are to be so conveyed as mentioned in paragraph (a) for simultaneous reception or for reception at different times in response to requests made by different users of the service.
- (2) Subsection (1) does not apply to—
  - (a) a service where the programmes are provided for transmission in the course of the provision of a television broadcasting service or a non-domestic satellite service;
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the Telecommunications Act 1984; or
  - (c) a two-way service, that is to say a service of which it is an essential feature that while visual images or sounds (or both) are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same telecommunication system or (as the case may be) the part of it by means of which they are conveyed, visual images or sounds (or both) for reception by the person providing the service or other persons receiving it (other than signals sent for the operation or control of the service).

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- (3) It is hereby declared that the person who does either or both of the following things, that is to say—
- (a) uses a telecommunication system for conveying relevant programmes as mentioned in subsection (1), or
  - (b) runs a telecommunication system which is so used,
- is not to be regarded as providing a licensable programme service in respect of any such programmes except to the extent that they are provided by that person with a view to their being so conveyed by means of that system.
- (4) It is hereby also declared that where—
- (a) any service constitutes such a service as is mentioned in subsection (1), and
  - (b) the relevant programmes in respect of which the service is provided are provided for transmission in the course of the provision of any additional service,
- that service is licensable under section 47 as a licensable programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part III.
- (5) In this section “relevant programme” means a television programme other than one consisting wholly or mainly of non-representational images (within the meaning of section 2(6)); and for the purposes of this section a person has a business interest in receiving programmes if he has an interest in receiving them for the purposes of his business, trade, profession or employment.

#### **47 Licensing etc. of licensable programme services**

- (1) An application for a licence to provide a licensable programme service shall—
- (a) be made in such manner as the Commission may determine; and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Commission, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 6(1) (whether the Commission were to make a determination under subsection (4) below or not).
- (3) Any licence granted by the Commission to provide a licensable programme service shall (subject to the provisions of this Part) continue in force for such period not exceeding ten years as may be specified in the licence.
- (4) If the Commission—
- (a) are satisfied that a particular licensable programme service is to be provided with a view to its programmes being conveyed for reception only in a particular area or locality in the United Kingdom, and
  - (b) consider that it is appropriate to do so,
- they may, when licensing the service, determine that section 6 shall, in its application in relation to that service, have effect subject to the modifications specified in subsection (5).
- (5) The modifications of section 6 are as follows—
- (a) the following paragraph shall be substituted for paragraph (c) of subsection (1)
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- “(c) that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on matters of political or industrial controversy or relating to current public policy;”;
- (b) the following subsection shall be substituted for subsection (2)—
- “(2) In applying subsection (1)(c) to any licensed service, the programmes included in that service shall be taken as a whole.”;
- and
- (c) the following provisions shall be omitted, namely—
- (i) subsections (3) and (5) to (7), and
- (ii) in subsection (4), the words from the beginning to “subsection (1),”.
- (6) The Commission shall—
- (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of section 6(1)(c) (as substituted by subsection (5) above) in relation to a service in respect of which a determination under subsection (4) above is in force; and
- (b) do all that they can to secure that the provisions of the code are observed in the provision of any such service.
- (7) The Commission shall publish the code drawn up under subsection (6), and every revision of it, in such manner as they consider appropriate.
- (8) Subject to subsections (9) and (10), sections 40 to 42 shall apply in relation to a licence to provide a licensable programme service as they apply in relation to a licence to provide a Channel 3 service.
- (9) In its application in relation to such a licence, section 41 shall have effect with the omission of subsection (2); and the maximum amount which the holder of such a licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) of that section shall instead be £50,000.
- (10) Section 42 shall apply in relation to such a licence with the omission of subsection (7).
- (11) The Secretary of State may by order amend subsection (9) above by substituting a different sum for the sum for the time being specified there.
- (12) Any order under subsection (11) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER V

### ADDITIONAL SERVICES PROVIDED ON TELEVISION BROADCASTING FREQUENCIES

#### 48 Additional services

- (1) In this Part “additional service” means any service which consists in the sending of telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any television broadcasting service provided—

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- (a) on any frequency assigned under section 65(1) (other than a frequency which, in pursuance of section 73(2), is assigned by the Commission to a local delivery service within the meaning of Part II), or
  - (b) on any other allocated frequency notified to the Commission by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
- (a) where the service is provided on a frequency falling within subsection (1)(a) above, any part of those signals which is not required for the purposes of the provision of that service and is determined by the Commission to be available for the provision of additional services;
  - (b) where the service is provided on a frequency notified to the Commission under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;
- and references in this Part to spare capacity shall be construed accordingly.
- (3) The Commission shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency, have regard—
- (a) if it is a frequency on which a Channel 3 service or Channel 5 is provided, to the obligations of the person providing that service as respects the provision of subtitling in accordance with conditions imposed in pursuance of section 35;
  - (b) if it is a frequency on which Channel 4 is provided, to the need for subtitling to be provided in connection with programmes on Channel 4; and
  - (c) if it is a frequency falling within either of paragraphs (a) and (b), to any need of the person providing the service in question to be able to use part of the signals carrying it for providing services (other than subtitling) which are ancillary to programmes included in the service and directly related to their contents.
- (4) A person holding a licence to provide a Channel 3 service or Channel 4 or 5 shall be taken for the purposes of this Part to be authorised by his licence—
- (a) to provide subtitling as mentioned in subsection (3)(a) or (b); and
  - (b) to provide any such services as are mentioned in subsection (3)(c).
- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.
- (6) In this section—
- “allocated frequency” means a frequency allocated to the United Kingdom for the provision of television broadcasting services;
  - “subtitling” means subtitling for the deaf provided by means of a teletext service; and
  - “telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the Telecommunications Act 1984 (meaning of “telecommunication system”).

## 49 Licensing of additional services

- (1) Subject to subsection (2), the Commission shall do all that they can to secure that, in the case of each of the following frequencies, namely—
  - (a) any frequencies falling within section 48(1)(a) on which television broadcasting services are provided, and
  - (b) any frequencies notified to the Commission under section 48(1)(b),all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by the Commission in accordance with this section.
- (2) The Commission shall do all that they can to secure, in relation to the combined spare capacity available for the provision of additional services on frequencies on which Channel 3 services and Channel 4 are respectively provided, that a single teletext service is provided on that spare capacity; but any such service shall be provided only on so much of that spare capacity as the Secretary of State may approve.
- (3) In relation to so much of any such service as is provided for reception wholly or mainly in Wales, references in subsection (2) to any such combined spare capacity as is there mentioned shall be construed as references to the spare capacity available for the provision of additional services on frequencies on which S4C is provided; and the Secretary of State shall exercise his powers under section 48(1)(b) and (2)(b) in such manner as he considers appropriate to take account of this subsection.
- (4) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (5) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (8) Every licence under this Part to provide a television broadcasting service shall include such conditions as appear to the Commission to be appropriate for securing that the licence holder grants—
  - (a) to any person who holds a licence to provide additional services on the frequency on which that broadcasting service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (5) to provide additional services on that frequency,access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.

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- (9) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (8) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by the Commission.
- (10) In this Part “additional services licence” means a licence to provide additional services.

## **50 Applications for additional services licences**

- (1) Where the Commission propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the television broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (ii) (subject to the approval of the Secretary of State) the extent and nature of the spare capacity which is to be allocated by the licence;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 52(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
- (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 49(5);
  - (c) the applicant’s cash bid in respect of the licence; and
  - (d) such information as the Commission may reasonably require as to the applicant’s present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.



- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Commission consider appropriate.
- (7) The provisions of this section and sections 51 and 53 shall, in relation to the teletext service referred to in section 49(2), have effect subject to the provisions of Schedule 5 to this Act.

## **51 Procedure to be followed by Commission in connection with consideration of applications for, and awarding of, licences**

- (1) Where a person has made an application for an additional services licence in accordance with section 50, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—
- (a) that the technical plan submitted under section 50(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; and
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;
- and any reference to an applicant in section 17 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirement specified in subsection (1) (a) is satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities.
- (3) Subject to subsection (4), section 17 shall apply in relation to an additional services licence as it applies in relation to a Channel 3 licence.
- (4) In the application of section 17 in relation to an additional services licence—
- (a) the provisions of subsection (4) down to the end of paragraph (b) shall be omitted;
  - (b) in subsection (7)(a), the reference to section 19(1) shall be construed as a reference to section 52(1); and
  - (c) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)—
    - “(b) the name of every other applicant in whose case it appeared to the Commission that the requirement specified in section 51(1)(a) was satisfied;”.
- (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that none of the services in question will be provided once the licence has come into force, or

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- (b) the Commission for any other reason have reasonable grounds for believing that none of those services will be so provided,  
then, subject to subsection (6)—
  - (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 17 (as applied by subsection (3) above) shall, subject to section 17(14), have effect as if he had not made an application for the licence.
- (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

## **52 Additional payments to be made in respect of additional services licences**

- (1) An additional services licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 50(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
  - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—

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- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
- (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

### **53 Duration of licences, and renewal of licences for provision of services on assigned frequencies**

- (1) A licence for the provision of additional services on a frequency notified to the Commission under section 48(1)(b) shall not continue in force beyond such date as may be specified by the Secretary of State in relation to that frequency under section 48(5); and a licence for the provision of such services on a frequency assigned under section 65(1)—
  - (a) shall, subject to the provisions of this Part, continue in force for a period of ten years, and
  - (b) may (subject to the following provisions of this section) be renewed on one or more occasions for a period of ten years beginning with the date of renewal.
- (2) An application for the renewal of a licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) In its application to a licence for the provision of additional services on a frequency used for the broadcasting of a domestic satellite service—
  - (a) subsection (1) shall have effect with the substitution of “fifteen years” for “ten years” in both places where those words occur; and
  - (b) subsection (2) shall have effect with the substitution of “five years” for “four years”.
- (4) Where an application is made for the renewal of a licence under subsection (1) before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (9).
- (5) Where an application for the renewal of an additional services licence has been duly made to the Commission, they may only (subject to subsection (6)) refuse the application if—
  - (a) they are not satisfied that any additional service specified in the technical plan submitted under section 50(3)(b) would, if the licence were renewed, be provided as proposed in that plan, or
  - (b) they propose to grant a fresh additional services licence for the provision of any additional service which would differ in any material respect from any such service authorised to be provided under the applicant’s licence, or
  - (c) they propose to determine that all or part of the spare capacity allocated by the licence is to cease to be available for the provision of additional services in order that it may be used by any relevant person for the purpose of enhancing the technical quality of his television broadcasting service;

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and in paragraph (c) “relevant person” means the person providing a television broadcasting service on whose frequency the licensed service has been provided.

- (6) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of an additional services licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if—
- (a) any reference to the awarding of a Channel 3 licence to the applicant were a reference to the renewal of the applicant’s licence under this section; and
  - (b) in section 17(7), the reference to section 19(1) were a reference to section 52(1).
- (7) On the grant of any such application the Commission—
- (a) shall determine an amount which is to be payable to the Commission by the licence holder in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 50(1)(d) (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 52(1)(c) during the period for which the licence is to be renewed;
- and the Commission may specify under paragraph (b) either of the things mentioned in section 50(2).
- (8) The amount determined by the Commission under subsection (7)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 52(1)(a) if they were granting a fresh licence to provide the additional services in question.
- (9) Where the Commission have granted a person’s application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) the amount determined by them under subsection (7)(a), and
  - (b) any percentage specified by them under subsection (7)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (10) Where an additional services licence is renewed under this section—
- (a) any conditions included in it in pursuance of section 52 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (7) (a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (7)(b) above; and
  - (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which an additional services licence is originally in force.
- (11) In this section “the relevant date”, in relation to an additional services licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 50 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the additional services formerly provided under that licence.

#### **54 Additional services not to interfere with other transmissions**

- (1) An additional services licence may include such conditions as the Commission consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
  - (a) the television broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.
- (2) Before imposing any conditions in pursuance of subsection (1) the Commission shall consult the relevant licensing authorities (within the meaning of section 51).

#### **55 Enforcement of additional services licences**

- (1) If the Commission are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by the Commission under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Commission.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—
  - (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 52(2)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Commission estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Commission shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 42 shall apply in relation to an additional services licence as it applies in relation to a licence to provide a Channel 3 service, but with the omission of subsection (7).

### **CHAPTER VI**

#### **TELEVISION BROADCASTING BY WELSH AUTHORITY**

#### **56 Welsh Authority to continue in existence as Sianel Pedwar Cymru**

- (1) The authority which at the commencement of this section is called the Welsh Fourth Channel Authority shall continue in existence as a body corporate but—
  - (a) shall be known as Sianel Pedwar Cymru (or S4C); and

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(b) shall be constituted in accordance with, and have the functions conferred by, this Act;

and in this Act references to the Welsh Authority are references to that authority.

- (2) The Welsh Authority shall consist of—
- (a) a chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four nor more than eight, as he may from time to time determine.
- (3) Schedule 6 to this Act shall have effect with respect to the Welsh Authority.

## **57 Function and duties of Welsh Authority**

- (1) The function of the Welsh Authority shall be to provide a television broadcasting service of high quality for reception wholly or mainly in Wales to be known as Sianel Pedwar Cymru (or S4C); and in this Part references to S4C are references to that service.
- (2) It shall be the duty of the Welsh Authority—
- (a) to provide S4C as a public service for disseminating information, education and entertainment;
  - (b) to ensure that a substantial proportion of the programmes broadcast on S4C are in Welsh and that the programmes broadcast on S4C between 6.30 pm and 10 pm consist mainly of programmes in Welsh; and
  - (c) to ensure that the programmes in Welsh which are broadcast on S4C maintain—
    - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
    - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.
- (3) The Welsh Authority shall secure that, during any period allocated by them to the broadcasting of a programme not in Welsh, the programme broadcast by them on S4C is normally a programme which is being, has been or is to be broadcast on Channel 4.
- (4) The Welsh Authority may use part of the signals carrying S4C to provide—
- (a) subtitling in connection with programmes on S4C, and
  - (b) other services which are ancillary to such programmes and directly related to their contents;
- and in this subsection “subtitling” means any subtitling provided by means of a teletext service.
- (5) In this section and section 58 “programme” does not include an advertisement.

## **58 Sources of programmes for S4C**

- (1) For the purpose of enabling the Welsh Authority to comply with their duty under section 57(2)(b) it shall be the duty of the BBC to provide the Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week, and to do so in a way which meets the reasonable requirements of the Authority.

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- (2) It shall be the duty of the Channel Four Television Corporation—
  - (a) to provide the Welsh Authority with programme schedules for the programmes broadcast on Channel 4, including information as to the periods available for the broadcasting of advertisements, far enough in advance to enable the Welsh Authority to comply with section 57(3); and
  - (b) to provide the Welsh Authority (free of charge) with any programmes which are required by the Authority for the purpose of complying with that provision.
- (3) The programmes broadcast on S4C may, to the extent that they are not provided under subsection (1) or (2), be obtained by the Welsh Authority from such persons as they think fit.
- (4) Where any programmes provided under subsection (2) each form part of a series of programmes, the Welsh Authority shall ensure that the intervals between those programmes when broadcast on S4C normally correspond to the intervals between them when broadcast on Channel 4.
- (5) The Welsh Authority shall publish, in such manner as they consider appropriate, advance notice of the programme schedules for the programmes to be broadcast on S4C.

## **59 Requirements to be complied with in relation to S4C programmes**

- (1) The Welsh Authority shall ensure that the following requirements are complied with in relation to S4C, namely—
  - (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
  - (c) that due impartiality is preserved on the part of the Authority as respects matters of political or industrial controversy or relating to current public policy;
  - (d) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those watching the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination; and
  - (e) that its programmes do not include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.
- (2) In applying subsection (1)(c) a series of programmes may be considered as a whole.
- (3) Without prejudice to the generality of subsection (1), the Welsh Authority shall ensure that there are excluded from the programmes broadcast on S4C all expressions of the views and opinions of the Authority on matters (other than broadcasting) which are of political or industrial controversy or relate to current public policy.

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- (4) The code referred to in section 6(3) shall have effect in relation to the application of subsection (1)(c) above in relation to S4C as it has effect in relation to the application of section 6(1)(c) in relation to a licensed service; and the code referred to in section 7 shall have effect in relation to S4C as it has effect in relation to a licensed service.
- (5) The Welsh Authority shall observe the provisions of those codes (as they have effect in accordance with subsection (4)) in the provision of S4C.

## **60 Advertising on S4C**

- (1) The Welsh Authority shall ensure that the following rules are complied with in relation to S4C, namely—
  - (a) S4C must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in S4C there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C must not include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the Welsh Authority are prohibited from advertising by virtue of subsection (2) or (4) below.
- (2) The code under section 9 shall have effect in relation to advertisements broadcast on S4C as it has effect in relation to advertisements broadcast on Channel 4; and the Welsh Authority shall observe the provisions of that code (as it so has effect) in the provision of S4C.
- (3) Where the Commission give any directions under subsection (7) of that section to the Channel Four Television Corporation, they shall send a copy of those directions to the Welsh Authority; and, so long as the directions remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.
- (4) The Welsh Authority shall—
  - (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be broadcast on S4C and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of S4C; and
  - (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Welsh Authority shall not act as an advertising agent.
- (6) After consultation with the Welsh Authority the Secretary of State may make regulations amending, repealing or adding to the rules specified in subsection (1); but



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no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.

## **61 Funding of Welsh Authority**

- (1) The Secretary of State shall, for the year 1993 and each subsequent year, pay to the Welsh Authority an amount representing 32 per cent. of the total television revenues for the preceding year.
- (2) The Commission shall, before the beginning of each of those years (“the relevant year”)—
  - (a) estimate the amount of the total television revenues for the preceding year; and
  - (b) notify the Secretary of State of that estimated amount;and the Secretary of State shall at the beginning of the relevant year pay to the Welsh Authority, by way of an interim payment for that year, an amount representing 32 per cent. of that estimated amount.
- (3) Once the Commission have finally determined the amount of the total television revenues for a particular year, they shall notify the Secretary of State of the amount so determined by them; and on receiving any such notification the Secretary of State shall, in respect of the year following that year—
  - (a) pay to the Welsh Authority any amount payable by him by virtue of subsection (1), after taking into account the interim payment made for that year under subsection (2), or
  - (b) notify the Welsh Authority of the amount of any overpayment made by him by means of any such interim payment.
- (4) The Welsh Authority shall, as soon as reasonably practicable after receiving any notification under subsection (3)(b), pay to the Secretary of State the amount specified in the notification.
- (5) In this section “total television revenues”—
  - (a) in relation to the year 1992, means the aggregate of the qualifying revenues for that year of—
    - (i) the TV programme contractors (as defined by section 10(2) of the 1981 Act), and
    - (ii) the body corporate referred to in section 12(2) of that Act; and
  - (b) in relation to any subsequent year, has the meaning given by section 26(2); and section 19(2) to (6) shall have effect, with any necessary modifications, for the purpose of enabling the Commission to estimate or determine a person’s qualifying revenue for any year for the purposes of this subsection.
- (6) Any sums required by the Secretary of State under this section shall be paid out of money provided by Parliament.
- (7) The Secretary of State may, after consulting the Commission and the Welsh Authority, by order amend each of subsections (1) and (2) by substituting a different percentage for the percentage for the time being specified there; but no such order may be made before the end of the year 1997 unless the Secretary of State is satisfied that it is necessary to make the order having regard to the cost to the Authority of transmitting S4C.

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- (8) An order shall not be made under subsection (7) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

**62 Information to be supplied to Commission by Welsh Authority**

The Welsh Authority shall provide the Commission with such forecasts, estimates, information and documents as the Commission may reasonably require for the purpose of enabling them to perform their functions under sections 26 and 61.

**63 Government control over S4C**

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Welsh Authority to broadcast, at such times as may be specified in the notice, any announcement specified in the notice, with or without visual images of any picture, scene or object mentioned in the announcement; and it shall be the duty of the Authority to comply with the notice.
- (2) Where the Welsh Authority broadcast any announcement in pursuance of a notice under subsection (1), they may announce that they are doing so in pursuance of such a notice.
- (3) The Secretary of State may at any time by notice require the Welsh Authority to refrain from broadcasting any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice.
- (4) Where the Secretary of State has given the Welsh Authority a notice under subsection (3), the Authority may broadcast an announcement of the giving of the notice or, when it has been revoked or has expired, of its revocation or expiration.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.

**64 Audience research by Welsh Authority**

- (1) The Welsh Authority shall make arrangements for ascertaining—
  - (a) the state of public opinion concerning programmes broadcast on S4C;
  - (b) any effects of such programmes on the attitudes or behaviour of persons who watch them; and
  - (c) the types of programme that members of the public would like to be broadcast on S4C.
- (2) Those arrangements shall—
  - (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Welsh Authority; and
  - (b) include provision for full consideration by the Authority of the results of any such research.

## CHAPTER VII

### SUPPLEMENTAL

#### **65 Assignment of frequencies by Secretary of State**

- (1) The Secretary of State may by notice assign to the Commission, for the purpose of the provision of services falling to be licensed by them under this Part or Part II, such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more of those services.
- (2) Any frequency assigned by the Secretary of State under subsection (1) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (3) The Secretary of State may by notice assign to the Welsh Authority for the purpose of the provision of S4C such frequencies as he may determine; and any such frequencies shall be taken to be so assigned for the purpose only of being used for the provision of that service and any services which they are authorised to provide by virtue of section 57(4).
- (4) The Secretary of State may by notice revoke the assignment under subsection (1) or (3) of any frequency specified in the notice, and (in the case of a frequency assigned to the Commission) may do so whether or not the frequency is for the time being one on which there is being provided a service licensed under this Part or Part II.

#### **66 Requirements relating to transmission and distribution of services**

- (1) During such period as the Secretary of State may by order specify, all Channel 3 services shall be broadcast for general reception by a single person under arrangements made with him by the persons licensed to provide those services; and every Channel 3 licence shall include such conditions as appear to the Commission to be appropriate—
  - (a) for securing that result and
  - (b) for securing that the costs incurred in respect of the broadcasting of those services (taken as a whole) during that period in accordance with those arrangements are shared by those persons in such manner as may be approved by the Secretary of State.
- (2) Any Channel 3 licence shall include such conditions as appear to the Commission to be appropriate for securing that the costs incurred in respect of the distribution of Channel 3 services (taken as a whole) during such period as the Secretary of State may by order specify are shared by the persons licensed to provide those services in such manner as may be approved by the Secretary of State.

In this subsection “distribution”, in relation to Channel 3 services, means the conveyance of those services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast for general reception.

- (3) The Secretary of State may, at any time during the period referred to in subsection (1) or (2), by order provide for that period to be extended by such further period as is specified in the order; and any conditions included in a Channel 3 licence in pursuance of that subsection shall accordingly, in any such case, have effect in relation to that period as so extended.

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- (4) Any Channel 3 licence or licence to provide Channel 4 or 5 shall include such conditions as appear to the Commission to be appropriate for requiring the signals carrying the licensed service to attain high standards in terms of technical quality and reliability throughout so much of the relevant area as is for the time being reasonably practicable.
- (5) Before imposing any conditions in pursuance of subsection (4) the Commission shall consult the Secretary of State as to how much of the relevant area is to be specified in the conditions as the area throughout which the required standards are to be attained.
- (6) In subsections (4) and (5) “the relevant area”—
  - (a) in relation to a Channel 3 or Channel 5 licence, means the area for which the licensed service is to be provided; and
  - (b) in relation to the licence to provide Channel 4, means England, Scotland and Northern Ireland.
- (7) The Welsh Authority shall do all that they can to ensure that the signals carrying S4C attain high standards in terms of technical quality and reliability throughout so much of Wales as is for the time being reasonably practicable.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **67 Computation of qualifying revenue**

Part I of Schedule 7 (which contains provisions relating to the computation of qualifying revenue for the purposes of this Part and Part II) shall have effect.

#### **68 Certain receipts of Commission to be paid into Consolidated Fund**

- (1) Where, in respect of any licence granted under this Part or Part II, the Commission receive any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Commission but shall—
  - (a) if the licence is for the provision of a service for any area in Great Britain, be paid into the Consolidated Fund of the United Kingdom;
  - (b) if the licence is for the provision of a service for Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or
  - (c) if the licence is for the provision of a service for the whole or part of Great Britain and for the whole or part of Northern Ireland, be paid into both of those Funds in such proportions as the Commission consider appropriate.
- (2) The amounts referred to in subsection (1) are—
  - (a) any amount payable to the Commission by virtue of section 19(1), 52(1) or 77(1);
  - (b) any amount payable to them by virtue of section 18(3); and
  - (c) any amount payable to them by virtue of section 41(1)(a) or 55(1).
- (3) Any reference in subsection (2)(a), (b) or (c) to any provision of this Part includes a reference to that provision as applied by any other provision of this Part or Part II.
- (4) Subsection (1) shall not be construed as applying to any amount which is required by the Commission for the making of an adjustment in respect of an overpayment made by any person.

- (5) Any amount payable by any person to the Commission under or by virtue of this Part or Part II shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of a licence granted under this Part or Part II, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (6) The Commission shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,
- and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

## **69 Frequency planning and research and development**

- (1) The Commission may make arrangements for such work relating to frequency planning to be carried out as they consider appropriate in connection with the discharge of their functions.
- (2) Any such work shall be directed towards securing that the frequencies assigned to the Commission under this Act are used as efficiently as is reasonably practicable.
- (3) The Commission may—
- (a) make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions;
  - (b) promote the carrying out by other persons of research and development work relating to television broadcasting.
- (4) The Commission shall consult the persons holding licences under this Part or Part II as to the arrangements to be made by the Commission in pursuance of subsection (3)(a).
- (5) The Commission shall secure that, so far as is reasonably practicable—
- (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Commission, by persons who are neither members nor employees of the Commission; and
  - (b) any work carried out under arrangements made in pursuance of subsection (3) (a) is to a substantial extent financed by persons other than the Commission.

## **70 Representation by Commission of Government and other interests in connection with broadcasting matters**

The functions of the Commission shall include representing, at the request of the Secretary of State—

- (a) Her Majesty's Government in the United Kingdom, and
- (b) persons providing television programme services,

on bodies concerned with the regulation (whether nationally or internationally) of matters relating to television broadcasting.

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## 71 Interpretation of Part I

(1) In this Part (unless the context otherwise requires)—

“the 1981 Act” means the Broadcasting Act 1981;

“additional service” and “additional services licence” have the meaning given by section 48(1) and section 49(10) respectively;

“the appropriate percentage”, in relation to any year, has the meaning given by section 19(10);

“cash bid”, in relation to a licence, has the meaning given by section 15(7);

“Channel 3” means the system of television broadcasting services established by the Commission under section 14, and “a Channel 3 licence” means a licence to provide one of the services comprised within that system;

“Channel 4” means the television broadcasting service referred to in section 24(1), and “on Channel 4” means in that service;

“Channel 5” means the television broadcasting service referred to in section 28(1), and “a Channel 5 licence” means a licence to provide that service;

“the Commission” means the Independent Television Commission established by section 1;

“the Corporation” means the Channel Four Television Corporation established by section 23;

“domestic satellite service” has the meaning given by section 43(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“licensable programme service” has the meaning given by section 46(1);

“national Channel 3 service” has the meaning given by section 14(6), and “a national Channel 3 licence” means a licence to provide a national Channel 3 service;

“non-domestic satellite service” has the meaning given by section 43(2);

“regional Channel 3 service” has the meaning given by section 14(6), and “a regional Channel 3 licence” means a licence to provide a regional Channel 3 service;

“S4C” means the television broadcasting service referred to in section 57(1), and “on S4C” means in that service;

“spare capacity” shall be construed in accordance with section 48(2);

“television broadcasting service” has the meaning given by section 2(5);

“television programme service” has the meaning given by section 2(4).

(2) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

## PART II

### LOCAL DELIVERY SERVICES

#### *Preliminary*

#### **72 Local delivery services**

- (1) In this Part “local delivery service” means a service provided by any person which—
  - (a) consists in the use of a telecommunication system (whether run by that or any other person) for the purpose of the delivery of one or more of the services specified in subsection (2) for simultaneous reception in two or more dwelling-houses in the United Kingdom; and
  - (b) is of a class or description specified in an order made by the Secretary of State.
- (2) The services referred to in subsection (1)(a) are—
  - (a) any television broadcasting service (within the meaning of Part I of this Act) whether provided by the holder of a licence under that Part or by the BBC or the Welsh Authority;
  - (b) any non-domestic satellite service (within the meaning of that Part);
  - (c) any licensable programme service (within the meaning of that Part);
  - (d) any sound broadcasting service to which section 84 applies or which is provided by the BBC; and
  - (e) any licensable sound programme service (as defined by section 112(1)).
- (3) Without prejudice to the generality of subsection (1)(b) any class or description of service specified in an order under that provision may be framed by reference to—
  - (a) the nature of the telecommunication system by means of which the service is provided, or
  - (b) the nature of the programmes, or any of the programmes, delivered by the service.
- (4) Any order under subsection (1)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this Part—
  - “the Commission” means the Independent Television Commission;
  - “licence” means (unless the context otherwise requires) a licence under this Part;
  - “local delivery licence” means a licence to provide a local delivery service.

#### *Licensing of local delivery services*

#### **73 Licensing of local delivery services**

- (1) The Commission may grant such licences to provide local delivery services as they may determine.
- (2) Local delivery licences shall authorise the provision of local delivery services for such areas in the United Kingdom as the Commission may determine; and, where such

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licences authorise the provision of such services to any extent by wireless telegraphy, they shall be so provided on frequencies assigned to those services by the Commission.

- (3) Subject to subsection (4), sections 3, 4 and 5 shall apply to local delivery licences as they apply to licences granted by the Commission under Part I of this Act.
- (4) In the application of those sections to local delivery licences—
  - (a) section 3(1) shall have effect as if the words “or Part II” were added at the end;
  - (b) any reference in any other provision of those sections to Part I of this Act shall be construed as including a reference to this Part of this Act; and
  - (c) section 3(5) shall have effect as if the first reference to section 19(1) included a reference to section 77(1).
- (5) A local delivery licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Commission may impose, to authorise any person to whom this subsection applies to undertake to any extent the provision of the licensed service on behalf of the licence holder.
- (6) Subsection (5) applies to any person who is not a disqualified person in relation to a local delivery licence by virtue of Part II of Schedule 2 to this Act.
- (7) Any conditions included in a local delivery licence shall apply in relation to the provision of the licensed service to any extent by a person authorised as mentioned in subsection (5) as they apply in relation to the provision of the service by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.

#### **74 Applications for local delivery licences**

- (1) Where the Commission propose to grant a licence to provide a local delivery service they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the area in the United Kingdom for which the service is to be provided, and
    - (ii) any frequencies that would be available for it to be provided by wireless telegraphy should it be desired so to provide it;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 77(1)(c) if he were granted the licence.
- (2) The Commission may, if they think fit, specify under subsection (1)(d)(ii)—
  - (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.



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- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan relating to the service which the applicant proposes to provide and indicating—
    - (i) the parts of the area specified under subsection (1)(b)(i) which would be covered by that service,
    - (ii) the timetable in accordance with which that coverage would be achieved,
    - (iii) the technical means by which it would be achieved, and
    - (iv) the extent (if any) to which he proposes that the provision of the service should be undertaken by some other person in accordance with section 73(5);
  - (c) the applicant's cash bid in respect of the licence;
  - (d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and
  - (e) such other information as the Commission may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (3)(b), (d) or (e).
- (5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Commission consider appropriate.
- (7) In this Part—
- (a) “cash bid”, in relation to a local delivery licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period); and
  - (b) “the appropriate percentage”, in relation to any year, has the meaning given by section 19(10).

## **75 Procedure to be followed by Commission in connection with consideration of applications for licences**

- (1) Where a person has made an application for a local delivery licence in accordance with section 74, the Commission shall not proceed to consider whether to award him

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the licence on the basis of his cash bid in accordance with section 76 unless it appears to them—

- (a) that any telecommunication system proposed to be used by the applicant in the provision of his proposed service would be acceptable to the relevant licensing authorities and would be capable of being established in accordance with the timetable indicated by him in the technical plan submitted under section 74(3)(b); and
- (b) that he would be able to maintain that service throughout the period for which the licence would be in force;

and any reference to an applicant in section 76 (except in subsection (12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.

- (2) Before forming any view as to whether the requirements of subsection (1)(a) are satisfied in the case of an applicant the Commission shall consult the relevant licensing authorities; and in that provision and this subsection “the relevant licensing authorities” means—
  - (a) where any telecommunication system proposed to be used as mentioned in that provision would be required to be licensed under the Wireless Telegraphy Act 1949, the Secretary of State; and
  - (b) where any telecommunication system proposed to be so used would be required to be licensed under Part II of the Telecommunications Act 1984, the Secretary of State and the Director General of Telecommunications.

## **76 Award of licence to person submitting highest cash bid**

- (1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a local delivery licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.
- (4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to them that the coverage proposed to be achieved by such an applicant, as indicated in the technical plan submitted by him under section 74(3)(b), is substantially greater than that proposed to be achieved—
  - (a) by the applicant who submitted the highest bid, or
  - (b) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids,

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- as indicated in the technical plan submitted by him under that provision; and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
- (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.
- (7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 77(1), or
  - (b) otherwise financing the provision of his proposed service.
- (8) In a case where any requirement such as is mentioned in section 5(1)(b) (as it applies by virtue of section 73(3)) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases; and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.
- (9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.
- (10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (16)) have effect as if that person had not made an application for the licence.
- (11) Where the Commission have awarded a local delivery licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (12) The matters referred to in subsection (11)(a) are—

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- (a) the name of the applicant to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Commission that the requirements of section 75(1)(a) were satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission's reasons for the licence having been so awarded; and
  - (d) such other information as the Commission consider appropriate.
- (13) If at any time after a local delivery licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
  - (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,
- then, subject to subsections (14) and (16)—
- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
    - (ii) this section shall have effect as if he had not made an application for the licence.
- (14) Subsection (13) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (15) In a case where a local delivery licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (16) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 74 in respect of the grant of the licence; and similarly this section shall not have effect as mentioned in subsection (13) if the Commission decide that it would be desirable to publish such a notice in respect of the grant of a further licence to provide the local delivery service in question.

## 77 **Additional payments to be made in respect of local delivery licences**

- (1) A local delivery licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b), as applied by section 73(3))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and

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- (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 74(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all payments which are received or to be received by him, or by any person connected with him, and are derived from the delivery in that period, in accordance with his licence, of services falling within section 72(2) (whether their delivery is undertaken by him or by any person authorised by him as mentioned in section 73(5)).
- (3) A local delivery licence may include conditions—
  - (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
  - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (6) Part I of Schedule 7 has effect for the purposes of this section.

## **78 Duration and renewal of local delivery licences**

- (1) A local delivery licence shall, subject to the provisions of this Part, continue in force for a period of fifteen years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of fifteen years beginning with the date of renewal.
- (2) An application for the renewal of a local delivery licence under subsection (1) may be made by the licence holder not earlier than five years before the date on which it would otherwise cease to be in force and not later than the relevant date.
- (3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).

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- (4) Where an application for the renewal of a local delivery licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if—
- (a) they propose to grant a fresh local delivery licence for the provision of a service which would be provided for a different area from that for which the applicant's service is provided under his licence; or
  - (b) in the case of an applicant who has not achieved the coverage set out in the technical plan submitted under section 74(3)(b), either—
    - (i) they are not satisfied that he would, if his licence were renewed, be able to achieve that coverage in accordance with the timetable indicated in the plan, or
    - (ii) the period within which it was to be achieved has expired.
- (5) Section 76(5) to (7) shall apply in relation to an applicant for the renewal of a local delivery licence as those provisions apply in relation to such an applicant as is mentioned in section 76(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.
- (6) On the grant of any such application the Commission—
- (a) shall determine an amount which is to be payable to the Commission by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
  - (b) may specify a different percentage from that specified under section 74(1)(d)
    - (ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 77(1)(c) during the period for which the licence is to be renewed;
- and the Commission may specify under paragraph (b) either of the things mentioned in section 74(2).
- (7) The amount determined by the Commission under subsection (6)(a) in connection with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 77(1)(a) if they were granting a fresh licence to provide the local delivery service in question.
- (8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) the amount determined by them under subsection (6)(a), and
  - (b) any percentage specified by them under subsection (6)(b),
- and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.
- (9) Where a local delivery licence is renewed under this section—
- (a) any conditions included in it in pursuance of section 77 shall have effect during the period for which the licence has been renewed—
    - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
    - (ii) subject to any determination made under subsection (6)(b) above; and

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- (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a local delivery licence is originally in force.
- (10) In this section “the relevant date”, in relation to a local delivery licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 74 if they were to grant, as from the date on which that licence would expire if not renewed, a fresh licence to provide the local delivery service formerly provided under that licence.

#### *Regulation of delivery of certain programmes*

### **79 Regulation of delivery of programmes provided by licence holder and foreign satellite programmes**

- (1) Without prejudice to the generality of section 3(2) or (as the case may be) section 86(2), a licence to provide such a service as is mentioned in section 72(2)(c) or (e) may, where it is granted to the holder of a local delivery licence, authorise the provision by that person of programmes for delivery on all or any of the channels on which his local delivery service is provided.
- (2) Where any licensed local delivery service consists in or includes relaying (complete and unchanged) any foreign satellite programmes, the following provisions, namely—
  - (a) section 6(1) so far as relating to the requirements specified in paragraphs (a), (d) and (e) of that provision, and
  - (b) section 7,shall have effect as if the delivery of those programmes constituted the provision of a service licensed under Part I of this Act.
- (3) Accordingly, any reference in those provisions to programmes included in a licensed service shall, where those provisions have effect as mentioned in subsection (2) above, be construed as a reference to any such programmes as are mentioned in that subsection.
- (4) The holder of a local delivery licence shall be taken to be authorised by his licence to include in the licensed service advertisements which are inserted by him and are not included in any service falling within section 72(2); but, if any such advertisements are so included by him, sections 8 and 9 shall have effect as if the delivery of those advertisements constituted the provision of a service licensed under Part I of this Act and he were the holder of a licence in force under that Part.
- (5) In subsection (2) “foreign satellite programme” means a programme transmitted by satellite from a place outside the United Kingdom, other than a programme so transmitted from within any country specified in an order made by the Secretary of State for the purposes of this subsection.

### **80 Directions requiring licence holder to cease relaying foreign television programmes**

- (1) If the Commission are satisfied that it is appropriate to do so in pursuance of any international agreement to which the United Kingdom is for the time being a party, they may give to the holder of a local delivery licence a direction requiring him not to relay television programmes which—

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- (a) are transmitted from a place outside the United Kingdom, and
  - (b) are included in any service specified or described in the direction.
- (2) Any direction under this section may describe a service for the purposes of subsection (1)(b) by reference to such matters as the Commission think fit.
- (3) Any such direction shall, according to its terms, have effect either during a specified period or for an indefinite period.

### *Enforcement of licences*

#### **81 Enforcement of local delivery licences**

- (1) Subject to subsections (2) and (4), sections 41 and 42 shall apply in relation to a local delivery licence as they apply in relation to a licence to provide a Channel 3 service.
- (2) In its application in relation to a local delivery licence—
- (a) section 41 shall have effect—
    - (i) with the substitution in subsection (2) of “section 77(2)” for “section 19(2) to (6)”, and
    - (ii) with the omission of subsection (5); and
  - (b) section 42 shall have effect with the omission of subsection (7);
- and the reference to Part I of this Act in subsection (1) of each of those sections shall be construed as including a reference to this Part of this Act.
- (3) A local delivery licence shall include a condition requiring the licensed service to be established by the licence holder in accordance with the timetable indicated in the technical plan submitted under section 74(3)(b).
- (4) The Commission shall not revoke any local delivery licence under section 42 (as applied by subsection (1) above) by reason of the failure of the licence holder to comply with any such condition as is mentioned in subsection (3) above unless they are satisfied, after consulting the Secretary of State and the Director General of Telecommunications, that it would have been reasonably practicable for the licence holder to comply with it.

### *Prohibition on providing unlicensed local delivery services*

#### **82 Prohibition on providing local delivery services without a licence**

- (1) Any person who provides any local delivery service without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) No proceedings in respect of an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.



- (4) Without prejudice to subsection (2) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.

## PART III

### INDEPENDENT RADIO SERVICES

#### CHAPTER I

##### REGULATION BY AUTHORITY OF INDEPENDENT RADIO SERVICES GENERALLY

###### *Establishment of Radio Authority*

#### **83 The Radio Authority**

- (1) There shall be an authority to be called the Radio Authority (in this Part referred to as “the Authority”).
- (2) The Authority shall consist of—
- (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four nor more than ten, as he may from time to time determine.
- (3) Schedule 8 to this Act shall have effect with respect to the Authority.

###### *Function of Authority*

#### **84 Regulation by Authority of independent radio services**

- (1) It shall be the function of the Authority to regulate, in accordance with this Part, the provision of the following services, namely—
- (a) sound broadcasting services to which this section applies and which are provided from places in the United Kingdom;
  - (b) licensable sound programme services (as defined by section 112(1)) which are provided from places in the United Kingdom by persons other than the BBC; and
  - (c) additional services (as defined by section 114(1)) which are provided from places in the United Kingdom;
- and in this Part “independent radio service” means a service falling within paragraph (a), (b) or (c) above.
- (2) This section applies to—
- (a) any sound broadcasting service which is provided, on a frequency or frequencies assigned to the Authority under subsection (4)—
    - (i) for any such minimum area of the United Kingdom as the Authority may determine in accordance with section 98(2) (a “national service”), or

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- (ii) for a particular area or locality in the United Kingdom (a “local service”), or
- (iii) for a particular establishment or other defined location, or a particular event, in the United Kingdom (a “restricted service”); and
- (b) any sound broadcasting service (other than one provided by the BBC) which consists—
  - (i) in the transmission of sound programmes by satellite from a place in the United Kingdom for general reception there, or
  - (ii) in the transmission of such programmes by satellite from a place outside the United Kingdom for general reception there, if and to the extent that the programmes included in the service consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him),
 and any such service is referred to in this Part as a “satellite service”.
- (3) For the purposes of this Part satellite services shall be regarded as provided by the following persons—
  - (a) a service falling within subsection (2)(b)(i)—
    - (i) shall, if and to the extent that the programmes included in it consist of material provided by a person in the United Kingdom who is in a position to determine what is to be included in the service (so far as it consists of programme material provided by him), be regarded as provided by that person (whether the programmes are transmitted by him or not), but
    - (ii) shall otherwise be regarded as provided by the person by whom the programmes are transmitted; and
  - (b) a service falling within subsection (2)(b)(ii) shall be regarded as provided by the person by whom the programme material in question is provided as mentioned in that provision.
- (4) For the purposes of this Part the Secretary of State may by notice assign to the Authority such frequencies as he may determine; and any frequency so assigned shall be taken to be so assigned for the purpose only of being used for the provision of one or more independent radio services.
- (5) Any frequency assigned by the Secretary of State under subsection (4) may be so assigned for use only in such area or areas as may be specified by the Secretary of State when making the assignment.
- (6) The Secretary of State may by notice revoke the assignment under subsection (4) of any frequency specified in the notice, and may do so whether or not that frequency is for the time being one on which an independent radio service is being provided.

## **85 Licensing functions of Authority**

- (1) Subject to subsection (2), the Authority may, in accordance with the following provisions of this Part, grant such licences to provide independent radio services as they may determine.
- (2) The Authority shall do all that they can to secure the provision within the United Kingdom of—

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- (a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—
    - (i) one is a service the greater part of which consists in the broadcasting of spoken material, and
    - (ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of the Authority, is not pop music; and
  - (b) a range and diversity of local services.
- (3) It shall be the duty of the Authority to discharge their functions as respects the licensing of independent radio services in the manner which they consider is best calculated—
- (a) to facilitate the provision of licensed services which (taken as a whole) are of high quality and offer a wide range of programmes calculated to appeal to a variety of tastes and interests; and
  - (b) to ensure fair and effective competition in the provision of such services and services connected with them.
- (4) Subsection (3)(b) shall not be construed as affecting the discharge by the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission of any of his or their functions in connection with competition.
- (5) The Secretary of State may by order make such amendments of subsection (2)(a) as he considers appropriate—
- (a) for including in that provision a requirement that one of the national services there referred to should be a service of a particular description, or
  - (b) for removing such a requirement from that provision;
- and (without prejudice to the generality of section 200(2)(b)) any such order may make such consequential amendments of section 98(1)(b)(iii) as the Secretary of State considers appropriate.
- (6) In subsection (2)(a)(ii) “pop music” includes rock music and other kinds of modern popular music which are characterised by a strong rhythmic element and a reliance on electronic amplification for their performance (whether or not, in the case of any particular piece of rock or other such music, the music in question enjoys a current popularity as measured by the number of recordings sold).
- (7) An order shall not be made under subsection (5) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### *General provisions about licences*

### **86 Licences under Part III**

- (1) A licence shall be in writing and (subject to the provisions of this Part) shall continue in force for such period as may be specified in the licence.
- (2) A licence may be granted by the Authority for the provision of such a service as is specified in the licence or for the provision of a service of such a description as is so specified; and (without prejudice to the generality of the preceding provision) a licence may be so granted for the provision of a service which to any extent consists in the simultaneous broadcasting of different programmes on different frequencies.
- (3) The following licences, namely—

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- (a) any licence to provide a national, local or satellite service,
- (b) any licence to provide a licensable sound programme service, and
- (c) any licence to provide additional services,

shall not continue in force for a period of more than eight years.

(4) The Authority—

- (a) shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
- (b) shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence;

and nothing in this Part shall be construed as affecting the operation of this subsection or of section 88(1) or (2)(b) or (c) or 89(1).

(5) The Authority may vary a licence by a notice served on the licence holder if—

- (a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or
- (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to the Authority about the variation.

(6) Paragraph (a) of subsection (5) does not affect the operation of section 110(1)(b); and that subsection shall not authorise the variation of any conditions included in a licence in pursuance of section 102(1) or section 118(1).

(7) A licence granted to any person under this Part shall not be transferable to any other person without the previous consent in writing of the Authority.

(8) Without prejudice to the generality of subsection (7), the Authority shall not give their consent for the purposes of that subsection unless they are satisfied that any such other person would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.

(9) The holding by any person of a licence to provide any service shall not relieve him of any requirement to hold a licence under section 1 of the Wireless Telegraphy Act 1949 or section 7 of the Telecommunications Act 1984 in connection with the provision of that service.

## **87 General licence conditions**

(1) A licence may include—

- (a) such conditions as appear to the Authority to be appropriate having regard to any duties which are or may be imposed on them, or on the licence holder, by or under this Act;
- (b) conditions enabling the Authority to supervise and enforce technical standards in connection with the provision of the licensed service;
- (c) conditions requiring the payment by the licence holder to the Authority (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined;
- (d) conditions requiring the licence holder to furnish the Authority, in such manner and at such times as they may reasonably require, with such

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- information as they may require for the purpose of exercising the functions assigned to them by or under this Act;
- (e) conditions requiring the licence holder, if found by the Authority to be in breach of any condition of his licence, to reimburse to the Authority, in such circumstances as are specified in any conditions, any costs reasonably incurred by them in connection with the breach of that condition;
  - (f) conditions providing for such incidental and supplemental matters as appear to the Authority to be appropriate.
- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that the Authority consent to his doing or not doing them) not to do or to do such things as are specified in the licence or are of a description so specified; and
  - (b) conditions requiring the licence holder to permit—
    - (i) any employee of, or person authorised by, the Authority, or
    - (ii) any officer of, or person authorised by, the Secretary of State,to enter any premises which are used in connection with the broadcasting of the licensed service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.
- (3) The fees required to be paid to the Authority by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by the Authority; and the amount of any fee which is to be so paid by the holder of a licence of a particular class or description shall be such as to represent what appears to the Authority to be the appropriate contribution of the holder of such a licence towards meeting the sums which the Authority regard as necessary in order to discharge their duty under paragraph 12(1) of Schedule 8.
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Authority shall publish every such tariff in such manner as they consider appropriate.
- (5) Where the holder of any licence—
- (a) is required by virtue of any condition imposed under this Part to provide the Authority with any information, and
  - (b) in purported compliance with that condition provides them with any information which is false in a material particular,
- he shall be taken for the purposes of sections 110 and 111 to have failed to comply with that condition.
- (6) Nothing in this Act which authorises or requires the inclusion in a licence of conditions relating to any particular matter or having effect for any particular purpose shall be taken as derogating from the generality of subsection (1).

## **88 Restrictions on the holding of licences**

- (1) The Authority shall do all that they can to secure—

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- (a) that a person does not become or remain the holder of a licence if he is a person who is a disqualified person in relation to that licence by virtue of Part II of Schedule 2 to this Act; and
  - (b) that any requirements imposed by or under Parts III to V of that Schedule are complied with by or in relation to persons holding licences in relation to which those requirements apply.
- (2) The Authority may accordingly—
- (a) require any applicant for a licence to provide them with such information as they may reasonably require for the purpose of determining—
    - (i) whether he is such a disqualified person as is mentioned in subsection (1)(a),
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) would preclude them from granting a licence to him, and
    - (iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;
  - (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
  - (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
  - (d) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
    - (i) shareholdings in the body, or
    - (ii) the directors of the body,
 where such proposals are known to the body;
  - (e) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.
- (3) Where the Authority—
- (a) revoke the award of any licence in pursuance of subsection (2)(b), or
  - (b) determine that any condition imposed by them in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,
- any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to whom the licence was awarded or granted had not made an application for it.
- (4) Those provisions shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.
- (5) Every licence shall include such conditions as the Authority consider necessary or expedient to ensure that where—
- (a) the holder of the licence is a body, and
  - (b) a relevant change takes place after the grant of the licence,
- the Authority may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

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- (6) The Authority shall not serve any such notice on the licence holder unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—
- (a) any change affecting the nature or characteristics of the body, or
  - (b) any change in the persons having control over or interests in the body,
- being (in either case) a change which is such that, if it fell to the Authority to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from so awarding it.

## **89 Disqualification for holding licence on grounds of conviction for transmitting offence**

- (1) Subject to subsection (2), a person shall be disqualified for holding a licence under this Part if within the last five years he has been convicted of—
- (a) an offence under section 1 of the Wireless Telegraphy Act 1949 (licensing of wireless telegraphy) which involved the making of any transmission by wireless telegraphy otherwise than under and in accordance with a licence under that section;
  - (b) an offence under the Marine, &c., Broadcasting (Offences) Act 1967; or
  - (c) an offence under section 97 below.
- (2) Subsection (1)(a) and (b) do not apply to any offence committed before 1st January 1989.
- (3) Every licence granted under this Part shall include conditions requiring the holder of the licence to do all that he can to ensure that no person who is disqualified for holding a licence by virtue of subsection (1) is concerned in the operation of any station for wireless telegraphy used in the provision of the licensed service.

### *General provisions about licensed services*

## **90 General requirements as to licensed services**

- (1) The Authority shall do all that they can to secure that every licensed service complies with the following requirements, namely—
- (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
  - (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality; and
  - (c) that its programmes do not include any technique which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons listening to the programmes without their being aware, or fully aware, of what has occurred.
- (2) The Authority shall, in the case of every licensed service which is a national, local, satellite or licensable sound programme service, do all that they can to secure that the service complies with the following additional requirements, namely—

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- (a) the appropriate requirement specified in subsection (3);
  - (b) that (without prejudice to the generality of subsection (1)(b) or (3)(a)) there are excluded from its programmes all expressions of the views and opinions of the person providing the service on matters (other than sound broadcasting) which are of political or industrial controversy or relate to current public policy; and
  - (c) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve—
    - (i) any improper exploitation of any susceptibilities of those listening to the programmes, or
    - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (3) The appropriate requirement referred to in subsection (2)(a) is—
- (a) where the licensed service is a national service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
  - (b) where the licensed service is a local, satellite or licensable sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.
- (4) In applying subsection (3)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local, satellite or licensable sound programme service the programmes included in that service shall be taken as a whole.
- (5) The Authority shall—
- (a) draw up, and from time to time review, a code giving guidance—
    - (i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (4),
    - (ii) as to the rules to be observed in other respects in connection with the application of subsection (3)(a) in relation to a national service, and
    - (iii) as to the rules to be observed in connection with the application of subsection (3)(b) in relation to a local, satellite or licensable sound programme service; and
  - (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different cases or circumstances.
- (6) The Authority shall publish the code drawn up under subsection (5), and every revision of it, in such manner as they consider appropriate.
- (7) Nothing in this section or in sections 91 to 96 has effect in relation to any licensed service which is an additional service.

## **91 General code for programmes**

- (1) The Authority shall draw up, and from time to time review, a code giving guidance—
- (a) as to the rules to be observed with respect to the inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large



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numbers of children and young persons may be expected to be listening to the programmes;

- (b) as to the rules to be observed with respect to the inclusion in programmes of appeals for donations; and
- (c) as to such other matters concerning standards and practice for programmes as the Authority may consider suitable for inclusion in the code;

and the Authority shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.

- (2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Authority shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.
- (3) Before drawing up or revising the code under this section the Authority shall (to such extent as they consider it reasonably practicable to do so) consult every person who is the holder of a licence under this Part.
- (4) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

## **92 General provisions as to advertisements**

- (1) The Authority shall do all that they can to secure that the rules specified in subsection (2) are complied with in relation to licensed services.
- (2) Those rules are as follows—
  - (a) a licensed service must not include—
    - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature,
    - (ii) any advertisement which is directed towards any political end, or
    - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a government department);
  - (b) in the acceptance of advertisements for inclusion in a licensed service there must be no unreasonable discrimination either against or in favour of any particular advertiser; and
  - (c) a licensed service must not, without the previous approval of the Authority, include a programme which is sponsored by any person whose business consists, wholly or mainly, in the manufacture or supply of a product, or in the provision of a service, which the licence holder is prohibited from advertising by virtue of any provision of section 93.
- (3) Nothing in subsection (2) shall be construed as prohibiting the inclusion in a licensed service of any party political broadcast which complies with the rules (so far as applicable) made by the Authority for the purposes of section 107.
- (4) After consultation with the Authority the Secretary of State may make regulations amending, repealing, or adding to the rules specified in subsection (2); but no such regulations shall be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.
- (5) The Authority shall not act as an advertising agent.

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### **93 Control of advertisements**

- (1) It shall be the duty of the Authority—
- (a) after the appropriate consultation, to draw up, and from time to time review, a code—
    - (i) governing standards and practice in advertising and in the sponsoring of programmes, and
    - (ii) prescribing the advertisements and methods of advertising or sponsorship to be prohibited, or to be prohibited in particular circumstances; and
  - (b) to do all that they can to secure that the provisions of the code are observed in the provision of licensed services;
- and the Authority may make different provision in the code for different kinds of licensed services.
- (2) In subsection (1) “the appropriate consultation” means consultation with—
- (a) the Independent Television Commission,
  - (b) such bodies or persons appearing to the Authority to represent each of the following, namely—
    - (i) listeners,
    - (ii) advertisers, and
    - (iii) professional organisations qualified to give advice in relation to the advertising of particular products,as the Authority think fit, and
  - (c) such other bodies or persons who are concerned with standards of conduct in advertising as the Authority think fit,
- and (to the extent that the Authority consider such consultation to be reasonably practicable) consultation with every person who is the holder of a licence under this Part.
- (3) The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.
- (4) The Authority shall—
- (a) from time to time consult the Secretary of State as to the classes and descriptions of advertisements which must not be included in licensed services and the methods of advertising or sponsorship which must not be employed in, or in connection with, the provision of such services; and
  - (b) carry out any directions which he may give to them in respect of such matters.
- (5) The Authority may, in the discharge of a general responsibility with respect to advertisements and methods of advertising and sponsorship, impose requirements as to advertisements or methods of advertising or sponsorship which go beyond the requirements imposed by the code.
- (6) The methods of control exercisable by the Authority for the purpose of securing that the provisions of the code are complied with, and for the purpose of securing compliance with requirements imposed under subsection (5) which go beyond the requirements of the code, shall include a power to give directions to the holder of a licence—

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- (a) with respect to the classes and descriptions of advertisements and methods of advertising or sponsorship to be excluded, or to be excluded in particular circumstances; or
  - (b) with respect to the exclusion of a particular advertisement, or its exclusion in particular circumstances.
- (7) Directions under this section may be, to any degree, either general or specific and qualified or unqualified.
- (8) The Authority shall, in drawing up or revising the code, take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

#### **94 Government control over licensed services**

- (1) If it appears to him to be necessary or expedient to do so in connection with his functions as such, the Secretary of State or any other Minister of the Crown may at any time by notice require the Authority to direct the holders of any licences specified in the notice to publish in their licensed services, at such times as may be specified in the notice, such announcement as is so specified; and it shall be the duty of the Authority to comply with the notice.
- (2) Where the holder of a licence publishes any announcement in pursuance of a direction under subsection (1), he may announce that he is doing so in pursuance of such a direction.
- (3) The Secretary of State may at any time by notice require the Authority to direct the holders of any licences specified in the notice to refrain from including in the programmes included in their licensed services any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice.
- (4) Where the Authority—
- (a) have given the holder of any licence a direction in accordance with a notice under subsection (3), or
  - (b) in consequence of the revocation by the Secretary of State of such a notice, have revoked such a direction,
- or where such a notice has expired, the holder of the licence in question may publish in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) The powers conferred by this section are in addition to any power specifically conferred on the Secretary of State by any other provision of this Act.
- (6) In relation to any licensed service provided from a place in Northern Ireland, the reference in subsection (1) to a Minister of the Crown includes a reference to the head of any Northern Ireland department.

#### **95 Monitoring by Authority of programmes included in licensed services**

- (1) For the purpose of maintaining supervision over the programmes included in licensed services the Authority may make and use recordings of those programmes or any part of them.

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- (2) A licence shall include conditions requiring the licence holder—
- (a) to retain, for a period not exceeding 42 days, a recording of every programme included in the licensed service;
  - (b) at the request of the Authority, to produce to them any such recording for examination or reproduction;
  - (c) at the request of the Authority, to produce to them any script or transcript of a programme included in the licensed service which he is able to produce to them.
- (3) Nothing in this Part shall be construed as requiring the Authority, in the discharge of their duties under this Part as respects licensed services and the programmes included in them, to listen to such programmes in advance of their being included in such services.

## **96 Audience research**

- (1) The Authority shall make arrangements—
- (a) for ascertaining the state of public opinion concerning programmes included in licensed services; and
  - (b) for the purpose of assisting them to perform their functions under Chapter II in connection with the programmes to be included in national and local services, for ascertaining the types of programme that members of the public would like to be included in licensed services.
- (2) Those arrangements shall—
- (a) secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Authority; and
  - (b) include provision for full consideration by the Authority of the results of any such research.

### *Prohibition on providing unlicensed independent radio services*

## **97 Prohibition on providing independent radio services without a licence**

- (1) Subject to subsection (2), any person who provides any independent radio service without being authorised to do so by or under a licence under this Part shall be guilty of an offence.
- (2) The Secretary of State may, after consultation with the Authority, by order provide that subsection (1) shall not apply to such services or descriptions of services as are specified in the order.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) No proceedings in respect of an offence under this section shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

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- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) Without prejudice to subsection (3) above, compliance with this section shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (6) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## CHAPTER II

### SOUND BROADCASTING SERVICES

#### *National services*

#### **98 Applications for national licences**

- (1) Where the Authority propose to grant a licence to provide a national service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,
    - (ii) the minimum area of the United Kingdom for which the service is to be provided,
    - (iii) if the service is to be one falling within section 85(2)(a)(i) or (ii), that the service is to be such a service, and
    - (iv) if there is any existing licensed national service, that the service is to be one which caters for tastes and interests different from those already catered for by any such service (as described in the notice);
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 102(1)(c) if he were granted the licence.
- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided the Authority shall have regard to the following considerations, namely—
  - (a) that the service in question should, so far as is reasonably practicable, make the most effective use of the frequency or frequencies on which it is to be provided; but
  - (b) that the area for which it is to be provided should not be so extensive that the costs of providing it would be likely to affect the ability of the person providing the service to maintain it.

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- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
- (a) the applicant's proposals for providing a service that would both—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), and
    - (ii) consist of a diversity of programmes calculated to appeal to a variety of tastes and interests;
  - (b) the fee specified in the notice under subsection (1)(d)(i);
  - (c) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connection with, the making of programmes to be included in his proposed service;
  - (d) the applicant's cash bid in respect of the licence;
  - (e) such information as the Authority may reasonably require—
    - (i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (f) such other information as the Authority may reasonably require for the purpose of considering the application.
- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under any of paragraphs (a), (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
- (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) the proposals submitted by him under subsection (3)(a); and
  - (c) such other information connected with his application as the Authority consider appropriate.
- (7) In this section "programme" does not include an advertisement.
- (8) In this Part "cash bid", in relation to a licence, means an offer to pay to the Authority a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

**99 Procedure to be followed by Authority in connection with consideration of applications for national licences**

- (1) Where a person has made an application for a national licence in accordance with section 98, the Authority shall not proceed to consider whether to award him the

licence on the basis of his cash bid in accordance with section 100 unless it appears to them—

- (a) that his proposed service would both—
    - (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, and
    - (ii) consist of such a diversity of programmes as is mentioned in subsection (3)(a) of that section; and
  - (b) that he would be able to maintain that service throughout the period for which the licence would be in force.
- (2) Any reference to an applicant in section 100 (except in section 100(9)(b)) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of subsection (1)(a) and (b) above are satisfied.

### **100 Award of national licence to person submitting highest cash bid**

- (1) Subject to the following provisions of this section, the Authority shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.
- (2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence) the Authority shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.
- (3) The Authority may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to the Authority, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.
- (4) If it appears to the Authority, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him—
  - (a) they shall refer his application to the Secretary of State, together with—
    - (i) a copy of all documents submitted to them by the applicant, and
    - (ii) a summary of their deliberations on the application; and
  - (b) they shall not award the licence to him unless the Secretary of State has given his approval.
- (5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.

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- (6) In subsections (4) and (5) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—
- (a) paying any amounts payable by him by virtue of section 102(1), or
  - (b) otherwise financing the provision of his proposed service.
- (7) Where the Authority are, by virtue of subsection (4), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (11)) have effect as if that person had not made an application for the licence.
- (8) Where the Authority have awarded a national licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence—
- (a) publish the matters specified in subsection (9) in such manner as they consider appropriate; and
  - (b) grant the licence to that person.
- (9) The matters referred to in subsection (8)(a) are—
- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
  - (b) the name of every other applicant in whose case it appeared to the Authority that the requirement specified in section 99(1)(a) was satisfied;
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Authority’s reasons for the licence having been so awarded; and
  - (d) such other information as the Authority consider appropriate.
- (10) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (9) shall have effect as if—
- (a) paragraph (b) were omitted; and
  - (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.
- (11) Subsections (1) to (6) shall not have effect as mentioned in subsection (7) if the Authority decide that it would be desirable to publish a fresh notice under section 98 in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connection with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if the Authority decide that it would be desirable to publish a fresh notice under this Part in respect of the grant of a further licence to provide the service in question.

**101 Failure to begin providing licensed service and financial penalties on revocation of licence**

- (1) If at any time after a national licence has been granted to any person but before the licence has come into force—
- (a) that person indicates to the Authority that he does not intend to provide the service in question, or
  - (b) the Authority for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,



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- then, subject to subsection (2)—
- (i) the Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 100 shall (subject to section 100(11)) have effect as if he had not made an application for the licence.
- (2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Authority have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (3) Where the Authority revoke a national licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.
- (4) In subsection (3) “the prescribed amount” means—
- (a) where—
    - (i) the licence is revoked under this section, or
    - (ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended, 7 per cent. of the amount which the Authority estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 102(2) to (6)); and
  - (b) in any other case, 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).
- (5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 122(4), be recoverable by the Authority as a debt due to them from any person who controls that body.

## **102 Additional payments to be made in respect of national licences**

- (1) A national licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 98(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person—
- (a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or
  - (b) in respect of charges made in that period for the reception of programmes included in that service.

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- (3) If, in connection with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.
- (4) In the case of an advertisement included under arrangements made between—
- (a) the licence holder or any connected person, and
  - (b) a person acting as an advertising agent,
- the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.
- (5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.
- (6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.
- (7) A national licence may include conditions—
- (a) enabling the Authority to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (8) Such a licence may in particular include conditions—
- (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (9) Where—
- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,
- any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.
- (10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between—

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- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
- (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose “the retail prices index” means the general index of prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.

### **103 Restriction on changes in control over holder of national licence**

(1) Where—

- (a) any change in the persons having control over—
  - (i) a body to which a national licence has been awarded or transferred in accordance with this Part of this Act, or
  - (ii) an associated programme provider,takes place within the relevant period, and
- (b) that change takes place without having been previously approved for the purposes of this section by the Authority,

then (subject to subsection (5)) the Authority may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

(2) In subsection (1)—

“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Authority to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and

“the relevant period”, in relation to a national licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a national licence has been awarded but not yet granted were the holder of such a licence.

- (3) The Authority shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 98(3)(a) by that body (or, as the case may be, by the person to whom the licence was originally awarded).
- (4) The Authority may refuse so to approve any such change if, in any circumstances not falling within subsection (3), they consider it appropriate to do so.
- (5) The Authority shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.
- (6) Where under subsection (1) the Authority refuse to grant a licence to any body, section 100 shall (subject to section 100(11)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any

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body a notice revoking its licence, subsections (6) and (7) of section 111 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

*Local and other services*

**104 Applications for other licences**

- (1) Where the Authority propose to grant a licence to provide a local service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they propose to grant such a licence;
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided;
  - (c) inviting applications for the licence and specifying the closing date for applications; and
  - (d) stating the fee payable on any application made in pursuance of the notice.
- (2) Any application made in pursuance of a notice under subsection (1) must be in writing and accompanied by—
  - (a) the fee specified in the notice under paragraph (d) of that subsection;
  - (b) the applicant's proposals for providing a service that would—
    - (i) cater for the tastes and interests of persons living in the area or locality for which it would be provided or for any particular tastes and interests of such persons, and
    - (ii) broaden the range of programmes available by way of local services to persons living in that area or locality;
  - (c) such information as the Authority may reasonably require—
    - (i) as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force, and
    - (ii) as to the arrangements which the applicant proposes to make for, and in connection with, the transmission of his proposed service; and
  - (d) such other information as the Authority may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).
- (4) The Authority shall, at the request of any person and on the payment by him of such sum (if any) as the Authority may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.
- (5) Where the Authority propose, in the case of any local licence which is due to expire (otherwise than by virtue of section 110), to grant a further licence to provide the service in question, they shall, in accordance with subsection (1), publish a notice under that subsection relating to the proposed grant of the further licence to provide that service, unless it appears to them that to do so would not serve to broaden the range of programmes available by way of local services to persons living in the area or locality for which that service has been provided.

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- (6) The following applications, namely—
- (a) an application to be granted a local licence in a case where, in accordance with subsection (5), no notice is to be published under subsection (1), or
  - (b) an application for a licence to provide a satellite or restricted service,
- shall be made in such manner as the Authority may determine, and shall be accompanied by such fee (if any) as the Authority may determine.
- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

### **105 Special requirements relating to grant of local licences**

Where the Authority have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

- (a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- (c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- (d) the extent to which any application for the licence is supported by persons living in that area or locality.

*Miscellaneous provisions relating to national and local services*

### **106 Requirements as to character and coverage of national and local services**

- (1) A national or local licence shall include such conditions as appear to the Authority to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force, except to the extent that the Authority consent to any departure on the grounds—
- (a) that it would not narrow the range of programmes available by way of independent radio services to persons living in the area or locality for which the service is licensed to be provided, or
  - (b) that it would not substantially alter the character of the service.
- (2) A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.
- (3) A national licence shall include conditions enabling the Authority, where it appears to them to be reasonably practicable for the licensed service to be provided for any

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additional area falling outside the minimum area determined by them in accordance with section 98(2), to require the licence holder to provide the licensed service for any such additional area.

- (4) Subject to subsection (5), the Authority may, if they think fit, authorise the holder of a local licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided.
- (5) The Authority shall only exercise the power conferred on them by subsection (4) if it appears to them that to do so would not result in a substantial increase in the area or locality for which the service in question is licensed to be provided.
- (6) As soon as practicable after the Authority have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice—
  - (a) stating that they have exercised that power in relation to that service; and
  - (b) giving details of the additional area or locality for which that service is licensed to be provided.

#### **107 Party political broadcasts**

- (1) A national licence shall include—
  - (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; and
  - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Authority may determine.
- (2) Without prejudice to the generality of paragraph (b) of subsection (1), the Authority may determine for the purposes of that subsection—
  - (a) the political parties on whose behalf party political broadcasts may be made; and
  - (b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- (3) Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances.

#### **108 Promotion of equal opportunities in relation to employment by holder of national licence**

- (1) A national licence shall include conditions requiring the licence holder—
  - (a) to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups; and
  - (b) to review those arrangements from time to time.
- (2) In subsection (1) “racial group” has the same meaning as in the Race Relations Act 1976.

### *Enforcement of licences*

#### **109 Power to require scripts etc. or broadcasting of correction or apology**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may serve on him a notice—
  - (a) stating that the Authority are so satisfied as respects any specified condition or direction;
  - (b) stating the effect of subsection (2); and
  - (c) specifying for the purposes of that subsection a period not exceeding twelve months.
- (2) If, at any time during the period specified in a notice under subsection (1), the Authority are satisfied that the licence holder has again failed to comply with any such condition or direction as is mentioned in that subsection (whether or not the same as the one specified in the notice), the Authority may direct him—
  - (a) to provide the Authority in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and
  - (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to the Authority in advance for examination or reproduction such recordings of that matter as are so specified;and a direction under this subsection shall have effect for such period, not exceeding six months, as is specified in the direction.
- (3) If the Authority are satisfied—
  - (a) that the holder of a licence has failed to comply with any condition of the licence, and
  - (b) that that failure can be appropriately remedied by the inclusion in the licensed service of a correction or apology (or both) under this subsection,they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or apology (or both) in such form, and at such time or times, as they may determine.
- (4) The Authority shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to the Authority about the matters complained of.
- (5) Where the holder of a licence includes a correction or apology in the licensed service in pursuance of a direction under subsection (3), he may announce that he is doing so in pursuance of such a direction.

#### **110 Power to impose financial penalty or suspend or shorten licence period**

- (1) If the Authority are satisfied that the holder of a licence granted under this Chapter has failed to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
  - (a) a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority;

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- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years; or
  - (c) a notice suspending the licence for a specified period not exceeding six months.
- (2) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of a national licence—
- (a) shall, if such a penalty has not previously been imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period (as determined in accordance with section 102(2) to (6)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed £50,000.
- (4) The Authority shall not serve on any person such a notice as is mentioned in subsection (1)(a), (b) or (c) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), the Authority may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.
- (6) It is hereby declared that any exercise by the Authority of their powers under subsection (1) of this section in respect of any failure to comply with any condition or direction shall not preclude any exercise by them of their powers under section 109 in respect of that failure.
- (7) The Secretary of State may by order amend subsection (3) by substituting a different sum for the sum for the time being specified there; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **111 Power to revoke licences**

- (1) If the Authority are satisfied—
- (a) that the holder of a licence granted under this Chapter is failing to comply with any condition of the licence or with any direction given by them under or by virtue of any provision of this Part, and
  - (b) that that failure is such that, if not remedied, it would justify the revocation of the licence,
- they shall (subject to subsection (8)) serve on the holder of the licence a notice under subsection (2).
- (2) A notice under this subsection is a notice—



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- (a) stating that the Authority are satisfied as mentioned in subsection (1);
  - (b) specifying the respects in which, in their opinion, the licence holder is failing to comply with any such condition or direction as is there mentioned; and
  - (c) stating that, unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Authority will revoke his licence under subsection (3).
- (3) If at the end of the period specified in a notice under subsection (2) the Authority are satisfied—
- (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (4) If the Authority are satisfied in the case of any national licence—
- (a) that the holder of the licence has ceased to provide the licensed service before the end of the period for which the licence is to continue in force, and
  - (b) that it is appropriate for them to do so,
- they shall (subject to subsection (8)) serve on him a notice revoking his licence.
- (5) If the Authority are satisfied—
- (a) that the holder of a licence granted under this Chapter provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,
- they may (subject to subsection (8)) serve on him a notice revoking his licence.
- (6) Subject to subsection (7), any notice served under subsection (3), (4) or (5) shall take effect as from the time when it is served on the licence holder.
- (7) If it appears to the Authority to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, they may provide in any such notice for it to take effect as from a date specified in it.
- (8) The Authority shall not serve any notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

## CHAPTER III

### LICENSABLE SOUND PROGRAMME SERVICES

#### 112 Licensable sound programme services

- (1) In this Part “licensable sound programme service” means (subject to subsection (2)) a service consisting in the provision by any person of sound programmes with a view to their being conveyed, by means of a telecommunication system, for reception—
- (a) in two or more dwelling-houses in the United Kingdom, and

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- (b) otherwise than for the purpose of being received there by persons who have a business interest in receiving them,  
 whether the telecommunication system is run by the person so providing the programmes or by some other person, and whether the programmes are to be so conveyed for simultaneous reception or for reception at different times in response to requests made by different users of the service.
- (2) Subsection (1) does not apply to—
- (a) a service where the programmes are provided for transmission in the course of the provision of a sound broadcasting service;
  - (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the Telecommunications Act 1984; or
  - (c) a two-way service (as defined by section 46(2)(c)).
- (3) It is hereby declared that the person who does either or both of the following things, that is to say—
- (a) uses a telecommunication system for conveying sound programmes as mentioned in subsection (1), or
  - (b) runs a telecommunications system which is so used,
- is not to be regarded as providing a licensable sound programme service in respect of any such programmes except to the extent that they are provided by that person with a view to their being so conveyed by means of that system.
- (4) It is hereby also declared that where—
- (a) any service constitutes such a service as is mentioned in subsection (1), and
  - (b) the sound programmes in respect of which the service is provided are provided for transmission in the course of the provision of any additional service,
- that service is licensable under section 113 as a licensable sound programme service, and not otherwise; and in this subsection “additional service” means an additional service within the meaning of this Part or Part I.
- (5) For the purposes of this section a person has a business interest in receiving programmes if he has an interest in receiving them for the purposes of his business, trade, profession or employment.

### **113 Licensing etc. of licensable sound programme services**

- (1) An application for a licence to provide a licensable sound programme service shall—
  - (a) be made in such manner as the Authority may determine; and
  - (b) be accompanied by such fee (if any) as they may determine.
- (2) Where such an application is duly made to the Authority, they may only refuse to grant the licence applied for if it appears to them that the service which would be provided under the licence would not comply with the requirements of section 90(1) and (2).
- (3) Subject to subsection (4), sections 109 to 111 shall apply in relation to a licence to provide a licensable sound programme service as they apply in relation to a licence granted under Chapter II of this Part.
- (4) Section 111 shall apply in relation to such a licence with the omission of subsection (7).

## CHAPTER IV

### ADDITIONAL SERVICES PROVIDED ON SOUND BROADCASTING FREQUENCIES

#### 114 Additional services

- (1) In this Part “additional service” means any service which consists in the sending of telecommunication signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided—
  - (a) on a frequency assigned under section 84(4), or
  - (b) on any other allocated frequency notified to the Authority by the Secretary of State.
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be—
  - (a) where the service is provided on a frequency assigned under section 84(4), any part of those signals which is not required for the purposes of the provision of that service and is determined by the Authority to be available for the provision of additional services;
  - (b) where the service is provided on a frequency notified to the Authority under subsection (1)(b) above, such part of those signals as the Secretary of State may specify when making the notification;and references in this Part to spare capacity shall be construed accordingly.
- (3) The Authority shall, when determining under subsection (2)(a) the extent and nature of the spare capacity available for the provision of additional services in the case of any frequency on which a national service is provided, have regard to any need of the person providing that service to be able to use part of the signals carrying it for providing services which are ancillary to programmes included in the service.
- (4) A person holding a national licence shall be taken for the purposes of this Part to be authorised by his licence to provide any such services as are mentioned in subsection (3).
- (5) The Secretary of State may, when making any notification under subsection (1)(b), specify a date beyond which the frequency in question is not to be used for the provision of additional services; and any such notification shall accordingly cease to have effect on that date.
- (6) In this section—

“allocated frequency” means a frequency allocated to the United Kingdom for the provision of sound broadcasting services;

“telecommunication signals” means anything falling within paragraphs (a) to (d) of section 4(1) of the Telecommunications Act 1984 (meaning of “telecommunication system”).

#### 115 Licensing of additional services

- (1) The Authority shall do all that they can to secure that, in the case of each of the following frequencies, namely—
  - (a) any frequencies assigned under section 84(4) and used for the provision of a national service, and

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- (b) any frequencies notified to the Authority under section 114(1)(b), all of the spare capacity available for the provision of additional services on that frequency is used for the provision of such services under additional services licences granted by the Authority in accordance with this section.
- (2) An additional services licence may relate to the use of spare capacity within more than one frequency; and two or more additional services licences may relate to the use of spare capacity within the same frequency where it is to be used at different times, or in different areas, in the case of each of those licences.
- (3) An additional services licence may include provisions enabling the licence holder, subject to and in accordance with such conditions as the Authority may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.
- (4) Subsection (3) applies to any person who is not a disqualified person in relation to an additional services licence by virtue of Part II of Schedule 2 to this Act.
- (5) Any conditions included in an additional services licence shall apply in relation to the provision of additional services by a person authorised as mentioned in subsection (3) as they apply in relation to the provision of such services by the licence holder; and any failure by such a person to comply with any such conditions shall be treated for the purposes of this Part as a failure on the part of the licence holder to comply with those conditions.
- (6) Every licence to provide a national service shall include such conditions as appear to the Authority to be appropriate for securing that the licence holder grants—
- (a) to any person who holds a licence to provide additional services on the frequency on which that national service is provided, and
  - (b) to any person who is authorised by any such person as mentioned in subsection (3) to provide additional services on that frequency,
- access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (7) Any person who grants to any other person access to facilities in accordance with conditions imposed under subsection (6) may require that other person to pay a reasonable charge in respect thereof; and any dispute as to the amount of any such charge shall be determined by the Authority.
- (8) The holder of a licence to provide a local, restricted or satellite service shall be taken for the purposes of this Part to be authorised by his licence to provide, or to authorise another person to provide, additional services on the frequency on which the licensed service is provided.
- (9) In this Part “additional services licence” means a licence to provide additional services.

## **116 Applications for additional services licences**

- (1) Where the Authority propose to grant a licence to provide additional services they shall publish, in such manner as they consider appropriate, a notice—
- (a) stating that they propose to grant such a licence;
  - (b) specifying—
    - (i) the period for which the licence is to be granted,

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- (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) (subject to the approval of the Secretary of State) the extent and nature of the spare capacity which is to be allocated by the licence;
  - (c) inviting applications for the licence and specifying the closing date for such applications; and
  - (d) specifying—
    - (i) the fee payable on any application made in pursuance of the notice, and
    - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 118(1)(c) if he were granted the licence.
- (2) The Authority may, if they think fit, specify under subsection (1)(d)(ii)—
  - (a) different percentages in relation to different accounting periods falling within the period for which the licence would be in force;
  - (b) a nil percentage in relation to any accounting period so falling.
- (3) Any application made in pursuance of a notice under this section must be in writing and accompanied by—
  - (a) the fee specified in the notice under subsection (1)(d)(i);
  - (b) a technical plan indicating—
    - (i) the nature of any additional services which the applicant proposes to provide, and
    - (ii) so far as known to the applicant, the nature of any additional services which any other person proposes to provide in accordance with section 115(3);
  - (c) the applicant's cash bid in respect of the licence; and
  - (d) such information as the Authority may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving such an application and before determining it the Authority may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to the Authority under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) The Authority shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate—
  - (a) the name of every person who has made an application to them in pursuance of the notice;
  - (b) particulars of the technical plan submitted by him under subsection (3)(b); and
  - (c) such other information connected with his application as the Authority consider appropriate.

**117 Procedure to be followed by Authority in connection with consideration of applications for, and awarding of, licences**

- (1) Where a person has made an application for an additional services licence in accordance with section 116, the Authority shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with subsections (3) and (4) below unless it appears to them—
  - (a) that the technical plan submitted under section 116(3)(b) is, so far as it involves the use of any telecommunication system, acceptable to the relevant licensing authorities; and
  - (b) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force;

and any reference to an applicant in section 100 (as applied by subsection (3) below) is accordingly a reference to an applicant in whose case it appears to the Authority that the requirements of paragraphs (a) and (b) above are satisfied.
- (2) Before forming any view as to whether the requirement specified in subsection (1)(a) is satisfied in the case of an applicant the Authority shall consult the relevant licensing authorities.
- (3) Subject to subsection (4), section 100 shall apply in relation to an additional services licence as it applies in relation to a national licence.
- (4) In the application of section 100 in relation to an additional services licence—
  - (a) subsection (6) shall have effect with the substitution in paragraph (a) of a reference to section 118(1) for the reference to section 102(1); and
  - (b) subsection (9) shall have effect with the substitution in paragraph (b) of a reference to the requirement specified in subsection (1)(a) above for the reference to the requirement specified in section 99(1)(a).
- (5) If at any time after an additional services licence has been granted to any person but before the licence has come into force—
  - (a) that person indicates to the Authority that none of the services in question will be provided once the licence has come into force, or
  - (b) the Authority for any other reason have reasonable grounds for believing that none of those services will be so provided,

then, subject to subsection (6)—

  - (i) the Authority shall serve on him a notice revoking the licence as from the time the notice is served on him, and
  - (ii) section 100 (as applied by subsection (3) above) shall, subject to section 100(11), have effect as if he had not made an application for the licence.
- (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Authority have served on him a notice stating their grounds for believing that none of the services in question will be provided once his licence has come into force; and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (7) In this section “the relevant licensing authorities” means the Secretary of State and the Director General of Telecommunications.

## **118 Additional payments to be made in respect of additional services licences**

- (1) An additional services licence shall include conditions requiring the licence holder to pay to the Authority (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
  - (a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;
  - (b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - (c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 116(1)(d)(ii).
- (2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall consist of all amounts which are received or to be received by him or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, in that period the spare capacity allocated by the licence.
- (3) An additional services licence may include conditions—
  - (a) enabling the Authority to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
  - (a) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the licence holder to take account of the revised estimate;
  - (b) providing for the adjustment of any overpayment or underpayment.
- (5) Where—
  - (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
  - (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

## **119 Additional services not to interfere with other transmissions**

- (1) An additional services licence may include such conditions as the Authority consider appropriate for securing that the provision of any additional service under the licence does not cause any interference with—
  - (a) the sound broadcasting service or services on whose frequency or frequencies it is provided, or
  - (b) any other wireless telegraphy transmissions.

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- (2) Before imposing any conditions in pursuance of subsection (1) the Authority shall consult the relevant licensing authorities (within the meaning of section 117).

## **120 Enforcement of additional services licences**

- (1) If the Authority are satisfied that the holder of an additional services licence has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, they may (subject to subsection (3)) serve on him a notice requiring him to pay, within a specified period, a specified financial penalty to the Authority.
- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)—
- (a) shall, if such a penalty has not previously been so imposed on that person during any period for which his licence has been in force (“the relevant period”), not exceed 3 per cent. of the qualifying revenue for his last complete accounting period falling within the relevant period (as determined in accordance with section 118(2)); and
  - (b) shall, in any other case, not exceed 5 per cent. of the qualifying revenue for that accounting period (as so determined);
- and, in relation to a person whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount which the Authority estimate to be the qualifying revenue for that accounting period (as so determined).
- (3) The Authority shall not serve on any person a notice under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (4) Section 111 shall apply in relation to an additional services licence as it applies in relation to a licence granted under Chapter II of this Part, but with the omission of subsection (7).

## **CHAPTER V**

### **SUPPLEMENTAL**

## **121 Computation of qualifying revenue**

Part II of Schedule 7 (which contains provisions relating to the computation of qualifying revenue for the purposes of this Part) shall have effect.

## **122 Certain receipts of Authority to be paid into Consolidated Fund**

- (1) Where the Authority receive in respect of any licence any of the amounts specified in subsection (2), that amount shall not form part of the revenues of the Authority but shall—
- (a) if the licence is for the provision of a service for any area, locality, establishment or other place, or for any event, in Great Britain, be paid into the Consolidated Fund of the United Kingdom;



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- (b) if the licence is for the provision of a service for any area, locality, establishment or other place, or for any event, in Northern Ireland, be paid into the Consolidated Fund of Northern Ireland; or
  - (c) if the licence is for the provision of a national or satellite service or any additional services, be paid into both of those Funds in such proportions as the Authority consider appropriate.
- (2) The amounts referred to in subsection (1) are—
- (a) any amount payable to the Authority by virtue of section 102(1) or 118(1);
  - (b) any amount payable to them by virtue of section 101(3); and
  - (c) any amount payable to them by virtue of section 110(1)(a), 113(3) or 120(1).
- (3) Subsection (1) shall not be construed as applying to any amount which is required by the Authority for the making of an adjustment in respect of an overpayment made by any person.
- (4) Any amount payable by any person to the Authority under or by virtue of this Part shall be recoverable by them as a debt due to them from that person; and, where any amount is so payable by a person as the holder of any licence under this Part, his liability to pay it shall not be affected by his licence ceasing (for any reason) to be in force.
- (5) The Authority shall, in respect of each financial year, prepare an account showing—
- (a) all such amounts falling within subsection (1) as have been received by them, and
  - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under that subsection in respect of those amounts,
- and shall send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.

### **123 Frequency planning and general research and development**

- (1) The Authority may make arrangements for such work relating to frequency planning to be carried out as they consider appropriate in connection with the discharge of their functions.
- (2) Any such work shall be directed towards securing that the frequencies assigned to the Authority under this Act are used as efficiently as is reasonably practicable.
- (3) The Authority may make arrangements for such research and development work to be carried out as they consider appropriate in connection with the discharge of their functions.
- (4) The Authority shall secure that, so far as is reasonably practicable—
  - (a) any work carried out under arrangements made in pursuance of subsection (1) or (3) is carried out, under the supervision of the Authority, by persons who are neither members nor employees of the Authority; and
  - (b) any work carried out under arrangements made in pursuance of subsection (3) is to a substantial extent financed by persons other than the Authority.

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**124 Authority to assist Secretary of State in connection with licensing functions under 1949 Act**

The Authority shall give to the Secretary of State such information or other assistance as he may reasonably require in connection with his functions under section 1 of the Wireless Telegraphy Act 1949 as respects the granting, variation or revocation of licences under that section.

**125 Representation by Authority of Government and other interests in connection with broadcasting matters**

The functions of the Authority shall include representing—

- (a) Her Majesty's Government in the United Kingdom, and
- (b) persons providing independent radio services,

on bodies concerned with the regulation (whether nationally or internationally) of matters relating to sound broadcasting.

**126 Interpretation of Part III**

(1) In this Part (unless the context otherwise requires)—

“additional service” and “additional services licence” shall be construed in accordance with section 114(1) and section 115(9) respectively;

“the appropriate percentage”, in relation to any year, has the meaning given by section 102(10);

“assigned frequency” means a frequency for the time being assigned to the Authority under section 84(4);

“the Authority” means the Radio Authority established under this Part;

“cash bid” has the meaning given by section 98(8);

“independent radio service” has the meaning given by section 84(1);

“licence” means a licence under this Part, and “licensed” shall be construed accordingly;

“licensable sound programme service” has the meaning given by section 112(1);

“local licence” and “national licence” mean a licence to provide a local service and a licence to provide a national service, respectively;

“local service”, “national service”, “restricted service” and “satellite service” shall be construed in accordance with section 84(2);

“sound broadcasting service” means a broadcasting service whose broadcasts consist of transmissions in sound only;

“spare capacity” shall be construed in accordance with section 114(2).

(2) Any reference in this Part to an area in the United Kingdom does not include an area which comprises or includes the whole of England; and nothing in this Part shall be read as precluding a local service from being provided for an area or locality that is to any extent comprised in the area or locality for which another local service is to be provided.

(3) Where the person who is for the time being the holder of any licence (“the present licence holder”) is not the person to whom the licence was originally granted, any reference in this Part (however expressed) to the holder of the licence shall be construed, in relation to any time falling before the date when the present licence

holder became the holder of it, as including a reference to a person who was previously the holder of the licence.

## PART IV

### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

#### *Transfer of undertakings*

#### **127 Division of assets of IBA and their dissolution**

- (1) On such day as the Secretary of State may by order appoint as the transfer date there shall come into force a scheme made under Schedule 9 to this Act and providing for the division of the property, rights and liabilities of the IBA between—
  - (a) the Commission,
  - (b) the Radio Authority, and
  - (c) a company nominated for the purposes of this subsection by the Secretary of State.
- (2) The Secretary of State may, by order made before the transfer date, nominate for the purposes of subsection (1) any company formed and registered under the Companies Act 1985; but on that date the company must be a company limited by shares which is wholly owned by the Crown.
- (3) Subject to subsection (4), the IBA shall continue in existence after the transfer date until such time as they are dissolved by order made by the Secretary of State.
- (4) On the transfer date the chairman and members of the IBA shall cease to hold office; and as from that date the IBA—
  - (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the IBA; and
  - (b) shall have only the functions which fall to be carried out by the IBA under or by virtue of Schedule 9.
- (5) If requested to do so by the chairman appointed under subsection (4)(a), the Commission shall furnish the IBA with any assistance required by them for the purpose of carrying out any of those functions.
- (6) The Secretary of State shall not make an order under subsection (3) unless he is satisfied, after consultation with the IBA and with each of the bodies referred to in subsection (1)(a) to (c), that nothing further remains to be done by the IBA under or by virtue of Schedule 9.

#### **128 Vesting in Commission of assets of Cable Authority and dissolution of Authority**

- (1) On the transfer date all the property, rights and liabilities to which the Cable Authority were entitled or subject immediately before that date shall become property, rights and liabilities of the Commission; and Schedule 10 to this Act shall have effect for the purpose of supplementing this and the following provisions of this section.

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- (2) Subject to subsection (3), the Cable Authority shall continue in existence after the transfer date until such time as they are dissolved by order made by the Secretary of State.
- (3) On the transfer date the chairman and members of the Cable Authority shall cease to hold office; and as from that date the Authority—
  - (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the Authority; and
  - (b) shall have only the functions which fall to be carried out by the Authority under or by virtue of Schedule 10.
- (4) If requested to do so by the chairman appointed under subsection (3)(a), the Commission shall furnish the Cable Authority with any assistance required by them for the purpose of carrying out any of those functions.
- (5) The Secretary of State shall not make an order under subsection (2) unless he is satisfied, after consultation with the Cable Authority and the Commission, that nothing further remains to be done by the Authority under or by virtue of that Schedule.
- (6) References in this Part to property, rights and liabilities of the Cable Authority include references to property, rights and liabilities which are not capable of being transferred or assigned by the Authority.

#### *Transitional arrangements*

### **129 Transitional arrangements relating to IBA's broadcasting services**

- (1) Schedule 11 to this Act shall have effect—
  - (a) with respect to the provision by the Commission and the Welsh Authority, during the period beginning with the transfer date and ending with 31st December 1992, of television broadcasting services which have been provided by the IBA under the Broadcasting Act 1981 down to the transfer date;
  - (b) for the purpose of the regulation by the Commission after the end of that period of services provided in succession to the DBS services provided by them during that period; and
  - (c) in the case of local sound broadcasting services which have been provided by the IBA down to the transfer date—
    - (i) with respect to the provision of such services on and after that date by the Radio Authority, and
    - (ii) for the purpose of the regulation by that Authority on and after that date of services provided in succession to such services.
- (2) The programmes provided by a programme contractor under his contract for inclusion in any broadcasting service provided by the Commission or the Radio Authority in accordance with Part II or IV of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission or the Radio Authority (as the case may be) but shall be transmitted—
  - (a) by the nominated company in pursuance of a contract made between that company and the programme contractor in accordance with section 130, or
  - (b) under arrangements made in accordance with subsection (3)(a) of that section in a case where any such contract made between a DBS programme contractor

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and that company is terminated by the contractor as mentioned in that provision.

- (3) The programmes broadcast on Channel 4 and S4C respectively during the interim period in accordance with Part II of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission but shall be transmitted by the nominated company—
- (a) in the case of the programmes broadcast on Channel 4, in pursuance of such a contract made between that company and the Channel 4 company as is mentioned in subsection (4), and
  - (b) in the case of the programmes broadcast on S4C, in pursuance of such a contract made between the nominated company and the Welsh Authority as is mentioned in subsection (6).
- (4) The contract referred to in subsection (3)(a) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on Channel 4 during that period, and in particular makes provision—
- (a) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company; and
  - (b) for the transmission of those programmes to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify.
- (5) The circumstances referred to in subsection (4)(b) are circumstances where the Commission consider it necessary to require the transmission of the programmes in question to be suspended in order for them to comply, or secure compliance, with the provisions of the Broadcasting Act 1981 (as it has effect in accordance with Part II of Schedule 11 to this Act) or with any restriction or requirement imposed thereunder.
- (6) The contract referred to in subsection (3)(b) is a contract which makes provision for and in connection with the transmission by the nominated company during the interim period of the programmes to be broadcast on S4C during that period, and in particular makes provision for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company.
- (7) In the following provisions, namely—
- (a) Parts II and IV of Schedule 11 to this Act, and
  - (b) any provision of the Broadcasting Act 1981 which is to be construed as referring to the Commission or to the Radio Authority by virtue of either of those Parts of that Schedule,
- any reference (however expressed) to the broadcasting of programmes, or to programmes broadcast, by the Commission or the Radio Authority shall, in consequence of subsections (2) and (3) above, be read as a reference to the broadcasting of programmes, or to programmes broadcast, by that body whether the transmission of the programmes is undertaken (according to the circumstances of the case)—
- (i) by, or under arrangements made by, that body, or
  - (ii) by the nominated company in pursuance of any such contract as is referred to in either of those subsections, or
  - (iii) under any such arrangements as are referred to in subsection (2)(b);

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and those Parts of that Schedule contain other modifications of provisions of that Act which are consequential on those subsections.

- (8) This section and section 130 shall have effect in relation to any teletext service provided by the Commission in accordance with Part II of Schedule 11 as if—
- (a) any reference to a programme or television programme were a reference to a teletext transmission; and
  - (b) any reference to a programme contractor were a reference to a teletext contractor.
- (9) This section and section 130 shall, in so far as they apply to the transmission of the programmes provided by a DBS programme contractor under his contract for inclusion in any DBS service provided by the Commission in accordance with Part II of Schedule 11, be construed as applying only to the carrying on of such activities in connection with the transmission of those programmes as were being so carried on by the IBA immediately before the transfer date.
- (10) In this section—
- “the Channel 4 company” means the body corporate referred to in section 12(2) of the Broadcasting Act 1981, and “on Channel 4” means in the additional broadcasting service referred to in section 10(1) of that Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales;
- “the interim period” means the period specified in subsection (1)(a) above;
- “on S4C” has the same meaning as in Part I of this Act.
- (11) The reference in subsection (4) or (6) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date.

### **130 Variation of programme contracts to take account of new transmission arrangements**

- (1) Subject to subsections (2) and (4), it shall be the duty of the IBA to make before the transfer date such variations of each contract between them and a programme contractor (“the programme contract”) as appear to them to be appropriate—
- (a) for requiring the programme contractor to enter into a contract with the nominated company which makes provision for and in connection with the transmission by that company during the interim period of the programmes which the programme contractor has the right and the duty to provide under the programme contract, and in particular makes provision—
    - (i) for specified standards relating to technical quality, coverage and reliability to be attained in connection with the transmission of those programmes by that company,
    - (ii) for the transmission of those programmes to be suspended, if the relevant authority so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify, and
    - (iii) where the programme contractor is a TV programme contractor, for the consideration payable in respect of the transmission of those programmes to be payable in accordance with subsection (6); and

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- (b) for securing that the right and the duty of the programme contractor under the programme contract to provide those programmes is accordingly (so long as any such contract with the nominated company remains in force) a right and a duty to provide them for transmission by that company.
- (2) Subsection (1) shall apply to a contract for the provision of television programmes for broadcasting in a DBS service (“a DBS programme contract”) as if—
  - (a) the reference to coverage in paragraph (a)(i) were omitted; and
  - (b) for paragraph (a)(iii) there were substituted—
    - “(iii) for the programme contractor to be entitled to terminate the contract if he is notified by the Commission that they are satisfied that the standards referred to in sub-paragraph (i) are not being attained as mentioned in that sub-paragraph;”.
- (3) The IBA shall, in the case of any DBS programme contract, make before the transfer date such variations of the contract as appear to them to be appropriate—
  - (a) for requiring the DBS programme contractor, if he terminates his contract with the nominated company under any provision included in the contract in consequence of subsection (2)(b), to make such arrangements as the Commission may approve for and in connection with the transmission during the interim period of the programmes which he has the right and the duty to provide under the DBS programme contract, being arrangements under which—
    - (i) specified standards relating to technical quality and reliability are to be attained in connection with the transmission of those programmes under the arrangements, and
    - (ii) the transmission of those programmes is to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify; and
  - (b) for securing that the right and the duty of the programme contractor under the DBS programme contract to provide those programmes is accordingly (so long as any such arrangements remain in force) a right and a duty to provide them for transmission under the arrangements.
- (4) Subsection (1) shall apply to a contract for the provision of local sound broadcasts as if the reference to the interim period were a reference to the remainder of the period for which the contract continues in force by virtue of paragraph 2(1) in Part IV of Schedule 11; and that subsection accordingly does not apply to any such contract if—
  - (a) the programme contractor notifies the IBA, before such date as they shall determine, that he proposes to request the Radio Authority to determine the contract as from the transfer date in accordance with paragraph 1(1) in Part V of that Schedule; or
  - (b) the contract is one to which paragraph 2(1) in that Part of that Schedule would apply on the transfer date.
- (5) The circumstances referred to in paragraph (a)(ii) of subsection (1) or (3) are circumstances where the relevant authority or (as the case may be) the Commission consider it necessary to require the transmission of the programmes in question to be suspended—

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- (a) in order for them to comply, or secure compliance, with the provisions of the Broadcasting Act 1981 (as it has effect in accordance with Schedule 11 to this Act) or with any restriction or requirement imposed thereunder, or
  - (b) in view of any matter which they consider constitutes or would constitute a breach of the programme contractor's contract.
- (6) The IBA shall make before the transfer date such variations of each contract between them and a TV programme contractor as appear to them to be appropriate for requiring the programme contractor to enter into an agreement with all of the other TV programme contractors which—
- (a) relates to the payment by those contractors to the nominated company of the consideration payable by them in respect of the transmission by that company of the programmes provided by them; and
  - (b) provides for the amounts payable by each of the contractors to be such proportion of the total consideration so payable as corresponds to the proportion of the relevant amount which he was liable to pay by virtue of section 32(1)(a) of the Broadcasting Act 1981 (rental payments) in respect of the period beginning with 1st April 1990 and ending with the transfer date;
- and in paragraph (b) “the relevant amount” means the aggregate amount of all payments falling to be made by TV programme contractors by virtue of section 32(1)(a) of that Act in respect of that period (excluding any payments falling to be so made in consequence of section 13(2) of that Act (advertisements on Channel 4)).
- (7) The IBA shall, in the case of each such contract as is mentioned in subsection (6), also make before the transfer date such variations of the contract as appear to them to be appropriate in consequence of section 129(3).
- (8) In this section—
- “the interim period” means the period specified in section 129(1)(a);
  - “the relevant authority”—
  - (a) in relation to any such contract as is mentioned in subsection (1)(a) which relates to the transmission of television programmes, means the Commission, and
  - (b) in relation to any such contract which relates to the transmission of local sound broadcasts, means the Radio Authority;
- and section 129(8) and (9) apply for the purposes of this section.
- (9) Any reference in subsection (1) or (3) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date; and different standards may be so specified for the purposes of subsection (1) in relation to programme contractors of different descriptions.

### **131 Supplementary provisions relating to variation of programme contracts**

- (1) Where the IBA make any variation of a programme contract in pursuance of section 130(1) to (4) or (6), they may make such variations of that contract of a supplemental, incidental, consequential or transitional nature as they consider appropriate.
- (2) The relevant authority may on or after the transfer date make any variation of a programme contract which could have been made before that date by the IBA—
  - (a) in pursuance of section 130(1) to (4), or



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- (b) in pursuance of subsection (1) above in connection with any variation made in pursuance of section 130(1) to (4);  
and any such variation may be made with retrospective effect as from that date.
- (3) Before making any variation of a programme contract in pursuance of any provision of section 130, this section or Schedule 11, the IBA or (as the case may be) the relevant authority shall consult the programme contractor concerned.
- (4) Any such variation shall be made by means of a notice served on that programme contractor.
- (5) In this section—
  - “programme contract” means a contract between the IBA and a programme contractor;
  - “programme contractor” includes a teletext contractor;
  - “the relevant authority”—
    - (a) in relation to a programme contract for the provision of television programmes or teletext transmissions, means the Commission; and
    - (b) in relation to a programme contract for the provision of local sound broadcasts, means the Radio Authority.

### **132 Disposal by IBA of DBS transmitting equipment etc**

- (1) The IBA shall have power, with the approval of the Secretary of State—
  - (a) to dispose of any relevant assets to a DBS contractor; and
  - (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).
- (2) Any disposal under subsection (1) shall take effect on the transfer date.
- (3) In this section “relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of DBS services.

### **133 Functions exercisable by IBA before transfer date in connection with local sound broadcasting**

- (1) It shall be the duty of the IBA to prepare before the transfer date, in the case of each relevant programme contractor, a contract which—
  - (a) is expressed to be made between the nominated company and the contractor; and
  - (b) is to come into force in accordance with subsection (3) at such time (if any) as the contractor becomes the holder of a local licence by virtue of paragraph 1(1) in Part V of Schedule 11 to this Act; and
  - (c) makes provision in connection with the transmission, as from any such time, of the programmes included in the local service provided by the contractor (as the holder of such a licence), which may include provision for the transmission of those programmes by the nominated company.
- (2) For the purposes of subsection (1) the IBA shall, after consultation with all the relevant programme contractors, draw up a number of different standard forms of contract,

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and each contract prepared by them under that subsection shall be in such one of those forms as they may determine after consultation with the relevant programme contractor concerned.

(3) Any contract prepared under subsection (1) shall by virtue of this subsection come into force, as a contract between the nominated company and the relevant programme contractor concerned, at any such time as is mentioned in paragraph (b) of that subsection and (subject to the provisions of the contract) shall continue in force for such period as is specified in it, being a period expiring not later than 31st December 1994.

(4) If—

- (a) any contract prepared under subsection (1) has not yet come into force, and
- (b) the nominated company and the relevant programme contractor concerned agree that it would be more appropriate for them to be parties to a contract which is in one of the other forms of contract drawn up as mentioned in subsection (2), and
- (c) the nominated company prepares such a contract as is mentioned in subsection (1) which is in that other form,

subsection (3) shall have effect in relation to that contract as if it had been prepared by the IBA under subsection (1) (and accordingly shall not have effect in relation to the contract referred to in paragraph (a) above).

(5) The IBA shall be deemed to have had power to impose such requirements as have been imposed by them on the various local sound programme contractors with respect to the making of payments to the IBA for the purpose of enabling reductions to be made in relevant charges; and in this subsection “relevant charges” means charges made by the nominated company in connection with the transmission, during the period beginning with the transfer date and ending with 31st December 1994, of programmes which are included in local services falling within any description of such services determined by the IBA.

(6) The IBA shall have power, with the approval of the Secretary of State—

- (a) to dispose of, or of an interest in, any relevant assets to a relevant programme contractor; and
- (b) to do so on such terms and for such consideration as they may determine (whether or not any such consideration represents the market value of the assets).

(7) In this section—

“local licence” and “local service” have the same meaning as in Part III of this Act;

“local sound programme contractor” means a person who is a programme contractor by virtue of a contract for the provision of local sound broadcasts;

“relevant asset” means any equipment or other asset (of whatever description) which has been used or held by the IBA in connection with the transmission of local sound broadcasts;

“relevant programme contractor” means the programme contractor under a contract which, if effective immediately before the transfer date, would be a contract to which paragraph 2(1) in Part IV of Schedule 11 applied.

### **134 Transitional arrangements relating to existing cable services**

Schedule 12 to this Act shall have effect—

- (a) for the purpose of the regulation by the Commission on and after the transfer date of—
  - (i) diffusion services (within the meaning of Part I of the Cable and Broadcasting Act 1984) which, immediately before that date, were authorised to be provided under that Part of that Act, and
  - (ii) services provided in succession to such services; and
- (b) for the purpose of the regulation by the Commission or the Radio Authority on and after the transfer date of services provided in succession to restricted services (within the meaning of that Part of that Act) which, immediately before that date, were authorised to be provided under that Part of that Act.

#### *Provisions relating to nominated company*

### **135 Initial Government holding in nominated company**

- (1) As a consequence of the vesting in the nominated company, in accordance with the scheme made under Schedule 9 to this Act, of property, rights and liabilities of the IBA, that company shall issue to the Secretary of State such securities of the company as he may from time to time direct.
- (2) The Secretary of State shall not give a direction under subsection (1) at a time when the nominated company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued at such time or times, and (subject to subsection (4)) on such terms, as the Secretary of State may direct.
- (4) Any shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the Companies Act 1985 as if they had been paid up by virtue of the payment to the nominated company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued to him in pursuance of this section, without the consent of the Treasury.
- (6) Without prejudice to the generality of section 198(2), any dividends or other sums received by the Secretary of State in right of or on the disposal of any securities acquired by virtue of this section shall be paid into the Consolidated Fund.

### **136 Exercise of functions through nominees**

- (1) The Secretary of State may, with the consent of the Treasury, appoint any person to act as his nominee, or one of his nominees, for the purposes of section 135; but any issue of securities to any such nominee in pursuance of that section shall be effected in accordance with such directions as may be given from time to time by the Secretary of State with the consent of the Treasury.

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- (2) Any person holding any securities as a nominee of the Secretary of State by virtue of subsection (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Secretary of State may direct with the consent of the Treasury.

**137 Target investment limit for Government shareholding in nominated company**

- (1) As soon as he considers it expedient, and in any case not later than six months after the nominated company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the aggregate of the shares for the time being held in the company, under or by virtue of any enactment, by any Minister of the Crown or any nominee of his (“the Government shareholding”).
- (2) The target investment limit for the Government shareholding in the company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in the company shall be equal to the proportion of the ordinary voting rights which is in fact carried by the Government shareholding in the company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in the company in place of the one previously in force under this section; but—
- (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of a Minister of the Crown so to exercise—
- (a) any power to dispose of any shares held in the company under or by virtue of any enactment, and
  - (b) his power to give directions to any nominee of his,
- as to secure that the Government shareholding in the company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5), a Minister of the Crown may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to the nominee, as an existing holder of shares or other securities of the company; but if, as a result, the proportion of the ordinary voting rights carried by the Government shareholding in the company at any time exceeds the target investment limit for the time being in force under this section, it shall be the duty of that Minister to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) References in this section to a Minister of the Crown include references to the Treasury; and for the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (8) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **138 Reserves of nominated company**

- (1) If the Secretary of State so directs at any time before the nominated company ceases to be wholly owned by the Crown, such sums as may be specified in the direction shall, instead of being applied in any other way, be carried by the company to a reserve (“the statutory reserve”).
- (2) The statutory reserve may only be applied by the nominated company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2), the statutory reserve shall not count as an undistributable reserve of the nominated company for the purposes of subsection (3) (d) of section 264 of the Companies Act 1985 (restriction on distribution of assets); but, for the purpose of determining under that section whether the nominated company may make a distribution at any time, any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of subsection (3)(c) of that section as if it were unrealised profits of the company.

### **139 Loans by Secretary of State to nominated company**

- (1) As from the transfer date the Secretary of State may, with the consent of the Treasury, make loans to the nominated company out of money provided by Parliament; but no loan shall be made by him under this section at a time when the company has ceased to be wholly owned by the Crown.
- (2) The aggregate amount outstanding in respect of the principal of loans made by the Secretary of State under this section shall not exceed the limit specified in subsection (3).
- (3) That limit is £20 million or such greater sum, not exceeding £100 million, as the Secretary of State may from time to time specify by order made with the consent of the Treasury.
- (4) Any loan made by the Secretary of State under this section shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such times and at such rates, as he may from time to time direct with the consent of the Treasury.
- (5) An order shall not be made by the Secretary of State under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

### **140 Temporary restriction on borrowings of nominated company**

- (1) The aggregate amount outstanding in respect of the principal of any relevant borrowing of the nominated company shall not, at any time when the company is wholly owned by the Crown, exceed such sum as the Secretary of State may determine with the consent of the Treasury.
- (2) In subsection (1) “relevant borrowing”, in relation to the nominated company, means—
  - (a) loans made to that company or to any subsidiary of that company, other than—
    - (i) loans so made by any such subsidiary or (as the case may be) by that company, and

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- (ii) loans made to that company by the Secretary of State under section 139; and
- (b) loans which are to be treated as having been made to that company, including loans which are to be treated as having been so made by virtue of the issue of debentures in pursuance of section 135.

### *General*

## **141 Interpretation of Part IV**

- (1) In this Part—
  - “the Commission” means the Independent Television Commission;
  - “debentures” includes debenture stock;
  - “the IBA” means the Independent Broadcasting Authority;
  - “the nominated company” means the company nominated for the purposes of section 127(1);
  - “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
  - “shares” includes stock;
  - “subsidiary” has the meaning given by section 736 of the Companies Act 1985;
  - “the transfer date” means the day appointed under section 127(1).
- (2) Other expressions used in this Part which are also used in the Broadcasting Act 1981 have the same meaning as in that Act.
- (3) The nominated company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of, the Secretary of State.

## **PART V**

### THE BROADCASTING COMPLAINTS COMMISSION

## **142 The Broadcasting Complaints Commission**

- (1) The commission which at the commencement of this section is known as the Broadcasting Complaints Commission (in this Part referred to as “the BCC”) shall continue in existence as a body corporate but shall be constituted in accordance with, and have the functions conferred by, this Part.
- (2) The BCC shall consist of not less than three members appointed by the Secretary of State.
- (3) The Secretary of State shall appoint one member of the BCC to be chairman, and may appoint another to be deputy chairman.
- (4) Schedule 13 to this Act shall have effect with respect to the BCC.

### **143 Function of BCC**

- (1) Subject to the provisions of this Part, the function of the BCC shall be to consider and adjudicate upon complaints of—
  - (a) unjust or unfair treatment in programmes to which this Part applies, or
  - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
- (2) This Part applies to—
  - (a) any television or sound programme broadcast by the BBC on or after such date as is specified in an order made by the Secretary of State for the purposes of this subsection;
  - (b) any television programme broadcast by the Welsh Authority on or after that date; and
  - (c) any television or sound programme included, on or after that date, in a licensed service.

### **144 Making and entertaining of complaints**

- (1) Complaints must be made in writing.
- (2) A complaint may be made by an individual or by a body of persons, whether incorporated or not, but, subject to subsection (3), shall not be entertained by the BCC unless made by the person affected or by a person authorised by him to make the complaint for him.
- (3) Where the person affected is an individual who has died or is for any other reason both unable to make a complaint himself and unable to authorise another person to do so for him, a complaint may be made by the personal representative of the person affected, or by a member of his family, or by some other person or body closely connected with him (whether as his employer, or as a body of which he is or was at his death a member, or in any other way).
- (4) The BCC shall not entertain, or proceed with the consideration of, a complaint if it appears to them—
  - (a) that the complaint relates to the broadcasting of the relevant programme, or to its inclusion in a licensed service, on an occasion more than five years after the death of the person affected, or
  - (b) that the unjust or unfair treatment or unwarranted infringement of privacy complained of is the subject of proceedings in a court of law in the United Kingdom, or
  - (c) that the unjust or unfair treatment or unwarranted infringement of privacy complained of is a matter in respect of which the person affected has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for the BCC to consider a complaint about it, or
  - (d) that the complaint is frivolous,or if it appears to them for any other reason inappropriate for them to entertain, or proceed with the consideration of, the complaint.
- (5) The BCC may refuse to entertain a complaint if it appears to them not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast or, as the case may be, included in a licensed service.

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- (6) Where, in the case of a complaint, the relevant programme was broadcast or included in a licensed service within five years after the death of the person affected, subsection (5) shall apply as if at the end there were added “within five years after the death of the person affected”.
- (7) The BCC may refuse to entertain—
  - (a) a complaint of unjust or unfair treatment if the person named as the person affected was not himself the subject of the treatment complained of and it appears to the BCC that he did not have a sufficiently direct interest in the subject-matter of that treatment to justify the making of a complaint with him as the person affected; or
  - (b) a complaint made under subsection (3) by a person other than the person affected or a person authorised by him, if it appears to the BCC that the complainant’s connection with the person affected is not sufficiently close to justify the making of the complaint by him.

#### **145 Consideration of complaints**

- (1) Subject to the provisions of section 144, every complaint made to the BCC shall be considered by them either at a hearing or, if they think fit, without a hearing.
- (2) Hearings under this section shall be held in private; and where such a hearing is held in respect of a complaint, each of the following persons shall be given an opportunity to attend and be heard, namely—
  - (a) the complainant;
  - (b) the relevant person;
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body;
  - (d) any person not falling within any of paragraphs (a) to (c) who appears to the BCC to have been responsible for the making or provision of that programme; and
  - (e) any other person who the BCC consider might be able to assist at the hearing.
- (3) Before they proceed to consider a complaint the BCC shall send a copy of it—
  - (a) to the relevant person, and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.
- (4) Where the relevant person receives from the BCC a copy of the complaint, it shall be the duty of that person, if so required by the BCC—
  - (a) to provide the BCC with a visual or sound recording of the relevant programme or of any specified part of it, if and so far as the relevant person has such a recording in his possession;
  - (b) to make suitable arrangements for enabling the complainant to view or hear the relevant programme, or any specified part of it, if and so far as the relevant person has in his possession a visual or sound recording of it;
  - (c) to provide the BCC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the relevant person is able to do so;
  - (d) to provide the BCC and the complainant with copies of any documents in the possession of the relevant person being the originals or copies of



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- any correspondence between that person and the person affected or the complainant in connection with the complaint;
- (e) to furnish to the BCC and the complainant a written statement in answer to the complaint.
- (5) For the purposes of this section, section 155 and section 167 it shall be the duty of each broadcasting body to retain a recording of every television or sound programme which is broadcast by that body—
- (a) where it is of a television programme, during the period of 90 days beginning with the broadcast, and
- (b) where it is of a sound programme, during the period of 42 days beginning with the broadcast.
- (6) Where the relevant person receives from the BCC a copy of a complaint, it shall be the duty of that person, if so required by the BCC—
- (a) where the relevant person is a broadcasting body, to arrange for one or more of the governors, members or employees of the body to attend the BCC and assist them in their consideration of the complaint, or
- (b) where the relevant person is a body other than a broadcasting body, to arrange for one or more of the following, namely—
- (i) the persons who take part in the management or control of the body, or
- (ii) the employees of the body,
- to attend the BCC and assist them in their consideration of the complaint, or
- (c) where the relevant person is an individual, to attend, or to arrange for one or more of his employees to attend, the BCC and assist them in their consideration of the complaint.
- (7) Where the relevant person receives from the BCC a copy of a complaint and, in connection with the complaint, the BCC make to any other person a request to which this subsection applies, it shall be the duty of the relevant person to take such steps as he reasonably can to ensure that the request is complied with.
- (8) Subsection (7) applies to the following requests by the BCC to any such other person as is there mentioned, namely—
- (a) a request to make suitable arrangements for enabling the complainant and any member or employee of the BCC to view or hear the relevant programme, or any specified part of it, if and so far as the person requested has in his possession a visual or sound recording of it;
- (b) a request to provide the BCC and the complainant with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as the person requested is able to do so;
- (c) a request to provide the BCC and the complainant with copies of any documents in the possession of the person requested, being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint;
- (d) a request to furnish to the BCC and the complainant a written statement in answer to the complaint;
- (e) a request to attend, or (where the person requested is not an individual) to arrange for a representative to attend, the BCC and assist them in their consideration of the complaint.

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- (9) The BCC may, if they think fit, make to any person who attends them in connection with a complaint such payments as they think fit by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him so to attend.
- (10) In this section “the relevant person” means—
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
  - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing the service.

#### **146 Publication of BCC’s findings**

- (1) Where the BCC have considered and adjudicated upon a complaint, they may give the following directions, namely—
- (a) where the relevant programme was broadcast by a broadcasting body, directions requiring that body to publish the matters mentioned in subsection (2) in such manner, and within such period, as may be specified in the directions; and
  - (b) where the relevant programme was included in a licensed service, directions requiring the appropriate regulatory body to direct the licence holder to publish those matters in such manner, and within such period, as may be so specified.
- (2) Those matters are—
- (a) a summary of the complaint; and
  - (b) the BCC’s findings on the complaint or a summary of them.
- (3) The form and content of any such summary as is mentioned in subsection (2)(a) or (b) shall be such as may be approved by the BCC.
- (4) A broadcasting or regulatory body shall comply with any directions given to them under this section.
- (5) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body for the purpose of enabling them to comply with any directions given to them under this section.
- (6) The BCC shall publish, at such intervals and in such manner as they think fit, reports each containing, as regards every complaint within this subsection which has been dealt with by them in the period covered by the report, a summary of the complaint and the action taken by them on it and, where they have adjudicated upon it, a summary of their findings.
- (7) A complaint made to the BCC is within subsection (6) unless it is one which they are precluded from entertaining by section 144(2).
- (8) The BCC may, if they think fit, omit from any summary included in a report under subsection (6) any information which could lead to the disclosure of the identity of any person connected with the complaint in question other than—
- (a) a broadcasting or regulatory body; or
  - (b) a person providing a licensed service.

#### **147 Duty to publicise BCC**

- (1) It shall be the duty of each broadcasting or regulatory body to arrange for the publication (by means of broadcasts or otherwise) of regular announcements publicising the BCC.
- (2) Any such announcements may contain a statement of the difference between the kinds of complaints that may be considered by the BCC and those that may be considered by the Broadcasting Standards Council established by this Act.
- (3) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body in connection with the performance by them of their duty under subsection (1).

#### **148 Annual reports**

- (1) As soon as possible after the end of every financial year the BCC shall prepare a report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall have attached to it the statement of accounts for the year and a copy of any report made by the auditors on that statement.
- (3) The BCC shall send a copy of the report—
  - (a) to each broadcasting or regulatory body; and
  - (b) to every person providing a licensed service.

#### **149 Contributions towards cost of BCC**

- (1) For the financial year which includes the commencement of this section and each subsequent financial year the Secretary of State shall notify—
  - (a) to each regulatory body the sum which he considers to be the appropriate contribution of that body, in respect of persons providing licensed services under licences granted by that body, towards the expenses of the BCC; and
  - (b) to the Welsh Authority the sum which he considers to be the appropriate contribution of that body towards such expenses.
- (2) Each regulatory body and the Welsh Authority shall pay to the Secretary of State any sum notified to them under subsection (1).

#### **150 Interpretation of Part V**

In this Part—

- “appropriate regulatory body”, in relation to a programme included in a licensed service, means the regulatory body by whom that service is licensed;
- “the BCC” means the Broadcasting Complaints Commission;
- “broadcasting body” means the BBC or the Welsh Authority;
- “complaint” means a complaint to the BCC of any such unjust or unfair treatment or unwarranted infringement of privacy as is mentioned in section 143(1);
- “licensed service” means—

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- (a) a television programme service (within the meaning of Part I of this Act),  
or
- (b) an independent radio service falling within paragraph (a) or (b) of section 84(1),

which is licensed under Part I or (as the case may be) Part III of this Act, or any additional service (within the meaning of Part I or III of this Act) which is licensed under that Part of this Act and constitutes a teletext service;

“participant”, in relation to a programme, means a person who appeared, or whose voice was heard, in the programme;

“the person affected”—

- (a) in relation to any such unjust or unfair treatment as is mentioned in section 143(1), means a participant in the programme in question who was the subject of that treatment or a person who, whether such a participant or not, had a direct interest in the subject-matter of that treatment; and
- (b) in relation to any such unwarranted infringement of privacy as is so mentioned, means a person whose privacy was infringed;

“regulatory body” means the Independent Television Commission or the Radio Authority;

“the relevant programme”, in relation to a complaint, means the programme to which the complaint relates;

“television programme” includes a teletext transmission, and references to programmes shall be construed accordingly;

“unjust or unfair treatment” includes treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged.

## PART VI

### THE BROADCASTING STANDARDS COUNCIL

#### **151 The Broadcasting Standards Council**

- (1) The council which at the commencement of this section is known as the Broadcasting Standards Council shall be, by that name, a body corporate and as such shall be constituted in accordance with, and have the functions conferred by, this Act.
- (2) The Council shall consist of—
  - (a) a chairman and a deputy chairman appointed by the Secretary of State; and
  - (b) such number of other members appointed by the Secretary of State, not being less than four, as he may from time to time determine.
- (3) Schedule 14 to this Act shall have effect with respect to the Council.

#### **152 Preparation by Council of code relating to broadcasting standards**

- (1) It shall be the duty of the Council to draw up, and from time to time review, a code giving guidance as to—
  - (a) practices to be followed in connection with the portrayal of violence in programmes to which this Part applies,

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- (b) practices to be followed in connection with the portrayal of sexual conduct in such programmes, and
  - (c) standards of taste and decency for such programmes generally.
- (2) This Part applies to—
- (a) any television or sound programme broadcast by the BBC;
  - (b) any television programme broadcast by the Welsh Authority; and
  - (c) any television or sound programme included in a licensed service.
- (3) It shall be the duty of each broadcasting or regulatory body, when drawing up or revising any code relating to standards and practice for programmes, to reflect the general effect of so much of the code referred to in subsection (1) (as for the time being in force) as is relevant to the programmes in question.
- (4) The Council shall from time to time publish the code referred to in subsection (1) (as for the time being in force).
- (5) Before drawing up or revising the code the Council shall consult—
- (a) each broadcasting or regulatory body; and
  - (b) such other persons as appear to the Council to be appropriate.

### **153 Monitoring by Council of broadcasting standards**

- (1) It shall be the duty of the Council to monitor programmes to which this Part applies with a view to enabling the Council—
- (a) to make reports on the portrayal of violence and sexual conduct in, and the standards of taste and decency attained by, such programmes generally, and
  - (b) to determine whether to issue complaints in respect of such programmes under section 154(7).
- (2) Subject to section 160(2), the Council may make reports on the matters specified in subsection (1)(a) on such occasions as they think fit; and any such report may include an assessment of either or both of the following, namely—
- (a) the attitudes of the public at large towards the portrayal of violence or sexual conduct in, or towards the standards of taste and decency attained by, programmes to which this Part applies; and
  - (b) any effects or potential effects on the attitudes or behaviour of particular categories of persons of the portrayal of violence or sexual conduct in such programmes or of any failure on the part of such programmes to attain such standards.
- (3) The Council may publish any report made by them in pursuance of subsection (1)(a).
- (4) The Council shall have the further duty of monitoring, so far as is reasonably practicable, all television and sound programmes which are transmitted or sent from outside the United Kingdom but are capable of being received there, with a view to ascertaining—
- (a) how violence and sexual conduct are portrayed in those programmes; and
  - (b) the extent to which those programmes meet standards of taste and decency.
- (5) The Council may make a report to the Secretary of State on any issues identified by them in the course of carrying out their duty under subsection (4) and appearing to them to raise questions of general broadcasting policy.

#### **154 Consideration by Council of complaints relating to broadcasting standards**

- (1) Subject to the provisions of this section, it shall be the duty of the Council to consider complaints which are made to them under this section and relate—
  - (a) to the portrayal of violence or sexual conduct in programmes to which this Part applies, or
  - (b) to alleged failures on the part of such programmes to attain standards of taste and decency,and to make findings on such complaints, taking into account any relevant provisions of the code.
- (2) Any such complaint must be in writing and give particulars of the matters complained of.
- (3) The Council shall not entertain a complaint which is made—
  - (a) where the relevant programme is a television programme, more than two months after the relevant date, or
  - (b) where the relevant programme is a sound programme, more than three weeks after that date,unless it appears to them that in the particular circumstances it is appropriate for them to do so.
- (4) In subsection (3) “the relevant date” means—
  - (a) the date on which the relevant programme was broadcast by a broadcasting body or included in a licensed service, or
  - (b) where it has been so broadcast or included on more than one occasion, the date on which it was last so broadcast or included.
- (5) The Council shall not entertain, or proceed with the consideration of, a complaint if it appears to them—
  - (a) that the matter complained of is the subject of proceedings in a court of law in the United Kingdom, or
  - (b) that the matter complained of is a matter in respect of which the complainant has a remedy by way of proceedings in a court of law in the United Kingdom, and that in the particular circumstances it is not appropriate for the Council to consider a complaint about it, or
  - (c) that the complaint is frivolous, or
  - (d) that for any other reason it is inappropriate for them to entertain, or proceed with the consideration of, the complaint.
- (6) Where, apart from this subsection, there would fall to be considered by the Council two or more complaints which appear to them to raise the same, or substantially the same, issue or issues in relation to a particular programme, the Council may determine that those complaints shall be treated for the purposes of this Part as constituting a single complaint.
- (7) If it appears to the Council to be appropriate to do so, they may of their own motion issue complaints relating to matters falling within subsection (1)(a) or (b).
- (8) Any such complaint shall give particulars of the matters complained of.

## **155 Consideration of complaints**

- (1) Subject to the provisions of section 154, every complaint made to or issued by the Council under that section shall be considered by them either without a hearing or, if they think fit, at a hearing (and any such hearing shall be held in private unless the Council decide otherwise).
- (2) Before the Council proceed to consider a complaint they shall send a copy of it—
  - (a) to the relevant person; and
  - (b) where the relevant programme was included in a licensed service, to the appropriate regulatory body.
- (3) Where the relevant person receives from the Council a copy of the complaint, it shall be the duty of that person, if so required by the Council—
  - (a) to provide the Council with a visual or sound recording of the relevant programme or any specified part of it, if and so far as he has such a recording in his possession;
  - (b) to provide the Council with a transcript of so much of the relevant programme, or of any specified part of it, as consisted of speech, if and so far as he is able to do so;
  - (c) to provide the Council with copies of any documents in his possession, being the originals or copies of any correspondence between him and the complainant in connection with the complaint;
  - (d) to furnish to the Council a written statement in answer to the complaint.
- (4) Where a hearing is held in respect of a complaint, the following persons shall be given an opportunity to attend and be heard, namely—
  - (a) the complainant;
  - (b) the relevant person;
  - (c) where the relevant programme was included in a licensed service, the appropriate regulatory body;
  - (d) any person not within any of paragraphs (a) to (c) who appears to the Council to have been responsible for the making or provision of that programme; and
  - (e) any other person who the Council consider might be able to assist at the hearing.
- (5) In a case where the Council have made a determination in respect of any complaints under subsection (6) of section 154, subsection (4)(a) above shall be construed as referring to such one or more of the persons who made those complaints as the Council may determine; and in relation to a complaint issued by the Council under subsection (7) of that section, subsection (4) above shall have effect as if paragraph (a) were omitted.
- (6) The Council may, if they think fit, make to any person who attends a hearing in connection with a complaint such payments as they think fit by way of travelling allowance or subsistence allowance where expenditure on travelling or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him so to attend.
- (7) In this section “the relevant person” means—
  - (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and

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- (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.

#### **156 Publication of Council's findings**

- (1) Where the Council have considered and made their findings on any complaint, they may give the following directions, namely—
  - (a) where the relevant programme was broadcast by a broadcasting body, directions requiring that body to publish the matters mentioned in subsection (2) in such manner, and within such period, as may be specified in the directions; and
  - (b) where the relevant programme was included in a licensed service, directions requiring the appropriate regulatory body to direct the licence holder to publish those matters in such manner, and within such period, as may be so specified.
- (2) Those matters are—
  - (a) a summary of the complaint; and
  - (b) the Council's findings, and any observations by them, on the complaint, or a summary of those findings and any such observations.
- (3) The form and content of any such summary as is mentioned in subsection (2)(a) or (b) shall be such as may be approved by the Council.
- (4) A broadcasting or regulatory body shall comply with any directions given to them under this section.
- (5) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body for the purpose of enabling them to comply with any directions given to them under this section.

#### **157 Power of Council to commission research**

- (1) The Council may make arrangements for the undertaking of research into matters related to or connected with—
  - (a) the portrayal of violence or sexual conduct in programmes to which this Part applies, or
  - (b) standards of taste and decency for such programmes generally.
- (2) The matters into which research may be undertaken in pursuance of subsection (1) include, in particular, matters falling within section 153(2)(a) and (b).
- (3) Arrangements made under subsection (1) shall secure that, so far as is reasonably practicable, any research undertaken in pursuance of the arrangements is undertaken by persons who are neither members nor employees of the Council.
- (4) The Council may publish the results of any research undertaken in pursuance of subsection (1).



### **158 International representation by Council of Government interests**

The functions of the Council shall include representing Her Majesty's Government in the United Kingdom, at the request of the Secretary of State, on international bodies concerned with setting standards for television programmes.

### **159 Duty to publicise Council**

- (1) It shall be the duty of each broadcasting or regulatory body to arrange for the publication (by means of broadcasts or otherwise) of regular announcements publicising the Council.
- (2) Any such announcements may contain a statement of the difference between the kinds of complaints that may be considered by the Council and those that may be considered by the Broadcasting Complaints Commission.
- (3) Any licence to provide a licensed service which is granted by a regulatory body under this Act shall include conditions requiring the licence holder to comply with such directions as may be given to him by that body in connection with the performance by them of their duty under subsection (1).

### **160 Annual reports**

- (1) As soon as possible after the end of every financial year the Council shall prepare a report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.
- (2) The report shall include a report by the Council on the matters specified in section 153(1)(a).
- (3) The Council shall send a copy of the report—
  - (a) to each broadcasting or regulatory body; and
  - (b) to every person providing a licensed service.

### **161 Interpretation of Part VI**

- (1) In this Part—
  - “the appropriate regulatory body”, in relation to a programme included in a licensed service, means the regulatory body by whom that service is licensed;
  - “broadcasting body” means the BBC or the Welsh Authority;
  - “the code” means the code referred to in section 152(1) (as for the time being in force);
  - “the Council” means the Broadcasting Standards Council;
  - “licensed service” means—
    - (a) a television programme service (within the meaning of Part I of this Act),  
or
    - (b) an independent radio service falling within paragraph (a) or (b) of section 84(1),  
which is licensed under Part I or (as the case may be) Part III of this Act, or so much of any licensed delivery service (within the meaning of Part II of this Act) as is, by virtue of section 79(2) or (4), treated as the provision of a service licensed under Part I of this Act;

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“regulatory body” means the Independent Television Commission or the Radio Authority;

“the relevant programme”, in relation to a complaint, means the programme to which the complaint relates;

“sexual conduct” means any form of sexual activity or other sexual behaviour.

- (2) Any reference in this Part to programmes to which this Part applies shall be construed in accordance with section 152(2).

## PART VII

### PROHIBITION ON INCLUSION OF OBSCENE AND OTHER MATERIAL IN PROGRAMME SERVICES

#### *Obscenity*

#### **162 Obscenity in programme services: England and Wales**

- (1) In section 1 of the Obscene Publications Act 1959 (test of obscenity)—
- (a) the proviso to subsection (3) (exemption for television and sound broadcasting) shall cease to have effect; and
  - (b) the following subsections shall be added after that subsection—
- “(4) For the purposes of this Act a person also publishes an article to the extent that any matter recorded on it is included by him in a programme included in a programme service.
- (5) Where the inclusion of any matter in a programme so included would, if that matter were recorded matter, constitute the publication of an obscene article for the purposes of this Act by virtue of subsection (4) above, this Act shall have effect in relation to the inclusion of that matter in that programme as if it were recorded matter.
- (6) In this section “programme” and “programme service” have the same meaning as in the Broadcasting Act 1990.”
- (2) Schedule 15 to this Act shall have effect for the purpose of supplementing subsection (1) above.

#### **163 Obscenity in programme services: Scotland**

- (1) Section 51 of the Civic Government (Scotland) Act 1982 (offences of displaying, publishing, etc. of obscene material) shall be amended in accordance with the following provisions of this section.
- (2) After subsection (2) there shall be inserted the following subsection—
- “(2A) Subject to subsection (4) below, any person who—
- (a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or
  - (b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,

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shall be guilty of an offence under this section.”

- (3) In subsection (6), paragraph (a) shall cease to have effect.
- (4) In subsection (8)—
- (a) in the definition of “material”, the words from “and” onwards shall be omitted;
  - (b) after the definition of “prescribed sum” there shall be inserted—

““programme” and “programme service” have the same meaning as  
in the Broadcasting Act 1990;” and
  - (c) the word “showing,” shall be omitted.

*Racially inflammatory material etc.*

#### **164 Inclusion in programme services in Great Britain of racially inflammatory material**

- (1) Part III of the Public Order Act 1986 (racial hatred) shall be amended as follows.
- (2) In each of the following provisions, namely—
- (a) section 18(6) (exemption from prohibition applying to use of threatening words etc.),
  - (b) section 20(3)(c) (exemption from prohibition applying to public performances of plays), and
  - (c) section 21(4) (exemption from prohibition applying to distribution etc. of recordings),
- for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In section 22 (broadcasting or including programme in cable programme service)—
- (a) in subsections (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted, namely—
    - (i) in subsection (2), the words “broadcasting or cable”,
    - (ii) in subsections (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) subsection (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) subsection (8) (application of certain provisions of the Cable and Broadcasting Act 1984).
- (4) In section 23 (possession of racially inflammatory material)—
- (a) in subsection (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”;
  - (b) in subsection (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service”; and
  - (c) subsection (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.

(5) In section 29 (interpretation)—

- (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
- (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
- (c) the following definition shall be inserted after that definition—

““programme service” has the same meaning as in the Broadcasting Act 1990;”.

**165 Inclusion in programme services in Northern Ireland of material likely to stir up hatred etc**

(1) Part III of the Public Order (Northern Ireland) Order 1987 (stirring up hatred or arousing fear) shall be amended as follows.

(2) In each of the following provisions, namely—

- (a) Article 9(5) (exemption from prohibition applying to use of threatening words etc.), and
- (b) Article 11(4) (exemption from prohibition applying to distribution etc. of recordings),

for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.

(3) In Article 12 (broadcasting or including programme in cable programme service)—

- (a) in paragraphs (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
- (b) the following provisions shall be omitted—
  - (i) in paragraph (2)(a), the words “broadcasting or cable”,
  - (ii) in paragraphs (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
  - (iii) paragraph (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
  - (iv) paragraph (8) (application of certain provisions of Cable and Broadcasting Act 1984).

(4) In Article 13 (possession of matter intended or likely to stir up hatred or arouse fear)—

- (a) in paragraph (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”;
- (b) in paragraph (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service”; and
- (c) paragraph (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.

(5) In Article 17 (interpretation)—

- (a) the definitions of “broadcast” and “cable programme service” shall be omitted;

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- (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
- (c) the following definition shall be inserted after that definition—
  - ““programme service” has the same meaning as in the Broadcasting Act 1990;”.

### *Defamation*

#### **166 Defamatory material**

- (1) For the purposes of the law of libel and slander (including the law of criminal libel so far as it relates to the publication of defamatory matter) the publication of words in the course of any programme included in a programme service shall be treated as publication in permanent form.
- (2) Subsection (1) above shall apply for the purposes of section 3 of each of the Defamation Acts (slander of title etc.) as it applies for the purposes of the law of libel and slander.
- (3) Section 7 of each of those Acts (qualified privilege of newspapers) shall apply in relation to—
  - (a) reports or matters included in a programme service, and
  - (b) any inclusion in such a service of any such report or matter,as it applies in relation to reports and matters published in a newspaper and to publication in a newspaper; and subsection (2) of that section shall have effect, in relation to any such inclusion, as if for the words “in the newspaper in which” there were substituted the words “in the programme service in which”.
- (4) In this section “the Defamation Acts” means the Defamation Act 1952 and the Defamation Act (Northern Ireland) 1955.
- (5) Subsections (1) and (2) above do not extend to Scotland.

### *Supplementary*

#### **167 Power to make copies of recordings**

- (1) If a justice of the peace is satisfied by information on oath laid by a constable that there is reasonable ground for suspecting that a relevant offence has been committed by any person in respect of a programme included in a programme service, he may make an order authorising any constable to require that person—
  - (a) to produce to the constable a visual or sound recording of any matter included in that programme, if and so far as that person is able to do so; and
  - (b) on the production of such a recording, to afford the constable an opportunity of causing a copy of it to be made.
- (2) An order made under this section shall describe the programme to which it relates in a manner sufficient to enable that programme to be identified.

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- (3) A person who without reasonable excuse fails to comply with any requirement of a constable made by virtue of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (4) No order shall be made under this section in respect of any recording in respect of which a warrant could be granted under any of the following provisions, namely—
- (a) section 3 of the Obscene Publications Act 1959;
  - (b) section 24 of the Public Order Act 1986; and
  - (c) Article 14 of the Public Order (Northern Ireland) Order 1987.
- (5) In the application of subsection (1) to England and Wales “relevant offence” means an offence under—
- (a) section 2 of the Obscene Publications Act 1959; or
  - (b) section 22 of the Public Order Act 1986.
- (6) In the application of subsection (1) to Scotland—
- (a) “relevant offence” means an offence under—
    - (i) section 51 of the Civic Government (Scotland) Act 1982, or
    - (ii) section 22 of the Public Order Act 1986;
  - (b) the reference to a justice of the peace shall include a reference to the sheriff; and
  - (c) for the reference to information on oath there shall be substituted a reference to evidence on oath.
- (7) In the application of subsection (1) to Northern Ireland—
- (a) “relevant offence” means an offence under Article 12 of the Public Order (Northern Ireland) Order 1987;
  - (b) for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate; and
  - (c) for the reference to information on oath laid by a constable there shall be substituted a reference to a complaint on oath made by a constable.

## PART VIII

### PROVISIONS RELATING TO WIRELESS TELEGRAPHY

#### **168 Offence of keeping wireless telegraphy station or apparatus available for unauthorised use**

The following section shall be inserted after section 1 of the Wireless Telegraphy Act 1949 (in this Part referred to as “the 1949 Act”)—

#### **“1A Offence of keeping wireless telegraphy station or apparatus available for unauthorised use**

Any person who has any station for wireless telegraphy or apparatus for wireless telegraphy in his possession or under his control and either—

- (a) intends to use it in contravention of section 1 of this Act; or
- (b) knows, or has reasonable cause to believe, that another person intends to use it in contravention of that section,

shall be guilty of an offence.”

**169 Offence of allowing premises to be used for purpose of unlawful broadcasting**

The following section shall be inserted in the 1949 Act after the section 1A inserted by section 168 above—

**“1B Offence of allowing premises to be used for purpose of unlawful broadcasting**

- (1) A person who is in charge of any premises which are used for making an unlawful broadcast, or for sending signals for the operation or control of any apparatus used for the purpose of making an unlawful broadcast from any other place, shall be guilty of an offence if—
  - (a) he knowingly causes or permits the premises to be so used; or
  - (b) having reasonable cause to believe that the premises are being so used, he fails to take such steps as are reasonable in the circumstances of the case to prevent the premises from being so used.
- (2) For the purposes of this section a person is in charge of any premises if he—
  - (a) is the owner or occupier of the premises; or
  - (b) has, or acts or assists in, the management or control of the premises.
- (3) For the purposes of this section a broadcast is unlawful if—
  - (a) it is made by means of the use of any station for wireless telegraphy or apparatus for wireless telegraphy in contravention of section 1 of this Act; or
  - (b) the making of the broadcast contravenes any provision of the Marine, &c., Broadcasting (Offences) Act 1967.
- (4) In this section—

“broadcast” has the same meaning as in the Marine, &c., Broadcasting (Offences) Act 1967;

“premises” includes any place and, in particular, includes—

  - (a) any vehicle, vessel or aircraft; and
  - (b) any structure or other object (whether movable or otherwise and whether on land or otherwise).”

**170 Prohibition of acts facilitating unauthorised broadcasting**

The following section shall be inserted in the 1949 Act after the section 1B inserted by section 169 above—

**“1C Prohibition of acts facilitating unauthorised broadcasting**

- (1) If a person—
  - (a) does any of the acts mentioned in subsection (2) in relation to a broadcasting station by which unauthorised broadcasts are made, and
  - (b) if any knowledge or belief or any circumstances is or are specified in relation to the act, does it with that knowledge or belief or in those circumstances,

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he shall be guilty of an offence.

- (2) The acts referred to in subsection (1) are—
- (a) participating in the management, financing, operation or day-to-day running of the station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station;
  - (b) supplying, installing, repairing or maintaining any wireless telegraphy apparatus or any other item knowing, or having reasonable cause to believe, that the apparatus or other item is to be, or is, used for the purpose of facilitating the operation or day-to-day running of the station and that unauthorised broadcasts are made by the station;
  - (c) rendering any other service to any person knowing, or having reasonable cause to believe, that the rendering of that service to that person will facilitate the operation or day-to-day running of the station and that unauthorised broadcasts are so made;
  - (d) supplying a film or sound recording knowing, or having reasonable cause to believe, that an unauthorised broadcast of the film or recording is to be so made;
  - (e) making a literary, dramatic or musical work knowing, or having reasonable cause to believe, that an unauthorised broadcast of the work is to be so made;
  - (f) making an artistic work knowing, or having reasonable cause to believe, that an unauthorised broadcast including that work is to be so made;
  - (g) doing any of the following acts, namely—
    - (i) participating in an unauthorised broadcast made by the station, being actually present as an announcer, as a performer or one of the performers concerned in an entertainment given, or as the deliverer of a speech;
    - (ii) advertising, or inviting another to advertise, by means of an unauthorised broadcast made by the station; or
    - (iii) publishing the times or other details of any unauthorised broadcasts made by the station or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote the station (whether directly or indirectly),
 

knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- (3) In any proceedings against a person for an offence under this section consisting in the supplying of any thing or the rendering of any service, it shall be a defence for him to prove that he was obliged, under or by virtue of any enactment, to supply that thing or render that service.
- (4) If, by means of an unauthorised broadcast made by a broadcasting station, it is stated, suggested or implied that any entertainment of which a broadcast is so made has been supplied by, or given at the expense of, a person, then for the purposes of this section he shall, unless he proves that it was not so supplied or given, be deemed thereby to have advertised.
- (5) Section 46 of the Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as



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it has effect for the purpose of construing references in that Act to the supply of any goods.

(6) In this section—

“broadcast” has the same meaning as in the Marine, &c., Broadcasting (Offences) Act 1967;

“broadcasting station” means any business or other operation (whether or not in the nature of a commercial venture) which is engaged in the making of broadcasts;

“film”, “sound recording”, “literary, dramatic or musical work” and “artistic work” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988;

“speech” includes lecture, address and sermon; and

“unauthorised broadcast” means a broadcast made by means of the use of a station for wireless telegraphy or wireless telegraphy apparatus in contravention of section 1 of this Act.”

## **171 Amendments of the Marine, &c., Broadcasting (Offences) Act 1967**

The Marine, &c., Broadcasting (Offences) Act 1967 shall have effect subject to the amendments specified in Schedule 16 (which include amendments that impose further restrictions on broadcasting at sea and on acts facilitating such broadcasting).

## **172 Amendments of provisions of 1949 Act relating to penalties and forfeiture**

(1) Section 14 of the 1949 Act (penalties and legal proceedings) shall be amended as follows.

(2) In subsection (1), the following paragraphs shall be inserted before paragraph (a)—

“(aa) any offence under section 1(1) of this Act other than one falling within subsection (1A)(a) of this section;

(ab) any offence under section 1A of this Act other than one falling within subsection (1A)(aa) of this section;

(ac) any offence under section 1B or 1C of this Act;”.

(3) In subsection (1A), the following paragraph shall be inserted after paragraph (a)—

“(aa) any offence under section 1A of this Act committed in relation to any wireless telegraphy apparatus not designed or adapted for emission (as opposed to reception);”.

(4) The following subsections shall be substituted for subsection (3)—

“(3) Where a person is convicted of —

(a) an offence under this Act consisting in any contravention of any of the provisions of Part I of this Act in relation to any station for wireless telegraphy or any wireless telegraphy apparatus (including an offence under section 1B or 1C of this Act) or in the use of any apparatus for the purpose of interfering with any wireless telegraphy;

(b) any offence under section 12A of this Act;

(c) any offence under the Marine, &c., Broadcasting (Offences) Act 1967; or

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(d) any offence under this Act which is an offence under section 7 of the Wireless Telegraphy Act 1967 (whether as originally enacted or as substituted by section 77 of the Telecommunications Act 1984),  
the court may, in addition to any other penalty, order such of the following things to be forfeited to the Secretary of State as the court considers appropriate, that is to say—

- (i) any vehicle, vessel or aircraft, or any structure or other object, which was used in connection with the commission of the offence;
- (ii) any wireless telegraphy apparatus or other apparatus in relation to which the offence was committed or which was used in connection with the commission of it;
- (iii) any wireless telegraphy apparatus or other apparatus not falling within paragraph (ii) above which was, at the time of the commission of the offence, in the possession or under the control of the person convicted of the offence and was intended to be used (whether or not by that person) in connection with the making of any broadcast or other transmission that would contravene section 1 of this Act or any provision of the Marine, &c., Broadcasting (Offences) Act 1967.

(3AA) The power conferred by virtue of subsection (3)(a) above does not apply in a case where the offence is any such offence as is mentioned in subsection (1A) (a) or (aa) above.

(3AB) References in subsection (3)(ii) or (iii) above to apparatus other than wireless telegraphy apparatus include references to—

- (a) recordings;
- (b) equipment designed or adapted for use—
  - (i) in making recordings; or
  - (ii) in reproducing from recordings any sounds or visual images;
and
- (c) equipment not falling within paragraphs (a) and (b) above but connected, directly or indirectly, to wireless telegraphy apparatus.”

(5) In subsection (3E), for the words from “(whether” to “provision” there shall be substituted “, shall be treated as an offence committed under the same provision, and at the same time,”.

### **173 Extension of search and seizure powers in relation to unlawful broadcasting etc**

- (1) In subsection (1) of section 15 of the 1949 Act (entry and search of premises)—
  - (a) after “Act” there shall be inserted “or under the Marine, &c., Broadcasting (Offences) Act 1967”; and
  - (b) the words “and named in the warrant,” shall be omitted.
- (2) In subsection (2) of that section, the words “and named in the authorisation” shall be omitted.
- (3) The following subsection shall be inserted after subsection (2) of that section—

“(2A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State or (as the case may be) by the

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BBC to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.”

- (4) In subsection (1)(b) of section 79 of the Telecommunications Act 1984 (seizure of apparatus and other property used in committing certain offences connected with wireless telegraphy), the following paragraphs shall be inserted after “reception);”—
- “(ba) any offence under section 5(b) of that Act;
  - “(bb) any offence under the Marine, &c., Broadcasting (Offences) Act 1967;”.
- (5) In subsection (2) of that section—
- (a) for “the person or persons named in it” there shall be substituted “any person authorised by the Secretary of State to exercise the power conferred by this subsection”; and
  - (b) the words “or them” shall be omitted.
- (6) The following subsection shall be inserted after subsection (4) of that section—
- “(4A) Without prejudice to any power exercisable by him apart from this subsection, a person authorised by the Secretary of State to exercise any power conferred by this section may use reasonable force, if necessary, in the exercise of that power.”

#### **174 Application of Part VIII to Isle of Man and Channel Islands**

Section 20(3) of the 1949 Act and section 10 of the Marine, &c., Broadcasting (Offences) Act 1967 (power to extend provisions to the Isle of Man and Channel Islands) shall extend respectively to the provisions of this Part amending each of those Acts.

### **PART IX**

#### **COPYRIGHT AND RELATED MATTERS**

#### **175 Use as of right of sound recordings in broadcasts and cable programme services**

- (1) In Chapter VII of Part I of the Copyright, Designs and Patents Act 1988 (copyright licensing) there shall be inserted after section 135—

*“Use as of right of sound recordings in broadcasts and cable programme services*

##### **135A Circumstances in which right available**

- (1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if—
- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
  - (b) the condition in subsection (2) or (3) applies, and
  - (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.

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- (2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence—
- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
  - (b) allowing unlimited needletime or such needletime as he has demanded.
- (3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G—
- “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;
- “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

### **135B Notice of intention to exercise right**

- (1) A person intending to avail himself of the right conferred by section 135C must—
- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).
- (3) Before the person intending to avail himself of the right begins to exercise it, he must—

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- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
- (b) apply to the Tribunal under section 135D to settle the terms of payment.

### **135C Conditions for exercise of right**

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—
  - (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
  - (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
  - (c) makes the payments to the licensing body that are required by this section,shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made—
  - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

### **135D Applications to settle payments**

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

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### **135E References etc. about conditions, information and other terms**

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—
  - (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or
  - (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

### **135F Application for review of order**

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### **135G Factors to be taken into account**

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall—
  - (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
  - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.

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- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.”
- (2) In section 149 of that Act (jurisdiction of the Copyright Tribunal), after paragraph (c) there shall be inserted—
- “*(cc)* section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);”.
- (3) In section 179 of that Act (index of defined expressions)—
- (a) in the appropriate places in alphabetical order there shall be inserted—
- |                   |                    |
|-------------------|--------------------|
| “needletime       | section 135A”, and |
| “terms of payment | section 135A”, and |
- (b) in the entry for sound recordings, for “section 5” there shall be substituted “sections 5 and 135A”.

## **176 Duty to provide advance information about programmes**

- (1) A person providing a programme service to which this section applies must make available in accordance with this section information relating to the programmes to be included in the service to any person (referred to in this section and Schedule 17 to this Act as “the publisher”) wishing to publish in the United Kingdom any such information.
- (2) The duty imposed by subsection (1) is to make available information as to the titles of the programmes which are to be, or may be, included in the service on any date, and the time of their inclusion, to any publisher who has asked the person providing the programme service to make such information available to him and reasonably requires it.
- (3) Information to be made available to a publisher under this section is to be made available as soon after it has been prepared as is reasonably practicable but, in any event—
- (a) not later than when it is made available to any other publisher, and
- (b) in the case of information in respect of all the programmes to be included in the service in any period of seven days, not later than the beginning of the preceding period of fourteen days, or such other number of days as may be prescribed by the Secretary of State by order.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The duty imposed by subsection (1) is not satisfied by providing the information on terms, other than terms as to copyright, prohibiting or restricting publication in the United Kingdom by the publisher.
- (6) Schedule 17 applies to any information or future information which the person providing a programme service to which this section applies is or may be required to make available under this section.

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- (7) For the purposes of this section and that Schedule, the following table shows the programme services to which the section and Schedule apply and the persons who provide them or are to be treated as providing them.

*SERVICES OTHER THAN SERVICES UNDER THE ACT*

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Television and national radio services provided by the BBC for reception in the United Kingdom	The BBC
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*SERVICES UNDER THE ACT*

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Television programme services subject to regulation by the Independent Television Commission	The person licensed to provide the service
The television broadcasting service provided by the Welsh Authority	The Authority
Any national service (see section 84(2)(a)(i)) subject to regulation by the Radio Authority	The person licensed to provide the service

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*SERVICES PROVIDED DURING INTERIM PERIOD ONLY*

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Television broadcasting services provided by the Independent Television Commission in accordance with Schedule 11, other than Channel 4	The programme contractor
Channel 4, as so provided	The body corporate referred to in section 12(2) of the Broadcasting Act 1981

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- (8) This section does not require any information to be given about any advertisement.

**PART X**

MISCELLANEOUS AND GENERAL

*Foreign satellite services*

**177 Orders proscribing unacceptable foreign satellite services**

- (1) Subject to the following provisions of this section, the Secretary of State may make an order proscribing a foreign satellite service for the purposes of section 178.
- (2) If the Independent Television Commission or the Radio Authority consider that the quality of any relevant foreign satellite service which is brought to their attention is unacceptable and that the service should be the subject of an order under this section,



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they shall notify to the Secretary of State details of the service and their reasons why they consider such an order should be made.

- (3) The Independent Television Commission or (as the case may be) the Radio Authority shall not consider a foreign satellite service to be unacceptable for the purposes of subsection (2) unless they are satisfied that there is repeatedly contained in programmes included in the service matter which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.
- (4) Where the Secretary of State has been notified under subsection (2), he shall not make an order under this section unless he is satisfied that the making of the order—
  - (a) is in the public interest; and
  - (b) is compatible with any international obligations of the United Kingdom.
- (5) An order under this section—
  - (a) may make such provision for the purpose of identifying a particular foreign satellite service as the Secretary of State thinks fit; and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section and section 178—

“foreign satellite service” means a service which consists wholly or mainly in the transmission by satellite from a place outside the United Kingdom of television or sound programmes which are capable of being received in the United Kingdom;

“relevant foreign satellite service” means—

  - (a) in relation to the Independent Television Commission, a foreign satellite service which consists wholly or mainly in the transmission of television programmes; and
  - (b) in relation to the Radio Authority, a foreign satellite service which consists wholly or mainly in the transmission of sound programmes.

## **178 Offence of supporting proscribed foreign satellite services**

- (1) This section applies to any foreign satellite service which is proscribed for the purposes of this section by virtue of an order under section 177; and references in this section to a proscribed service are references to any such service.
- (2) Any person who in the United Kingdom does any of the acts specified in subsection (3) shall be guilty of an offence.
- (3) Those acts are—
  - (a) supplying any equipment or other goods for use in connection with the operation or day-to-day running of a proscribed service;
  - (b) supplying, or offering to supply, programme material to be included in any programme transmitted in the provision of a proscribed service;
  - (c) arranging for, or inviting, any other person to supply programme material to be so included;
  - (d) advertising, by means of programmes transmitted in the provision of a proscribed service, goods supplied by him or services provided by him;

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- (e) publishing the times or other details of any programmes which are to be transmitted in the provision of a proscribed service or (otherwise than by publishing such details) publishing an advertisement of matter calculated to promote a proscribed service (whether directly or indirectly);
  - (f) supplying or offering to supply any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted in the provision of a proscribed service.
- (4) In any proceedings against a person for an offence under this section, it is a defence for him to prove that he did not know, and had no reasonable cause to suspect, that the service in connection with which the act was done was a proscribed service.
- (5) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (6) For the purposes of this section a person exposing decoding equipment for supply or having such equipment in his possession for supply shall be deemed to offer to supply it.
- (7) Section 46 of the Consumer Protection Act 1987 shall have effect for the purpose of construing references in this section to the supply of any thing as it has effect for the purpose of construing references in that Act to the supply of any goods.
- (8) In this section “programme material” includes—
- (a) a film (within the meaning of Part I of the Copyright, Designs and Patents Act 1988);
  - (b) any other recording; and
  - (c) any advertisement or other advertising material.

#### *Unauthorised decoders*

### **179 Unauthorised decoders for encrypted services etc**

- (1) In the Copyright, Designs and Patents Act 1988 the following section shall be inserted after section 297—

#### **“297A Unauthorised decoders**

- (1) A person who makes, imports, sells or lets for hire any unauthorised decoder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for knowing, that the decoder was an unauthorised decoder.
- (3) In this section—  
“apparatus” includes any device, component or electronic data;

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“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom; and

“unauthorised”, in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.”

- (2) In section 299 of the Act of 1988 (fraudulent reception of programmes broadcast from countries or territories outside the United Kingdom)—
- (a) subsection (2) shall cease to have effect; and
  - (b) in subsection (5), after “297” there shall be inserted “, 297A”.

#### *Television licensing*

### **180 Transfer to BBC of functions connected with television licences**

- (1) The Wireless Telegraphy Act 1949 (“the 1949 Act”) shall have effect subject to the amendments specified in Part I of Schedule 18 to this Act (by virtue of which functions of the Secretary of State as respects the issue and renewal of television licences are transferred to the BBC).
- (2) Section 3(3) of the Post Office Act 1969 (refunds in respect of wireless telegraphy licences) shall not apply to sums which, by virtue of subsection (1) above, are paid to the BBC under section 2(1) of the 1949 Act (fees and charges for licences); but refunds of sums so paid may be made by the BBC, out of sums received by them under section 2(1) of the 1949 Act, in such cases or classes of cases as they may determine.
- (3) Except so far as required for the making of refunds under subsection (2) above, sums received by the BBC under section 2(1) of the 1949 Act shall be paid into the Consolidated Fund.
- (4) Part I of the Wireless Telegraphy Act 1967 (obtaining of information as to sale and hire of television sets) shall have effect subject to the amendments specified in Part II of Schedule 18 to this Act (by virtue of which all of the functions of the Secretary of State under that Part of that Act, apart from his power to make regulations under section 2(7) or 6(1), are transferred to the BBC).

### **181 Certain apparatus to be deemed to be apparatus for wireless telegraphy**

- (1) Any apparatus which—
- (a) is connected to the telecommunication system by means of which a relevant cable service is provided, and
  - (b) is so connected for the purpose of enabling any person to receive any programmes included in that service by means of the reception and immediate re-transmission of programmes included in a television broadcasting service,

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shall be deemed for the purposes of the 1949 Act to be apparatus for wireless telegraphy.

- (2) Any such apparatus shall, in addition, be deemed for the purposes of—
- (a) section 1(7) of the 1949 Act (as amended by Part I of Schedule 18 to this Act), and
  - (b) any regulations made by the Secretary of State for the purposes of that provision under section 2 of that Act,
- to be television receiving apparatus.
- (3) In this section “relevant cable service” means a service provided by any person to the extent that it consists in the use of a telecommunication system (whether run by him or by any other person) for the purpose of the delivery, otherwise than by wireless telegraphy, of programmes included in one or more television broadcasting services, where such programmes are so delivered—
- (a) for simultaneous reception at two or more places in the United Kingdom, or
  - (b) for reception at any place in the United Kingdom for the purpose of being presented there either to members of the public or to any group of persons.
- (4) In this section—
- “the 1949 Act” means the Wireless Telegraphy Act 1949;
  - “connected” has the same meaning as in the Telecommunications Act 1984;
  - “television broadcasting service” means a television broadcasting service within the meaning of Part I of this Act, whether provided by the holder of a licence under that Part or by the BBC or the Welsh Authority or in accordance with Part II of Schedule 11 to this Act.

#### *Listed events*

### **182 Certain events not to be shown on pay-per-view terms**

- (1) The Independent Television Commission shall do all that they can to secure that any programme which consists of or includes the whole or any part of a listed event shall not be included on pay-per-view terms in any service provided by the holder of a licence granted by the Commission under Part I of this Act.
- (2) Any such programme as is mentioned in subsection (1) shall not be included on pay-per-view terms in any television broadcasting service provided by the BBC or the Welsh Authority.
- (3) For the purposes of this section—
- (a) a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this section; and
  - (b) a programme is included in any service on pay-per-view terms if any payments falling to be made by subscribers to that service will or may vary according to whether that programme is or is not actually received by them.
- (4) The Secretary of State shall not at any time draw up, revise or cease to maintain such a list as is mentioned in subsection (3) unless he has first consulted—
- (a) the BBC;
  - (b) the Welsh Authority;

- (c) the Commission; and
  - (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;
- and for the purposes of this subsection a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.
- (5) As soon as he has drawn up or revised such a list as is mentioned in subsection (3), the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of—
    - (a) the persons mentioned in subsection (4); and
    - (b) every person who is the holder of a licence granted by the Commission under Part I of this Act.
  - (6) Neither subsection (1) nor subsection (2) above shall apply in relation to the inclusion in such a service as is mentioned in that subsection of a programme which consists of or includes a recording of the whole or any part of any listed event where the programme is so included more than 48 hours after the original recording was made.
  - (7) In this section “national interest” includes interest within England, Scotland, Wales or Northern Ireland.

#### *Gaelic television programmes*

### **183 Financing of programmes in Gaelic out of Gaelic Television Fund**

- (1) The Secretary of State—
  - (a) may, for the financial year beginning with 1st April 1991, and
  - (b) shall, for each subsequent financial year,pay to the Commission such amount as he may, with the approval of the Treasury, determine to be appropriate for the purposes of this section.
- (2) Any amount received by the Commission under subsection (1) shall be carried by them to the credit of a fund established by them under this section, to be known as the Gaelic Television Fund (and any such amount shall accordingly not be regarded as forming part of the revenues of the Commission).
- (3) The Fund shall be under the management of a body established for the purposes of this section, which shall be called Comataidh Telebhisein Gaidhlig (the Gaelic Television Committee) and shall consist of—
  - (a) a chairman appointed by the Commission; and
  - (b) such number of other members appointed by the Commission, not being less than four nor more than eight, as they may from time to time determine.
- (4) The Fund may be applied by the Committee—
  - (a) in the making of grants for the following purposes, namely—
    - (i) financing the making of television programmes in Gaelic primarily with a view to the broadcasting of such programmes for reception in Scotland;
    - (ii) financing the training of persons employed or to be employed in connection with the making of such programmes; and

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- (iii) other purposes connected with or related to the making of such programmes; and
  - (b) in financing the undertaking of research into the types of television programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast.
- (5) When making any grant out of the Fund in pursuance of subsection (4) the Committee may impose such conditions as they think fit, including conditions requiring the grant to be repaid in specified circumstances.
- (6) The Committee shall perform their functions under this section with respect to the making of grants out of the Fund in such manner as they consider will secure that a wide range of high quality television programmes in Gaelic are broadcast for reception in Scotland; but nothing in this section shall be construed as authorising programmes to be commissioned by the Committee.
- (7) The Commission shall so exercise their power under subsection (3) to appoint the members of the Committee as to secure that a majority of the members are persons who appear to them to represent the Gaelic-speaking community; and Schedule 19 to this Act shall have effect with respect to the Committee.
- (8) Any sums required by the Secretary of State under subsection (1) shall be paid out of money provided by Parliament.
- (9) In this section, section 184 and Schedule 19—
- “the Commission” means the Independent Television Commission;
  - “the Committee” means the body established under subsection (3) above;
  - “Gaelic” means the Gaelic language as spoken in Scotland; and
  - “for reception in Scotland” means for reception wholly or mainly in Scotland.

#### **184 Broadcasting of programmes in Gaelic on Channel 3 in Scotland**

- (1) Section 16 shall have effect in relation to any service to which this section applies as if the following requirements were included among those specified in subsection (2) of that section, namely—
- (a) that a suitable proportion of the programmes included in the service are programmes in Gaelic other than funded Gaelic productions;
  - (b) that the service includes funded Gaelic productions of which—
    - (i) a suitable proportion are of high quality, and
    - (ii) a suitable proportion are shown at peak viewing times; and
  - (c) that (taking the programmes included in the service in accordance with paragraphs (a) and (b) above as a whole) the service includes a wide range of programmes in Gaelic.
- (2) In subsection (1) above “funded Gaelic productions” means programmes in Gaelic the making of which has been wholly or partly financed out of grants made in pursuance of section 183(4) to the person providing the service.
- (3) The conditions which are, by virtue of section 33(1), to be included in a licence to provide a service to which this section applies accordingly include conditions imposed for the purpose of securing that the requirements specified in paragraphs (a) to (c) of subsection (1) above are complied with in relation to the service.

- (4) This section applies—
- (a) to any regional Channel 3 service that is to be provided for an area the whole of which is in Scotland; and
  - (b) if the Commission determine that it shall so apply, to any regional Channel 3 service that is to be provided for an area the greater part of which is in Scotland.
- (5) In this section “licence” and “regional Channel 3 service” have the same meaning as in Part I of this Act; and subsection (9) of section 183 applies for the purposes of this section.

*National television archive*

**185 Contributions towards maintenance of national television archive**

- (1) The Commission shall, for the financial year which includes the commencement of this section and each subsequent financial year, determine an aggregate amount which they consider it would be appropriate for the holders of Channel 3 and Channel 5 licences to contribute, in accordance with this section, towards the expenses incurred by the nominated body in connection with the maintenance by it of a national television archive.
- (2) In this section “the nominated body” means such body as may for the time being be nominated by the Commission for the purposes of this section, being a body which—
- (a) is for the time being a designated body for the purposes of section 75 of the Copyright, Designs and Patents Act 1988 (recordings for archival purposes), and
  - (b) appears to the Commission to be in a position to maintain a national television archive.
- (3) A Channel 3 or Channel 5 licence shall include conditions requiring the licence holder to pay to the Commission, in respect of each of the financial years mentioned in subsection (1), such amount as they may notify to him for the purposes of this section, being such proportion of the aggregate amount determined for that year under that subsection as they consider appropriate (and different proportions may be determined in relation to different persons).
- (4) Any amount received by the Commission by virtue of subsection (3) shall be transmitted by them to the nominated body.
- (5) In this section—
- “the Commission” means the Independent Television Commission; and
  - “Channel 3 licence” and “Channel 5 licence” have the same meaning as in Part I of this Act.

*Duties of BBC as respects independent productions*

**186 Duty of BBC to include independent productions in their television services**

- (1) It shall be the duty of the BBC to secure that, in each relevant period, not less than the prescribed percentage of the total amount of time allocated to the broadcasting

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of qualifying programmes in the television broadcasting services provided by them is allocated to the broadcasting of a range and diversity of independent productions.

- (2) In subsection (1)—
- (a) “qualifying programmes” and “independent productions” have the same meaning as in section 16(2)(h), and “the prescribed percentage” means the percentage for the time being specified in section 16(2)(h); and
  - (b) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved;
- and before making an order under section 16(5) or (6) the Secretary of State shall (in addition to consulting the Independent Television Commission in accordance with section 16(7)) consult the BBC.
- (3) The Director General of Fair Trading (“the Director”) shall, in respect of each relevant period, make a report to the Secretary of State on the extent to which the BBC have, in his opinion, performed their duty under subsection (1) above in that period.
- (4) A report made by the Director under subsection (3) may contain, in addition to his conclusions as to the extent to which the BBC have performed that duty in the period in question—
- (a) such an account of his reasons for those conclusions as is, in his opinion, expedient for facilitating a proper understanding of those conclusions; and
  - (b) his observations, in the light of those conclusions and his reasons for them, with regard to—
    - (i) competition in connection with the production of television programmes for broadcasting by the BBC, or
    - (ii) matters appearing to him to arise out of, or to be conducive to, such competition.
- (5) The Director may at any time make a report to the Secretary of State on any matter related to or connected with the performance by the BBC of their duty under subsection (1); and any such report may include observations by the Director on any matter falling within subsection (4)(b)(i) or (ii) and pertinent to the subject-matter of the report.
- (6) The Director shall publish any report made by him under this section in such manner as he considers appropriate; and where he makes any report under this section he shall have regard to the need for excluding from the report, so far as it is practicable to do so—
- (a) any matter which relates to the private affairs of an individual, where in the opinion of the Director the publication of that matter would or might seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a body of persons (whether corporate or unincorporate), where in the opinion of the Director—
    - (i) publication of that matter would or might seriously and prejudicially affect the interests of that body, and
    - (ii) it is not necessary for the purposes of the report to include that matter as matter specifically relating to that body.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Director under this section.



- (8) In any proceedings relating to the performance by the BBC of their duty under subsection (1), any report made by the Director under subsection (3)—
- (a) shall be evidence of any facts stated in the report, and
  - (b) so far as it consists of any such conclusions as are mentioned in subsection (4), shall be evidence of the extent to which the BBC have performed that duty in the relevant period in question;
- and any document purporting to be a copy of any such report shall be received in evidence and shall be deemed to be such a copy unless the contrary is shown.
- (9) The following periods are relevant periods for the purposes of this section, namely—
- (a) the period beginning with 1st January 1993 and ending with 31st March 1994;
  - (b) the financial year beginning with 1st April 1994; and
  - (c) each subsequent financial year.

### **187 Information to be furnished by BBC for purposes of reports under section 186**

- (1) The Director may serve on the BBC a notice requiring them, at a time and place specified in the notice—
- (a) to produce to him such documents specified or described in the notice (being documents in the custody or under the control of the BBC), or
  - (b) to furnish him, in a form specified in the notice, with such estimates, returns or other information specified or described in it,
- as he may require for the purpose of making any report under section 186.
- (2) The BBC shall not by virtue of subsection (1) be compelled—
- (a) to produce any document which they could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session, or
  - (b) in complying with any requirement for the furnishing of information, to give any information which they could not be compelled to give in evidence in such proceedings.
- (3) In this section “the Director” means the Director General of Fair Trading.

#### *Power to give directions relating to international obligations*

### **188 Power to give broadcasting bodies etc. directions relating to international obligations**

- (1) A body to which this section applies shall carry out any functions which the Secretary of State may by order direct them to carry out for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (2) This section applies to—
- (a) the BBC;
  - (b) the Independent Television Commission;
  - (c) the Welsh Authority;
  - (d) the Radio Authority; and
  - (e) the Broadcasting Standards Council.

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- (3) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Matters relating to telecommunication systems*

**189 Sharing of apparatus by operators of telecommunication systems**

- (1) Where—
- (a) the telecommunications code contained in Schedule 2 to the 1984 Act expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person (“the operator”) may be put, and
  - (b) the operator is a party to a relevant agreement,
- that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to the operator, the purposes for which that apparatus is used.
- (2) In this section “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—
- (a) to which the parties are either—
    - (i) two or more persons to whom this section applies, or
    - (ii) one or more persons to whom this section applies and one or more telecommunications operators who are not such persons; and
  - (b) which relates to the sharing by those persons of the use of that apparatus.
- (3) Subsection (1) shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.
- (4) This section applies to—
- (a) the holder of a licence to provide a local delivery service within the meaning of Part II of this Act;
  - (b) the holder of any licence to provide a prescribed diffusion service continued in force by, or granted under, Part II of Schedule 12 to this Act;
  - (c) a telecommunications operator in his capacity as a person providing the means of delivery for the service provided under his licence by a person falling within paragraph (a) or (b) above; and
  - (d) the company nominated for the purposes of section 127(1).
- (5) In this section—
- “the 1984 Act” means the Telecommunications Act 1984;
- “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment;
- “telecommunication apparatus” has the same meaning as in Schedule 2 to the 1984 Act;

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“telecommunications operator” means a person who runs a telecommunication system the running of which is, or is not required to be, licensed under Part II of the 1984 Act.

## **190 Modification of certain references in Telecom- munications Act licences**

- (1) This section applies to licences which have been granted under section 7 of the Telecommunications Act 1984 (licensing of telecommunication systems) before the transfer date and continue in force on or after that date.
- (2) In any licence to which this section applies, any reference (however expressed) to a cable programme service sent under a licence granted under section 4 of the Cable Act shall be construed, as from the transfer date, as a reference to a licensable service within the meaning of Part I of that Act (other than an exempt service), whether sent—
  - (a) under a diffusion licence which is continued in force by, or granted under, Part II of Schedule 12 to this Act, or
  - (b) under a local delivery licence granted under this Act, or otherwise.
- (3) Where any licence to which this section applies (“the telecommunications licence”) authorises the Secretary of State to revoke that licence in the event of the revocation of a licence granted under section 4 of the Cable Act in respect of the licensed systems (“the cable licence”), he may similarly revoke the telecommunications licence in the event of the revocation of any licence granted in respect of the licensed systems, in succession to the cable licence, under or in pursuance of any of paragraphs 2 to 4 in Part II of Schedule 12 to this Act.
- (4) Where any licence to which this section applies (“the telecommunications licence”) provides for that licence to remain in force so long as there remains in force in respect of the licensed systems a licence granted under section 4 of the Cable Act (“the cable licence”), then if a local delivery licence is granted in respect of the licensed system, in succession to the cable licence, in pursuance of paragraph 6 in Part II of Schedule 12 to this Act, the telecommunications licence shall (subject to the terms contained in it) remain in force so long as that local delivery licence remains in force.
- (5) In this section—
  - “the Cable Act” means the Cable and Broadcasting Act 1984;
  - “diffusion licence” means a licence to provide a prescribed diffusion service or other diffusion service within the meaning of Part I of the Cable Act;
  - “exempt service” means a service falling within any description of services exempted from licensing under Part I of the Cable Act by virtue of an order in force under section 3 of that Act immediately before the transfer date;
  - “the licensed systems”, in relation to a licence to which this section applies, means the telecommunication systems the running of which is authorised by the licence;
  - “local delivery licence” has the same meaning as in Part II of this Act;
  - “the transfer date” means the day appointed under section 127(1);and any reference to a licence granted under section 4 of the Cable Act includes, in relation to a licence to which this section applies (“the relevant licence”), a reference to a licence granted under section 58 of the Telecommunications Act 1984 (whether described in the relevant licence in those terms or in any other way).

### **191 Revocation of class licence to run broadcast relay systems**

The licence entitled “Class Licence to run Broadcast Relay Systems”, which was granted by the Secretary of State on 25th November 1986 under section 7 of the Telecommunications Act 1984, is hereby revoked.

*Application of competition legislation*

### **192 Application of provisions of Fair Trading Act 1973 to broadcasting and telecommunication services**

- (1) In section 137(3) of the Fair Trading Act 1973 (definition of “supply of services”), there shall be inserted after paragraph (e) “and
  - (f) includes the making of arrangements, by means of such an agreement as is mentioned in section 189(2) of the Broadcasting Act 1990, for the sharing of the use of any telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984).”
- (2) It is hereby declared for the avoidance of doubt that the provision of a broadcasting service is not a service falling within paragraph 7 of Schedule 5 to the Fair Trading Act 1973 (restriction on making references under section 14, 50 or 51 of the Act in connection with telecommunication services) by reason of the fact that the broadcasting service is provided by means of the running of any such system as is mentioned in that paragraph.
- (3) In subsection (2) “broadcasting service” means—
  - (a) a programme service; or
  - (b) a local delivery service (within the meaning of Part II of this Act).
- (4) In Part I of Schedule 7 to the Fair Trading Act 1973, paragraphs 8 and 9 (provision of programmes for transmission by Independent Broadcasting Authority, or of licensed cable programme services, wholly excluded from references under section 50 or 51 of the Act) shall cease to have effect.

### **193 Modification of networking arrangements in consequence of reports under competition legislation**

- (1) The Secretary of State may, in any of the circumstances in which this subsection has effect, by order provide for any networking arrangements specified in the order to have effect with such modifications as appear to him to be appropriate.
- (2) Subsection (1) shall have effect in the following circumstances, namely—
  - (a) where the circumstances are as mentioned in section 56(1) of the Fair Trading Act 1973 (order on report on monopoly reference) and the monopoly situation exists in connection with the provision of programmes for broadcasting in regional Channel 3 services;
  - (b) where the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and one or more of the enterprises which ceased to be distinct enterprises was engaged in the provision of such programmes; and
  - (c) where the circumstances are as mentioned in section 10(1) of the Competition Act 1980 (order on report on competition reference) and the anti-competitive practice was pursued in connection with the provision of such programmes.

(3) An order under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section—

“networking arrangements” means any such arrangements as are mentioned in section 39(1) above;

“regional Channel 3 service” has the meaning given by section 14(6) above; and any expression used in this section which is also used in the Fair Trading Act 1973 or the Competition Act 1980 has the same meaning as in that Act.

#### **194 Restrictive Trade Practices Act 1976 not to apply to networking arrangements**

(1) The Restrictive Trade Practices Act 1976 shall not apply, and shall be deemed never to have applied, to any relevant networking arrangements which are specified, or are of a description specified, in an order made by the Secretary of State (whether before or after the making of those arrangements) and which satisfy such conditions as may be so specified.

(2) In subsection (1) “relevant networking arrangements” means—

(a) any arrangements entered into as mentioned in section 39(4) or (7)(b) above, or

(b) any agreement not falling within paragraph (a) but made for the purpose mentioned in section 39(1) above.

(3) Before making an order under subsection (1) the Secretary of State shall consult the Independent Television Commission and the Director General of Fair Trading; and such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *General*

#### **195 Offences by bodies corporate**

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **196 Entry and search of premises**

(1) If a justice of the peace is satisfied by information on oath—

(a) that there is reasonable ground for suspecting that an offence under section 13, 82 or 97 has been or is being committed on any premises specified in the information, and

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- (b) that evidence of the commission of the offence is to be found on those premises,
- he may grant a search warrant conferring power on any person or persons authorised in that behalf by the relevant authority to enter and search the premises specified in the information at any time within one month from the date of the warrant.
- (2) In subsection (1) “the relevant authority”—
- (a) in relation to an offence under section 13 or 82, means the Independent Television Commission; and
- (b) in relation to an offence under section 97, means the Radio Authority.
- (3) A person who intentionally obstructs a person in the exercise of powers conferred on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (4) A person who discloses, otherwise than for the purposes of any legal proceedings or of a report of any such proceedings, any information obtained by means of an exercise of powers conferred by this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (5) In the application of this section to Scotland, for the reference to a justice of the peace there shall be substituted a reference to the sheriff and for any reference to information on oath there shall be substituted a reference to evidence on oath.
- (6) In the application of this section to Northern Ireland, for the reference to a justice of the peace there shall be substituted a reference to a resident magistrate and for any reference to information on oath there shall be substituted a reference to a complaint on oath.

## **197 Restriction on disclosure of information**

- (1) Subject to subsections (2) to (4), no information with respect to any particular business which has been obtained under or by virtue of this Act shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the performance of—
- (i) any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations, or
- (ii) any functions of the Director General of Fair Trading, the Secretary of State or the Monopolies and Mergers Commission under the Fair Trading Act 1973 (excluding Parts II, III and XI of that Act), the Restrictive Trade Practices Act 1976, the Competition Act 1980 or this Act or the 1988 Regulations;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings or a report of any such proceedings;
- (c) for the purposes of any civil proceedings brought under or by virtue of the Fair Trading Act 1973 (excluding Part III), the Restrictive Trade Practices Act

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- 1976 or this Act or the 1988 Regulations, or for the purposes of a report of any such proceedings; or
- (d) in pursuance of any Community obligation.
- (3) Nothing in subsection (1) shall be construed—
- (a) as limiting the matters which may be included in, or be made public as part of, a report under section 186 above or under Schedule 4 to this Act, or
- (b) as applying to any information which has been made public as part of such a report.
- (4) Subsection (1) does not apply to any information obtained as mentioned in section 196(4) above.
- (5) The following provisions, namely—
- (a) section 133(1) of the Fair Trading Act 1973,
- (b) section 41(1) of the Restrictive Trade Practices Act 1976, and
- (c) section 19(1) of the Competition Act 1980,
- shall not apply to any disclosure of information which is made for the purpose of facilitating the performance of any functions of the Independent Television Commission, the Welsh Authority or the Radio Authority under this Act or the 1988 Regulations.
- (6) Any person who discloses any information in contravention of subsection (1) shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- (7) In this section “the 1988 Regulations” means the Control of Misleading Advertisements Regulations 1988.

## **198 Financial provisions**

- (1) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

## **199 Notices**

- (1) Subsections (2) to (4) below have effect in relation to any notice required or authorised by or under this Act to be served on or given to any person other than the Secretary of State.
- (2) Any such notice shall be in writing and may be served on or given to the person in question—
- (a) by delivering it to him,
- (b) by leaving it at his proper address, or
- (c) by sending it by post to him at that address.
- (3) Any such notice may—

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- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on or given to any partner or any person having the control or management of the partnership business;
  - (c) in the case of an unincorporated association other than a partnership, be served on or given to any member of the governing body of the association.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom a notice is to be served or given shall be his last known address, except that—
- (a) where it is to be served on or given to a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; and
  - (b) where it is to be served on or given to a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;
- and, in relation to a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom, the reference in paragraph (a) or (b) to its principal office includes a reference to its principal office within the United Kingdom (if any).
- (5) Any notice served—
- (a) by the Independent Television Commission under section 21, 41, 42 or 55, or
  - (b) by the Radio Authority under section 103, 109, 110, 111, or 120,
- shall be published in such manner as that body consider appropriate, and shall be so published as soon as reasonably practicable after it is served.
- (6) In this section (except in subsection (5)) “notice” includes any notification.

## **200 Regulations and orders**

- (1) Any power of the Secretary of State to make regulations or an order under this Act shall be exercisable by statutory instrument.
- (2) Any regulations or order made by the Secretary of State under this Act may make—
  - (a) different provision for different cases; and
  - (b) such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.

## **201 Programme services**

- (1) In this Act “programme service” means any of the following services (whether or not it is, or it requires to be, licensed under this Act), namely—
  - (a) any television broadcasting service or other television programme service (within the meaning of Part I of this Act);
  - (b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of this Act);
  - (c) any other service which consists in the sending, by means of a telecommunication system, of sounds or visual images or both either—



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- (i) for reception at two or more places in the United Kingdom (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or
- (ii) for reception at a place in the United Kingdom for the purpose of being presented there to members of the public or to any group of persons.

(2) Subsection (1)(c) does not apply to—

- (a) a local delivery service (within the meaning of Part II of this Act);
- (b) a service where the running of the telecommunication system does not require to be licensed under Part II of the Telecommunications Act 1984; or
- (c) a two-way service (as defined by section 46(2)(c)).

## 202 General interpretation

(1) In this Act (unless the context otherwise requires)—

- “advertising agent” shall be construed in accordance with subsection (7);
- “the BBC” means the British Broadcasting Corporation;
- “body”, without more, means a body of persons whether incorporated or not, and includes a partnership;
- “broadcast” means broadcast by wireless telegraphy;
- “connected”, in relation to any licence, shall be construed in accordance with paragraph 3 in Part I of Schedule 2;
- “control”, in relation to a body, has the meaning given by paragraph 1(1) in that Part of that Schedule;
- “dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;
- “financial year” shall be construed in accordance with subsection (2);
- “frequency” includes frequency band;
- “modifications” includes additions, alterations and omissions;
- “pension scheme” means a scheme for the payment of pensions, allowances or gratuities;
- “programme” includes an advertisement and, in relation to any service, includes any item included in that service;
- “telecommunication system” has the same meaning as in the Telecommunications Act 1984;
- “the Welsh Authority” means the authority renamed Sianel Pedwar Cymru by section 56(1);
- “wireless telegraphy” and “station for wireless telegraphy” have the same meaning as in the Wireless Telegraphy Act 1949.

(2) In any provision of—

- (a) section 148 or 160, or
- (b) Schedule 1, 2, 3, 6, 8, 13, 14 or 19,

“financial year” means a financial year of the body with which that provision is concerned; and in any other provision of this Act “financial year” means the twelve months ending with 31st March.

(3) In this Act—

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- (a) references to pensions, allowances or gratuities include references to like benefits to be given on death or retirement; and
  - (b) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.
- (4) Any reference in this Act (however expressed) to a licence under this Act being in force is a reference to its being in force so as to authorise the provision under the licence of the licensed service; and any such reference shall accordingly not be construed as prejudicing the operation of any provisions of such a licence which are intended to have effect otherwise than at a time when the licensed service is authorised to be so provided.
- (5) It is hereby declared that, for the purpose of determining for the purposes of any provision of this Act whether a service is—
- (a) for general reception, or capable of being received, within the United Kingdom or elsewhere, or
  - (b) for reception at any place or places, or in any area, in the United Kingdom, the fact that the service has been encrypted to any extent shall be disregarded.
- (6) Any reference in this Act, in relation to a service consisting of programmes transmitted by satellite—
- (a) to a person by whom the programmes are transmitted, or
  - (b) to a place from which the programmes are transmitted,
- is a reference to a person by whom, or a place from which, the programmes are transmitted to the satellite by means of which the service is provided.
- (7) For the purposes of this Act—
- (a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise;
  - (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts;
  - (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers;
  - (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

### **203 Consequential and transitional provisions**

- (1) The enactments mentioned in Schedule 20 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the provisions of this Act).
- (2) Unless the context otherwise requires, in any enactment amended by this Act—

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“programme”, in relation to a programme service, includes any item included in that service; and

“television programme” includes a teletext transmission.

- (3) The enactments mentioned in Schedule 21 to this Act (which include certain spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The transitional provisions and savings contained in Schedule 22 to this Act shall have effect.

## **204 Short title, commencement and extent**

- (1) This Act may be cited as the Broadcasting Act 1990.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) Subject to subsections (4) and (5), this Act extends to the whole of the United Kingdom.
- (4) In Part VII—
  - (a) section 162 and Schedule 15 extend to England and Wales only;
  - (b) section 163 extends to Scotland only;
  - (c) section 164 extends to England and Wales and Scotland; and
  - (d) section 165 extends to Northern Ireland only.
- (5) The amendments and repeals in Schedules 20 and 21 have the same extent as the enactments to which they refer.
- (6) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such modifications, if any, as appear to Her Majesty to be appropriate.