



# Broadcasting Act 1990

## 1990 CHAPTER 42

### <sup>F1</sup>PART I

#### INDEPENDENT TELEVISION SERVICES

### CHAPTER II

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

**Modifications etc. (not altering text)**

- C1** Pt. I: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 3\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### *Channel 3*

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

- (1) [<sup>F1</sup>OFCOM] 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 [<sup>F1</sup>OFCOM] may determine in the case of that service.
- (3) If it appears to [<sup>F1</sup>OFCOM] 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.

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- (4) If [<sup>F1</sup>OFCOM] 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 [<sup>F1</sup>OFCOM] may determine.
- (5) If [<sup>F1</sup>OFCOM] 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).

<sup>F2</sup>(7) .....

[<sup>F3</sup>(7A) The areas mentioned in subsection (2) must at all times include at least one area that comprises, or falls entirely within, Scotland.]

- (8) In this section and section 15 “programme” does not include an advertisement.

#### Textual Amendments

- F1** Words in s. 14 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 6](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F2** [S. 14\(7\)](#) repealed (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 24(1)(a), 47(1), [Sch. 2](#)
- F3** [S. 14\(7A\)](#) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 24\(1\)\(b\)](#), 47(1)

## 15 Applications for Channel 3 licences.

- (1) Where [<sup>F4</sup>OFCOM] 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

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- (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) [F<sup>4</sup>OFCOM] 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 [F<sup>4</sup>OFCOM] that the service would comply with the requirements [F<sup>5</sup>that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
- (a) the public service remit for that service,
  - (b) programming quotas,
  - (c) news and current affairs programmes, and
  - (d) programme production and regional programming.]
- (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 [F<sup>6</sup>that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming]
  - F<sup>7</sup>(c) .....
  - F<sup>7</sup>(d) .....
  - F<sup>7</sup>(e) .....
  - (f) the applicant's cash bid in respect of the licence;
  - (g) such information as [F<sup>4</sup>OFCOM] 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 [F<sup>4</sup>OFCOM] may reasonably require for the purpose of considering the application.
- [F<sup>8</sup>(3A) For the purposes of subsection (1)(d)(ii)—
- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.]
- (4) At any time after receiving such an application and before determining it [F<sup>4</sup>OFCOM] may require the applicant to furnish additional information under any of [F<sup>9</sup>paragraphs (b)], (g) and (h) of subsection (3).
- (5) Any information to be furnished to [F<sup>4</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [F<sup>4</sup>OFCOM] 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—

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- (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 [F4OFCOM] 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 [F4OFCOM] 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).

#### Textual Amendments

- F4** Words in s. 15 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F5** Words in s. 15(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F6** Words in s. 15(3)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F7** S. 15(3)(c)-(e) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(4\)\(b\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F8** S. 15(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F9** Words in s. 15(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 7\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C2** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 215\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

## 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, [F10OFCOM] 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 [F11] that have to be imposed under Chapter 4 of Part 3 of the [Communications Act 2003](#) by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,

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- (iii) news and current affairs programmes, and
  - (iv) programme production and regional programming], 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 17 (except in section 17(12)(b)) is accordingly a reference to an applicant in whose case it appears to [F10OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

F12(2) .....

F12(3) .....

- (4) In deciding whether an applicant's proposed service would comply with the requirements [F13] that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
  - (a) the public service remit for that service,
  - (b) programming quotas,
  - (c) news and current affairs programmes, and
  - (d) programme production and regional programming,]

[F10OFCOM] shall take into account any representations made to them in pursuance of section 15(6)(b) with respect to that service; F14 ....

F15(5) .....

F15(6) .....

F15(7) .....

F15(8) .....

#### Textual Amendments

- F10** Words in s. 16 substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F11** Words in s. 16(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F12** S. 16(2)(3) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(4), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F13** Words in s. 16(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 8(5)(a)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F14** Words in s. 16(4) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(5)(b), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F15** S. 16(5)-(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 8(6), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### Modifications etc. (not altering text)

- C2** Ss. 15-17A excluded (29.12.2003) by Communications Act 2003 (c. 21), **ss. 215(3), 411(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- (1) Subject to the following provisions of this section, [F16OFCOM] 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) [F16OFCOM] 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) [F16OFCOM] 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), [F16OFCOM] 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 [F16OFCOM] —
  - (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 [F16OFCOM] , 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 [F16OFCOM] , 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—

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- (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 [F<sup>16</sup>OFCOM] 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 [F<sup>16</sup>OFCOM] by applicants at the time of making their applications.
- (9) Any such rules shall be published by [F<sup>16</sup>OFCOM] 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 [F<sup>16</sup>OFCOM] 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 [F<sup>16</sup>OFCOM] 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 [F<sup>16</sup>OFCOM] that his proposed service would comply with the requirements [F<sup>17</sup>that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to—
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming];
  - (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, [F<sup>16</sup>OFCOM]’s reasons for the licence having been so awarded; and
  - (d) such other information as [F<sup>16</sup>OFCOM] 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 [F<sup>16</sup>OFCOM] 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

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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 <sup>F16</sup>[OFCOM] 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.

#### Textual Amendments

- F16** Words in s. 17 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 9\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F17** Words in s. 17(12)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 9\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C2** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 215\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C3** S. 17 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 10 para. 5\(4\)\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C4** S. 17(5)-(7) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 222\(5\)](#), 411(2) (with [s. 222\(11\)](#), [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C5** S. 17(5)-(7) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 216\(5\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### <sup>F18</sup>17A Award of Channel 3 licence subject to conditions.

- (1) <sup>F19</sup>[OFCOM] may, when awarding a Channel 3 licence to any person, make the grant of the licence to him conditional on his compliance before the grant with such specified requirements relating to the financing of the service as appear to them to be appropriate, having regard to—
- (a) any duties which are or may be imposed on them, or on the licence holder, by or under this Act, and
  - (b) any information provided to them under section 15(3)(g) by the person to whom the licence is awarded as to his projected financial position during the period for which the licence would be in force.
- (2) Where <sup>F19</sup>[OFCOM] determine that any condition imposed by them in relation to a Channel 3 licence in pursuance of subsection (1) has not been satisfied, section 17 shall (subject to subsection (3)) have effect as if the person to whom the licence was awarded had not made an application for it.
- (3) Section 17 shall not so have effect if <sup>F19</sup>[OFCOM] decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence.]

#### Textual Amendments

- F18** S. 17A inserted (1.10.1996) by [1996 c. 55](#), [s. 86\(1\)](#); [S.I. 1996/2120](#), art. 4, [Sch. 1](#)
- F19** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 10](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C2** Ss. 15-17A excluded (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 215\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)



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**C6** S. 17A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 5\(4\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

## **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 [F<sup>19</sup>OFCOM] that he does not intend to provide the service in question, or
  - (b) [F<sup>19</sup>OFCOM] 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) [F<sup>19</sup>OFCOM] 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 [F<sup>19</sup>OFCOM] 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 [F<sup>19</sup>OFCOM] 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, [F<sup>20</sup>a specified financial penalty].

[F<sup>21</sup>(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

- (3C) In any other case, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

- (3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.]

- (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 [F<sup>19</sup>OFCOM] as a debt due to them from any person who controls that body.

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#### Textual Amendments

- F19** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 10](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F20** Words in s. 18(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 2\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F21** S. 18(3A)-(3D) substituted for 18(4) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 2\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C7** S. 18(3B)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C8** S. 18(3C)(a): power to amend conferred (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 9](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C9** S. 18(3) modified (1.11.1996) by [1996 c. 55](#), s. [145\(6\)\(a\)](#); [S.I. 1996/2120](#), art. 4, [Sch. 1](#); [S.I. 1996/2120](#), art. 5, [Sch. 2](#)

### 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 <sup>[F19]</sup>OFCOM] (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

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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 [F19OFCOM] .

- (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 Channel 3 licence may include conditions—
- (a) enabling [F19OFCOM] 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 [F19OFCOM] 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 [F22Statistics Board].

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#### Textual Amendments

- F19** Words in ss. 17A-19 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 10](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F22** Words in s. 19(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(2\)](#); S.I. 2008/839, art. 2

#### Modifications etc. (not altering text)

- C10** S. 19(2)-(6) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 9 para. 8\(7\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- C11** S. 19(2)-(6) applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 237\(5\)](#), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

### <sup>F23</sup> 20 Duration and renewal of Channel 3 licences.

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#### Textual Amendments

- F23** S. 20 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

### 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 [<sup>F24</sup>OFCOM] ,
- then (subject to subsection (4)) [<sup>F24</sup>OFCOM] 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 [<sup>F25</sup>is or is likely to be involved, to a substantial extent, in the provision of the programmes included] 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.

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- (3) [F<sup>24</sup>OFCOM] 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 [F<sup>24</sup>OFCOM] 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) [F<sup>24</sup>OFCOM] 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) [F<sup>24</sup>OFCOM] 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.

**Textual Amendments**

- F24** Words in s. 21 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 11\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F25** Words in s. 21(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 11\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F<sup>26</sup>21A Variation of regional Channel 3 licence following change of control.**

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**Textual Amendments**

- F26** S. 21A repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Where it appears to [F<sup>27</sup>OFCOM] —
- (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,

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[<sup>F27</sup>OFCOM] 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, [<sup>F27</sup>OFCOM] 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.

#### **Textual Amendments**

**F27** Words in s. 22 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 12](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

### *Channel 4*

PROSPECTIVE

#### **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 [<sup>F28</sup>OFCOM] ; and
  - (b) such number of other members, not being less than eleven nor more than thirteen, as [<sup>F28</sup>OFCOM] may from time to time determine.
- (3) The other members referred to in subsection (2)(b) shall consist of—
- (a) persons appointed by [<sup>F28</sup>OFCOM] ; and
  - (b) ex-officio members of the Corporation;
- and the total number of members appointed by [<sup>F28</sup>OFCOM] under subsection (2)(a) and paragraph (a) above shall exceed the number of ex-officio members.
- (4) Any appointment made by [<sup>F28</sup>OFCOM] 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.

#### **Textual Amendments**

**F28** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 13](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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**Modifications etc. (not altering text)**

**C12** S. 23: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 4](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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

- (1) [<sup>F29</sup>The Corporation must] 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 [<sup>F30</sup>OFCOM], and shall be so provided for so much of England, Scotland and Northern Ireland as may from time to time be reasonably practicable.

<sup>F31</sup>(4) .....

<sup>F31</sup>(5) .....

<sup>F32</sup>(6) .....

**Textual Amendments**

- F29** Words in s. 24(1) substituted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 22(5), 47(1)
- F30** Words in s. 24(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 14](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F31** S. 24(4)(5) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F32** S. 24(6) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 199(3), 411(2), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

PROSPECTIVE

<sup>F33</sup>**25 Conditions to be included in Channel 4 licence.**

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**Textual Amendments**

- F33** S. 25 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

<sup>F34</sup>**26 Revenue deficits of Corporation to be funded by Channel 3 licensees.**

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**Textual Amendments**

**F34** S. 26 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 201, 411(2), [Sch. 19\(1\)](#) Note 1 6 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**<sup>F35</sup>27 Application of excess revenues of Corporation.**

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**Textual Amendments**

**F35** S. 27 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 201, 411(2), [Sch. 19\(1\)](#) Note 1 6 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

*Channel 5*

**28 Channel 5.**

- (1) [<sup>F36</sup>OFCOM] 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 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 [<sup>F36</sup>OFCOM] 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 [<sup>F36</sup>OFCOM] 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 [<sup>F36</sup>OFCOM] 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.

**Textual Amendments**

**F36** Words in s. 28 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 15](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**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—



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(a) section 15(1)(b)(i) shall be read as referring to any such minimum area of the United Kingdom as is determined by [<sup>F37</sup>OFCOM] in accordance with section 28(2); <sup>F38</sup>...

<sup>F38</sup>(b) .....

<sup>F39</sup>(3) .....

**Textual Amendments**

**F37** Words in s. 29(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 16\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F38** S. 29(2)(b) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 16\(1\)\(a\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F39** S. 29(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 16\(1\)\(b\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

<sup>F40</sup>**30 Initial Channel 5 licensee required to retune equipment susceptible to interference.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

*Provision of news programmes*

<sup>F40</sup>**31 Provision of news on Channels 3 and 5.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

<sup>F40</sup>**31A Appointment of news provider by holders of regional Channel 3 licences.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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*for the Broadcasting Act 1990, Chapter II. (See end of Document for details)*

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**F4032 Nomination of bodies to provide news for regional Channel 3 services.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

**F4033 Conditions requiring holder of Channel 3 or Channel 5 licence to deliver promised service.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F4034 Schools programmes.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F4035 Subtitling for the deaf.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F4036 Party political broadcasts.**

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**Textual Amendments**

**F40** Ss. 30-36 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 280(10), s. 296(11), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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### 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 [<sup>F41</sup>OFCOM] may determine.
- (2) In this section “relevant programme schedules” means—
  - (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.

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#### Textual Amendments

**F41** Words in s. 37(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 17](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### 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 <sup>M1</sup>Race Relations Act 1976.

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#### Marginal Citations

**M1** 1976 c. 74.

### 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

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- (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 [<sup>F42</sup>the Office 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—
- (a) shall consult [<sup>F43</sup>the Office of Fair Trading], and
  - (b) if [<sup>F44</sup>it] 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.

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*Status: This version of this chapter contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Chapter II. (See end of Document for details)*

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- (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
  - (b) the modification shall come into force on a date determined by the Commission.
- <sup>F45</sup>(9A) The matters to which the Commission shall have regard in deciding whether to approve any arrangements or modification under subsection (4) or (8) include the likely effect of the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, on the ability of the holders of regional Channel 3 licences to maintain the quality and range—
- (a) of the regional programmes (as defined by section 21A(9)) included in each regional Channel 3 service, and
  - (b) of the other programmes included in each service which contribute to the regional character of the service.]
- <sup>F46</sup>[(10) Without prejudice to the generality of their power to refuse to approve any arrangements or modification under subsection (4) or (8), the Commission shall refuse to do so if—
- (a) 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), or
  - (b) it appears to them that the arrangements in question, or (as the case may be) those arrangements as proposed to be modified, would be likely to prejudice the ability of the holder of any regional Channel 3 licence to comply with—
    - (i) any condition imposed in pursuance of section 33(1), for the purpose of securing the implementation of proposals relating to the matters specified in section 16(2)(c), or
    - (ii) any condition imposed in pursuance of subsection (3) of section 21A in relation to the matters specified in paragraph (a) of that subsection.]
- (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),

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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 [<sup>F47</sup>the Office of Fair Trading], and
- (b) in the case of any such modification as is so referred to, to inform [<sup>F48</sup>it] 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.

#### Textual Amendments

- F42** Words in s. 39(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(3\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F43** Words in s. 39(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(3\)\(b\)\(i\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F44** Word in s. 39(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(3\)\(b\)\(ii\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F45** S. 39(9A) inserted (1.10.1996) by [1996 c. 55](#), s. [79\(2\)](#) (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 4 [Sch. 1](#)
- F46** S. 39(10) substituted (1.10.1996) by [1996 c. 55](#), s. [79\(3\)](#) (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 4, [Sch. 1](#)
- F47** Words in s. 39(12) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(3\)\(c\)\(i\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F48** Word in s. 39(12) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 24\(3\)\(c\)\(ii\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

#### *Enforcement of licences*

#### **40 Power to direct licensee to broadcast correction or [<sup>F49</sup>a statement of findings] or not to repeat programme.**

- (1) If [<sup>F50</sup>OFCOM] 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 [<sup>F49</sup>a statement of findings] (or both) under this subsection,

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- they may (subject to subsection (2)) direct the licence holder to include in the licensed service a correction or <sup>F49</sup>[a statement of findings] (or both) in such form, and at such time or times, as they may determine.
- (2) <sup>F50</sup>[OFCOM] 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 <sup>F49</sup>[a statement of findings] 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 <sup>F50</sup>[OFCOM] 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.
- <sup>F51</sup>(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.]

#### Textual Amendments

- F49** Words in s. 40 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F50** Words in ss. 40-42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F51** S. 40(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 344\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C13** S. 40 applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 10 para. 8\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- C14** S. 40(1)-(4) applied (1.10.1996) by [1996 c. 55, s. 23\(8\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- C15** S. 40(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), art. 1, Sch. para. 2\(a\)](#) (with art. 5)

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

- (1) If <sup>F50</sup>[OFCOM] 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 <sup>F50</sup>[OFCOM] under or by virtue of any provision of this Part <sup>F52</sup>[Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], 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 <sup>F50</sup>[OFCOM]; or
- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

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- [<sup>F53</sup>(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) (a) shall not exceed 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [<sup>F50</sup>OFCOM] 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), [<sup>F50</sup>OFCOM] 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 [<sup>F50</sup>OFCOM] of their powers under subsection (1) of this section in respect of any failure to comply with any condition 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.

#### Textual Amendments

- F50** Words in ss. 40–42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 18(1)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F52** Words in s. 41(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 18(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F53** S. 41(1A)–(1C) substituted for s. 41(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 3\(1\)\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### Modifications etc. (not altering text)

- C16** S. 41(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, **Sch. para. 3(a)** (with art. 5)

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

- (1) If [<sup>F50</sup>OFCOM] 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



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virtue of any provision of this Part [<sup>F54</sup>, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003], 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 [<sup>F50</sup>OFCOM] 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, [<sup>F50</sup>OFCOM] will revoke his licence under subsection (3).

- (3) If at the end of the period specified in a notice under subsection (2) [<sup>F50</sup>OFCOM] 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 [<sup>F50</sup>OFCOM] 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 [<sup>F50</sup>OFCOM] 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 [<sup>F50</sup>OFCOM] 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) [<sup>F50</sup>OFCOM] 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.

#### Textual Amendments

**F50** Words in ss. 40-42 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 18\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Chapter II. (See end of Document for details)*

**F54** Words in s. 42(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 18\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**Modifications etc. (not altering text)**

- C17** S. 42 modified (1.10.1996) by [1996 c. 55, s. 4\(5\)\(6\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C18** S. 42 extended (with modifications) (1.10.1996) by [1996 c. 55, s. 17\(6\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C19** S. 42 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 23\(8\)\(9\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
 S. 42 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 27\(8\)\(9\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
 S. 42 applied (1.10.1996) by [1996 c. 55, s. 27\(8\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)
- C20** S. 42 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 10 para. 11](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- C21** S. 42(1) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), art. 1, [Sch. para. 3\(b\)](#) (with art. 5)

**Status:**

This version of this chapter contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting Act 1990, Chapter II.