



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART III

#### INDEPENDENT RADIO SERVICES

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

- C1** Pt. III: transfer of functions (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 1 para. 5](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

### CHAPTER I

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

##### *Establishment of Radio Authority*

**<sup>F1</sup>83** **The Radio Authority.**

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##### Textual Amendments

- F1** S. 83 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#)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)

##### *Function of Authority*

**<sup>F2</sup>84** **Regulation by Authority of independent radio services.**

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

**Textual Amendments**

**F2** S. 84 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#)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)

**85 Licensing functions of Authority.**

(1) Subject to subsection (2), [<sup>F3</sup>OFCOM] may, in accordance with the following provisions of this Part, grant [<sup>F4</sup> licences to provide relevant independent radio services].

(2) [<sup>F3</sup>OFCOM] shall do all that they can to secure the provision within the United Kingdom of—

- (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 [<sup>F3</sup>OFCOM], is not pop music; and
- (b) a range and diversity of local services.

<sup>F5</sup>(3) .....

<sup>F5</sup>(4) .....

(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.

[<sup>F6</sup>(8) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—

- (a) sound broadcasting services;
- (b) radio licensable content services;
- (c) additional radio services.]

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

### Textual Amendments

- F3** Words in s. 85(1)(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F4** Words in s. 85(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F5** S. 85(3)(4) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(4\)](#), [Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F6** S. 85(8) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 32\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

### *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 [<sup>F7</sup>(subject to a suspension of the licence under section 111B)—
- in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
  - in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.]
- (2) A licence may be granted by [<sup>F8</sup>OFCOM] 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.
- [<sup>F9</sup>(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.]
- (4) [<sup>F8</sup>OFCOM] —
- shall not grant a licence to any person unless they are satisfied that he is a fit and proper person to hold it; and
  - 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).
- [<sup>F10</sup>(4A) Where [<sup>F8</sup>OFCOM] are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.]
- (5) [<sup>F8</sup>OFCOM] may vary a licence by a notice served on the licence holder if—
- in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or

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- (b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to [F<sup>8</sup>OFCOM] about the variation.
- (6) Paragraph (a) of subsection (5) does not affect the operation of [F<sup>11</sup>section 97B [F<sup>12</sup>, 105A] or 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 [F<sup>8</sup>OFCOM] .
- (8) Without prejudice to the generality of subsection (7), [F<sup>8</sup>OFCOM] 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.
- [F<sup>13</sup>(9) The holding of a licence by a person shall not relieve him of—
- (a) any liability in respect of a failure to hold [F<sup>14</sup>a licence under section 8 of the Wireless Telegraphy Act 2006]; or
  - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).]

#### Textual Amendments

- F7** Words in s. 86(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(1)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F8** Words in s. 86 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 33(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F9** S. 86(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 252(2)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F10** S. 86(4A) inserted (24.7.1996) by [1996 c. 55](#), s. 136, 149(1)(f), **Sch. 8 para. 5** (with s. 43(1)(6))
- F11** Words in s. 86(6) substituted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 30(1)**, 47(2)(b)
- F12** Words in s. 86(6) inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 33(1)**, 47(1)
- F13** S. 86(9) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 33(3)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- F14** Words in s. 86(9)(a) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\)](#), s. 126(2), **Sch. 7 para. 11**

## 87 General licence conditions.

- (1) A licence may include—
- (a) such conditions as appear to [F<sup>15</sup>OFCOM] 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 [F<sup>16</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
  - (b) conditions enabling [F<sup>15</sup>OFCOM] 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 [F<sup>15</sup>OFCOM] (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;

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- (d) conditions requiring the licence holder to furnish [F<sup>15</sup>OFCOM], 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 [F<sup>17</sup>, the Broadcasting Act 1996 or the Communications Act 2003];
  - (e) conditions requiring the licence holder, if found by [F<sup>15</sup>OFCOM] to be in breach of any condition of his licence, to reimburse to [F<sup>15</sup>OFCOM], 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 [F<sup>15</sup>OFCOM] to be appropriate.
- (2) A licence may in particular include—
- (a) conditions requiring the licence holder—
    - (i) to comply with any direction given by [F<sup>15</sup>OFCOM] as to such matters as are specified in the licence or are of a description so specified, or
    - (ii) (except to the extent that [F<sup>15</sup>OFCOM] 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, [F<sup>15</sup>OFCOM], <sup>F18</sup>...
    - <sup>F18</sup>(ii) . . . . .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 [F<sup>15</sup>OFCOM] by virtue of subsection (1)(c) shall be in accordance with such tariff as may from time to time be fixed by [F<sup>15</sup>OFCOM]; <sup>F19</sup> ...
- (4) A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and [F<sup>15</sup>OFCOM] 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 [F<sup>15</sup>OFCOM] 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).

**Textual Amendments**

**F15** Words in s. 87 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

**F16** Words in s. 87(1)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- F17** Words in s. 87(1)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F18** S. 87(2)(b)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F19** Words in s. 87(3) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 34\(5\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C2** S. 87(1)(d) modified (20.7.2004) by [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\), arts. 1, 10\(1\)\(a\)\(2\)](#) (a) (with art. 5)

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

- (1) [<sup>F20</sup>OFCOM] 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
  - [<sup>F21</sup>(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.]
- (2) [<sup>F20</sup>OFCOM] 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;
  - [<sup>F22</sup>(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting—
    - (i) shareholdings in the body; or
    - (ii) the directors of the body;

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- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining—
    - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;]
  - (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.
- [<sup>F23</sup>(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, [<sup>F20</sup>OFCOM] shall give the Secretary of State notice of their intention to do so, specifying the relevant change.]
- (3) Where [<sup>F20</sup>OFCOM] —
    - (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 [<sup>F20</sup>OFCOM] 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 [<sup>F20</sup>OFCOM] 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,[<sup>F20</sup>OFCOM] 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.
  - [<sup>F24</sup>(6) The Commission shall not serve any such notice on the licence holder unless—
    - (a) the Commission have notified him of the matters [<sup>F25</sup>constituting their grounds for revoking the licence] and given him a reasonable opportunity of making representations to them about those matters, and
    - (b) in a case where the relevant change is one falling within subsection (6A)—
      - (i) they have also given him an opportunity of complying with [<sup>F26</sup>the requirements imposed by or under Schedule 14 to the Communications Act 2003] within a period specified in the notification, and
      - (ii) the period specified in the notification has elapsed.
  - (6A) A relevant change falls within this subsection if it consists only in one or more of the following—
    - [<sup>F27</sup>(a) .....

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- (b) a change in the national market share (within the meaning of [F28Part 1 of Schedule 14 to the Communications Act 2003]) of one or more national newspapers (within the meaning of that Part of that Schedule);
- (c) a change in the local market share (within the meaning of [F29section 5]) in a particular area of one or more local newspapers (within the meaning of [F30Part 1 of Schedule 14 to the Communications Act 2003]).

F31(6B)] . . . . .

[F32(6C) [F20OFCOM] shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.

(6D) Where [F20OFCOM] receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.]

(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, [F33or
- (c) any other change giving rise to [F34a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,]]

being [F35(in any case)] a change which is such that, if it fell to [F20OFCOM] 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.

#### Textual Amendments

- F20** Words in s. 88 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F21** S. 88(1)(b)(c) substituted for s. 88(1)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 350\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F22** S. 88(2)(da)(db) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F23** S. 88(2A) inserted (24.7.1996) by [1996 c. 55, s. 136, Sch. 8 para. 6\(2\)](#) (with s. 43(1)(6))
- F24** S. 88: subsections (6)(6A)(6B) substituted for subsection (6) (1.11.1996) by [1996 c. 55, s. 73, Sch. 2 Pt. V para. 13\(2\)](#); [S.I. 1996/2120, art. 5, Sch. 2](#)
- F25** Words in s. 88(6)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F26** Words in s. 88(6)(b)(i) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(4\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F27** S. 88(6A)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F28** Words in s. 88(6A)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(5\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F29** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(a\)](#)
- F30** Words in s. 88(6A)(c) substituted (15.6.2011) by [The Media Ownership \(Radio and Cross-media\) Order 2011 \(S.I. 2011/1503\), arts. 1, 12\(b\)](#)
- F31** S. 88(6B) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 35\(6\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F32** S. 88(6C)(6D) inserted (24.7.1996) by [1996 c. 55, s. 136, Sch. 8 para. 6\(3\)](#) (with s. 43(1)(6))



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

- F33** S. 88(7)(c) and the word “or” immediately preceding it inserted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 13(3)(a)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- F34** Words in s. 88(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 35(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F35** Words in s. 88(7) substituted (1.11.1996) by 1996 c. 55, s. 73, **Sch. 2 Pt. V para. 13(3)(b)** (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

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

- C3** S. 88 modified (temp.) (17.7.2003) by The Communications Act 2003 (Commencement No. 1) Order 2003 (S.I. 2003/1900), **art. 5**
- C4** S. 88(1) modified (1.11.1996) by 1996 c. 55, s. 143(3)(4)(6)(b) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**
- C5** S. 88(1)(a) amended (1.11.1996) by 1996 c. 55, s. 145(7) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, **Sch. 2**

**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—

[<sup>F36</sup>(a) an offence under section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) consisting in the establishment or use of a wireless telegraphy station, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of Part 5 of that Act);]

[<sup>F36</sup>(aa) an offence under section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 8 of that Act would constitute an offence falling within paragraph (a);]

[<sup>F36</sup>(ab) an offence under section 37 or 38 of that Act (unlawful broadcasting offences);]

[<sup>F36</sup>(b) an offence under Part 5 of that Act (prohibition of broadcasting from sea or air); or]

(c) an offence under section 97 below.

<sup>F37</sup>(2) .....

(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 [<sup>F38</sup>concerned in—

(a) the provision of the licensed service or the making of programmes included in it; or

(b) the operation of [<sup>F39</sup>a wireless telegraphy station] used for broadcasting the service.]

**Textual Amendments**

- F36** S. 89(1)(a)(aa)(ab)(b) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), s. 126(2), **Sch. 7 para. 12(2)**
- F37** S. 89(2) 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)

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

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- F38** Words in s. 89(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 36\(3\)\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F39** Words in s. 89(3)(b) substituted (8.2.2007) by [Wireless Telegraphy Act 2006 \(c. 36\), s. 126\(2\), Sch. 7 para. 12\(3\)](#)

### *General provisions about licensed services*

#### **F4090 General requirements as to licensed services.**

.....

##### **Textual Amendments**

- F40** Ss. 90-96 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](#))

#### **F4091 General code for programmes.**

.....

##### **Textual Amendments**

- F40** Ss. 90-96 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](#))

#### **F4092 General provisions as to advertisements.**

.....

##### **Textual Amendments**

- F40** Ss. 90-96 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](#))

#### **F4093 Control of advertisements.**

.....

##### **Textual Amendments**

- F40** Ss. 90-96 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](#))

#### **F4094 Government control over licensed services.**

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

**Textual Amendments**

**F40** Ss. 90-96 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)

**F4095 Monitoring by Authority of programmes included in licensed services.**

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**Textual Amendments**

**F40** Ss. 90-96 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)

**F4096 Audience research.**

.....

**Textual Amendments**

**F40** Ss. 90-96 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)

*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 [<sup>F41</sup>relevant regulated radio service] without being authorised to do so by or under a licence under this Part [<sup>F42</sup>or Part II of the Broadcasting Act 1996] shall be guilty of an offence.

[<sup>F43</sup>(1A) In subsection (1) “relevant regulated radio service” means a service falling to be regulated by OFCOM under section 245 of the Communications Act 2003, other than a radio multiplex service.]

(2) The Secretary of State may, after consultation with [<sup>F44</sup>OFCOM], 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) 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.

#### Textual Amendments

- F41** Words in s. 97(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F42** Words in S. 97(1) inserted (1.10.1996) by [1996 c. 55, s. 148\(1\), Sch. 10 Pt. I para. 7\(b\)](#) (with s. 43(1)(6)); [S.I. 1996/2120, art. 4, Sch. 1](#)
- F43** S. 97(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F44** Words in s. 97(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 37\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C6** S. 97(1) excluded by [S.I. 1990/2536, art. 2\(1\)](#)
- C7** S. 97(1) excluded (19.3.2007) by [The Broadcasting Act 1990 \(Independent Radio Services Exceptions\) Order 2007 \(S.I. 2007/272\), arts. 1\(1\), 2](#)

### *<sup>F45</sup>Digital switchover*

#### Textual Amendments

- F45** [Ss. 97A 97B](#) and cross-heading inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\), ss. 30\(2\), 47\(2\)\(b\)](#)

#### 97A Date for digital switchover

- (1) The Secretary of State may give notice to OFCOM nominating a date for digital switchover for the post-commencement services specified or described in the notice.
- (2) When nominating a date, or considering whether to nominate a date, the Secretary of State must have regard to any report submitted by OFCOM or the BBC under section 67(1)(b) of the Broadcasting Act 1996 (review of digital radio broadcasting).
- (3) The Secretary of State—
- (a) may nominate different dates for different services, and
  - (b) may give notice to OFCOM withdrawing a nomination under this section.
- (4) In this section and section 97B—
- “date for digital switchover”, in relation to a post-commencement service, means a date after which it will cease to be appropriate for the service to continue to be provided in analogue form;
- “post-commencement service” means a local service, national service or additional service that is provided under a licence that—
- (a) was granted on or after the day on which this section comes into force, or

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(b) has been renewed under section 103B or 104AA.

### **97B Variation of licence period after date for digital switchover nominated**

- (1) This section applies if the Secretary of State has nominated a date for digital switchover for a post-commencement service (and has not withdrawn the nomination).
- (2) If the period for which the licence to provide the post-commencement service is to continue in force ends after the date for digital switchover, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (3).
- (3) OFCOM may not reduce the period so that it ends less than 2 years after the day on which they issue the notice, unless the licence holder consents to such a reduction.
- (4) If the period for which the licence to provide the post-commencement service is to continue in force ends on or before the date for digital switchover, OFCOM may not vary the licence so that the period ends after that date.]

## **CHAPTER II**

### **SOUND BROADCASTING SERVICES**

#### *National services*

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

- (1) Where [<sup>F46</sup>OFCOM] 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,
    - [<sup>F47</sup>(iiia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;]
    - (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.

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- (2) In determining the minimum area of the United Kingdom for which a national service is to be provided [<sup>F46</sup>OFCOM] 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.
- (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 <sup>F48</sup>...—
    - (i) comply with any requirement specified in the notice under subsection (1)(b)(iii) or (iv), <sup>F49</sup>...
    - <sup>F49</sup>(ii) .....
  - <sup>F50</sup>(aa) the applicant's proposals (if any) for providing a simulcast radio service corresponding to the service;
  - (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 [<sup>F46</sup>OFCOM] 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 [<sup>F46</sup>OFCOM] may reasonably require for the purpose of considering the application.
- <sup>F51</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 [<sup>F46</sup>OFCOM] may require the applicant to furnish additional information under any of paragraphs (a), [<sup>F52</sup>(aa),] (c), (e) and (f) of subsection (3).
- (5) Any information to be furnished to [<sup>F46</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [<sup>F46</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—
- (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) [<sup>F53</sup> and (aa)]; and

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- (c) such other information connected with his application as [F46OFCOM] consider appropriate.
- (7) In this section  
[F54“national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and]  
“programme” does not include an advertisement.
- (8) In this Part “cash bid”, in relation to a licence, means an offer to pay to [F46OFCOM] 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

- F46** Words in s. 98 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F47** S. 98(1)(b)(ia) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(2\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F48** Word in s. 98(3)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F49** S. 98(3)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F50** S. 98(3)(aa) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(3\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F51** S. 98(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F52** Word in s. 98(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(5\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F53** Words in s. 98(6)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 38\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F54** Words in s. 98(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), ss. 257\(4\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

## 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, [F55OFCOM] 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 F56...—
- (i) comply with any requirement specified under subsection (1)(b)(iii) or (iv) of section 98, F57...
- F57(ii) .....
- (b) that he would be able to maintain that service [F58and any proposed simulcast radio service corresponding to that service] throughout the period for which the licence would be in force.

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

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- (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 [F55OFCOM] that the requirements of subsection (1)(a) and (b) above are satisfied.

#### Textual Amendments

- F55** Words in s. 99 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F56** Word in s. 99(1)(a) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(a\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F57** S. 99(1)(a)(ii) and the word immediately preceding it repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(3\)\(b\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))
- F58** Words in s. 99(1)(b) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 39\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) Subject to the following provisions of this section, [F59OFCOM] 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.

[F60(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—

- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where—

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

(2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—

- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
- (b) they propose to exercise their power under subsection (3).

(2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).



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

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- (2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.]
- (3) [F59OFCOM] 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 [F59OFCOM], 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 [F59OFCOM], 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.
- (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 [F59OFCOM] 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 [F59OFCOM] 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 [F59OFCOM] 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, [F59OFCOM]’s reasons for the licence having been so awarded; and

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- (d) such other information as [<sup>F59</sup>OFCOM] 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 [<sup>F59</sup>OFCOM] 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 [<sup>F59</sup>OFCOM] 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.

#### Textual Amendments

- F59** Words in s. 100 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 40](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F60** S. 100(1A)-(2C) substituted for s. 100(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 257\(5\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F61</sup>100A] Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.]

#### Textual Amendments

- F61** S. 100A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 257\(6\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### 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 [<sup>F62</sup>OFCOM] that he does not intend to provide [<sup>F63</sup>the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A], or

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- (b) [F62OFCOM] for any other reason have reasonable grounds for believing that that person will not provide [F64the licensed national service or any such simulcast radio service] once the licence has come into force, then, subject to subsection (2)—
- (i) [F62OFCOM] 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 [F62OFCOM] have served on him a notice stating their grounds for believing that he will not provide [F65the licensed national service or the simulcast radio service] 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 [F62OFCOM] 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, [F66a specified financial penalty].
- [F67(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) £250,000; 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) £250,000; 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 102(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 122(4), be recoverable by [F62OFCOM] as a debt due to them from any person who controls that body.

#### Textual Amendments

- F62** Words in s. 101 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F63** Words in s. 101(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F64** Words in s. 101(1)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F65** Words in s. 101(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 41\(4\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F66** Words in s. 101(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F67** S. 101(3A)-(3D) substituted for s. 101(4) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 6\(2\)\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C8** S. 101(3) modified (1.11.1996) by [1996 c. 55, s. 145\(6\)\(b\)](#) (with [s. 43\(1\)\(6\)](#)); S.I. 1996/2120, art. 5, [Sch. 2](#)
- C9** S. 101(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)
- C10** S. 101(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)

**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 <sup>[F68]</sup>OFCOM] (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.
- (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.

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- (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 [F68OFCOM] 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 [F68OFCOM] 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 [F69Statistics Board].

#### Textual Amendments

**F68** Words in s. 102 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 42](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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**F69** Words in s. 102(10) substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 6\(3\)](#); [S.I. 2008/839](#), art. 2

### 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 <sup>[F70]</sup>OFCOM],

then (subject to subsection (5)) <sup>[F70]</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>[F71]</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 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 <sup>[F72]</sup>as it has effect for the purposes of that Schedule.]

- (3) <sup>[F70]</sup>OFCOM] 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) <sup>[F70]</sup>OFCOM] 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) <sup>[F70]</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.
- (6) Where under subsection (1) <sup>[F70]</sup>OFCOM] 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 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.

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

#### Textual Amendments

- F70** Words in s. 103 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F71** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F72** Words in s. 103(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 43\(3\)\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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

- C11** S. 103 applied (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 18 para. 44\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### [<sup>F73</sup>103A] **Renewal of national licences.**

- (1) A national licence may (subject to the following provisions of this section) be renewed [<sup>F74</sup>under this section] on one occasion for a period of [<sup>F75</sup>twelve] years beginning with the date of renewal.
- (2) An application for the renewal of a national licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than [<sup>F76</sup>the day falling three months before] the relevant date.
- (3) Where any such application is made <sup>F77</sup>...—
  - <sup>F78</sup>(a) .....
  - (b) <sup>F79</sup>..., [<sup>F80</sup>OFCOM] may postpone the consideration of the application for so long as they think appropriate having regard to subsection (8).
- (4) Where an application for the renewal of a national licence has been duly made to [<sup>F80</sup>OFCOM], they shall (subject to subsection (5)) grant the application if, but only if—
  - (a) [<sup>F80</sup>OFCOM] are satisfied that the applicant would, if his licence were renewed, provide a national service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section),
  - [<sup>F81</sup>(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and]
  - (c) a simulcast radio service provided by the applicant is being broadcast in digital form or [<sup>F80</sup>OFCOM] are satisfied that by the relevant date the applicant has done all that it would in the circumstances be reasonable to expect him to do by that date to procure the broadcasting of such a service within such time as [<sup>F80</sup>OFCOM] consider reasonable.
- (5) Section 100(4) to (6) shall apply in relation to an applicant for the renewal of a national licence as those provisions apply in relation to such an applicant as is mentioned in section 100(4), 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 application under this section [<sup>F80</sup>OFCOM] —

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- (a) may, in a case where a simulcast radio service provided by the applicant is not yet being broadcast in digital form on the relevant date, determine a date by which the broadcasting of such a service in that form must begin;
- (b) shall determine an amount which is to be payable to [F80OFCOM] by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
- (c) may specify a different percentage from that specified under section 98(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 102(1)(c) during the period for which the licence is to be renewed.

[F82(7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.

(7A) For the purposes of subsection (6)(c)—

- (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.]

(8) Where [F80OFCOM] 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 F83 ..., as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—

- (a) any date determined by them under subsection (6)(a),
- (b) the amount determined by them under subsection (6)(b), and
- (c) any percentage specified by them under subsection (6)(c),

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 national licence has been renewed under this section—

- (a) any conditions included in it in pursuance of section 102 shall have effect during the period for which the licence has been renewed—
  - (i) as if the amount determined by [F80OFCOM] under subsection (6) (b) were an amount specified in a cash bid submitted by the licence holder, and
  - (ii) subject to any determination made under subsection (6)(c);
- (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 national licence is originally in force;
- (c) where [F80OFCOM] have determined a date under subsection (6)(a), they shall include in the licence as renewed a condition requiring a simulcast radio service to be broadcast in digital form throughout the period beginning with the date determined under subsection (6)(a) and ending with the date on which the licence (as renewed) is to expire; and
- (d) the reference in section 111(4) to the end of the period for which a national 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.

F84(10) .....



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[ In the case of a pre-transfer national licence (including one for a period extended under <sup>F85</sup>(10A) section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.]

(11) In this section—

<sup>F86</sup>  
...

“the relevant date”, in relation to a national licence, means the date which [<sup>F80</sup>OFCOM] determine to be that by which they would need to publish a notice under section 98(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 national service formerly provided under that licence.]

[<sup>F87</sup>(12) A determination for the purposes of subsection (11)—

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.]

#### Textual Amendments

- F73** S. 103A inserted (24.7.1996) by 1996 c. 55, **ss. 92**, 149(e) (with s. 43(1)(6))
- F74** Words in s. 103A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 31(1)**, 47(2)(b)
- F75** Word in s. 103A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F76** Words in s. 103A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F77** Words in s. 103A(3) 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)
- F78** S. 103A(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F79** Words in s. 103A(3)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 44(5), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F80** Words in s. 103A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F81** S. 103A(4)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F82** S. 103A(7)(7A) substituted for s. 103A(7) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F83** Words in s. 103A(8) 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)
- F84** S. 103A(10) 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)
- F85** S. 103A(10A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(8)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F86** Words in s. 103A(11) 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)
- F87** S. 103A(12) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 44(9)** (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, Part III. (See end of Document for details)*

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

- C12** S. 103A(2) modified (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 18 para. 50(3)–(6)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- C13** S. 103A(12) restricted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 18 para. 50(1),(2)(b),(6)** (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F88</sup>103B Further renewal of national licences

- (1) A national licence may be renewed under this section on [<sup>F89</sup>three occasions] for a period of not more than 7 years [<sup>F90</sup>(on the [<sup>F91</sup>first occasion),] 5 years (on the second occasion)] [<sup>F92</sup>or 10 years (on the third occasion)] beginning with the date of renewal (“the renewal period”) (subject to the following provisions of this section).
- (2) Subsections (2) to (9), (11) and (12) of section 103A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 103A, subject to [<sup>F93</sup>subsections (3) and (3A)].
- (3) Those provisions apply in relation to the renewal of a licence under this section as if the following were omitted—
  - (a) subsection (4)(b),
  - (b) in subsection (4)(c), the words from “or OFCOM” to the end,
  - (c) subsection (6)(a),
  - (d) subsection (8)(a), and
  - (e) subsection (9)(c).

[ Section 103A(12) (as applied) does not prevent the determination of a date falling less <sup>F94</sup>(3A) than one year after the making of the determination where—

- (a) the renewal of the licence in question would be the third renewal under this section,
  - (b) OFCOM consider that the relevant date for the purposes of section 103A (as applied) is a date which is not more than 15 months after the day on which this subsection comes into force, and
  - (c) the determination is made as soon as practicable after that day.]
- (4) Where OFCOM renew a licence under this section they must include in the licence as renewed a condition requiring the licence holder to do all that the licence holder can to secure the broadcasting of a simulcast radio service in digital form throughout the renewal period.]

#### Textual Amendments

- F88** S. 103B inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 31(2)**, 47(2)(b) (with s. 31(3))
- F89** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(a)(i)**
- F90** Words in s. 103B(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **2(b)**
- F91** Words in s. 103B(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(a)(ii)**
- F92** Words in s. 103B(1) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(a)(iii)**

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- F93** Words in s. 103B(2) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(b)**
- F94** S. 103B(3A) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **3(c)**

### *Local and other services*

#### **104 Applications for other licences.**

- (1) Where [F95OFCOM] 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 [F95OFCOM] 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 [F95OFCOM] may reasonably require for the purpose of considering the application.
- (3) At any time after receiving such an application and before determining it [F95OFCOM] may require the applicant to furnish additional information under subsection (2)(b), (c) or (d).
- (4) [F95OFCOM] shall, at the request of any person and on the payment by him of such sum (if any) as [F95OFCOM] may reasonably require, make available for inspection by that person any information furnished under subsection (2)(b) by the applicants for a local licence.
- <sup>F96</sup>(5) .....
- (6) [F97An application for a licence to provide a restricted service shall be made] in such manner as [F95OFCOM] may determine, and shall be accompanied by such fee (if any) as [F95OFCOM] may determine.

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- (7) In this section and sections 105 and 106 “programme” does not include an advertisement.

#### Textual Amendments

- F95** Words in s. 104 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 45\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F96** S. 104(5)(6)(a) repealed (1.11.1996) by 1996 c. 55, ss. 94(2), 148(2), [Sch. 11 Pt. I](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)
- F97** Words in s. 104(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 45\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

#### [<sup>F98</sup>104A] Renewal of local licences.

- (1) A local licence may (subject to the following provisions of this section) be renewed [<sup>F99</sup>under this section] on one occasion for a period of [<sup>F100</sup>twelve] years beginning with the date of renewal.
- [ A local licence may be renewed under this section only if it is granted before the day <sup>F101</sup>(1A) on which section 104AA comes into force.]
- (2) No application for the renewal of a local licence under subsection (1) may be made before [<sup>F102</sup>OFCOM] first publish a notice pursuant to section 50(2) of the Broadcasting Act 1996 inviting applications for a licence to provide a relevant local radio multiplex service.
- (3) Subject to subsection (2), an application for the renewal of a local licence under subsection (1) may be made by the licence holder not earlier than three years before the date on which it would otherwise cease to be in force and not later than [<sup>F103</sup>the day falling three months before] the relevant date.
- (4) The applicant must, in his application or at any time before the consideration of his application, nominate—
- (a) a local digital sound programme service provided or to be provided by him, and
  - (b) a relevant local radio multiplex service [<sup>F104</sup>or a relevant small-scale radio multiplex service],
- but may not nominate together a local digital sound programme service and a local radio multiplex service [<sup>F105</sup>or a local digital sound programme service and a small-scale radio multiplex service] if another local licence held by him includes a condition in pursuance of subsection (12) relating to the broadcasting of that local digital sound programme service by that local radio multiplex service [<sup>F106</sup>or (as the case may be) that small-scale radio multiplex service].
- (5) Where an application for the renewal of a local licence has been duly made to [<sup>F102</sup>OFCOM], they shall grant the application if—
- (a) they are satisfied that the applicant would, if his licence were renewed, provide a local service which complied with the conditions included in the licence in pursuance of section 106 (whether as originally imposed or as varied under that section), <sup>F107</sup>...

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- (b) the nominated local digital sound programme service provided by the applicant is being broadcast by means of the nominated local radio multiplex service [F<sup>108</sup> or the nominated small-scale radio multiplex service].
- [ F<sup>109</sup>(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;]
- (6) Where the condition specified in subsection (5)(a) is satisfied, [F<sup>102</sup>OFCOM] may grant the application even though the condition specified in subsection (5)(b) is not satisfied if—
- (a) the applicant holds a licence to provide local digital sound programme services,
- (b) a licence to provide the nominated local radio multiplex service [F<sup>110</sup> or the nominated small-scale radio multiplex service] has been awarded, and
- (c) it appears to [F<sup>102</sup>OFCOM] that, under a contract between the applicant and the person to whom that licence has been awarded, the applicant is obliged to provide the nominated local digital sound programme service for broadcasting by means of the nominated local radio multiplex service [F<sup>110</sup> or the nominated small-scale radio multiplex service].
- (7) [F<sup>102</sup>OFCOM] may in any case postpone consideration of the application until the relevant date.
- (8) If, at the relevant date, the condition specified in subsection (5)(b) is not satisfied, and any of the conditions specified in subsection (6) is not satisfied, [F<sup>102</sup>OFCOM] may postpone consideration of the application for such period not exceeding twelve months as they think appropriate.
- (9) Where [F<sup>102</sup>OFCOM] postpone consideration of an application under this section for any period beyond the relevant date (the “postponement period”), they shall extend the period for which the licence is in force by a period equal to the postponement period; and section 86(3) shall not limit the powers of [F<sup>102</sup>OFCOM] under this subsection.
- (10) On the grant of any application under this section [F<sup>102</sup>OFCOM] shall—
- (a) where the nominated local digital sound programme service provided by the applicant is not being broadcast by means of the nominated local radio multiplex service [F<sup>111</sup> or the nominated small-scale radio multiplex service], determine a date by which that service must have begun to be so broadcast; and
- (b) specify a fee payable to [F<sup>102</sup>OFCOM] in respect of the renewal.
- (11) Where [F<sup>102</sup>OFCOM] have granted a person’s application under this section they shall formally renew his licence as soon afterwards as is reasonably practicable; and they shall not so renew his licence unless they have notified him of—
- (a) any date determined by them under subsection (10)(a), and
- (b) the renewal fee specified by them under subsection (10)(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.
- (12) Where [F<sup>102</sup>OFCOM] renew a licence under this section they shall include in the licence as renewed a condition requiring the licence holder to do all that he can to ensure that the nominated local digital sound programme service is broadcast by means

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of the nominated local radio multiplex service [<sup>F112</sup>or the nominated small-scale radio multiplex service] throughout the period beginning with whichever is the later of—

- (a) the date on which the licence would expire if not renewed, and
  - (b) any date determined by them under subsection (10)(a),
- and ending with the date on which the licence (as renewed) is to expire.

[ In the case of a pre-transfer local licence (including one for a period extended under <sup>F113</sup>(12A) section 253 of the Communications Act 2003)—

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.]

(13) In this section—

- (a) “local digital sound programme service” has the same meaning as in Part II of the Broadcasting Act 1996;
- (b) “nominated” means nominated by the applicant under subsection (4);
- (c) “relevant date”, in relation to a local licence, means the date which [<sup>F1102</sup>OFCOM] determine to be that by which they would need to publish a notice under section 104(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 local service formerly provided under that licence; <sup>F114</sup>...
- (d) “relevant local radio multiplex service”, in relation to a local licence, means a local radio multiplex service (within the meaning of Part II of the Broadcasting Act 1996) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose [<sup>F115</sup>the coverage area for a local service or local radio multiplex service is the area determined by OFCOM to be the area in the United Kingdom within which the service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this paragraph; and]

<sup>F116</sup>(e) [ “relevant small-scale radio multiplex service”, in relation to a local licence, means a small-scale radio multiplex service (within the meaning of section 258A of the Communications Act 2003) with a coverage area which to a significant extent includes the coverage area of the local service provided under the local licence; and for this purpose the coverage area for a local service or small-scale radio multiplex service is the area determined by OFCOM to be the area in the United Kingdom within which the service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this paragraph.]

[ A determination for the purposes of subsection (13)(c)—

- <sup>F117</sup>(14) (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.]]

#### Textual Amendments

**F98** Ss. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, Sch. 2

**F99** Words in s. 104A(1) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), ss. 32(1)(a), 47(2)(b)

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- F100** Word in s. 104A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F101** S. 104A(1A) inserted (8.4.2010) by Digital Economy Act 2010 (c. 24), **ss. 32(1)(b)**, 47(2)(b)
- F102** Words in s. 104A substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F103** Words in s. 104A(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F104** Words in s. 104A(4)(b) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(i)**
- F105** Words in s. 104A(4) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(ii)**
- F106** Words in s. 104A(4) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(a)(iii)**
- F107** Word in s. 104A(5)(a) 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)
- F108** Words in s. 104A(5)(b) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(b)**
- F109** S. 104A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 254**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F110** Words in s. 104A(6) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(c)**
- F111** Words in s. 104A(10)(a) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(d)**
- F112** Words in s. 104A(12) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(e)**
- F113** S. 104A(12A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F114** Word in s. 104A(13)(c) omitted (10.12.2020) by virtue of The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(i)**
- F115** Words in s. 104A(13)(d) substituted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(ii)**
- F116** S. 104A(13)(e) inserted (10.12.2020) by The Legislative Reform (Renewal of Radio Licences) Order 2020 (S.I. 2020/1526), arts. 1, **4(f)(iii)**
- F117** S. 104A(14) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 46(7)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C14** S. 104A(3) modified (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 18 para. 50(3)-(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- C15** S. 104A(14) restricted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2) **Sch. 18 para. 50(1), (2)(c), (6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**[<sup>F118</sup>104A] Further renewal of local licences**

- (1) A local licence may be renewed under this section on [<sup>F119</sup>three occasions] for a period of not more than 7 years [<sup>F120</sup>(on the [<sup>F121</sup>first occasion),] 5 years (on the second occasion)] [<sup>F122</sup>or 10 years (on the third occasion)] beginning with the date of renewal (subject to the following provisions of this section and section 104AB).
- (2) A local licence may be renewed under this section only if—
- it has been renewed under section 104A, or
  - it is granted on or after the day on which this section comes into force <sup>F123</sup>....

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- (3) Subsections (3) to (12), (13) and (14) of section 104A apply in relation to the renewal of a licence under this section as they apply in relation to the renewal of a licence under section 104A, subject to subsections (4) [<sup>F124</sup>, (4A)] and (5).
- (4) Section 104A(3) (as applied) has effect as if the words “Subject to subsection (2)” were omitted.
- [ Section 104A(14) (as applied) does not prevent the determination of a date falling less <sup>F125</sup>(4A) than one year after the making of the determination where—
- (a) the renewal of the licence in question would be the third renewal under this section,
  - (b) OFCOM consider that the relevant date for the purposes of section 104A (as applied) is a date which is not more than 15 months after the day on which this subsection comes into force, and
  - (c) the determination is made as soon as practicable after that day.]
- (5) In the case of an approved licence, if an applicant for renewal of the licence under this section makes a national nomination in accordance with section 104AB, section 104A (as applied) has effect as if—
- (a) subsections (4) and (13)(b) were omitted,
  - (b) references to the nominated local digital sound programme service were references to the national digital sound programme service nominated under section 104AB, <sup>F126</sup> ...
  - (c) references to the nominated local radio multiplex service were references to the national radio multiplex service nominated under section 104AB [<sup>F127</sup>, and
  - (d) references to the nominated small-scale radio multiplex service were omitted.]
- (6) In this section and sections 104AB and 104AC—
- “approved licence” means a local licence approved by OFCOM for the purposes of this section;
- “local digital sound programme service”, “local radio multiplex service”, “national digital sound programme service” and “national radio multiplex service” have the same meanings as in Part 2 of the Broadcasting Act 1996.
- [<sup>F128</sup>“small-scale radio multiplex service” has the same meaning as in section 258A of the Communications Act 2003.]
- (7) Before approving a licence for the purposes of this section, OFCOM must publish a document specifying—
- (a) the licence proposed to be approved, and
  - (b) a period in which representations may be made to OFCOM.

#### **Textual Amendments**

**F118** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))

**F119** Words in s. 104AA(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(i)**

**F120** Words in s. 104AA(1) inserted (15.12.2015) by [The Legislative Reform \(Further Renewal of Radio Licences\) Order 2015 \(S.I. 2015/2052\)](#), arts. 1, **3(a)(ii)**

**F121** Words in s. 104AA(1) substituted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(ii)**



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- F122** Words in s. 104AA(1) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(a)(iii)**
- F123** Words in s. 104AA(2) omitted (10.12.2020) by virtue of [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(b)**
- F124** Word in s. 104AA(3) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(c)**
- F125** S. 104AA(4A) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(d)**
- F126** Word in s. 104AA(5)(b) omitted (10.12.2020) by virtue of [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(e)(i)**
- F127** S. 104AA(5)(d) and word inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(e)(ii)**
- F128** Words in s. 104AA(6) inserted (10.12.2020) by [The Legislative Reform \(Renewal of Radio Licences\) Order 2020 \(S.I. 2020/1526\)](#), arts. 1, **5(f)**

#### **104AB Renewal under section 104AA: nomination of national services**

- (1) For the purposes of section 104AA, a “national nomination” by an applicant for the renewal of an approved licence is the nomination of—
  - (a) a national digital sound programme service provided or to be provided by the applicant, and
  - (b) a national radio multiplex service.
- (2) A national nomination must be made in the application for the renewal of the approved licence or before OFCOM consider the application.
- (3) The applicant may not nominate a national digital sound programme service unless OFCOM are satisfied that, if the application in question were granted, the programmes included in that service in each calendar month would include at least 80% of the programmes included in the service provided under the approved licence.
- (4) A national nomination must specify the other approved licences (if any) in relation to which, in reliance on the nomination, an application may be made under section 104AC.

#### **Textual Amendments**

- F118** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2)**, 47(2)(b) (with s. 32(3)(4))

#### **104AC Variation of conditions relating to digital services**

- (1) This section applies where—
  - (a) a licence that is an approved licence has been renewed under section 104A and includes a local digital services condition,
  - (b) an application has been made under section 104AA for the renewal of another approved licence and the applicant has made a national nomination under section 104AB, and
  - (c) the nomination specifies the licence mentioned in paragraph (a) in accordance with section 104AB(4).

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- (2) OFCOM may, if the requirements of subsections (3) and (4) are met, vary the licence mentioned in subsection (1)(a) by—
- (a) removing the local digital services condition, and
  - (b) adding a national digital services condition.
- (3) OFCOM must have received an application for the variation from the licence holder.
- (4) OFCOM must be satisfied that, if they varied the licence, the programmes included in the nominated national digital sound programme service in each calendar month would include at least 80% of the programmes included in the service provided under that licence.
- (5) In this section—

“local digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that a local digital sound programme service is broadcast by means of a local radio multiplex service;

“national digital services condition” means a condition requiring the licence holder to do all that the licence holder can to ensure that the nominated national digital sound programme service is broadcast by means of the nominated national radio multiplex service until the day on which the licence (as renewed under section 104A) is to expire;

“nominated” means nominated in the nomination referred to in subsection (1)(b).]

#### Textual Amendments

**F118** Ss. 104AA-104AC inserted (8.4.2010) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 32(2), 47(2)(b)** (with [s. 32\(3\)\(4\)](#))

### **104B** <sup>F129</sup> **Special application procedure for local licences.**

- (1) Where—
- (a) a local licence is due to expire (otherwise than by virtue of section 110), <sup>F130</sup>and]
  - <sup>F131</sup>(b) .....
  - (c) <sup>F132</sup>[OFCOM] propose to grant a further licence to provide the service in question,  
<sup>F132</sup>[OFCOM] may if they think fit publish a notice under subsection (2) instead of a notice under section 104(1).

<sup>F133</sup>(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.]

- (2) A notice under this subsection is a notice—
- (a) stating that <sup>F132</sup>[OFCOM] propose to grant a further licence to provide a specified local service,
  - (b) specifying the area or locality in the United Kingdom for which the service is to be provided,
  - (c) inviting declarations of intent to apply for a licence to provide the service,

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- (d) specifying the closing date for such declarations, and
- (e) specifying—
  - (i) the application fee payable on any declaration made in pursuance of the notice, and
  - (ii) a deposit of such amount as [F132OFCOM] may think fit.
- (3) A declaration of intent made in pursuance of a notice under subsection (2) must be in writing and accompanied by the application fee and deposit specified under subsection (2)(e)(i) and (ii).
- (4) Where [F132OFCOM] receive a declaration of intent in accordance with the provisions of this section from a person other than the licence holder in relation to the service in question, they shall—
  - (a) publish a notice under section 104(1),
  - (b) specify—
    - (i) in relation to persons who have made a declaration of intent in accordance with the provisions of this section, no further application fee, and
    - (ii) in relation to all other applicants, an application fee of the same amount as the fee referred to in subsection (2)(e)(i), and
  - (c) repay the deposit referred to in subsection (2)(e)(ii) to every person—
    - (i) who has made a declaration of intent in accordance with the provisions of this section, and
    - (ii) who duly submits an application in pursuance of the notice referred to in paragraph (a).
- (5) Where [F132OFCOM] receive a declaration of intent in accordance with the provisions of this section from the licence holder in relation to the service in question, and no such declaration from any other person, they shall—
  - (a) invite the licence holder to apply for the licence in such manner as they may determine (but without requiring any further application fee), and
  - (b) on receiving an application duly made by him, repay to him the deposit referred to in subsection (2)(e)(ii).

F134(6) .....

F134(7) .....

#### Textual Amendments

- F129** S. 104A, 104B inserted (1.11.1996) by 1996 c. 55, s. 94(1) (with s. 43(1)(6)); S.I. 1996/2120, art. 5. Sch. 2
- F130** Word in s. 104B(1)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F131** S. 104B(1)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 255(b), 411(2), Sch. 19(1) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F132** Words in s. 104B substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F133** S. 104B(1A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 15 para. 47(3) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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**F134** S. 104B(6)(7) 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)

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

Where [<sup>F135</sup>OFCOM] 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
- [<sup>F136</sup>(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.]

### Textual Amendments

- F135** Words in s. 105 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 48\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F136** S. 105(d) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 48\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### *Miscellaneous provisions relating to national and local services*

#### [<sup>F137</sup>105A] Variation of licence period following renewal

- (1) This section applies if the Secretary of State—
  - (a) has not nominated a date for digital switchover under section 97A for one or more relevant renewed services, or
  - (b) has withdrawn the nomination of such a date and has not nominated another such date under that section.
- (2) The Secretary of State may give notice to OFCOM fixing a date (the “termination date”) in relation to that service or such of those services as are specified or described in the notice.
- (3) The Secretary of State may fix different dates for different services but may not fix a date falling before 31 December 2015.

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

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- (4) If the period for which a licence to provide a relevant renewed service is to continue in force ends after the termination date fixed for the service, OFCOM must by notice vary the licence so that the period ends on or before that date, subject to subsection (5).
- (5) OFCOM may not reduce the period so that it ends on a day falling less than 2 years after the date on which they issue the notice, unless the licence holder consents to such a reduction.
- (6) If the period for which a licence to provide a relevant renewed service is to continue in force ends on or before the termination date fixed for the service, OFCOM may not vary the licence so that the period ends after that date.
- (7) “Relevant renewed service” means a national service provided under a licence that has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA.]

#### Textual Amendments

**F137** S. 105A inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), ss. 33(2), 47(1) (with s. 33(4))

### 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 <sup>F138</sup>[OFCOM] 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 <sup>F139</sup>....
- <sup>F140</sup>(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—
  - (a) that the departure would not substantially alter the character of the service;
  - (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
  - (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; <sup>F141</sup>...
  - (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure <sup>F142</sup>; or
  - (e) that, in the case of a local licence—
    - (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but
    - (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).]
- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.]

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

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- (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 [<sup>F138</sup>OFCOM], where it appears to them to be reasonably practicable for the licensed service to be provided for any 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), [<sup>F138</sup>OFCOM] 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.
- [<sup>F143</sup>(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—
- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
  - (b) that the increase that would result is justifiable in the exceptional circumstances of the case.]
- (6) As soon as practicable after [<sup>F144</sup>OFCOM] 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.
- [<sup>F145</sup>(7) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
- (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional services;
- but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.]

#### Textual Amendments

- F138** Words in s. 106(1)-(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 49](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F139** Words in s. 106(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 312(2), 411(2), [Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F140** S. 106(1A)(1B) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 312\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F141** Word in s. 106(1A)(c) repealed (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), s. 47(1), [Sch. 2](#)
- F142** S. 106(1A)(e) and word inserted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 34\(1\)](#), 47(1)
- F143** S. 106(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 312\(4\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F144** Words in s. 106(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 49](#) (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, Part III. (See end of Document for details)

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**F145** S. 106(7) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 312(5), 411(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**[<sup>F146</sup>106ZA Consultation about change of character of local services**

- (1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying—
  - (a) the proposed departure; and
  - (b) the period in which representations may be made to OFCOM about the proposal.
- (2) That period must end not less than 28 days after the date of publication of the notice.
- (3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.
- (4) OFCOM—
  - (a) are not required to publish a notice under this section, and
  - (b) may specify a period of less than 28 days in such a notice as the period for representations,if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.
- (5) OFCOM are not required under this section—
  - (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
  - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (6) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (7) A matter is confidential under this subsection if—
  - (a) it relates specifically to the private affairs of an individual; and
  - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.]

**Textual Amendments**

**F146** S. 106ZA inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 313, 411(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**[<sup>F147</sup>106AVariation of local licence following change of control.**

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

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**Textual Amendments**

**F147** Ss. 106A-108 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>F147</sup>107 Party political broadcasts.**

.....

**Textual Amendments**

**F147** Ss. 106A-108 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>F147</sup>108 Promotion of equal opportunities in relation to employment by holder of national licence.**

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**Textual Amendments**

**F147** Ss. 106A-108 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)

*Enforcement of licences*

**109 Power to require scripts etc. or broadcasting of correction or [<sup>F148</sup>a statement of findings].**

- (1) If [<sup>F149</sup>OFCOM] 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 [<sup>F149</sup>OFCOM] under or by virtue of any provision of this Part, they may serve on him a notice—
  - (a) stating that [<sup>F149</sup>OFCOM] 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), [<sup>F149</sup>OFCOM] 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), [<sup>F149</sup>OFCOM] may direct him—
  - (a) to provide [<sup>F149</sup>OFCOM] in advance with such scripts and particulars of the programmes to be included in the licensed service as are specified in the direction; and



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- (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to [F149OFCOM] 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 [F149OFCOM] 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 [F148a statement of findings] (or both) under this subsection,
- they may (subject to subsection (4)) direct the licence holder to include in the licensed service a correction or [F148a statement of findings] (or both) in such form, and at such time or times, as they may determine.
- (4) [F149OFCOM] shall not give any person a direction under subsection (3) unless they have given him a reasonable opportunity of making representations to [F149OFCOM] about the matters complained of.
- (5) Where the holder of a licence includes a correction or [F148a statement of findings] 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.
- [F150(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

- F148** Words in s. 109 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**)
- F149** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **s. 411(2)**, **Sch. 15 para. 50** (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- F150** S. 109(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)

- C16** S. 109 applied (with modifications) (1.10.1996) by [1996 c. 55](#), **ss. 62(10)**, 66(10) (with **s. 43(1)(6)**); [S.I. 1996/2120](#), **art. 5**, **Sch. 2**
- C17** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (with **art. 11**)
- C18** S. 109(3) 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(b)** (with **art. 5**)

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

- (1) If [F149OFCOM] 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—

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

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- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to <sup>F149</sup>[OFCOM];
  - (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.
- <sup>F151</sup>(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).
- (1B) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
  - (b) 5 per cent. of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) 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.
- (1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.]
- (3) The amount of any financial penalty imposed in pursuance of subsection (1)(a) on the holder of any other licence shall not exceed <sup>F152</sup>[£250,000].
  - (4) <sup>F149</sup>[OFCOM] 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), <sup>F149</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.
  - (6) It is hereby declared that any exercise by <sup>F149</sup>[OFCOM] 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.
- <sup>F153</sup>(7) .....

#### Textual Amendments

- F149** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 50](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F151** S. 110(1A)-(1D) substituted for s. 110(2) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(1\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F152** Words in s. 110(3) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 13 para. 7\(2\)\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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**F153** S. 110(7) 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)

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

**C17** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 250\(3\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**C19** S. 110(1B)(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)

**C20** S. 110(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\(d\)](#) (with art. 5)

**C21** S. 110(3): 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)

## 111 Power to revoke licences.

- (1) If [<sup>F149</sup>OFCOM] 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—
  - (a) stating that [<sup>F149</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>F149</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>F149</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 him a notice revoking his licence.
- (4) If [<sup>F149</sup>OFCOM] 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 [<sup>F149</sup>OFCOM] 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

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

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- (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 [F149OFCOM] 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) [F149OFCOM] 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

**F149** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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

**C17** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 250\(3\)](#), 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**C22** S. 111 modified (1.10.1996) by [1996 c. 55, s. 43\(5\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 4, [Sch. 1](#)  
 S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, ss. 62\(10\)](#), 66(10) (with s. 43(1)(6));  
[S.I. 1996/2120, art. 5, Sch. 2](#)

S. 111 applied (with modifications) (1.10.1996) by [1996 c. 55, s. 59\(8\)\(9\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)

S. 111 modified (1.10.1996) by [1996 c. 55, s. 66\(12\)](#) (with s. 43(1)(6)); S.I. 1996/2120, art. 5, [Sch. 2](#)

**C23** S. 111(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\(e\)](#) (with art. 5)

#### [F154] 111A Enforcement of licences held by BBC companies.

Where [F149OFCOM] —

- (a) serve a notice on a BBC company under any provision of section 109, 110 or 111, or
- (b) receive any written representations from a BBC company under section 109(4), 110(4) or 111(8),

[F149OFCOM] shall send a copy of the direction, notice or representations to the Secretary of State.]

#### Textual Amendments

**F149** Words in ss. 109-111A substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 50](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

**F154** S. 111A inserted (24.7.1996) by [1996 c. 55, s. 136, 149\(1\)\(f\)](#), [Sch. 8 para. 7](#) (with s. 43(1)(6))

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

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

**C17** Ss. 109-111A applied (with modifications) (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 250(3), 411(2)** (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

[<sup>F155</sup>**111B** **Suspension of licences for inciting crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence granted under this Chapter if they are satisfied that—
  - (a) the licence holder has included in the licensed service one or more programmes containing material likely to encourage or incite the commission of crime or to lead to disorder,
  - (b) in doing so the licence holder has failed to comply with a condition included in the licence in compliance with section 263 of the Communications Act 2003, and
  - (c) the failure would justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1),
  - (b) specify the respects in which, in their opinion, the licence holder has failed to comply with the condition mentioned there,
  - (c) state that OFCOM may revoke the licence after the end of the period of 21 days beginning with the day on which the notice is served on the licence holder, and
  - (d) inform the licence holder of the right to make representations to OFCOM in that period about the matters that appear to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) is to suspend the licence from the time when the notice is served on the licence holder until either—
  - (a) the revocation of the licence takes effect, or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder in the 21 day period mentioned in subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they must serve on the licence holder a notice revoking the licence.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from whatever time is specified in the notice.
- (6) That time must not be earlier than the end of the period of 28 days beginning with the day on which the notice under subsection (4) is served on the licence holder.
- (7) Section 111 does not apply to the revocation of a licence under this section.]

**Textual Amendments**

**F155** **S. 111B** substituted (27.6.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 91(1), 118(2)**

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

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## CHAPTER III

### LICENSABLE SOUND PROGRAMME SERVICES

#### <sup>F156</sup> 112 Licensable sound programme services.

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##### Textual Amendments

**F156** S. 112 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>F157</sup> 113 Licensing etc. of licensable sound programme services.

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##### Textual Amendments

**F157** S. 113 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)

## 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 [<sup>F158</sup>electronic] signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided—[<sup>F159</sup>on a relevant frequency].
- (2) For the purposes of this Part the spare capacity within the signals carrying any such broadcasting service shall be taken to be [<sup>F160</sup>any part of the signals which—
  - (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and
  - (b) is determined by OFCOM to be available for the provision of additional services;]

and references in this Part to spare capacity shall be construed accordingly.

[<sup>F161</sup>(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.

(2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services.]

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

- (3) <sup>F162</sup>OFCOM shall, when determining under subsection (2)] 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).
- <sup>F163</sup>(5) . . . . .
- <sup>F164</sup>(6) In this section “electronic signal” means a signal within the meaning of section 32 of the Communications Act 2003.
- (7) In this section and section 115 “relevant frequency” means a frequency made available by OFCOM for the purposes of a sound broadcasting service.]

**Textual Amendments**

- F158** Word in s. 114(1) substituted (25.7.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(2)(a)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/1900, art. 2(1), Sch. 1
- F159** Words in s114(1) substituted for s. 14(1)(a)(b) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(2)(b)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F160** S. 114(2)(a)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(3)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F161** S. 114(2A)(2B) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(4)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F162** Words in s. 114(3) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(5)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F163** S. 114(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)
- F164** S. 114(6)(7) substituted for s. 114(6) (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 52(6)** (with Sch. 17 para. 52(7), Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**115 Licensing of additional services.**

- (1) <sup>F165</sup>OFCOM] shall do all that they can to secure that, in the case of each <sup>F166</sup>relevant frequency], 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 <sup>F165</sup>OFCOM] 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 <sup>F165</sup>OFCOM] may impose, to authorise any person to whom this subsection applies to provide any additional service on the spare capacity allocated by the licence.

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

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- (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 <sup>F167</sup>and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence].
- (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 <sup>F165</sup>OFCOM] 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 <sup>F165</sup>OFCOM].
- (8) The holder of a licence to provide a <sup>F168</sup>local or restricted service or to provide a radio licensable content 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.

#### Textual Amendments

- F165** Words in s. 115 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 53\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F166** Words in s. 115(1) substituted for s. 115(1)(a)(b) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 53\(3\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F167** Words in s. 115(4) inserted (18.9.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 53\(4\)](#) (with [Sch. 18](#)); S.I. 2003/1900, art. 2(2), Sch. 2
- F168** Words in s. 115(8) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 53\(5\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 116 Applications for additional services licences.

- (1) Where <sup>F169</sup>OFCOM] 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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*Changes to legislation:* There are currently no known outstanding effects for the Broadcasting Act 1990, Part III. (See end of Document for details)

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- (ii) the sound broadcasting service or services on whose frequency or frequencies the services are to be provided, and
    - (iii) <sup>F170</sup>... 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) [<sup>F169</sup>OFCOM] 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 [<sup>F169</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.
- (4) At any time after receiving such an application and before determining it [<sup>F169</sup>OFCOM] may require the applicant to furnish additional information under subsection (3)(b) or (d).
- (5) Any information to be furnished to [<sup>F169</sup>OFCOM] under this section shall, if they so require, be in such form or verified in such manner as they may specify.
- (6) [<sup>F169</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—
  - (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 [<sup>F169</sup>OFCOM] consider appropriate.

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

### Textual Amendments

**F169** Words in s. 116 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 54\(2\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F170** Words in s. 116(1)(b)(iii) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 54\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

## 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, <sup>F171</sup>[OFCOM] 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—

<sup>F172</sup>(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; 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 <sup>F171</sup>[OFCOM] that the requirements of paragraphs (a) and (b) above are satisfied.

<sup>F173</sup>(2) .....

(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 <sup>F171</sup>[OFCOM] that none of the services in question will be provided once the licence has come into force, or

(b) <sup>F171</sup>[OFCOM] for any other reason have reasonable grounds for believing that none of those services will be so provided,

then, subject to subsection (6)—

(i) <sup>F171</sup>[OFCOM] 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.

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

- (6) Subsection (5) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless [F171 OFCOM] 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.

F174 (7) .....

#### Textual Amendments

- F171** Words in s. 117 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F172** S. 117(1)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F173** S. 117(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F174** S. 117(7) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 55\(4\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

### 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 [F175 OFCOM] (in addition to any fees required to be so paid by virtue of section 87(1)(c))—
- 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;
  - in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and
  - 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—
- enabling [F175 OFCOM] to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
  - requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (4) Such a licence may in particular include conditions—
- authorising [F175 OFCOM] 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;
  - providing for the adjustment of any overpayment or underpayment.

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

(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.

**Textual Amendments**

**F175** Words in s. 118 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 56](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

- (1) An additional services licence may include such conditions as [<sup>F176</sup>OFCOM] 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.

<sup>F177</sup>(2) .....

**Textual Amendments**

**F176** Words in s. 119(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F177** S. 119(2) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 57\(3\), Sch. 19\(1\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**120 Enforcement of additional services licences.**

- (1) If [<sup>F178</sup>OFCOM] 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 [<sup>F178</sup>OFCOM] 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 [<sup>F178</sup>OFCOM].

[<sup>F179</sup>(1A)] The amount of a financial penalty imposed on a person in pursuance of subsection (1) 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

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

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construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

- (1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.]
- (3) [<sup>F178</sup>OFCOM] 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).

**Textual Amendments**

**F178** Words in s. 120 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 58](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F179** S. 120(1A)-(1C) substituted for s. 120(2) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 8](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

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

**C24** S. 120(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\(f\)](#) (with [art. 5](#))

**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.

<sup>F180</sup>**122 Certain receipts of Authority to be paid into Consolidated Fund.**

.....

**Textual Amendments**

**F180** Ss. 122-125 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>F180</sup>**123 Frequency planning and general research and development.**

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

**Textual Amendments**

**F180** Ss. 122-125 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)

**F180 124 Authority to assist Secretary of State in connection with licensing functions under 1949 Act.**

.....

**Textual Amendments**

**F180** Ss. 122-125 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)

**F180 125 Representation by Authority of Government and other interests in connection with broadcasting matters.**

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**Textual Amendments**

**F180** Ss. 122-125 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)

**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);

**F181**  
...

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

[**F182**“independent radio service” means a service falling to be regulated under section 245 of the Communications Act 2003;]

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

**F181**  
...

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

[**F183**“local service”, “national service” and “restricted service” each has the same meaning as in section 245 of the Communications Act 2003;

“pre-transfer local licence” and “pre-transfer national licence” each has the same meaning as in section 253 of that Act;

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“radio licensable content service” has the same meaning as in Part 3 of that Act;

“radio transfer date” has the same meaning as in that Act;]

[<sup>F184</sup>“simulcast radio service” means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;]

“sound broadcasting service” means a broadcasting service whose broadcasts consist of transmissions in sound only [<sup>F185</sup>but does not include a radio multiplex service ] [<sup>F186</sup>(within the meaning of Part 3 of the Communications Act 2003)] ;

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

[<sup>F187</sup>(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act.]

(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.

#### Textual Amendments

**F181** Words in s. 126(1) 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)

**F182** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(a\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F183** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(b\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F184** Words in s. 126(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 256\(2\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F185** Words in s. 126 inserted (1.10.1996) by [1996 c. 55](#), s. 148(1), [Sch. 10 Pt. I para. 9](#) (with s. 43(1)(6)); [S.I. 1996/2120](#), art. 4, [Sch. 1](#)

**F186** Words in s. 126(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 15 para. 59\(c\)](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F187** S. 126(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), [ss. 256\(3\)](#), 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting Act 1990, Part III.