



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART VII

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

##### *Obscenity*

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

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

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

- (1) Section 51 of the Civic Government (Scotland) Act 1982 (offences of displaying, publishing, etc. of obscene material) shall be amended in accordance with the following provisions of this section.
- (2) After subsection (2) there shall be inserted the following subsection—
  - “(2A) Subject to subsection (4) below, any person who—
    - (a) is responsible for the inclusion of any obscene material in a programme included in a programme service; or
    - (b) with a view to its eventual inclusion in a programme so included, makes, prints, has or keeps any obscene material,
 shall be guilty of an offence under this section.”
- (3) In subsection (6), paragraph (a) shall cease to have effect.
- (4) In subsection (8)—
  - (a) in the definition of “material”, the words from “and” onwards shall be omitted;
  - (b) after the definition of “prescribed sum” there shall be inserted—
 

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

*Racially inflammatory material etc.*

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

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

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- (iv) subsection (8) (application of certain provisions of the Cable and Broadcasting Act 1984).
- (4) In section 23 (possession of racially inflammatory material)—
  - (a) in subsection (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”;
  - (b) in subsection (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service”; and
  - (c) subsection (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In section 29 (interpretation)—
  - (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—

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

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

- (1) Part III of the Public Order (Northern Ireland) Order 1987 (stirring up hatred or arousing fear) shall be amended as follows.
- (2) In each of the following provisions, namely—
  - (a) Article 9(5) (exemption from prohibition applying to use of threatening words etc.), and
  - (b) Article 11(4) (exemption from prohibition applying to distribution etc. of recordings),for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”.
- (3) In Article 12 (broadcasting or including programme in cable programme service)—
  - (a) in paragraphs (1), (3)(b), (4)(a) and (5)(a), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “included in a programme service”; and
  - (b) the following provisions shall be omitted—
    - (i) in paragraph (2)(a), the words “broadcasting or cable”,
    - (ii) in paragraphs (4)(b) and (5)(b), the words “broadcast or”, wherever occurring,
    - (iii) paragraph (7) (exemption for programmes broadcast by BBC or Independent Broadcasting Authority), and
    - (iv) paragraph (8) (application of certain provisions of Cable and Broadcasting Act 1984).
- (4) In Article 13 (possession of matter intended or likely to stir up hatred or arouse fear)—

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- (a) in paragraph (1), for “broadcast or included in a cable programme service”, wherever occurring, there shall be substituted “or included in a programme service”;
  - (b) in paragraph (2), for “broadcasting or inclusion in a cable programme service” there shall be substituted “or inclusion in a programme service”; and
  - (c) paragraph (4) (exemption for material kept by BBC or Independent Broadcasting Authority) shall be omitted.
- (5) In Article 17 (interpretation)—
- (a) the definitions of “broadcast” and “cable programme service” shall be omitted;
  - (b) in the definition of “programme”, for “broadcast or included in a cable programme service” there shall be substituted “included in a programme service”; and
  - (c) the following definition shall be inserted after that definition—
    - ““programme service” has the same meaning as in the Broadcasting Act 1990;”.

### *Defamation*

#### **166 Defamatory material**

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

### *Supplementary*

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

- (1) If a justice of the peace is satisfied by information on oath laid by a constable that there is reasonable ground for suspecting that a relevant offence has been committed

by any person in respect of a programme included in a programme service, he may make an order authorising any constable to require that person—

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