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SCHEDULES

SCHEDULE 2

Section 73.

AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO RESTRICTIONS ON HOLDING OF LICENCES

PART I

AMENDMENTS OF PART I OF SCHEDULE 2

- 1 (1) In Part I of Schedule 2, paragraph 1 (which contains interpretative provisions) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) before the definition of “advertising agency” there is inserted—

““the 1996 Act” means the Broadcasting Act 1996;”,
 - (b) for paragraph (a) of the definition of “associate” there is substituted—

“in relation to a body corporate, shall be construed in accordance with paragraph (1A), and”,
 - (c) in paragraph (b) of the definition of “control” for “by virtue of the rules regulating that or any other body” there is substituted “by whatever means and whether directly or indirectly”,
 - (d) after the definition of “control” there is inserted—

““coverage area”, in relation to a service, shall be construed in accordance with paragraph 3A;
“digital programme service” has the same meaning as in Part I of the 1996 Act;”,
 - (e) after the definition of “local delivery service” there is inserted—

““local digital sound programme service” and “national digital sound programme service” have the same meaning as in Part II of the 1996 Act;
“local radio multiplex service” and “national radio multiplex service” have the same meaning as in Part II of the 1996 Act;”, and
 - (f) at the end there is inserted—

““television multiplex service” means a multiplex service within the meaning of Part I of the 1996 Act.”.
- (3) After sub-paragraph (1) there is inserted—
- “(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—
- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and

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- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.”

(4) For sub-paragraph (3) there is substituted—

“(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in the body, or possesses more than 50 per cent. of the voting power in it, or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent. of the equity share capital in that body, or possesses 50 per cent. of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(3A) For the purposes of sub-paragraph (3)(c)—

- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
- (b) a person shall be treated—
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
 - (ii) as possessing any voting power possessed by such a body corporate.”

(5) Sub-paragraph (4) is omitted.

(6) For sub-paragraph (6) there is substituted—

“(6) In this Schedule any reference to a participant with more than a 20 per cent. interest in a body corporate is a reference to a person who—

- (a) holds or is beneficially entitled to more than 20 per cent. of the shares in that body, or
- (b) possesses more than 20 per cent. of the voting power in that body.

(7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—

- (a) to an interest of more than a specified percentage in a body corporate, or
- (b) to an interest of a specified percentage or more in a body corporate.

(8) Any reference in this Schedule to a person who is over a particular age is a reference to a person who has attained that age.”

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Commencement Information

- II** [Sch. 2 para. 1](#) wholly in force at 1.11.1996; [Sch. 2 para. 1](#) not in force at Royal Assent see [s. 149](#); [Sch. 2 para. 1](#) in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by [S.I. 1996/2120](#), [art. 3, 4](#), [Sch. 1](#)

- 2 (1) Paragraph 2 of Part I of Schedule 2 is amended as follows.
- (2) At the beginning of sub-paragraph (1) there is inserted “ Subject to sub-paragraph (1A) ”.
- (3) After sub-paragraph (1) there is inserted—
- “(1A) For the purposes of this Schedule, a person’s holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
- (a) he holds the shares concerned—
- (i) as a nominee,
- (ii) as a custodian (whether under a trust or by a contract), or
- (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, as defined by section 220(1) of the Companies Act 1985, in respect of the shares concerned, and
- (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (1B) For the purposes of sub-paragraph (1A)(b)—
- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
- (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.”

Commencement Information

- I2** [Sch. 2 para. 2](#) wholly in force at 1.11.1996; [Sch. 2 para. 2](#) not in force at Royal Assent see [s. 149](#); [Sch. 2 para. 2](#) in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by [S.I. 1996/2120](#), [art. 3, 4](#), [Sch. 1](#)

- 3 For paragraph 3 of Part I of Schedule 2 there is substituted—
- “3 For the purposes of this Schedule the following persons shall be treated as connected with a particular person—
- (a) a person who controls that person,
- (b) an associate of that person or of a person falling within paragraph (a), and
- (c) a body which is controlled by that person or by an associate of that person.”

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Commencement Information

- I3** Sch. 2 para. 3 wholly in force at 1.11.1996; Sch. 2 para. 3 not in force at Royal Assent see s. 149; Sch. 2 para. 3 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

4 After paragraph 3 of Part I of Schedule 2 there is inserted—

“3A (1) In this Schedule “coverage area”—

- (a) in relation to any service licensed by the Commission under Part I of this Act or a television multiplex service licensed by them under Part I of the 1996 Act, means the area of the United Kingdom from time to time determined by the Commission as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine,
- (b) in relation to any digital programme service which is broadcast by means of a television multiplex service, means the area of the United Kingdom from time to time determined by the Commission as that within which the digital programme service as so broadcast is capable of being received at such a level,
- (c) in relation to any service licensed by the Authority under Part III of this Act, means the area of the United Kingdom from time to time determined by the Authority as that within which the service is capable of being received at a level satisfying such technical standards as they may from time to time determine, and
- (d) in relation to any local radio multiplex service licensed by the Authority under Part II of the 1996 Act or any local digital sound programme service which is broadcast by means of such a local radio multiplex service, means the area of the United Kingdom from time to time determined by the Authority as that within which the local radio multiplex service is capable of being received at such a level.

(2) Where the Commission or the Authority make any determination under this paragraph, they shall—

- (a) publish the determination in such manner as they think fit, and
- (b) send a copy of it to such persons holding licences granted by them as appear to them to be affected by the determination.

3B (1) For the purposes of this Schedule—

- (a) a person who holds a licence to provide digital programme services shall be taken to provide a digital programme service if, under a contract between him and a person who holds a licence to provide a television multiplex service, that person is obliged to broadcast the digital programme service by means of the television multiplex service;
- (b) a person who holds a licence to provide national digital sound programme services shall be taken to provide a national digital sound programme service if, under a contract between him and a person who holds a licence to provide a national radio multiplex

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service, that person is obliged to broadcast the national digital sound programme service by means of the national radio multiplex service;

- (c) a person who holds a licence to provide local digital sound programme services shall be taken to provide a local digital sound programme service if, under a contract between him and a person who holds a licence to provide a local radio multiplex service, that person is obliged to broadcast the local digital sound programme service by means of the local radio multiplex service.

- (2) For the purposes of this Schedule a person who holds a licence to provide digital programme services, national digital sound programme services or local digital sound programme services shall also be taken to provide a digital programme service, a national digital sound programme service or a local digital sound programme service (as the case may be) if he also holds a relevant multiplex licence and is broadcasting that service under that licence.

- (3) In sub-paragraph (2), “relevant multiplex licence” means—
- (a) in relation to digital programme services, a licence to provide a television multiplex service,
- (b) in relation to national digital sound programme services, a licence to provide a national radio multiplex service, and
- (c) in relation to local digital sound programme services, a licence to provide a local radio multiplex service.”

Commencement Information

- I4** Sch. 2 para. 4 wholly in force at 1.11.1996; Sch. 2 para. 4 not in force at Royal Assent see s. 149; Sch. 2 para. 4 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

- 5 In paragraph 4 of Part I of Schedule 2 (affirmative resolution procedure), for “this Schedule” there is substituted “ any provision of this Schedule other than paragraph 7 in Part III ”.

Commencement Information

- I5** Sch. 2 para. 5 wholly in force at 1.11.1996; Sch. 2 para. 5 not in force at Royal Assent see s. 149; Sch. 2 para. 5 in force for certain purposes at 10.8.1996 and wholly in force at 1.11.1996 by S.I. 1996/2120, art. 3, 4, Sch. 1

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PART II

AMENDMENTS OF PART II OF SCHEDULE 2

VALID FROM 01/11/1996

- 6 (1) In Part II of Schedule 2, paragraph 1 (general disqualification of non-EEA nationals and bodies having political connections) is amended as follows.
- (2) In sub-paragraph (1), after paragraph (h) there is inserted—
- “(hh) a body corporate which is controlled by a body corporate falling within paragraph (h);”.
- (3) In sub-paragraph (2), the “or” at the end of paragraph (e) is omitted and after paragraph (f) there is inserted—
- “(g) a licence to provide a television multiplex service, a national radio multiplex service or a local radio multiplex service,
- (h) a licence to provide digital additional services (within the meaning of Part I or II of the 1996 Act),
- (i) a licence to provide digital programme services, or
- (j) a licence to provide national or local digital sound programme services.”
- 7 In paragraph 3 of Part II of Schedule 2 (disqualification of publicly-funded bodies for radio service licences), in sub-paragraph (1)(a) for “(other than a local authority)” there is substituted “ (other than a local authority, the Welsh Authority or the BBC) ”.

Commencement Information

- I6** Sch. 2 para. 7 wholly in force at 1.11.1996; Sch. 2 para. 7 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 7 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

- 8 In paragraph 5 of Part II of Schedule 2 (general disqualification of broadcasting bodies), paragraphs (c) and (d) are omitted.

Commencement Information

- I7** Sch. 2 para. 8 wholly in force at 1.11.1996; Sch. 2 para. 8 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 8 in force at 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1

- 9 After paragraph 5 of Part II of Schedule 2 there is inserted—

“ Disqualification of certain companies for certain licences

- 5A (1) A BBC company, a Channel 4 company or an S4C company is a disqualified person in relation to—
- (a) any licence granted by the Commission to provide regional or national Channel 3 services or Channel 5, and
- (b) any licence granted by the Commission to provide a local delivery service.

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- (2) A BBC company is also a disqualified person in relation to any licence granted by the Authority to provide a national, local or restricted service within the meaning of Part III of this Act.
- (3) The Secretary of State may by order provide that sub-paragraph (1) (b) shall not have effect in relation to any local delivery service of a description specified in the order.”

Commencement Information

- I8** Sch. 2 para. 9 wholly in force at 1.10.1996; Sch. 2 para. 9 in force for certain purposes at 24.7.1996 see s. 149(1); Sch. 2 para. 9 in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

VALID FROM 01/11/1996

PART III

PROVISIONS SUBSTITUTED FOR PART III OF SCHEDULE 2

10 For Part III of Schedule 2 there is substituted—

“PART III

RESTRICTIONS TO PREVENT ACCUMULATIONS OF INTERESTS IN LICENSED SERVICES

- 1 (1) In this Part of this Schedule “relevant services” means any such services as are mentioned in sub-paragraphs (2) and (3) and, for the purposes of this Part, relevant services shall (subject to paragraph 9) be divided into the seventeen categories specified in those sub-paragraphs.
- (2) In the case of services licensed by the Commission, the categories are—
 - (a) regional and national Channel 3 services and Channel 5;
 - (b) restricted services (within the meaning of Part I of this Act);
 - (c) domestic satellite services;
 - (d) non-domestic satellite services;
 - (e) licensable programme services;
 - (f) additional services (within the meaning of Part I of this Act);
 - (g) television multiplex services;
 - (h) digital programme services; and
 - (i) digital additional services (within the meaning of Part I of the 1996 Act).
- (3) In the case of services licensed by the Authority, the categories are—
 - (a) national radio services;
 - (b) local radio services;

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- (c) satellite radio services;
- (d) licensable sound programme services;
- (e) additional services (within the meaning of Part III of this Act);
- (f) national or local radio multiplex services;
- (g) national or local digital sound programme services; and
- (h) digital additional services (within the meaning of Part II of the 1996 Act).

(4) References in this Part to national, local, restricted or satellite radio services are references to national, local, restricted or satellite services within the meaning of Part III of this Act.

General limit on the holding of licences to provide television services or interests in bodies corporate holding such licences

- 2 (1) No one person may, at any time when his audience time in respect of the period of twelve months ending with the last day of the preceding calendar month exceeds 15 per cent. of total audience time in respect of that period—
- (a) hold two or more licences to provide relevant services falling within one or more of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h),
 - (b) be a participant with a qualifying interest in two or more bodies corporate each of which holds a licence, or two or more licences, to provide services falling within one or more of those categories,
 - (c) hold any licence to provide a relevant service falling within any of those categories and be a participant with a qualifying interest in any body corporate which holds such a licence or two or more such licences,
 - (d) provide a foreign satellite service and either hold any licence to provide a relevant service falling within any of those categories or be a participant with a qualifying interest in a body corporate which holds such a licence or two or more such licences, or
 - (e) hold a licence to provide relevant services falling within the category specified in paragraph 1(2)(h) and provide two or more such services.
- (2) For the purposes of sub-paragraph (1) a person's audience time at any time ("the relevant time") in respect of any period is the aggregate of—
- (a) the audience time attributable in respect of that period to each relevant service falling within any of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h) provided under a licence held by him at the relevant time,
 - (b) one half of the audience time attributable in respect of that period to any relevant service falling within any of the categories specified in paragraph 1(2)(a), (c), (d), (e) or (h) provided under a licence held by a body corporate which he

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- does not control, but in which he is at the relevant time a participant with a qualifying interest, and
- (c) the audience time attributable in respect of that period to any foreign satellite service provided by him at the relevant time.
- (3) In this paragraph “foreign satellite service” means any service (other than a non-domestic satellite service) which consists in the transmission of television programmes by satellite, is provided on a frequency other than one allocated to the United Kingdom for broadcasting by satellite and either—
- (a) appears to the Commission to be intended for general reception in the United Kingdom (whether or not it appears to them to be also intended for general reception elsewhere), or
- (b) is (to any extent) relayed by a local delivery service.
- (4) References in this paragraph—
- (a) to the audience time attributable to any service in respect of any period, or
- (b) to total audience time in respect of any period,
- shall be construed in accordance with paragraph 3.
- (5) In this paragraph “qualifying interest” means an interest of more than 20 per cent.
- (6) The Secretary of State may by order amend sub-paragraph (5)—
- (a) by substituting a different percentage for any percentage for the time being specified there, and
- (b) so as to specify different percentages in relation to licences to provide different services.
- (7) The Secretary of State may by order amend sub-paragraphs (1)(a), (2)(a) and (b) by adding a reference to relevant services falling within the category specified in paragraph 1(2)(b).

Audience time and total audience time for purposes of paragraph 2

- 3 (1) For the purposes of paragraph 2—
- (a) the audience time attributable to a service in respect of any period is an estimate by the Commission of the number of hours that would be produced by—
- (i) ascertaining, in relation to every person who in that period watched any programme included in that service, the total amount of time he spent in that period watching programmes so included, and
- (ii) adding together all the amounts of time so ascertained, and
- (b) total audience time in respect of any period is the total of all the audience times attributable to services specified in sub-paragraph (2) in respect of that period.
- (2) The services referred to in sub-paragraph (1)(b) are—
- (a) every television programme service capable of being received in the British Islands, and

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- (b) every other service which consists wholly or mainly in the broadcasting, or transmission by satellite, from a place outside the British Islands of television programmes which are capable of being received in the British Islands.
- (3) For the purposes of this paragraph the Commission may disregard—
 - (a) watching in such circumstances, or by persons of such description, as the Commission may from time to time determine,
 - (b) periods of watching whose duration does not exceed such length of time as they may so determine, and
 - (c) the watching of recordings of television programmes to such extent as they may so determine.
- (4) Any estimate required for the purposes of this paragraph may be made by the Commission in such manner, or by reference to such surveys conducted or statistics prepared by any one or more other persons, as they think fit.
- (5) Any determination made by the Commission under sub-paragraph (4) shall be published by them in such manner as they think fit.
- (6) In this paragraph—
 - (a) “programme” includes part of a programme, and
 - (b) references to watching a programme do not include references to watching it outside the British Islands.
- (7) If it appears to the Secretary of State that there has been a significant change in the audience measurement practices prevailing in the television industry, the Secretary of State may, after consulting the Commission, make such amendments of sub-paragraphs (1), (3) and (6) as he considers appropriate for the purpose of taking account of that change.

Restrictions on holding of licences to provide Channel 3 services or Channel 5

- 4 (1) No one person may at any time hold a licence to provide a national Channel 3 service and a licence to provide Channel 5.
- (2) A person who holds a licence to provide a regional Channel 3 service for a particular area may not also hold any other licence to provide a regional Channel 3 service for that area.

Limit on the holding of licences to provide television multiplex services

- 5 (1) No one person may at any time hold more than three licences to provide television multiplex services.
- (2) For the purposes of sub-paragraph (1), a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a television multiplex service but does not control that body shall be treated as holding the licence held by that body.

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- (3) No one person may at any time, in relation to each of five or more licences to provide television multiplex services, be either the holder of the licence or a participant with more than a 10 per cent. interest in a body corporate which holds the licence.
- (4) In relation to any person who, under any arrangement with the BBC, provides a television multiplex service for the BBC (on a frequency which is not assigned to the Commission under section 6(1) of the 1996 Act)—
 - (a) sub-paragraph (1) shall have effect as if the reference to three licences were a reference to two licences, and
 - (b) sub-paragraph (3) shall have effect as if the reference to five licences were a reference to four licences.
- (5) The Secretary of State may by order—
 - (a) amend sub-paragraphs (1) to (4) by substituting a different numerical limit or percentage for any numerical limit or percentage for the time being specified there,
 - (b) designate any television multiplex service as a regional multiplex service for the purposes of this sub-paragraph, and
 - (c) prescribe restrictions on the holding by any one person of two or more licences to provide regional multiplex services whose coverage areas are to a significant extent the same.
- (6) The Secretary of State shall not designate any television multiplex service as a regional television multiplex service for the purposes of sub-paragraph (5) unless less than half of the population of the United Kingdom is resident within the proposed coverage area of the service.

Limits on the holding, by persons providing digital programme services, of licences to provide other categories of service

- 6 (1) The Secretary of State may by order prescribe restrictions on the holding, by a person who is providing a digital programme service by means of a television multiplex service designated by order under paragraph 5(5)(b) as a regional multiplex service, of a licence to provide any service specified in sub-paragraph (2) whose coverage area is to a significant extent the same as that of the digital programme service.
- (2) The services referred to in sub-paragraph (1) are—
 - (a) a regional Channel 3 service,
 - (b) a local radio service, and
 - (c) a local radio multiplex service.
- (3) The Secretary of State may also by order prescribe restrictions on the provision by any one person at any time of both—
 - (a) a digital programme service by means of a television multiplex service which is designated by order under paragraph 5(5)(b) as a regional multiplex service, and

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- (b) a digital sound programme service whose coverage area is to a significant extent the same as that of the digital programme service.

Limit in relation to provision of digital programme services

- 7 (1) No person holding a licence to provide digital programme services may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph, provide digital programme services by means of two or more television multiplex services if the number of points attributable to those digital programme services (calculated in accordance with this paragraph) exceeds the permitted maximum.
- (2) Subject to sub-paragraphs (3) to (5), the number of points attributable to any digital programme service is two.
- (3) Where—
- (a) the population within the coverage area of a digital programme service is less than half of the population within the coverage area of the television multiplex service by means of which it is provided, or
 - (b) a digital programme service is provided by means of a television multiplex service designated by the Secretary of State by order under paragraph 5(5)(b) as a regional multiplex service, or
 - (c) average weekly air time in relation to a digital programme service is at least 12 hours but less than 50 hours, or
 - (d) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be at least 12 hours but less than 50 hours,
- the number of points attributable to that digital programme service is one.
- (4) Subject to sub-paragraph (5), where—
- (a) average weekly air time in relation to a digital programme service is less than 12 hours, or
 - (b) in the case of a digital programme service which was first provided after the beginning of the relevant period, the applicant has notified the Commission of his intention to provide a service in relation to which average weekly air time will be less than 12 hours,
- no points are attributable to that digital programme service.
- (5) Where the average weekly air time in relation to each of two or more digital programme services (“the relevant services”) provided by any one holder of a licence to provide digital programme services is less than 12 hours, the relevant services shall be treated for the purposes of this paragraph as if they were one service with an average weekly air

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time equal to the aggregate of the average weekly air times in relation to the relevant services.

(6) For the purposes of sub-paragraphs (3) to (5), as they have effect in relation to the operation of sub-paragraph (1) at any time—

(a) “the relevant period” means the period of 13 weeks ending with the last week falling wholly within the previous calendar month, and

(b) “average weekly air time”, in relation to a digital programme service, means the average number of hours per week for which the service has been broadcast during the relevant period;

and in this sub-paragraph “week” means a week ending with Saturday.

(7) The permitted maximum shall be determined by reference to the total number of points attributable to all digital programme services being provided by the holders of licences to provide such services, as follows—

(a) where the total number of points is not more than 10, the permitted maximum is 2,

(b) where the total number of points is more than 10 but less than 24, the permitted maximum is 4, and

(c) where the total number of points is 24 or more, the permitted maximum is one quarter of that total.

(8) For the purposes of this paragraph a person who holds a licence to provide digital programme services and is a participant with more than a 20 per cent. interest in a body corporate which also holds such a licence, but who does not control that body, shall be taken to provide any digital programme services provided by that body.

(9) The Secretary of State may by order amend this paragraph—

(a) by altering the number of points for the time being attributable to digital programme services falling within sub-paragraph (2), (3) or (4),

(b) by substituting a different number of hours for the number for the time being specified in sub-paragraph (3), (4) or (5),

(c) by substituting different numbers for any numbers for the time being specified in sub-paragraph (7), and

(d) by substituting a different percentage for the percentage for the time being specified in sub-paragraph (8).

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

Limits in relation to licences to provide radio services

8 (1) No one person may, at any time before such day as the Secretary of State may by order appoint for the purposes of this paragraph (in this paragraph referred to as “the appointed day”) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a) or (b) such that the

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total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to all such services in respect of which licences are in force or have been awarded.

- (2) No one person may, at any time on or after the appointed day—
- (a) hold two or more licences to provide services falling within one or more of the categories specified in paragraph 1(3)(a), (b) or (g) such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to—
 - (i) all national or local radio services in respect of which licences are in force or have been awarded, and
 - (ii) all national or local digital sound programme services which are being provided, or
 - (b) hold a licence to provide services falling within the category specified in paragraph 1(3)(g) and provide two or more services falling within that category such that the total number of points attributable to those services, calculated in accordance with paragraph 9, exceeds 15 per cent. of the total number of points so calculated attributable to all the services referred to in paragraph (a)(i) or (ii).
- (3) Before making an order appointing a day for the purposes of this paragraph, the Secretary of State shall consult the Authority.

Calculation of points for purposes of paragraph 8

- 9 (1) For the purposes of paragraph 8, to the categories of national or local radio services and national or local digital sound programme services set out in the Table below there shall be attributed points according to that Table.

TABLE

<i>Category of service</i>	<i>Points</i>
National radio service or national digital sound programme service	25
Category A local radio service or Category A local digital sound programme service	15
Category B local radio service or Category B local digital sound programme service	8
Category C local radio service or Category C local digital sound programme service	3
Category D local radio service or Category D local digital sound programme service	1

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- (2) For the purposes of the Table a local radio service or local digital sound programme service falls—
 - (a) into category A if the number of persons over the age of 15 resident in the coverage area of that service exceeds 4.5 million;
 - (b) into category B if the number of such persons exceeds 1 million but does not exceed 4.5 million;
 - (c) into category C if the number of such persons exceeds 400,000 but does not exceed 1 million; and
 - (d) into category D if the number of such persons does not exceed 400,000.
- (3) No points shall be attributed to a national or local digital sound programme service unless the service is being provided.
- (4) In the case of a national or local radio service provided on an amplitude modulated (AM) frequency the relevant number of points attributable to the service by virtue of the Table shall be reduced by one third.
- (5) A service which, on the day on which the licence to provide it is granted, falls into a particular category for the purposes of the Table shall continue to be regarded as falling into that category so long as any increase or decrease in the relevant number of persons over the age of 15 (which would otherwise take the service outside that category) does not exceed 10 per cent.
- (6) A person who is a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a national or local radio service, but who does not control that body, shall for the purposes of paragraph 8 be treated as the holder of a licence to provide a national or local service to which one half of the points which would otherwise be attributable to such a service are attributed.
- (7) A person who is a participant with more than a 20 per cent. interest in a body corporate which provides a national or local digital sound programme service, but who does not control that body, shall for the purposes of paragraph 8 be treated as providing a national or local digital sound programme service to which one half of the points which would otherwise be attributable to such a service are attributed.

Power to amend paragraphs 8 and 9

- 10 (1) The Secretary of State may by order make such amendments of paragraphs 8 and 9 as he thinks fit for the purposes of including restricted radio services among the services referred to in any provision of paragraph 8 and of providing for the calculation of the points to be attributed to any such service, or any category of such service.
- (2) The Secretary of State may by order amend paragraph 9—

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- (a) by substituting different categories for the categories for the time being set out in the Table in sub-paragraph (1) and in sub-paragraph (2) or adding further categories,
- (b) by substituting a different number of points for the number of points for the time being attributed to each category,
- (c) by substituting different population figures for those for the time being specified in sub-paragraph (2),
- (d) by substituting a different age for the age for the time being specified in sub-paragraph (2)(a) and (5),
- (e) by substituting a different fraction for the fraction for the time being specified in sub-paragraph (4) or repealing that sub-paragraph, or
- (f) by substituting a different percentage for the percentage for the time being specified in sub-paragraphs (6) and (7) in relation to an interest in a body corporate or a different fraction for the fraction for the time being specified in those sub-paragraphs in relation to the points to be attributed to a person falling within either of those sub-paragraphs.

Limits in relation to licences to provide national radio services, radio multiplex services or digital sound programme services

- 11 (1) No one person may at any time hold more than one licence to provide a national radio service.
- (2) No one person may at any time—
- (a) hold more than one licence to provide a national radio multiplex service, or
 - (b) hold a licence to provide national digital sound programme services and provide more than one national digital sound programme service.
- (3) For the purposes of sub-paragraph (2)(a) a person who is a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a radio multiplex service but does not control that body shall be treated as holding the licence held by that body.
- (4) No one person may at any time—
- (a) hold a licence to provide a radio multiplex service and be a participant with more than a 10 per cent. interest in more than one body corporate which holds any other such licence, or
 - (b) be a participant with more than a 10 per cent. interest in each of three or more bodies corporate which hold such licences.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraph (1), (2) or (4) by substituting a different numerical limit for any numerical limit for the time being specified there, and
 - (b) amend sub-paragraph (3) or (4) by substituting a different percentage for any percentage for the time being specified there.

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Limits in relation to licences to provide local radio services in overlapping areas

- 12 (1) No one person may at any time hold any two licences to provide local radio services which share a potential audience unless either—
- (a) one of the licences is an AM licence and the other is an FM licence, or
 - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be expected to operate against the public interest within the area concerned.
- (2) No one person may at any time hold any three licences to provide local radio services any of which shares a potential audience with each of the other two services unless—
- (a) the licences include both an AM licence and an FM licence, and
 - (b) the Authority have determined that in all the circumstances, having regard to the matters specified in sub-paragraph (4), the holding by that person of the licences in question could not be expected to operate against the public interest within the area concerned.
- (3) No one person may at any time hold any four or more licences to provide local radio services any of which shares a potential audience with each of the other services.
- (4) The matters referred to in sub-paragraphs (1) and (2) are—
- (a) any reduction in plurality of ownership of local radio services within the area concerned that would result from a decision to allow the licences to be held together, and
 - (b) the likely effect of such a decision on—
 - (i) the range of programmes available by way of independent radio services to persons living in the area concerned, and
 - (ii) diversity in the sources of information available to the public in the area concerned and in the opinions expressed on local radio services received in that area.
- (5) For the purposes of this paragraph two local radio services share a potential audience if, but only if, the potential audience of one service includes more than half of the potential audience of the other service.
- (6) This paragraph has effect subject to paragraph 13.
- (7) In this paragraph—
- “AM licence” means a licence to provide a local radio service on an amplitude modulated frequency,
- “FM licence” means a licence to provide such a service on a frequency modulated frequency, and

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“potential audience”, in relation to a local radio service, means the persons over the age referred to in paragraph 9(2) (a) who reside in the coverage area of that service.

Power by order to impose different restrictions in place of paragraph 12

- 13 The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding by any one person of two or more licences to provide in that area local radio services which for the purposes of paragraph 12 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 12, be subject to other restrictions specified in the order.

Limits in relation to provision of local digital sound programme services

- 14 (1) Subject to sub-paragraph (2), no one person holding a licence to provide local digital sound programme services may at any time provide more than one non-simulcast service by means of a particular local radio multiplex service.
- (2) Where—
- (a) the coverage area of the local radio multiplex service is to a significant extent the same as that of another local radio multiplex service, and
 - (b) the person concerned is not providing any non-simulcast service by means of that other local radio multiplex service,
- sub-paragraph (1) shall have effect as if the reference to one non-simulcast service were a reference to two such services.
- (3) In this paragraph “non-simulcast service” means any local digital sound programme service other than one which—
- (a) is provided by a person who holds a licence to provide a local radio service, and
 - (b) corresponds to that local radio service.
- (4) For the purposes of sub-paragraph (3)(b) a local digital sound programme service corresponds to a local radio service if, and only if, in every calendar month—
- (a) at least 80 per cent. of so much of the local radio service as consists of programmes, consists of programmes which are also included in the local digital sound programme service in that month, and
 - (b) at least 50 per cent. of so much of the local radio service as consists of such programmes is broadcast at the same time on both services.
- (5) The Secretary of State may by order—
- (a) amend sub-paragraphs (1) and (2) by substituting a different numerical limit for any numerical limit for the time being specified there, and

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- (b) amend sub-paragraph (4)(a) or (b) by substituting a different percentage for any percentage for the time being specified there.

- (6) In subsection (4) “programme” does not include an advertisement.

Further restrictions on holding of licences of different descriptions

- 15 (1) No one person may at any time hold—
- (a) a licence to provide a national Channel 3 service or Channel 5, and
 - (b) a licence to provide a national radio service.
- (2) No one person may at any time hold—
- (a) a licence to provide a local radio service or local digital sound programme services, and
 - (b) a licence to provide a regional Channel 3 service whose coverage area is to a significant extent the same as that of the local radio service or of any local digital sound programme service provided by him.

Power to impose additional limits in relation to licences to provide television or radio services

- 16 (1) The Secretary of State may, in the case of—
- (a) any category of relevant services specified in paragraph 1(2) (b), (c), (d) or (f), or
 - (b) any category of relevant services specified in paragraph 1(3) (c) or (e),
- by order prescribe the maximum number of licences which may at any time be held by any one person to provide relevant services falling within that category.
- (2) The Secretary of State may by order impose, in relation to any category of relevant services specified in paragraph 1(2)(a) or (b) or paragraph 1(3)(a), (b) or (f) or under sub-paragraph (1), limits on the holding of licences to provide relevant services falling within that category which are additional to the limits specified in paragraphs 2 to 15 or under that sub-paragraph and are framed—
- (a) by reference to any specified circumstances relating to the holders of the licences in question or to the services to be provided under them, or
 - (b) (in the case of licences granted by the Commission) by reference to matters determined by them under the order.
- (3) Without prejudice to the generality of sub-paragraph (2), an order made under that sub-paragraph may impose on the holder of a licence to provide any specified category of relevant services specified in paragraph 1(3) limits framed (directly or indirectly) by reference to either or both of the following matters, namely—

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- (a) the number of licences of any one or more specified descriptions which are held by him or by any body controlled by him; and
 - (b) his participation, to any specified extent, in any body corporate which is the holder of any licence or licences of any one or more such descriptions.
- (4) Where a person holds—
- (a) a licence to provide a domestic satellite service,
 - (b) a licence to provide a non-domestic satellite service, or
 - (c) a licence to provide a satellite radio service,
- which, in accordance with section 44(2), 45(3) or 86(2), authorises the provision of a multichannel service, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences to provide domestic satellite services, non-domestic satellite services or (as the case may be) satellite radio services as corresponds to the number of channels on which the service may be provided.
- (5) In sub-paragraph (4)—
- (a) “multichannel service” means a service which to any extent consists in the simultaneous transmission of different programmes on different frequencies; and
 - (b) any reference to the number of channels on which such a service may be provided is a reference to the number of different frequencies involved.
- (6) Where a person who holds a licence to provide any of the services specified in sub-paragraph (4)(a), (b) or (c) provides that service by broadcasting two or more programmes simultaneously in digital form on a single frequency, he shall be treated for the purposes of any order under sub-paragraph (1) as holding such number of licences as corresponds to the number of programmes that are simultaneously transmitted.

Connected persons

- 17 (1) Subject to sub-paragraph (2), for the purposes of—
- (a) paragraphs 2 to 15, and
 - (b) any order under paragraph 13 or 16(1) or (2),
- a person shall be treated as holding a licence if the licence is held by a person connected with him and shall be treated as providing a service if the service is provided by a person connected with him.
- (2) For the purposes of paragraph 12 and any order under paragraph 13, a person shall not be treated as holding a licence to provide a local radio service merely because he is a director of a body corporate which holds the licence.
- (3) Any provision of paragraphs 2 to 14 which refers to a person’s participation in a body corporate shall have effect as if he and every person connected with him were one person.”

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Commencement Information

- 19** Sch. 2 para. 10 wholly in force at 1.4.1997; Sch. 2 para. 10 not in force at Royal Assent see s. 149; Sch. 2 para. 10 in force for certain purposes at 1.11.1996 by S.I. 1996/2120 art. 4, Sch. 1; Sch. 2 para. 10 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

PART IV

PROVISIONS SUBSTITUTED FOR PART IV OF SCHEDULE 2

- 11 For Part IV of Schedule 2 there is substituted—

“PART IV

RESTRICTIONS ON CONTROLLING INTERESTS IN BOTH NEWSPAPERS AND LICENSED SERVICES

Meaning of “relevant authority”

- 1 In this Part of this Schedule “the relevant authority”—
- (a) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Commission, means the Commission, and
 - (b) in relation to any restriction having effect in relation to any licence which has been or may be granted by the Authority, means the Authority.

National and local newspapers and their respective national and local market shares

- 2
- (1) In this Part of this Schedule references to a national or local newspaper are (subject to sub-paragraph (3)) references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.
 - (2) Where a newspaper is published in different regional editions on the same day, the relevant authority may determine, having regard to all the circumstances, whether those regional editions are to be treated for the purposes of this Part of this Schedule as constituting one national newspaper, two or more local newspapers or one national newspaper and one or more local newspapers.
 - (3) The relevant authority may determine that a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule shall be treated as a national or (as the case may be) a local newspaper for the purposes of any particular restriction imposed by or under this Part of this Schedule if it appears to them to be appropriate for the newspaper to be so treated having regard to its circulation or influence in the United Kingdom or (as the case may be) in a part of the United Kingdom.

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- (4) For the purposes of this Part of this Schedule, the “national market share” of any national newspaper at any time in a calendar month is the total number of copies of that newspaper sold in the United Kingdom in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all national newspapers sold in the United Kingdom in those six months.
- (5) For the purposes of this Part of this Schedule, the “local market share” of any local newspaper in any area at any time in a calendar month is the total number of copies of that newspaper sold in that area in the six months ending with the last day of the previous month, expressed as a percentage of the total number of copies of all local newspapers sold in that area in those six months.
- (6) For the purposes of sub-paragraphs (4) and (5), the relevant authority may estimate the numbers of copies of any newspaper sold in the United Kingdom, or in any area, during any period in such manner, or by reference to such statistics prepared by any other person, as they think fit.
- (7) In relation to any newspaper which is distributed free of charge rather than being sold, references in sub-paragraphs (4) to (6) to the number of copies sold shall have effect as references to the number of copies distributed.

Other interpretative provisions

- 3 (1) For the purposes of this Part of this Schedule a person runs a national or local newspaper if—
 - (a) he is the proprietor of the newspaper, or
 - (b) he controls a body which is the proprietor of the newspaper.
- (2) Paragraph 1(4) in Part III of this Schedule shall have effect for the purposes of this Part of this Schedule as it has effect for the purposes of Part III.

Restrictions on common control etc.

- 4 (1) No person who runs a national newspaper which for the time being has, or national newspapers which for the time being together have, a national market share of 20 per cent. or more may hold a licence to provide—
 - (a) a regional or national Channel 3 service or Channel 5, or
 - (b) a national or local radio service.
- (2) A licence to provide a regional Channel 3 service may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of the service.
- (3) A licence to provide digital programme services may not be held by a person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in the coverage area of any digital programme service provided under the licence.

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- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

Restrictions on participation

- 5 (1) No proprietor of a national newspaper which for the time being has, or of national newspapers which for the time being together have, a national market share of 20 per cent. or more shall be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide any of the services specified in sub-paragraph (4).
- (2) No person who is the holder of a licence to provide any of the services specified in sub-paragraph (4) shall be a participant with more than a 20 per cent. interest in a body corporate which runs a national newspaper which has, or two or more national newspapers which together have, a national market share of 20 per cent. or more.
- (3) No body corporate in which a person who runs a national newspaper which has, or national newspapers which together have, a national market share of 20 per cent. or more is a participant with more than a 20 per cent. interest, shall be a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4).
- (4) The services referred to in sub-paragraphs (1), (2) and (3) are—
- (a) a regional or national Channel 3 service or Channel 5, and
 - (b) national or local radio services.
- (5) The Secretary of State may by order amend sub-paragraph (1), (2) or (3) by substituting a different percentage interest in a body corporate for the percentage for the time being specified there.
- (6) Any restriction imposed by this paragraph on participation in a body corporate which is the holder of a particular kind of licence shall apply equally to participation in a body corporate which controls the holder of such a licence.
- (7) Any restriction on participation imposed by this paragraph—
- (a) on the proprietor of any newspaper, or
 - (b) on the holder of any licence,
- shall apply as if he and every person connected with him were one person.

Holding of local radio licence by person running local newspapers with at least 50 per cent local market share

- 6 (1) A licence to provide a local radio service may not be held by a person who runs a local newspaper which has, or local newspapers which for the time being together have, a local market share of 50 per cent. or more in the coverage area of the service unless—
- (a) the service in question shares a potential audience with another local radio service, but

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- (b) he does not hold any other licence to provide a local radio service whose coverage area is to any extent the same as the coverage area of the service in question.
- (2) The reference in sub-paragraph (1) to sharing a potential audience shall be construed in accordance with paragraph 12(5) in Part III of this Schedule.
- (3) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.

Further restrictions on holding of local radio licences by a person who runs a local newspaper

- 7 (1) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in each of the relevant areas may hold any three licences to provide local radio services any of which shares a potential audience with each of the other services.
- (2) No person who runs a local newspaper which for the time being has, or local newspapers which for the time being together have, a local market share of 20 per cent. or more in both the relevant areas may hold any two licences to provide local radio services which share a potential audience, unless one of the licences is an AM licence and the other is an FM licence.
- (3) In sub-paragraphs (1) and (2)—
 - (a) “the relevant areas” means the coverage areas of the local radio services in question,
 - (b) references to sharing a potential audience shall be construed in accordance with sub-paragraph (5) of paragraph 12 in Part III of this Schedule, and
 - (c) “AM licence” and “FM licence” have the same meaning as in that paragraph.
- (4) For the purposes of this paragraph a person shall be treated as holding a licence if the licence is held by a person connected with him.
- (5) This paragraph has effect subject to paragraph 8.

Power by order to impose different restrictions in place of paragraph 7

- 8 (1) The Secretary of State may by order provide that, where a digital sound programme service is provided in any area, the holding, by a person who runs a local newspaper or local newspapers as mentioned in paragraph 7(1), of two or more licences to provide in that area local radio services which for the purposes of paragraph 7 share a potential audience with each other or with each of the others shall, instead of being subject to the restrictions specified in paragraph 7, be subject to other restrictions specified in the order.

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- (2) For the purposes of any order under sub-paragraph (1), a person shall be treated as holding a licence if the licence is held by a person connected with him.

Additional restrictions applying where control of or by newspaper proprietor may operate against public interest

- 9 (1) A licence to provide any of the services specified in sub-paragraph (4) may not be granted to a body corporate which is, or is connected with, the proprietor of a national or local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
- (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide any of the services specified in sub-paragraph (4) shall not become, or become connected with, the proprietor of a national or local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
- (a) is already the proprietor of some other national or local newspaper, or is already connected with such a proprietor, and
 - (b) does not become connected with any other person who holds a licence to provide any of the services specified in sub-paragraph (4).
- (4) The services referred to in sub-paragraphs (1) to (3) are—
- (a) a national Channel 3 service or Channel 5,
 - (b) a national radio service, and
 - (c) national digital sound programme services.
- (5) Subject to sub-paragraph (6), in this paragraph “the permitted period” means a period beginning with the day on which the licence holder becomes, or becomes connected with, the proprietor of the national or local newspaper (“the relevant day”) and ending—
- (a) in a case where the licence holder has, before the relevant day, notified the relevant authority that he will become, or become connected with, the proprietor of that national or local newspaper on that day, at the end of the period of three months beginning with the relevant day, or
 - (b) in any other case, at the end of the period of three months beginning with the day on which the licence holder notifies the relevant authority that he has become, or has become connected with, the proprietor of that national or local newspaper.
- (6) The relevant authority may in a particular case, after consultation with the licence holder, notify him, before the time when the permitted period would (apart from this sub-paragraph) have ended, that the permitted period in that case is to be calculated as if the references in sub-paragraph (5) to three months were references to such longer period

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specified in the notification as the relevant authority reasonably consider necessary in the circumstances.

- (7) Nothing in any of the preceding provisions of this Schedule shall be construed as affecting the operation of this paragraph or paragraph 10 or 11.
- 10 (1) A licence to provide a regional Channel 3 service or a local radio service may not be granted to a body corporate which is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper if the relevant authority determine that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.
- (2) Subject to sub-paragraph (3), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a national newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (3) Sub-paragraph (2) does not apply in any case where the body corporate holding the licence—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
 - (b) does not become connected with—
 - (i) any other person who holds a licence to provide a regional Channel 3 service or a local radio service, or
 - (ii) any person who holds a licence to provide digital programme services and is providing a service under that licence.
- (4) Subject to sub-paragraph (5), a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to hold the licence if the relevant authority determine within the permitted period that in all the circumstances the continued holding of the licence by that body corporate operates, or could be expected to operate, against the public interest.
- (5) Sub-paragraph (4) does not apply in any case where the body corporate which holds the licence—
- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
 - (b) does not become connected with—
 - (i) any other person who holds a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
 - (ii) any person who holds a licence to provide digital programme services and is providing a service under

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that licence in relation to which that other local newspaper is also a relevant local newspaper.

- (6) For the purposes of this paragraph a local newspaper is a “relevant local newspaper”, in relation to any service, if it serves an area which is to a significant extent the same as the coverage area of the service.
- (7) In this paragraph “the permitted period” has the meaning given by paragraph 9(5) and (6).
- 11 (1) A body corporate which holds a licence to provide digital programme services and is, or is connected with, the proprietor of a national newspaper or a relevant local newspaper, shall not begin to provide a digital programme service if the Commission determine before the end of the period specified in sub-paragraph (2) that in all the circumstances the provision of that service by that body corporate could be expected to operate against the public interest.
- (2) The period referred to in sub-paragraph (1) is the period of three months beginning with the day on which the Commission are notified pursuant to section 19(3) of the 1996 Act of an agreement to provide the digital programme service, or such longer period beginning with that day as the Commission may in a particular case, after consultation with the licence holder, notify him during those three months as being the period which they reasonably consider necessary in the circumstances.
- (3) Subject to sub-paragraph (4), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a national newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (4) Sub-paragraph (3) does not apply in any case where the body corporate which is providing the digital programme service—
- (a) is already the proprietor of some other national newspaper or is already connected with such a proprietor, and
 - (b) does not become connected with—
 - (i) the holder of a licence to provide a regional Channel 3 service or a local radio service, or
 - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence.
- (5) Subject to sub-paragraph (6), a body corporate which is providing a digital programme service shall not become, or become connected with, the proprietor of a relevant local newspaper and continue to provide the service if the Commission determine within the permitted period that in all the circumstances the continued provision of the service by that body corporate operates, or could be expected to operate, against the public interest.
- (6) Sub-paragraph (5) does not apply in any case where the body corporate which is providing the digital programme service—

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- (a) is already the proprietor of some other local newspaper which is a relevant local newspaper in relation to the service referred to in that sub-paragraph, or is already connected with such a proprietor, and
 - (b) does not become connected with—
 - (i) the holder of a licence to provide a regional Channel 3 service or local radio service in relation to which that other local newspaper is also a relevant local newspaper, or
 - (ii) the holder of another licence to provide digital programme services who is providing a service under that licence in relation to which that other local newspaper is also a relevant local newspaper.
- (7) In this paragraph—
- (a) references to a relevant local newspaper shall be construed in accordance with paragraph 10(6), and
 - (b) “the permitted period” has the meaning given by paragraph 9(5) and (6).
- 12 (1) Notice may be given to the relevant authority in accordance with this paragraph of proposed arrangements which might result—
- (a) in the application of paragraph 9(2) to a body corporate which holds a licence to provide any of the services specified in paragraph 9(4),
 - (b) in the application of paragraph 10(2) or (4) to a body corporate which holds a licence to provide a regional Channel 3 service or a local radio service, or
 - (c) in the application of paragraph 11(1), (3) or (5) to a body corporate which holds a licence to provide digital programme services.
- (2) A notice under sub-paragraph (1)—
- (a) may be given by the licence holder or any other person appearing to the relevant authority to be concerned,
 - (b) shall state that the existence of the proposal has been made public, and
 - (c) shall be in such form as the relevant authority may require.
- (3) The relevant authority may, at any time before making a determination under this paragraph, require the person who gave the notice to provide them with such further information with respect to the notified arrangements as they think fit.
- (4) The relevant authority shall, as soon as reasonably practicable, determine whether in all the circumstances, if the notified arrangements were carried into effect, the continued holding of the licence by the body corporate could be expected to operate against the public interest.
- (5) If—
- (a) the relevant authority determine, in relation to any notified arrangements, that the fact referred to in sub-paragraph (4) could not be expected to operate against the public interest, and

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- (b) the notified arrangements are carried into effect within the period of 12 months beginning with the date of the determination,
- the relevant authority may not make any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) arising out of the carrying into effect of the notified arrangements.
- (6) Sub-paragraph (5) does not prevent any determination under paragraph 9(2), 10(2) or (4) or 11(1), (3) or (5) being made if—
- (a) any information given to the relevant authority in respect of the notified arrangements by the person who gave the notice is in any material respect false or misleading, or
- (b) since the making of the determination there has been a material change of circumstances (other than such a change of which notice was given to the relevant authority under sub-paragraph (3) before the making of the determination).
- (7) In this paragraph “the notified arrangements” means the arrangements mentioned in the notice under sub-paragraph (1) or arrangements not differing from them in any material respect.
- 13 (1) The matters to which the relevant authority shall have regard in determining, for the purposes of paragraph 9, 10, 11 or 12, whether the holding of a licence by a body corporate which is, or is connected with, the proprietor of a newspaper operates, or could be expected to operate, against the public interest include—
- (a) the desirability of promoting—
- (i) plurality of ownership in the broadcasting and newspaper industries, and
- (ii) diversity in the sources of information available to the public and in the opinions expressed on television or radio or in newspapers,
- (b) any economic benefits (such as, for example, technical development or an increase in employment or in the value of goods or services exported) that might be expected to result from the holding of the licence by that body but could not be expected to result from the holding of the licence by a body corporate which was not, and was not connected with, the proprietor of a newspaper, and
- (c) the effect of the holding of the licence by that body on the proper operation of the market within the broadcasting and newspaper industries or any section of them.
- (2) References in paragraphs 9, 10, 11 and 12 to the public interest include references to the public interest within any area of the United Kingdom.
- 14 In relation to any determination under paragraph 11(1), (3) or (5), references in paragraphs 12 and 13 to the holding of the licence shall have effect as references to the provision of the service.

Restricted television services

- 15 (1) The Secretary of State may by order—

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- (a) prescribe restrictions on the holding of one or more licences to provide restricted television services by a person who runs a national or local newspaper, and
 - (b) apply any of the provisions of paragraphs 9 to 13, with such modifications as may be specified in the order, in relation to the holding of a licence to provide a restricted television service.
- (2) Any order under sub-paragraph (1) may provide that, for the purposes of any provision of the order, a person is to be treated as holding a licence if the licence is held by a person connected with him.
- (3) In this paragraph “restricted television service” means a restricted service within the meaning of Part I of this Act.”

Commencement Information

I10 Sch. 2 para. 11 wholly in force at 1.4.1997; Sch. 2 para. 11 not in force at Royal Assent see s. 149; Sch. 2 para. 11 in force for certain purposes at 10.8.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 2 para. 11 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

VALID FROM 01/11/1996

PART V

AMENDMENTS OF OTHER PROVISIONS OF 1990 ACT

- 12 (1) Section 5 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—
- “(6) The Commission shall not serve any such notice on the licence holder unless—
- (a) the Commission have notified him of the matters complained of 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 Parts III and IV of Schedule 2 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—
- (a) a change in the percentage of total audience time attributable to one or more services for the purposes of paragraph 2 of Part III of Schedule 2;
 - (b) a change in the national market share (within the meaning of Part IV of that Schedule) of one or more national newspapers (within the meaning of that Part of that Schedule);

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- (c) a change in the local market share (within the meaning of that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Commission could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not enable the licence to be revoked merely because a change is such that the Commission would have made such a determination in the new circumstances of the case.”
- (3) In subsection (7)—
- (a) after paragraph (b) there is inserted—
- “or
- (c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,”, and
- (b) for “(in either case)” there is substituted “ (in any case) ”.
- 13 (1) Section 88 of the 1990 Act (restrictions on the holding of licences) is amended as follows.
- (2) For subsection (6) there is substituted—
- “(6) The Authority shall not serve any such notice on the licence holder unless—
- (a) the Authority have notified him of the matters complained of 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 Parts III and IV of Schedule 2 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—
- (a) a reduction in the total number of points, calculated in accordance with paragraph 9 of Part III of Schedule 2, attributable to all the services referred to in paragraph 8(1) or (2)(a) or (b) of that Part of that Schedule;
- (b) a change in the national market share (within the meaning of Part IV of that Schedule) 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 that Part of that Schedule) in a particular area of one or more local newspapers (within the meaning of that Part of that Schedule).
- (6B) Where a licence has been granted in a case where the Authority could have made a determination under paragraph 9(1) or 10(1) of Part IV of Schedule 2 (if satisfied that the fact mentioned in that provision could have been expected to operate against the public interest), subsection (5) does not

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enable the licence to be revoked merely because a change is such that the Authority would have made such a determination in the new circumstances of the case.”

(3) In subsection (7)—

(a) after paragraph (b) there is inserted—

“or

(c) any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2,” and

(b) for “(in either case)” there is substituted “ (in any case) ”.

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