

SCHEDULES

SCHEDULE 2

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

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;
 - (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).

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- (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 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
 - (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,

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- (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.
 - (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
 - (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.

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(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 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 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

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(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

(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—
 - (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.

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*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.

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
- “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—

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- (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
 - (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—
- (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

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- (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.”