

SCHEDULES

SCHEDULE 2

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—

“(a) 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—

Status: This is the original version (as it was originally enacted).

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (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.”

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.”

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.”

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,

Status: This is the original version (as it was originally enacted).

- (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 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.”

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”.