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## SCHEDULES

### SCHEDULE 1

Sections 37, 70.

#### MULTIPLEX REVENUE: SUPPLEMENTARY PROVISIONS

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

**C1** Sch. 1 applied (*prosp.*) by 1990 c. 42, s. 26(9A) (as inserted by 1996 c. 55, s. 82(3))

### PART I

#### MULTIPLEX REVENUE FOR PURPOSES OF PART I OF THIS ACT

##### *Computation of multiplex revenue*

- 1 (1) It shall be the duty of the Commission to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
- (a) the multiplex revenue in relation to a licence holder for the purposes of section 14 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any multiplex service for the purposes of any provision of Part I of this Act—
    - (i) for any accounting period of the holder of the multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Commission shall consult the Secretary of State and the Treasury.
- (4) The Commission shall—
- (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
- and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

##### *Disputes*

- 2 (1) For the purposes of any provision of Part I of this Act—
- (a) the amount of the multiplex revenue in relation to any holder of a multiplex licence for any accounting period of his, or (as the case may be) for any year, or

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- (b) the amount of any payment to be made to the Commission by any person in respect of any such revenue, or of an instalment of any such payment, shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (2) For the purposes of any provision of Part I of this Act the share of multiplex revenue attributable to any person in relation to a multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between the Commission and that person, be the amount determined by the Commission.
- (3) No determination of the Commission under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this subparagraph shall prevent the bringing of proceedings for judicial review.

## PART II

### MULTIPLEX REVENUE FOR PURPOSES OF PART II OF THIS ACT

#### *Computation of multiplex revenue*

- 3 (1) It shall be the duty of the Authority to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining—
  - (a) the multiplex revenue in relation to a licence holder for the purposes of section 56 for any accounting period, and
  - (b) the share of multiplex revenue attributable to a person in relation to any national radio multiplex service for the purposes of any provision of Part II of this Act—
    - (i) for any accounting period of the holder of the national radio multiplex licence, or
    - (ii) for any year.
- (2) A statement under this paragraph may set out different principles for persons holding different kinds of licences.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
  - (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of that statement, and every revision of it, to the Secretary of State;
 and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

#### *Disputes*

- 4 (1) For the purposes of any provision of Part II of this Act—
  - (a) the amount of the multiplex revenue in relation to any holder of a national radio multiplex licence for any accounting period of his, or (as the case may be) for any year, or

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- (b) the amount of any payment to be made to the Authority by any person in respect of any such revenue, or of an instalment of any such payment, shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (2) For the purposes of any provision of Part II of this Act the share of multiplex revenue attributable to any person in relation to any national radio multiplex service for any accounting period or (as the case may be) for any year shall, in the event of a disagreement between the Authority and that person, be the amount determined by the Authority.
- (3) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

## 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—

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““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
- (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.

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- (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.”

#### 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—

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- “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.”

**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,

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- 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.”

#### 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

- 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.
- (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.



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- (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

### 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—

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- (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

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- (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

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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.



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- (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

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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.

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*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.”

#### **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”—

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- (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.
  - (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.

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*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.
- (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).



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- (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
  - (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,

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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.
- (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

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- (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 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

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- (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 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.

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- (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—
- (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—

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- (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
  - (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.

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- 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—
- (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

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## 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);
- (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—



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- “(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 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)”.

### SCHEDULE 3

Section 106(3).

#### BROADCASTING STANDARDS COMMISSION: SUPPLEMENTARY PROVISIONS

##### *Interpretation*

- 1 In this Schedule—
- (a) “pension scheme” means a scheme for the payment of pensions, allowances or gratuities,

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- (b) any reference to the payment of pensions, allowances or gratuities includes a reference to like benefits to be given on death or retirement, and
- (c) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.

*Status and capacity*

- 2 (1) The BSC shall be a body corporate.
- (2) The BSC shall not be treated for the purposes of the enactments and rules of law relating to the privileges of the Crown as a body exercising functions on behalf of the Crown.
- (3) It shall be within the capacity of the BSC as a statutory corporation to do such things and enter into such transactions as are incidental or conducive to the discharge of their functions under this Act.

*Appointment of members*

- 3 (1) A person shall be disqualified for being a member of the BSC so long as he is—
  - (a) a governor or employee of the BBC,
  - (b) a member or employee of the Independent Television Commission,
  - (c) a member or employee of the Radio Authority,
  - (d) a member or employee of the Channel Four Television Corporation,
  - (e) a member or employee of the Welsh Authority, or
  - (f) a person who does not fall within any of the preceding paragraphs but who appears to the Secretary of State to be concerned with, or to have an interest in—
    - (i) the preparation or provision of programmes for broadcasting by the BBC or the Welsh Authority, or
    - (ii) the provision of a licensed service or the preparation or provision of programmes for inclusion in such a service.
- (2) Before appointing a person to be a member of the BSC the Secretary of State shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the BSC; and the Secretary of State shall also satisfy himself from time to time with respect to every member of the BSC that he has no such interest.
- (3) Any person who is, or whom the Secretary of State proposes to appoint to be, a member of the BSC shall, whenever requested by the Secretary of State to do so, furnish him with such information as the Secretary of State considers necessary for the performance by him of his duties under sub-paragraph (2).

*Tenure of office*

- 4 (1) Subject to the following provisions of this paragraph, each member of the BSC shall hold and vacate office in accordance with the terms of his appointment.

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- (2) A person shall not be appointed to be a member of the BSC for more than five years at a time.
- (3) Any member of the BSC may at any time resign his office by notice in writing to the Secretary of State.

*Remuneration and pensions of members*

- 5 (1) The BSC may pay to each member such remuneration and allowances as the Secretary of State may determine.
- (2) The BSC may pay or make provision for paying to or in respect of any member such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the BSC may make a payment to him of such amount as the Secretary of State may determine.

*Disqualification of members of BSC for House of Commons and Northern Ireland Assembly*

- 6 In Part II of Schedule 1 to the <sup>M1</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) there shall be inserted at the appropriate place—  
“The Broadcasting Standards Commission”; and a corresponding amendment shall be made in Part II of Schedule 1 to the <sup>M2</sup>  
Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M1** 1975 c. 24.

**M2** 1975 c. 25.

*Proceedings*

- 7 (1) Subject to paragraph 8 and to the provisions of Part V of this Act, the quorum of the BSC and the arrangements relating to their meetings shall be such as the BSC may determine.
- (2) Subject to section 112, the arrangements may provide for the discharge, under the general direction of the BSC, of any of the BSC’s functions by a committee or by one or more of the members or employees of the BSC.
- 8 (1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the BSC shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—
  - (a) the disclosure shall be recorded in the minutes of the meeting, and
  - (b) (subject to sub-paragraph (2)) the member shall not take any part in any deliberation or decision of the BSC, or of any of their committees, with respect to that matter.

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- (2) Sub-paragraph (1)(b) shall not apply in relation to any meeting of the BSC at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (3) For the purposes of sub-paragraph (1), a general notification given at a meeting of the BSC by a member to the effect that he is a member of a specified company or firm and is to be regarded as interested in any matter involving that company or firm shall be regarded as a sufficient disclosure of his interest in relation to any such matter.
- (4) A member need not attend in person at a meeting of the BSC in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at the meeting.
- (5) In this paragraph references to a meeting of the BSC include references to a meeting of any of their committees.
- 9       The validity of any proceedings of the BSC shall not be affected by any vacancy among the members or by any defect in the appointment of a member or by any failure to comply with the requirements of paragraph 8 or of section 112.

*Employees of the BSC*

- 10   (1) The BSC may appoint such number of employees as they may determine.
- (2) The remuneration and other conditions of service of the persons appointed under this paragraph shall be determined by the BSC.
- (3) If the BSC determine to do so in the case of any of their employees, the BSC shall pay to or in respect of those employees such pensions, allowances or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), as the BSC may determine.
- (4) Any determination under sub-paragraph (1), (2) or (3) shall require the approval of the Secretary of State.
- (5) If any employee of the BSC—
- (a) is a participant in any pension scheme applicable to his employment, and
- (b) becomes a member of the BSC,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member of the BSC were service as an employee of the BSC.
- (6) The <sup>M3</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the BSC.

**Marginal Citations**

**M3** 1969 c. 57.

*Financial provisions*

- 11   (1) The Secretary of State shall pay to the BSC—

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- (a) any expenses incurred or to be incurred by the BSC by virtue of paragraph 5 or 10, and
  - (b) with the consent of the Treasury, such sums as he thinks fit for enabling the BSC to meet other expenses.
- (2) Any sums required by the Secretary of State for making payments under sub-paragraph (1) shall be paid out of money provided by Parliament.

*Authentication of seal of BSC*

- 12 (1) The application of the seal of the BSC shall be authenticated by the signature of the chairman or of some other person authorised for the purpose.
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.

*Presumption of authenticity of documents issued by BSC*

- 13 Any document purporting to be an instrument issued by the BSC and to be duly executed under the seal of the BSC or to be signed on behalf of the BSC shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

*Accounts and audit*

- 14 (1) The BSC shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury.
- (2) The BSC shall send a copy of the statement of accounts to the Secretary of State and to the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct.
- (3) The Comptroller and Auditor General shall—
- (a) examine, certify and report on the statement of accounts, and
  - (b) lay a copy of the statement of accounts and of his report before each House of Parliament.

SCHEDULE 4

Section 128.

SUPPLEMENTARY PROVISIONS RELATING TO DISSOLUTION OF BROADCASTING  
COMPLAINTS COMMISSION AND BROADCASTING STANDARDS COUNCIL

*Meaning of “the existing boards”*

- 1 In this Schedule “the existing boards” has the same meaning as in section 128.

*Status: Point in time view as at 01/04/1997.*

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*Provisions as to vesting of property etc. of existing boards*

- 2 (1) Sub-paragraph (2) shall have effect for the purposes of, or in connection with, the vesting in the BSC by virtue of section 128(2) of property, rights or liabilities of the existing boards.
- (2) Any agreement made, transaction effected or other thing done by or in relation to either of the existing boards which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by or in relation to the BSC, in all respects as if the BSC were the same person, in law, as that existing board; and accordingly references to either of the existing boards—
- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument,
  - (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority, and
  - (c) in any other document whatever (other than an enactment),
- shall be taken as from the transfer date as referring to the BSC.
- 3 (1) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on either of the existing boards any rights or liabilities which vest in the BSC by virtue of section 128(2), and
  - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of that existing board,
- the agreement shall have effect, in relation to anything falling to be done on or after the transfer date, as if for that reference there were substituted a reference to such person as the BSC may appoint or, in default of appointment, to the member or employee of the BSC who corresponds as nearly as possible to the member or officer of that existing board.
- (2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

*Pensions*

- 4 (1) It is hereby declared for the avoidance of doubt that section 128(2) is effective to vest the rights and liabilities of either of the existing boards under any agreement or arrangement for the payment of pensions, allowances or gratuities in the BSC along with all other rights and liabilities of the existing boards.
- (2) Accordingly, for the purposes of any such agreement or arrangement as it has effect as from the transfer date, any period of employment with either of the existing boards shall count as employment with the BSC.

*Final accounts and annual report of existing bodies*

- 5 (1) The Broadcasting Complaints Commission shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in paragraph 12 of Schedule 13 to the 1990 Act (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last such statement of accounts was prepared by them under that paragraph, and
  - (b) the transfer date,

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whether that period is a financial year or not; and that paragraph shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that paragraph in respect of that period.

- (2) The Broadcasting Complaints Commission shall, as soon as possible after the transfer date, prepare and submit to the Secretary of State, in accordance with section 148 of the 1990 Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the reference to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1).
- 6 (1) The Broadcasting Standards Council shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in paragraph 13 of Schedule 14 to the 1990 Act (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last such statement of accounts was prepared by them under that paragraph, and
  - (b) the transfer date,
- whether that period is a financial year or not; and that paragraph shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that paragraph in respect of that period.
- (2) The Broadcasting Standards Council shall, as soon as possible after the transfer date, prepare and submit to the Secretary of State, in accordance with section 160 of the 1990 Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
  - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the reference to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1).
- 7 (1) The Secretary of State shall lay copies of any such report as is mentioned in paragraph 5(2) or 6(2) before each House of Parliament.
- (2) Any expenses incurred by the Broadcasting Complaints Commission under paragraph 5 or by the Broadcasting Standards Council under paragraph 6 shall be met by the BSC.

*Final contributions towards cost of Broadcasting Complaints Commission*

- 8 (1) For the period referred to in paragraph 5(1), the Secretary of State shall notify—
- (a) to each regulatory body the sum which he considers to be the appropriate contribution of that body, in respect of persons providing licensed

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- services under licences granted by that body, towards the expenses of the Broadcasting Complaints Commission, and
- (b) to the Welsh Authority the sum which he considers to be the appropriate contribution of that body towards such expenses.
- (2) Each regulatory body and the Welsh Authority shall pay to the Secretary of State any sum notified to them under sub-paragraph (1).

## SCHEDULE 5

Section 131(4).

### TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUPPLEMENTARY PROVISIONS

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

- C2** [Sch. 5](#) extended (with modifications) (22.8.1997): to Guernsey by [S.I. 1997/1755, art. 2, Sch.](#); to the Isle of Man by [S.I. 1997/1756, art. 2, Sch.](#); to Jersey by [S.I. 1997/1757, art. 2, Sch.](#)

#### *Contents and effect of scheme*

- 1 (1) A transfer scheme may define the property, rights and liabilities to be transferred to a particular person—
- (a) by specifying or describing the property, rights and liabilities in question,
  - (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the BBC's undertaking, or
  - (c) partly in one way and partly in the other.
- (2) A transfer scheme shall appoint the day on which it is to come into force.
- (3) This Act shall have effect, in relation to any provision of a transfer scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the scheme, and without further assurance, from the BBC to the person to whom they are allocated under the scheme and to vest them in that person; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (4) This Act shall have effect, in relation to any provision of a transfer scheme for the creation, by virtue of paragraph 2, of any interest or right, so as to create the specified interests and rights, at the beginning of the day appointed for the coming into force of the scheme and without further assurance.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of a transfer scheme as provides for—
- (a) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme, or
  - (b) the creation of any of the rights or interests to be created in accordance with the scheme,
- to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g).



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- (6) In their application to Scotland, sub-paragraphs (3) and (4) shall have effect with the omission of the words “and without further assurance”.

*Division of BBC’s undertaking by scheme*

- 2 (1) For the purposes of making any such division as the BBC consider appropriate of any of the property, rights and liabilities of the BBC between two or more persons (including any division between the BBC and any one or more other persons), a transfer scheme may contain provision—
- (a) for the creation in favour of the BBC of an interest or right in or in relation to property transferred in accordance with that scheme to any person,
  - (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another,
  - (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the BBC,
  - (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the BBC,
  - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) to be enforceable in different or modified respects by or against each or any of them,
  - (f) for the creation of new rights and liabilities as between different transferees and as between any transferee and the BBC, and
  - (g) without prejudice to paragraph (f), for imposing on any transferee or the BBC an obligation—
    - (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph of this Schedule (whether in the same or a different scheme), or
    - (ii) to execute such instruments in favour of any such person,as may be specified or described in the scheme.
- (2) A transfer scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the BBC consider to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1), or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (2) shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified or determined under the scheme.
- (4) An obligation imposed on any person by virtue of sub-paragraph (1)(g) shall be enforceable by the bringing, by any person with or in favour of whom the agreement or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.
- (5) In this paragraph—

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- (a) references, in relation to a transfer scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme, and
  - (b) the reference, in relation to such a scheme, to a third party is a reference to a person other than—
    - (i) the BBC, or
    - (ii) any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2)) is a transferee.
- (6) Sub-paragraphs (2) and (3) shall be without prejudice to the generality of paragraph 4(1).

*Property to which a scheme may relate*

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a transfer scheme shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the BBC,
  - (b) rights and liabilities of the BBC under any agreement or arrangement for the payment of pensions, allowances and gratuities,
  - (c) property acquired at a time after the making of the scheme and before it comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme,
  - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom, and
  - (e) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a), and the interests and rights that may be created in accordance with a transfer scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the BBC are entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act, to terminate, modify, acquire or claim an interest or right which is vested in the BBC at the passing of this Act or acquired by the BBC after that time, or to treat any such interest or right as modified or terminated, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme, and
  - (b) without prejudice to the preceding provisions of this paragraph or to paragraph 4(2)(a), that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains

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provision for it to be transferred subject to the provisions conferring that entitlement.

- (4) Subject to sub-paragraphs (5) and (6), nothing in sub-paragraph (1) or (2) shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), or
  - (b) anything done under any such agreement,
- to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made by or under that agreement or instrument.
- (5) A transfer scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
  - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2).
- (6) A transfer scheme may provide that sub-paragraph (3) shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3)(b) to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

#### *Supplemental provisions of schemes*

- 4 (1) A transfer scheme may contain supplemental, incidental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A transfer scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transferee to be treated as the same person in law as the BBC,
  - (b) for agreements made, transactions effected or other things done by or in relation to the BBC to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee,
  - (c) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the BBC to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme,
  - (d) for proceedings commenced by or against the BBC to be continued by or against the transferee, and
  - (e) for any such disputes as to the effect of the scheme as arise between different transferees, or between any transferee on the one hand and the BBC on the other, to be referred to such arbitration as may be specified in or determined under the scheme.

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- (3) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales or Northern Ireland—
- (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of the document, and
  - (b) section 64 of the <sup>M4</sup>Law of Property Act 1925 (production and safe custody of documents) or section 9 of the <sup>M5</sup>Conveyancing Act 1881 (the corresponding provision for Northern Ireland) shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.
- (4) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a transfer scheme, subsections (1) and (2) of section 16 of the <sup>M6</sup>Land Registration (Scotland) 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (5) In this paragraph—
- (a) references to a transfer include references to the creation in any person’s favour of any interest or right, and references to a transferee shall be construed accordingly, and
  - (b) references to a person who is entitled, in consequence of any transfer, to possession of a document include references to the BBC in a case where the BBC are entitled to retain possession of any document following any transfer.
- (6) Sub-paragraphs (2) to (4) shall be without prejudice to the generality of sub-paragraph (1).

**Marginal Citations**

- M4** 1925 c. 20.  
**M5** 1881 c. 41.  
**M6** 1979 c. 33.

*Certificate of Secretary of State as to vesting of property etc.*

- 5 A certificate issued by the Secretary of State to the effect that any property, right or liability of the BBC vested at a particular time in accordance with a transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters stated in the certificate.

*Duties in relation to foreign property etc.*

- 6 (1) It shall be the duty of the BBC and of any person to whom any foreign property, right or liability is transferred to take all such steps as may be requisite to secure that

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the vesting in the transferee, in accordance with the scheme, of the foreign property, right or liability is effective under the relevant foreign law.

- (2) Until the vesting in the transferee in accordance with the scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the BBC to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.
- (3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the transferee in accordance with the scheme of any foreign property, right or liability.
- (4) The BBC shall have all such powers as may be requisite for the performance of their duties under this paragraph, but it shall be the duty of a person to whom a transfer is made in accordance with a transfer scheme to act on behalf of the BBC (so far as possible) in performing the duties imposed on them by this paragraph.
- (5) Where—
  - (a) any foreign property, rights or liabilities are acquired or incurred by the BBC in respect of any other property, rights or liabilities, and
  - (b) by virtue of this paragraph the BBC hold the other property or rights for the benefit of another person or discharge the liability on behalf of another person,

the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Any expenses incurred by the BBC under this paragraph shall be met by the person to whom the transfer in question is made.
- (8) Any obligation imposed under this paragraph shall be enforceable as if contained in a contract between the BBC and the person to whom the transfer in question is made.

#### *Modification of scheme by agreement*

- 7 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the BBC or another person to whom anything has been transferred in accordance with that or any other transfer scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying the effect of either or both of the schemes—
  - (a) any of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
  - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,

should be transferred from one to the other as from a date appointed by the agreement.
- (2) If—

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- (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a transfer scheme of property, rights or liabilities to any of its parties comes into force, and
  - (b) the Secretary of State has given his approval to the transfer for which the agreement provides and to its terms and conditions,
- then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a transfer scheme.
- (3) Subject to the approval of the Secretary of State and to sub-paragraph (4), the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a transfer scheme provides, in that scheme.
- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) Before—
- (a) refusing his approval for the purposes of this paragraph, or
  - (b) giving his approval for those purposes in a case where the BBC are not a party to the proposed agreement,
- the Secretary of State shall consult the BBC.
- (6) In this paragraph references to a transfer in accordance with a transfer scheme include references to the creation of any interest, right or liability in accordance with such a scheme.
- (7) In this paragraph and paragraphs 8 and 9 “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2).

#### *Compensation*

- 8 (1) Where, in consequence of any provisions included in a transfer scheme for the purposes of any such division as is mentioned in paragraph 2(1), the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights, or
  - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
    - (i) an interest in only part of that property, or
    - (ii) separate interests in different parts of that property,
  - (b) a right of the third party against the BBC is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the BBC, or

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- (c) a liability of the third party to the BBC is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the BBC.

(3) Where—

- (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3), have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
- (b) the provisions of that scheme or of paragraph 3(3) have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
- (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

(4) A liability to pay compensation under this paragraph shall fall on the persons not being themselves third parties who, as the case may be—

- (a) have interests in the whole or any part of the property affected by the modification in question,
- (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
- (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

(5) Where any liability falls by virtue of sub-paragraph (4) on the BBC, that sub-paragraph shall have effect subject to so much of any transfer scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.

(6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall be referred to and determined—

- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
- (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

(7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue

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of paragraph 2(1)(g), and to any modification agreement, as it has effect in relation to the provisions of a transfer scheme.

- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—
- (a) the BBC or any of their wholly-owned subsidiaries (as defined by section 736 of the <sup>M7</sup>Companies Act 1985),
  - (b) the Secretary of State, or
  - (c) any person whose consent to those provisions has been given for the purposes of section 132(2) or who has agreed to those provisions by virtue of being a party to a modification agreement.

**Marginal Citations**

M7 1985 c. 6.

*Notice to persons affected by scheme*

- 9 (1) It shall be the duty of the BBC, where it appears to them in the case of any transfer scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8, to give notice under this paragraph to every such person.
- (2) A notice to be given by the BBC under this paragraph shall be given as soon as reasonably practicable after they make the scheme or agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the BBC that the property, rights or liabilities of the person to whom it is given are affected.
- (4) Where it is not reasonably practicable for the notice under this paragraph to any person to be given to that person, the BBC shall, instead, take such steps for publishing the contents of the notice as they may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.

*Consideration for transfer etc.*

- 10 (1) A transfer in accordance with a transfer scheme may be made for consideration or for no consideration and, if it is made for consideration, the consideration may, in particular, take the form of the issue of shares or securities.
- (2) In sub-paragraph (1), “transfer” has the meaning given by paragraph 1(1) of Schedule 7.



*Status: Point in time view as at 01/04/1997.*

*Changes to legislation: Broadcasting Act 1996 is up to date with all changes known to be in force on or before 30 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULE 6

Section 134.

## TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUCCESSOR COMPANIES

*Interpretation*

## 1 (1) In this Schedule—

“the Charter” means the <sup>M8</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation;

“preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;

“successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;

“transfer” includes—

- (a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5;
- (b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and
- (c) the creation of interests, rights or liabilities by virtue of any provision contained in a preparatory scheme by virtue of paragraph 2 of Schedule 5;

and references to a transfer in accordance with a preparatory scheme shall be construed accordingly;

“wholly-owned subsidiary” has the meaning given by section 736 of the <sup>M9</sup>Companies Act 1985.

- (2) Any reference in this Schedule to vesting in accordance with a preparatory scheme or vesting effected by a preparatory scheme shall be construed as a reference to vesting as a result of a transfer in accordance with a preparatory scheme.

**Marginal Citations**

**M8** Cm. 3248.

**M9** 1985 c. 6.

*Statutory accounts*

- 2 (1) The following provisions of this paragraph shall have effect for the purposes of any statutory accounts of a successor company.
- (2) The vesting in the company effected by any preparatory scheme shall be taken—
  - (a) to have been effected immediately after the end of the last financial year of the BBC to end before the coming into force of the scheme, and
  - (b) to have been a vesting of such property, rights and liabilities as are determined by or under the scheme.

*Status: Point in time view as at 01/04/1997.*

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- (3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) to have been vested in the company shall be taken to have been—
- (a) in the case where the value or amount is determined by or under the preparatory scheme, that value or amount, and
  - (b) in any other case, the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their last financial year to end before the day on which the preparatory scheme comes into force.
- (4) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (3).
- (5) In this paragraph “statutory accounts”, in relation to a company, means any accounts of that company prepared for the purposes of any provision of the <sup>M10</sup>Companies Act 1985 (including group accounts).

**Marginal Citations**

**M10** 1985 c. 6.

*Distributable reserves*

- 3 (1) Where statutory accounts of a successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital, and
  - (b) the amount, apart from any property, rights and liabilities transferred to it in accordance with any preparatory scheme, of its undistributable reserves,
- then, for the purposes of section 263 of the Companies Act 1985 (profits available for distribution) and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company’s accumulated realised profits over its accumulated realised losses.
- (2) For the purposes of section 264 of the Companies Act 1985 (restriction on distribution of assets) so much of any excess of a company’s net assets as falls, in accordance with a direction under this paragraph, to be treated otherwise than as representing an excess of the company’s accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company’s undistributable reserves.
- (3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be a wholly-owned subsidiary of the BBC) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) and is to fall to be treated as comprised in the company’s accumulated realised profits.

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- (4) The Secretary of State shall not give a direction under this paragraph in relation to a successor company at any time after the company has ceased to be a wholly-owned subsidiary of the BBC.
- (5) The consent of the Treasury shall be required for the giving of a direction under this paragraph.
- (6) In this paragraph—
- “called-up share capital” has the same meaning as in the Companies Act 1985;
  - “net assets” has the meaning given by subsection (2) of section 264 of that Act;
  - “undistributable reserves” has the meaning given by subsection (3) of that section;
- and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

#### *Dividends*

- 4 (1) Where a distribution is proposed to be declared during any accounting reference period of a successor company which includes a transfer date or before any accounts are laid or filed in respect of such a period, sections 270 to 276 of the <sup>M11</sup>Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
- (a) references in section 270 to the company’s accounts or to accounts relevant under that section, and
  - (b) references in section 273 to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (2), would have been prepared under section 226 of that Act in respect of the relevant year (in this paragraph referred to as “the relevant accounts”).
- (2) Those assumptions are—
- (a) that the relevant year had been a financial year of the successor company,
  - (b) that the vesting in accordance with the preparatory scheme had been a vesting of all the property, rights and liabilities transferred to the company in accordance with that scheme and had been effected immediately after the beginning of that year,
  - (c) that the value of any asset and the amount of any liability of the BBC vested in the successor company in accordance with the preparatory scheme had been the value or (as the case may be) amount determined by or under the scheme or (if there is no such determination) the value or amount assigned to the asset or liability for the purposes of the Account or Accounts prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of their financial year immediately preceding the relevant year,
  - (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year, and

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- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (3) If an Account or Accounts are prepared by the BBC for the purposes of Article 18(2) of the Charter in respect of the residual part of a financial year, that residual part shall be treated as a financial year of the BBC for the purposes of sub-paragraph (2)(c).
- (4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 2.
- (5) In this paragraph—  
“accounting reference period” has the meaning given by section 224 of the Companies Act 1985;  
“complete financial year” means a financial year ending with 31st March;  
“the relevant year”, in relation to any transfer date, means the last complete financial year ending before that date;  
“a transfer date”, in relation to a successor company, means the date of the coming into force of any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company.

**Marginal Citations**

**M11** 1985 c. 6.

*Application of the Trustee Investments Act 1961*

- 5 (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the <sup>M12</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in every year preceding the first investment year which is included in the relevant five years, and
- (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In sub-paragraph (1)—  
“the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made;  
“the transfer date”, in relation to a successor company, means the first date on which any preparatory scheme in accordance with which property, rights or liabilities are transferred to that company comes into force.

**Marginal Citations**

**M12** 1961 c. 62.

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## SCHEDULE 7

Section 135.

### TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: TAXATION PROVISIONS

#### *Interpretation*

- 1 (1) In this Schedule, unless the context otherwise requires—
- “the Allowances Act” means the <sup>M13</sup>Capital Allowances Act 1990;
  - “the BBC transmission network” has the meaning given by section 131(2);
  - “the Capital Allowances Acts” has the meaning given by section 832(1) of the Taxes Act 1988;
  - “direct disposal scheme” means a transfer scheme which is not a preparatory scheme;
  - “direct disposal transfer” means a transfer in accordance with a direct disposal scheme;
  - “the documents regulating the BBC” includes—
    - (a) the <sup>M14</sup>Royal Charter of 1st May 1996 for the continuance of the British Broadcasting Corporation; and
    - (b) the <sup>M15</sup>Agreement dated 25th January 1996 between Her Majesty’s Secretary of State for National Heritage and the British Broadcasting Corporation;
  - “the Gains Act” means the <sup>M16</sup>Taxation of Chargeable Gains Act 1992;
  - “modification agreement” has the meaning given by paragraph 7(7) of Schedule 5;
  - “preparatory scheme” means a transfer scheme whose main purpose is to provide for a transfer of property, rights or liabilities from the BBC to a wholly-owned subsidiary of the BBC;
  - “preparatory transfer” means a transfer in accordance with a preparatory scheme;
  - “relevant transfer” means a transfer in accordance with a transfer scheme;
  - “successor company” means a company to which property, rights or liabilities are transferred in accordance with a preparatory scheme at a time when the company is a wholly-owned subsidiary of the BBC;
  - “the Taxes Act 1988” means the <sup>M17</sup>Income and Corporation Taxes Act 1988;
  - “transfer”, except for the purposes of paragraphs 13 to 18, includes—
    - (a) any transfer effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by a provision contained in a transfer scheme by virtue of paragraph 2(1)(g) of Schedule 5;
    - (b) the creation of interests, rights or liabilities by or under any such agreement or instrument; and
    - (c) the creation of interests, rights or liabilities by virtue of any provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5;
- and references to a transfer in accordance with a transfer scheme (or any description of transfer scheme) shall be construed accordingly;

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“transferee”—

- (a) in relation to a transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the transfer scheme; and
- (b) in relation to a relevant transfer, means the person to whom the property, rights or liabilities in question are transferred in accordance with the transfer scheme in question;

“wholly-owned subsidiary” has the meaning given by section 736 of the <sup>M18</sup>Companies Act 1985.

- (2) In any provision of this Schedule “the prescribed amount”, in relation to any transferee under a transfer scheme, means such amount as may be specified by the Secretary of State by order for the purposes of that provision in its application to that transferee.
- (3) This Schedule—
  - (a) so far as it relates to corporation tax, shall be construed as one with the Corporation Tax Acts, and
  - (b) so far as it relates to capital allowances, shall be construed as one with the Capital Allowances Acts.

**Marginal Citations**

- M13** 1990 c. 1.
- M14** Cm. 3248.
- M15** Cm. 3152.
- M16** 1992 c. 12.
- M17** 1988 c. 1.
- M18** 1985 c. 6.

*Chargeable gains: preparatory transfers etc to be without gain or loss*

- 2 (1) For the purposes of corporation tax on chargeable gains, the disposal of property, rights or liabilities which is constituted by a preparatory transfer shall, subject to the following provisions of this Schedule, be taken in relation to both—
  - (a) the person to whom the disposal is made, and
  - (b) the person making the disposal,
 to be effected for a consideration such that no gain or loss accrues to the person making the disposal.
- (2) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a preparatory transfer.

*Chargeable gains: amendment of section 35(3)(d) of the Gains Act*

- 3 In section 35(3)(d) of the Gains Act (list of provisions for transfers without gain or loss for purposes of provisions applying to assets held on 31st March 1982) after sub-paragraph (xi) there shall be inserted—
  - “(xii) paragraph 2(1) of Schedule 7 to the Broadcasting Act 1996;”.

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*Chargeable gains: section 41 of the Gains Act*

- 4 Subsection (1) of section 174 of the Gains Act (which applies section 41 of that Act to cases where assets have been acquired without gain or loss) shall have effect, without prejudice to paragraph 2, where there has been a preparatory transfer as if the asset to which the preparatory transfer relates had thereby been transferred and acquired in relevant circumstances, within the meaning of that subsection.

*Chargeable gains: assets held before 6th April 1965*

- 5 Schedule 2 to the Gains Act (assets held on 6th April 1965) shall have effect in relation to any assets which are transferred to a successor company in accordance with a preparatory scheme as if—
- (a) the BBC and the successor company were the same person; and
  - (b) those assets, to the extent that they were in fact acquired or provided by the BBC, were acquired or, as the case may be, provided by the successor company.

*Chargeable gains: sale of successor company : group transactions*

- 6 (1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any company (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies, the degrouped company shall not, by virtue of that qualifying transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which falls to be regarded for the purposes of subsection (1) of that section as having been at the time of acquisition a member of that group.
- (2) Where, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.
- (3) In this paragraph—
- “preparatory transaction”, in the case of any qualifying transaction, means anything done for the purpose of initiating, advancing or facilitating the qualifying transaction;
  - “qualifying transaction” means the disposal by the BBC of any shares or securities of a successor company.
- (4) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

*Chargeable gains: sale or exchange of shares or securities of successor company*

- 7 (1) Where a company issues shares or debentures to the BBC in exchange for shares in or debentures of a successor company which have not, before that exchange, been disposed of by the BBC—
- (a) sections 127 to 131 of the Gains Act (reorganisation or reduction of share capital) shall not apply by virtue of subsection (3) of section 135 of that Act (exchange of securities) in relation to that exchange, and

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- (b) section 116 of that Act (reorganisations, conversions and reconstructions) accordingly does not have effect in relation to that transaction, and the following provisions of this paragraph shall apply accordingly.
- (2) The following provisions of this paragraph apply in any case where—
- (a) there is a preparatory transfer to a successor company;
  - (b) the BBC disposes of any shares or securities of the successor company for a consideration in money or money's worth; and
  - (c) those shares or securities are shares or securities which were—
    - (i) held by or on behalf of the BBC immediately before the preparatory transfer takes effect, or
    - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,
 and which have not previously been disposed of by the BBC.
- (3) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal mentioned in sub-paragraph (2)(b).
- (4) If the consideration for the disposal mentioned in sub-paragraph (2)(b) consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (5) In this paragraph “variable deferred consideration” means any consideration—
- (a) which is not to be given until after the disposal mentioned in sub-paragraph (2)(b); and
  - (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of that disposal.

*No chargeable gain or allowable loss to arise on  
 any disposal constituted by a direct disposal transfer*

- 8 (1) For the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on any disposal constituted by a direct disposal transfer.
- (2) If the consideration for a direct disposal transfer consists of or includes a right to any variable deferred consideration, then, for the purposes of corporation tax on chargeable gains, neither a chargeable gain nor an allowable loss shall be regarded as arising to the BBC on the disposal of the right to the variable deferred consideration.
- (3) In this paragraph “variable deferred consideration”, in the case of any direct disposal transfer, means any consideration—
- (a) which is not to be given until after the direct disposal transfer; and
  - (b) whose amount or value, as at the time when it is to be given, is not ascertainable at the time of the disposal constituted by that transfer.



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*Chargeable gains: value shifting*

- 9 (1) Nothing in Part VI of this Act, and no instrument or agreement made, or other thing done, under or by virtue of that Part or for the purpose of initiating, advancing or facilitating the disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
  - (b) any shares or securities of a successor company which are shares or securities which were—
    - (i) held by or on behalf of the BBC immediately before a preparatory transfer to the successor company takes effect, or
    - (ii) issued to or for the BBC at a time when the successor company is a wholly-owned subsidiary of the BBC,
- and which have not previously been disposed of by the BBC,
- shall be regarded as a scheme or arrangement for the purposes of section 30 of the Gains Act (value-shifting).
- (2) In any case where—
- (a) an asset which is the subject of a preparatory transfer has previously been the subject of a scheme or arrangements falling within subsection (1) of section 30 of the Gains Act,
  - (b) in consequence, subsection (5) of that section (consideration on disposal to be treated as increased for certain purposes) would, apart from sub-paragraph (3), have had effect in relation to the consideration for the preparatory transfer, and
  - (c) the consideration for the preparatory transfer falls to be determined, for the purposes of corporation tax on chargeable gains, under paragraph 2,
- sub-paragraph (3) shall apply.
- (3) Where this sub-paragraph applies—
- (a) subsection (5) of section 30 of the Gains Act shall not have effect in relation to the consideration for the preparatory transfer; but
  - (b) on the first subsequent disposal of the asset which is neither a preparatory transfer nor a group disposal—
    - (i) that subsection shall have effect in relation to the consideration for that disposal (whether or not it would otherwise have done so); and
    - (ii) the increase that falls to be made under that subsection shall be so calculated as to include any increase which would, but for paragraph (a) above, have fallen to be made in relation to the preparatory transfer.
- (4) In this paragraph “group disposal” means a disposal which falls to be treated by virtue of section 171(1) of the Gains Act as made for a consideration such that no gain or loss accrues to the person making the disposal.

*Chargeable gains: receipt of compensation or insurance money*

- 10 (1) Subsection (4) of section 23 of the Gains Act (adjustments where compensation or insurance money used for purchase of replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—

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- (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or
  - (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the BBC acquired the asset by the application of that sum,
 the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (2) Subsection (5) of that section (adjustments where a part of any compensation or insurance money is used for the purchase of a replacement asset) shall have effect in accordance with sub-paragraph (3) in any case where—
- (a) there is a relevant transfer such that—
    - (i) a capital sum received by the BBC by way of compensation for the loss or destruction of an asset, or under a policy of insurance of the risk of the loss or destruction of an asset, becomes available to the transferee; or
    - (ii) a right of the BBC to receive such a sum is transferred to the transferee, and the transferee receives that sum; and
  - (b) the transferee acquires an asset in circumstances where—
    - (i) had there been no such relevant transfer, and
    - (ii) had the BBC acquired the asset by the application of all of that sum except for a part which was less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the asset lost or destroyed,
 the BBC would be treated for the purposes of that subsection as having so acquired the asset in replacement for the asset lost or destroyed.
- (3) In a case falling within sub-paragraph (1) or (2) of this paragraph, subsection (4) or, as the case may be, subsection (5) of section 23 of the Gains Act shall have effect as if the transferee and the BBC were the same person, except that—
- (a) in a case falling within sub-paragraph (1)(a)(i) or (2)(a)(i)—
    - (i) any claim under the subsection in question must be made by the BBC and the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the BBC; and
  - (b) in a case falling within sub-paragraph (1)(a)(ii) or (2)(a)(ii)—
    - (i) any claim under the subsection in question must be made by the transferee; and
    - (ii) any adjustment to be made in consequence of paragraph (a) of that subsection shall be made for the purposes only of the taxation of the transferee.

*Loan relationships: disposal of securities by BBC*

- 11 (1) This paragraph applies in any case where—

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- (a) there is a preparatory transfer to a successor company;
  - (b) the BBC disposes of any securities of the successor company for a consideration in money or money's worth; and
  - (c) those securities are securities issued to or for the BBC in consideration for the preparatory transfer.
- (2) Where this paragraph applies, any debits or credits which, by reason of the disposal mentioned in sub-paragraph (1)(b), would, apart from this sub-paragraph, be given by Chapter II of Part IV of the <sup>M19</sup>Finance Act 1996 (loan relationships) in respect of a loan relationship for an accounting period of the BBC shall not be brought into account for the purposes of that Chapter as respects the BBC.

**Marginal Citations**

**M19** 1996 c. 8.

*Transfer of trade: loss relief and capital allowances*

- 12 (1) This paragraph applies in any case where, as a result of a relevant transfer,—
- (a) the BBC ceases to carry on a trade; and
  - (b) the transferee begins to carry on that trade.
- (2) Where this paragraph applies, section 343 of the Taxes Act 1988 (company reconstructions without change of ownership) shall not have effect in relation to the event described in sub-paragraph (1).
- (3) Where this paragraph applies, the trade mentioned in sub-paragraph (1) shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Acts; but—
- (a) there shall be made to or on the transferee in accordance with those Acts all such allowances and charges as would, if the BBC had continued to carry on the trade, have fallen to be made to or on it; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the BBC began to do so; and
    - (ii) everything done to or by the BBC had been done to or by the transferee (but so that no sale or transfer which on the transfer of the trade is made to the transferee by the BBC of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).
- (4) For the purposes of this paragraph—
- (a) where, on the BBC ceasing to carry on a trade, a company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the company shall be treated as a separate trade, if the effect of so treating it is that this paragraph applies by virtue of sub-paragraph (1) on that event in relation to that separate trade; and
  - (b) where, on the BBC ceasing to carry on part of a trade, a company begins to carry on the activities of that part as its trade or part of its trade, the BBC

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shall be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that this paragraph applies by virtue of subparagraph (1) on that event in relation to that separate trade.

*Capital allowances: industrial buildings and structures*

- 13 (1) This paragraph applies in any case where there is a relevant transfer of property which is, for the purposes of Part I of the Allowances Act (industrial buildings and structures), the relevant interest in relation to any expenditure incurred on the construction of a building or structure.
- (2) Where this paragraph applies, the Secretary of State may by order make provision specifying, as respects the transferee,—
- (a) the amount which is to be taken for the purposes of Part I of the Allowances Act to be the amount of the capital expenditure incurred on the construction of the building or structure; and
  - (b) the date which is to be taken for the purposes of that Part as the date on which the building or structure was first used.
- (3) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

*Capital allowances: machinery and plant*

- 14 (1) For the purposes of Part II of the Allowances Act (capital allowances in respect of machinery and plant) property which is transferred to a successor company in accordance with a preparatory scheme shall be treated as if—
- (a) it had been acquired by the successor company, for the purposes for which it is used by that company on and after the date on which the transfer of the property in accordance with the scheme takes effect, on that date; and
  - (b) capital expenditure of the prescribed amount had been incurred on that date by the successor company on the acquisition of the property for the purposes mentioned in paragraph (a).
- (2) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

*Capital allowances: leased fixtures*

- 15 (1) This paragraph applies to any lease which is granted in pursuance of an obligation imposed by a provision contained in a preparatory scheme by virtue of paragraph 2(1)(g) of Schedule 5.
- (2) Where the conditions in paragraphs (a) and (b) of subsection (1) of section 55 of the Allowances Act (expenditure incurred by incoming lessee: transfer of allowances) are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of Part II of that Act to have given as consideration for the lease a capital sum which falls to be treated

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- for the purposes of that Part as expenditure on the provision of the fixture concerned;
- (b) the amount of that capital sum shall be the prescribed amount; and
- (c) subsection (4)(a) of that section shall be disregarded.
- (3) Where the conditions in paragraphs (a), (c) and (d) of section 56 of the Allowances Act (expenditure incurred by incoming lessee: lessor not entitled to allowances) are fulfilled in relation to a lease to which this paragraph applies—
- (a) the lessee shall be deemed for the purposes of Part II of that Act to have given as consideration for the lease a capital sum which falls to be treated for the purposes of that Part as expenditure on the provision of the fixture concerned; and
- (b) the amount of that capital sum shall be the prescribed amount.

*Capital allowances: connected persons*

- 16 In Part II of the Allowances Act (machinery and plant) references to a transaction (however described) between connected persons within the meaning of section 839 of the Taxes Act 1988 shall not include references to a preparatory transfer.

*Capital allowances: agricultural buildings*

- 17 (1) This paragraph applies in any case where there is a relevant transfer of property which is the relevant interest in relation to any expenditure for which the BBC would be entitled to an allowance under Part V of the Allowances Act (agricultural buildings etc.) apart from section 128 of that Act (balancing allowances and charges).
- (2) Where this paragraph applies—
- (a) the acquisition of the relevant interest by the transferee shall, as respects the transferee, be treated for the purposes of Part V of the Allowances Act as a balancing event falling within subsection (1)(a) of section 129 of that Act (so that, in particular, subsection (3) of that section applies by reason of its occurrence); and
- (b) it shall accordingly be assumed, as respects the transferee, that an election has been made under subsection (2) of that section (acquisition of relevant interest by another not to be a balancing event without an election under that subsection) with respect to the acquisition of the relevant interest by the transferee.
- (3) Where this paragraph applies, subsection (3) of section 129 of the Allowances Act (entitlement of the new owner to allowances) shall, as respects the transferee, have effect with the following modifications, that is to say—
- (a) the period which, by virtue of paragraph (a) of that subsection, is to be treated as if it were itself the writing-down period in which the allowances in respect of the expenditure in question were to be made shall be such period as the Secretary of State may by order specify; and
- (b) the expenditure which, by virtue of paragraph (b) of that subsection, is to be treated as the expenditure in respect of which the transferee (as being the new owner, within the meaning of that section) is entitled to the allowances

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mentioned in that paragraph shall be equal to the prescribed amount (without any reduction or addition under that paragraph).

- (4) This paragraph shall not have effect in relation to any property if paragraph 12(3) has effect in relation to it.

*Corporation tax: BBC and successor company to be treated as one for certain purposes*

- 18 (1) If any property, rights or liabilities are transferred to a successor company in accordance with a preparatory scheme, then, subject to sub-paragraph (2), the following provisions shall apply for the purposes of the Corporation Tax Acts in their application in respect of any accounting period ending on or after the date on which the transfer takes effect, namely—
- (a) any trade or part of a trade carried on by the BBC which is transferred in accordance with the preparatory scheme to the successor company shall be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by that company;
  - (b) the trade or trades carried on by the successor company on and after the date on which the transfer takes effect shall be treated as the same trade or trades as that which, by virtue of paragraph (a), is treated as carried on before that date;
  - (c) all property, rights and liabilities of the BBC which are transferred in accordance with the scheme to the successor company shall be treated as having been, at the time when they became vested in the BBC and at all times since that time, property, rights and liabilities of that company; and
  - (d) anything done by the BBC in relation to property, rights and liabilities which are transferred to the successor company in accordance with the preparatory scheme shall be treated as having been done by that company.
- (2) Sub-paragraph (1) shall not apply for the purposes of—
- (a) corporation tax on chargeable gains,
  - (b) capital allowances, or
  - (c) relief for losses incurred in carrying on a trade,
- and no provision included in a scheme by virtue of paragraph 4(2)(a) of Schedule 5 shall have effect for those purposes.

*Corporation tax: no profit or loss under Case I of Schedule D by reason of a direct disposal transfer*

- 19 In determining for the purposes of Case I of Schedule D the profits or gains or losses arising or accruing to the BBC, it shall be assumed that no profits or gains, and no losses, arise or accrue to the BBC by reason of a direct disposal transfer of—
- (a) any trading stock, within the meaning of section 100 of the Taxes Act 1988, belonging to a trade carried on by the BBC;
  - (b) any right of the BBC to receive an amount which is for the purposes of corporation tax—
    - (i) an amount brought into account as a trading receipt of the BBC for any accounting period ending before the time when the transfer takes effect; or
    - (ii) an amount falling to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC

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- current on the day before the transfer takes effect ends immediately before that time; or
- (c) the whole or any part of the amount of a liability which falls for the purposes of corporation tax—
- (i) to be brought into account as deductible in computing the profits of any trade carried on by the BBC for any accounting period ending before the time when the transfer takes effect; or
- (ii) to be so brought into account if it is assumed, where it is not the case, that the accounting period of the BBC current on the day before the transfer takes effect ends immediately before that time.

*Corporation tax: group relief*

- 20 (1) None of the following, namely—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC,
- (b) any direction given by a Minister of the Crown under that Part or those documents, so far as that direction relates to a transfer scheme or (in a case where there is a preparatory scheme) to the sale of shares or securities issued by the successor company, or
- (c) any arrangements (of any kind, whether in writing or not) so far as relating to a transfer scheme or any such sale,
- shall be regarded as constituting arrangements falling within subsection (1) or (2) of section 410 of the Taxes Act 1988 (arrangements for the transfer of a company to another group or consortium).
- (2) Neither—
- (a) the existence of the powers of any Minister of the Crown or the BBC under Part VI of this Act or under the documents regulating the BBC, nor
- (b) any direction given as mentioned in sub-paragraph (1)(b),
- shall be regarded as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to the Taxes Act 1988.
- (3) Any reference in sub-paragraph (1) or (2) to the documents regulating the BBC is a reference to those documents only so far as they have effect in relation to a disposal by the BBC of—
- (a) the whole or any part of the BBC transmission network, or
- (b) any shares or securities of a successor company,
- or the initiating, advancing or facilitating of any such disposal.
- (4) In this paragraph “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M20</sup>Crown Act 1975.

**Marginal Citations**

M20 1975 c. 26.

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*Corporation tax: leases at an undervalue*

- 21 (1) Section 35 of the Taxes Act 1988 (charge on lease granted at an undervalue) shall not apply in the case of any lease which, in accordance with a transfer scheme, is granted—
- (a) to a company which is a transferee under that or any other transfer scheme, or
  - (b) by such a company to the BBC.
- (2) Section 87 of the Taxes Act 1988 (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for sub-paragraph (1); and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.
- (3) In this paragraph “lease” has the same meaning as in Part II of the Taxes Act 1988.

*Corporation tax: sale and lease-back*

- 22 (1) Section 779 of the Taxes Act 1988 (sale and lease-back: limitation on tax reliefs) shall not apply where the liability of the transferor or of the person associated with that transferor is as a result of—
- (a) the creation, in accordance with a transfer scheme, of any interest or right in favour of a transferee or the BBC;
  - (b) any other transaction for which a transfer scheme provides; or
  - (c) the grant by a company which is a transferee under a transfer scheme (“the relevant company”) to the BBC or to another company which is a transferee (whether under that or any other transfer scheme) of any interest or right, at a time when the relevant company remains a wholly-owned subsidiary of the BBC, in a case where the ability of the relevant company to grant that interest or right derives from the transfer to the company in accordance with a transfer scheme of an estate or interest in land.
- (2) In this paragraph “transferor” has the same meaning as in section 779 of the Taxes Act 1988 and “associated” shall be construed in accordance with that section.

*Corporation tax: sale of lease of land*

- 23 (1) Section 780 of the Taxes Act 1988 (sale and lease-back: taxation of consideration) shall not apply where—
- (a) the assignment of the original lease, and
  - (b) the grant or assignment of the new lease,
- each fall within sub-paragraph (2).
- (2) The assignment of the original lease, or the grant or assignment of the new lease, falls within this sub-paragraph if—
- (a) it is a relevant transfer; or
  - (b) it takes place between the BBC and a successor company at a time when the successor company remains a wholly-owned subsidiary of the BBC; or
  - (c) it takes place between two successor companies at a time when both remain wholly-owned subsidiaries of the BBC.
- (3) The reference in sub-paragraph (1) to the assignment of the original lease and the grant or assignment of the new lease shall be construed in accordance with



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section 780 of the Taxes Act 1988 and sub-paragraph (2) shall be construed accordingly.

*Corporation tax: leased assets*

- 24 (1) For the purposes of section 781 of the Taxes Act 1988 (assets leased to traders and others) where the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred in accordance with a transfer scheme to the BBC or a transferee, the transfer shall be treated as being effected without any capital sum having been obtained in respect of that interest by the BBC or the transferee.
- (2) Section 782 of the Taxes Act 1988 (deduction of payment under leases: special cases) shall not apply to any payments made by the BBC or a company which is a transferee under a transfer scheme if the payments are made—
- (a) under any lease created in favour of the BBC or such a company by virtue of, or in pursuance of an obligation imposed by, a provision contained in a transfer scheme by virtue of paragraph 2 of Schedule 5; or
  - (b) under any lease—
    - (i) which is granted to or by a successor company at a time when it remains a wholly-owned subsidiary of the BBC; and
    - (ii) which is a lease of an asset which at any time before the creation of the lease was used by the BBC for the purposes of a trade carried on by the BBC and which was, when so used, owned by the BBC.
- (3) In this paragraph “lease” and “asset” have the meaning given by section 785 of the Taxes Act 1988.

*Stamp duty*

- 25 (1) Stamp duty shall not be chargeable on any agreement or instrument to the extent that it is certified by the Secretary of State to the Commissioners of Inland Revenue as being—
- (a) a restructuring scheme,
  - (b) a restructuring scheme modification agreement, or
  - (c) an instrument giving effect to a restructuring scheme modification agreement,
- or as having been made in accordance with, or in pursuance of an obligation imposed by, a restructuring scheme.
- (2) No agreement or instrument which is certified as mentioned in sub-paragraph (1) shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would be liable, apart from that sub-paragraph; or
  - (b) it has, in accordance with section 12 of the <sup>M21</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Section 12 of the <sup>M22</sup>Finance Act 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory power) shall not operate to require—
- (a) the delivery to the Commissioners of Inland Revenue of a copy of this Act, or
  - (b) the payment of stamp duty under that section on any copy of this Act,

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and shall not apply in relation to any instrument on which, by virtue of the preceding provisions of this paragraph, stamp duty is not chargeable.

(4) In this paragraph—

“restructuring scheme modification agreement” means a modification agreement, so far as relating to a restructuring scheme;

“restructuring scheme” means a preparatory scheme, so far as it provides for the transfer of property, rights or liabilities in accordance with the scheme—

- (a) from the BBC to a wholly-owned subsidiary of the BBC;
- (b) to the BBC from a wholly-owned subsidiary of the BBC; or
- (c) from one wholly-owned subsidiary of the BBC to another.

**Marginal Citations**

**M21** 1891 c. 39.

**M22** 1895 c. 16.

*Stamp duty reserve tax*

- 26 (1) An agreement to transfer chargeable securities, as defined in section 99 of the <sup>M23</sup>Finance Act 1986, from the BBC to a wholly-owned subsidiary of the BBC shall not give rise to a charge to stamp duty reserve tax if the agreement is made for the purposes of, or for purposes connected with, a restructuring scheme.
- (2) An agreement shall not give rise to a charge to stamp duty reserve tax if the agreement is a restructuring scheme modification agreement.
- (3) In this paragraph “restructuring scheme” and “restructuring scheme modification agreement” have the same meaning as in paragraph 25.

**Marginal Citations**

**M23** 1986 c. 41.

*Modifications of transfer schemes*

- 27 (1) If the effect of any transfer scheme is modified in pursuance of a modification agreement, then the Corporation Tax Acts and this Schedule, other than paragraphs 25 and 26, shall have effect as if—
- (a) the scheme originally made had been the scheme as modified; and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.
- (2) If, in a case falling within sub-paragraph (1), the transfer scheme, as originally made, was a preparatory scheme, the scheme as modified shall be taken to be a preparatory scheme, whether or not any company which was a wholly-owned subsidiary of the

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BBC at the time when the preparatory scheme took effect remains a wholly-owned subsidiary of the BBC at the time when the modification takes effect.

### *Orders*

- 28 (1) The Secretary of State shall not make an order under this Schedule in relation to any transferee under a transfer scheme except—
- (a) with the consent of the Treasury;
  - (b) after consultation with the BBC; and
  - (c) if the transferee is not a wholly-owned subsidiary of the BBC, after consultation with the transferee.
- (2) Any power of the Secretary of State to make an order under this Part of this Schedule—
- (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases, including different provision in relation to different assets or descriptions of assets.

## SCHEDULE 8

Section 136.

### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO SERVICES PROVIDED BY BBC COMPANIES

#### *Television services*

- 1 In section 3 of the 1990 Act (licences under Part I) after subsection (3) there is inserted—
- “(3A) Where the Commission are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”
- 2 (1) Section 5 of that Act (restrictions on the holding of licences) is amended as follows.
- (2) After subsection (2) there is inserted—
- “(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Commission shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”
- (3) After subsection (6B) there is inserted—
- “(6C) The Commission shall not serve any such notice as is mentioned in subsection (5) on a BBC company unless they have given the Secretary of State notice of their intention to do so, specifying the relevant change.
- (6D) Where the Commission receive any written representations from a BBC company under subsection (6), they shall send a copy of the representations to the Secretary of State.”
- 3 After section 66 of that Act there is inserted—

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**“66A Enforcement of licences held by BBC companies.**

(1) Where the Commission—

- (a) give a direction to a BBC company under section 40(1),
- (b) serve a notice on a BBC company under any provision of section 41 or 42, or
- (c) receive any written representations from a BBC company under section 40(2), 41(3) or 42(8),

the Commission shall send a copy of the direction, notice or representations to the Secretary of State.

(2) References in subsection (1) to any of the provisions of sections 40 to 42 are references to that provision as applied—

- (a) by section 42B(2), in relation to a licence to provide a restricted service,
- (b) by section 44(3), in relation to a licence to provide a domestic satellite service,
- (c) by section 45(5), in relation to a licence to provide a non-domestic satellite service,
- (d) by section 47(8), in relation to a licence to provide a licensable programme service, or
- (e) by section 55(4), in relation to an additional services licence.”

4 In section 81 of that Act (enforcement of local delivery service licences), after subsection (2) there is inserted—

“(2A) Where the Commission—

- (a) serve a notice on a BBC company under any provision of section 41 or 42 (as applied by subsection (1)), or
- (b) receive any representations from a BBC company under section 40(2), 41(3) or 42(8) (as so applied),

the Commission shall send a copy of the notice or representations to the Secretary of State.”

*Radio services*

5 In section 86 of that Act (licences under Part III) after subsection (4) there is inserted—

“(4A) Where the Authority are not satisfied that a BBC company which has applied for a licence is a fit and proper person to hold it, they shall, before refusing the application, notify the Secretary of State that they are not so satisfied.”

6 (1) Section 88 of that Act (restrictions on the holding of licences) is amended as follows.

(2) After subsection (2) there is inserted—

“(2A) Before revoking in pursuance of subsection (2)(b) the award of a licence to a BBC company, the Authority shall give the Secretary of State notice of their intention to do so, specifying the relevant change.”

(3) After subsection (6B) there is inserted—

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

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

7 After section 111 of that Act there is inserted—

**“111A Enforcement of licences held by BBC companies.**

Where the Authority—

(a) serve a notice on a BBC company under any provision of section 109, 110 or 111, or

(b) receive any written representations from a BBC company under section 109(4), 110(4) or 111(8),

the Authority shall send a copy of the direction, notice or representations to the Secretary of State.”

*Meaning of “BBC company” for purposes of Broadcasting Act 1990*

8 In section 202 of that Act (interpretation), after the definition of “the BBC” there is inserted—

““a BBC company” means—

(a) any body corporate which is controlled by the BBC, or

(b) any body corporate in which the BBC or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”.

SCHEDULE 9

Section 138.

AMENDMENTS OF COPYRIGHT, DESIGNS AND PATENTS  
ACT 1988 RELATING TO CABLE PROGRAMME SERVICES

1 For section 73 of the <sup>M24</sup>Copyright, Designs and Patents Act 1988 there is substituted—

**“73 Reception and re-transmission of broadcast in cable programme service.**

(1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed—

(a) if the inclusion is in pursuance of a relevant requirement, or

(b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and forms part of a qualifying service.

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- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (4) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
  - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (5) Subsection (4) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that subsection) licensed by the owner of the copyright in the work.
- (6) In this section “qualifying service” means, subject to subsection (8), any of the following services—
- (a) a regional or national Channel 3 service,
  - (b) Channel 4, Channel 5 and S4C,
  - (c) the teletext service referred to in section 49(2) of the <sup>M25</sup>Broadcasting Act 1990,
  - (d) the service referred to in section 57(1A)(a) of that Act (power of S4C to provide digital service), and
  - (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;
- and expressions used in this subsection have the same meaning as in Part I of the <sup>M26</sup>Broadcasting Act 1990.
- (7) In this section “relevant requirement” means a requirement imposed under—
- (a) section 78A of the Broadcasting Act 1990 (inclusion of certain services in local delivery services provided by digital means), or
  - (b) paragraph 4 of Part III of Schedule 12 to that Act (inclusion of certain services in diffusion services originally licensed under the <sup>M27</sup>Cable and Broadcasting Act 1984).
- (8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (9) The Secretary of State may also by order—
- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or

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- (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.
- (10) Where the Secretary of State exercises the power conferred by subsection (9) (b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **73A Royalty or other sum payable in pursuance of section 73(4).**

- (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of broadcast in cable programme service) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”

#### **Marginal Citations**

- M24** 1988 c. 48.
- M25** 1990 c. 42.
- M26** 1990 c. 42.
- M27** 1984 c. 46.

- 2 (1) Section 134 of that Act (licences in respect of works included in re-transmissions) is amended as follows.
  - (2) At the beginning of subsection (1) there is inserted “Subject to subsection (3A)”.
  - (3) After subsection (3) there is inserted—
    - “(3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).”
- 3 In section 149 of that Act (jurisdiction of Copyright Tribunal), before paragraph (a) there is inserted—

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- “(za) section 73 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);”.
- 4 In section 205B of that Act (jurisdiction of Copyright Tribunal under Part II), after paragraph (c) there is inserted—
- “(cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);”.
- 5 For paragraph 19 of Schedule 2 to that Act there is substituted—

*“ Reception and re-transmission of broadcast in cable programme service*

- 19 (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
  - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (4) Sub-paragraph (3) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.
- (5) The Secretary of State may by order—
- (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
  - (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.



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- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
  - (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
  - (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (9) Expressions used in this paragraph have the same meaning as in section 73.”
- 6 After paragraph 19 of Schedule 2 to that Act there is inserted—
- “19A (1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
  - (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
  - (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
  - (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”

## SCHEDULE 10

Section 148(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

##### AMENDMENTS OF BROADCASTING ACT 1990 RELATING TO DIGITAL TERRESTRIAL BROADCASTING

- 1 (1) Section 2 of the 1990 Act (regulation by Commission of provision of television services) is amended as follows.
- (2) In subsection (1)—

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- (a) after “this Part” there is inserted “ and Part I of the Broadcasting Act 1996 ”, and
  - (b) after paragraph (b) there is inserted—
    - “(c) multiplex services (as defined by section 1(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC, and
    - (d) digital additional services (as defined by section 24(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC”.
- (3) In subsection (2)—
- (a) in paragraph (a) after “Part II” there is inserted “ and under Part I of the Broadcasting Act 1996 ”, and
  - (b) in paragraph (b)—
    - (i) after “this Part” there is inserted “ and Part I of the Broadcasting Act 1996 ”,
    - (ii) after “television programme services” there is inserted “ and multiplex services (as defined by section 1(1) of that Act) ”, and
    - (iii) for “such services” there is substituted “ television programme services. ”
- (4) In subsection (4), in the definition of “television programme service”, after paragraph (c) there is inserted—
- “or
- (d) a digital programme service (as defined by section 1(4) of the Broadcasting Act 1996).”
- (5) At the end of subsection (5) there is inserted “ but not including a restricted service (as defined by section 42A) or a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996) ”.
- 2 In section 13 of the 1990 Act (prohibition on providing television services without a licence), in subsection (1)—
- (a) for “or (b)” there is substituted “ ,(b), (c) or (d) ”, and
  - (b) after “this Part” there is inserted “ or Part I of the Broadcasting Act 1996 ”.
- 3 In section 69 of the 1990 Act (frequency planning and development), in subsection (4), after “Part II” there is inserted “ or Part I of the Broadcasting Act 1996 ”.
- 4 In section 72 of the 1990 Act (local delivery services), in subsection (2)—
- (a) after paragraph (c) there is inserted—
    - “(cc) any digital programme service (as defined by section 1(4) of the Broadcasting Act 1996);”, and
  - (b) at the end there is inserted “and
    - (f) any digital sound programme service (as defined by section 40(5) of the Broadcasting Act 1996).”
- 5 In section 84 of the 1990 Act (regulation by Authority of independent radio services), in subsection (1)—
- (a) after “this Part” there is inserted “ and Part II of the Broadcasting Act 1996 ”, and

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- (b) after paragraph (c) there is inserted—
- “(d) radio multiplex services (as defined by section 40(1) of the Broadcasting Act 1996) which are provided from places in the United Kingdom by persons other than the BBC;
  - (e) digital sound programme services (as defined by section 40(5) of that Act) which are provided from places in the United Kingdom by persons other than the BBC; and
  - (f) digital additional services (as defined by section 63(1) of that Act) which are provided from places in the United Kingdom by persons other than the BBC;”.
- 6 In section 85 of the 1990 Act (licensing functions of Authority), in subsection (3)—
- (a) after “independent radio services” there is inserted “ and services falling within section 84(1)(d), (e) and (f) ”, and
  - (b) in paragraph (a) after “licensed services” there is inserted “ (including digital sound programme services licensed under Part II of the Broadcasting Act 1996) ”.
- 7 In section 97 of the 1990 Act (prohibition on providing independent radio services without a licence), in subsection (1)—
- (a) after “independent radio service” there is inserted “ or any service falling within section 84(1)(d), (e) or (f) ”, and
  - (b) after “this Part” there is inserted “ or Part II of the Broadcasting Act 1996 ”.
- 8 In section 112 of the 1990 Act (licensable sound programme services), in subsection (2)(a), after “sound broadcasting service” there is inserted “ or a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996) ”.
- 9 In section 126 of the 1990 Act (interpretation of Part III), at the end of the definition of “sound broadcasting service” there is inserted “ but does not include a radio multiplex service (as defined by section 40(1) of the Broadcasting Act 1996) ”.
- 10 In section 176 of the 1990 Act (duty to provide advance information about programmes), in subsection (7), in the first column of the table—
- (a) after “Welsh Authority” there is inserted “ and the service referred to in section 57(1A)(a) ”, and
  - (b) after “Radio Authority” there is inserted “ , any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by the Radio Authority ”.
- 11 In section 201 of the 1990 Act (meaning of “programme service”), after paragraph (b) there is inserted—
- “(bb) any digital sound programme service (within the meaning of Part II of the Broadcasting Act 1996)”.

## PART II

### OTHER AMENDMENTS OF BROADCASTING ACT 1990

- 12 In section 2 of the 1990 Act (regulation by Commission of provision of television services), in subsection (4), in the definition of “television programme service”, after paragraph (a) there is inserted—

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- “a restricted service (as defined by section 42A);”.
- 13 In section 6 of the 1990 Act (general requirements as to licensed services), in subsection (8), for “the teletext service referred to in section 49(2)” there is substituted “a teletext service”.
- 14 In section 33 of the 1990 Act (conditions requiring holder of Channel 3 or Channel 5 licence to deliver licensed service), in subsection (3), after “subsection (1)” there is inserted “or section 21A(3) or (4)”.
- 15 (1) Section 43 of the 1990 Act (domestic and non-domestic satellite services) is amended as follows.
- (2) In subsection (3), after “shall”, where first occurring, there is inserted “subject to subsection (3A)”.
- (3) After that subsection there is inserted—
- “(3A) For the purposes of this Part, any non-domestic satellite service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company—
- (a) shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service), and
- (b) shall be regarded as provided from a place in the United Kingdom.”
- (4) At the end of subsection (4) there is inserted—
- ““relevant broadcasting body” means—
- (a) in relation to a BBC company, the BBC,
- (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
- (c) in relation to an S4C company, the Welsh Authority.”

#### Commencement Information

**I11** Sch. 10 para. 15 partly in force for certain purposes at 24.7.1996 see s. 149(1).

- 16 In section 46 of the 1990 Act (licensable programme services), in subsection (2) (a), after “television broadcasting service” there is inserted “a multiplex service (as defined by section 1(1) of the Broadcasting Act 1996), a restricted service”.

#### Commencement Information

**I12** Sch. 10 para. 16 wholly in force at 1.4.1997; Sch. 10 para. 16 not in force at Royal Assent see s. 149; Sch. 10 para. 16 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 16 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

- 17 In section 71 of the 1990 Act (interpretation of Part I), after the definition of “regional Channel 3 service” there is inserted—
- ““restricted service” has the meaning given by section 42A;”.

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- 18 In section 72 of the 1990 Act (local delivery services), in subsection (2) after paragraph (a) there is inserted—
- “(aa) any restricted service (within the meaning of that Part);”.
- 19 (1) Section 84 of the 1990 Act (regulation by Radio Authority of independent radio services) is amended as follows.
- (2) In subsection (3), after “shall”, where first occurring, there is inserted “ subject to subsection (3A) ”.
- (3) After that subsection there is inserted—
- “(3A) For the purposes of this Part, any satellite service which is composed by, and transmitted for, a BBC company, a Channel 4 company or an S4C company—
- (a) shall be regarded as provided by that company and not by the relevant broadcasting body (even if the relevant broadcasting body is in a position to determine what is to be included in the service), and
- (b) shall be regarded as provided from a place in the United Kingdom.
- (3B) In subsection (3A) “relevant broadcasting body” means—
- (a) in relation to a BBC company, the BBC,
- (b) in relation to a Channel 4 company, the Channel Four Television Corporation, and
- (c) in relation to an S4C company, the Welsh Authority.”

#### Commencement Information

**I13** Sch. 10 para. 19 wholly in force at 1.10.1996; Sch. 10 para. 19 in force for certain purposes at Royal Assent see s. 149(1); Sch. 10 para. 19 in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1

- 20 In section 188 of the 1990 Act (power to give broadcasting bodies etc. directions relating to international obligations), in subsection (2)(e), for “Broadcasting Standards Council” there is substituted “ Broadcasting Standards Commission ”.
- 21 In section 202(1) of the 1990 Act (interpretation)—
- (a) after the definition of “broadcast” there is inserted—
- ““a Channel 4 company” means—
- (a) any body corporate which is controlled by the Channel Four Television Corporation, or
- (b) any body corporate in which the Corporation or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”
- (b) in the definition of “connected”, for “licence” there is substituted “ person ”, and
- (c) after the definition of “programme” there is inserted—
- ““an S4C company” means—
- (a) any body corporate which is controlled by the Welsh Authority, or

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- (b) any body corporate in which the Welsh Authority or any body corporate falling within paragraph (a) above is (to any extent) a participant (as defined in paragraph 1(1) of Part I of Schedule 2);”.

#### Commencement Information

**I14** Sch. 10 para. 21 wholly in force: Sch. 10 para. 21 not in force at royal assent, see s. 149(2); Sch. 10 para. 21(a)(c) in force at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 21(b) in force at 1.11.1996 by S.I. 1996/2120, art. 5, Sch. 2

- 22 In paragraph 2(1) of Schedule 1 to the 1990 Act (persons disqualified for membership of the Independent Television Commission), for paragraphs (c) and (d) there is substituted—
- “or
- (c) a member or employee of the Broadcasting Standards Commission.”
- 23 In paragraph 2(1) of Schedule 3 to the 1990 Act (persons disqualified for membership of the Channel Four Television Corporation), for paragraphs (d) and (e) there is substituted—
- “or
- (d) a member or employee of the Broadcasting Standards Commission.”
- 24 In paragraph 2(1) of Schedule 6 to the 1990 Act (persons disqualified for membership of the Welsh Authority), for paragraphs (b) and (c) there is substituted—
- “or
- (b) a member or employee of the Broadcasting Standards Commission.”
- 25 In paragraph 2(1) of Schedule 8 to the 1990 Act (persons disqualified for membership of the Radio Authority), for paragraphs (d) and (e) there is substituted—
- “or
- (d) a member or employee of the Broadcasting Standards Commission.”
- 26 In Schedule 19 to the 1990 Act (the Gaelic Broadcasting Committee: supplementary provisions)—
- (a) in paragraph 8—
- (i) for “Gaelic Television Fund” there is substituted “ Gaelic Broadcasting Fund ”; and
- (ii) in sub-paragraph (c), after “Commission” there is inserted “ and (where the expenses relate to the Commission’s functions in connection with sound programmes) the Radio Authority ”; and
- (b) in paragraph 11(4)—
- (i) after “Commission” there is inserted “ or the Radio Authority ”; and
- (ii) for “them”, where it first occurs, there is substituted “ the Commission or, as the case may be, the Authority ”.

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### PART III

#### AMENDMENTS OF OTHER ENACTMENTS

##### *The Welsh Development Agency Act 1975 (c. 70)*

- 27 In section 19 of the Welsh Development Agency Act 1975 (the Agency and the media), in subsection (11)—
- (a) in the definition of “the appropriate authority”—
    - (i) in paragraph (a), after “Act 1990” there is inserted “ or Part I of the Broadcasting Act 1996 ”, and
    - (ii) in paragraph (b), for “that Act” there is substituted “ the Broadcasting Act 1990 or Part II of the Broadcasting Act 1996 ”, and
  - (b) in the definition of “relevant licence” for “(as the case may be) Part III of that Act” there is substituted “ III of the Broadcasting Act 1990 or Part I or II of the Broadcasting Act 1996. ”

##### *The Representation of the People Act 1983 (c. 2)*

- 28 In section 75 of the Representation of the People Act 1983 (prohibition of expenses not authorised by election agent), in subsection (1)(i), after “Broadcasting Act 1990” there is inserted “ or Part I or II of the Broadcasting Act 1996 ”.
- 29 In section 93 of the Representation of the People Act 1983 (broadcasting during elections), in subsection (1), for the paragraphs (a) and (b) inserted by paragraph 35(4)(a) of Schedule 20 to the 1990 Act there is substituted—
- “(i) broadcast by the British Broadcasting Corporation or Sianel Pedwar Cymru, or
  - (ii) included in any service licensed under Part I or III of the Broadcasting Act 1990 or Part I or II of the Broadcasting Act 1996”.
- 30 Without prejudice to the generality of section 20(2) of the <sup>M28</sup>Interpretation Act 1978, any reference in paragraph 28 or 29 to a provision of the Representation of the <sup>M29</sup>People Act 1983 includes a reference to that provision as applied by any regulations made under paragraph 2 of Schedule 1 to the European Parliamentary Elections Act 1978.

#### Marginal Citations

M28 1978 c. 30.

M29 1978 c. 10.

##### *The Copyright, Designs and Patents Act 1988 (c. 48)*

- 31 In section 69 of the Copyright, Designs and Patents Act 1988 (recording for purposes of supervision and control of broadcasts and cable programmes), for subsections (2) and (3) there is substituted—

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- “(2) Copyright is not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) Copyright is not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

#### Commencement Information

**I15** Sch. 10 para. 31 wholly in force at 1.4.1997; Sch. 10 para. 31 not in force at Royal Assent see s. 149; Sch. 10 para. 31 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 31 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

32 In Schedule 2 to the Copyright, Designs and Patents Act 1988 (rights in performances: permitted acts), in paragraph 17, for sub-paragraphs (2) and (3) there is substituted—

- “(2) The rights conferred by Part II are not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) The rights conferred by Part II are not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested



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or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.”

#### Commencement Information

**I16** Sch. 10 para. 32 wholly in force at 1.4.1997; Sch. 10 para. 32 not in force at Royal Assent see s. 149; Sch. 10 para. 32 in force for certain purposes at 1.10.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 10 para. 32 in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

## SCHEDULE 11

Section 148(2).

### REPEALS AND REVOCATIONS

#### PART I

##### ENACTMENTS REPEALED

#### Commencement Information

**I17** Sch. 11 Pt. I wholly in force at 1.4.1997; Sch. 11 Pt. I in force for certain purposes at 24.7.1996 see s. 149; Sch. 11 Pt. I in force for certain further purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. I in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Chapter	Short title	Extent of repeal
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints Commission, the Broadcasting Standards Council and Comataidh Telebhisein Gaidhlig.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to the Broadcasting Complaints Commission and the Broadcasting Standards Council.
1990 c. 42.	The Broadcasting Act 1990.	In section 2, in subsection (1) (a), the second “and” and, in subsection (4), in paragraph (b) of the definition of “television programme service”, the word “or”.  In section 32, in subsection (9), paragraph (b)

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and the word “and” immediately preceding it, in subsection (10) the words from “and for this purpose” onwards and in subsection (13)(a), the word “and”.

Section 45 (8) and (9).

Section 47 (11) and (12).

In section 72(2)(d), the word “and”.

In section 84(1)(b), the word “and”.

Section 104(5) and (6)(a).

Sections 142 to 161.

Section 182.

In section 202(2), paragraph (a) and, in paragraph (b), the words “13,14”.

In Schedule 2, in Part I, paragraphs 1(4) and 2(2) and (3) and, in Part II, in paragraph 1(2)(e), the word “or” and paragraph 5(c) and (d).

Schedules 13 and 14.

In Schedule 19, paragraph 3.

In Schedule 20, paragraph 50.

## PART II

### SUBORDINATE LEGISLATION REVOKED

#### Commencement Information

**I18** Sch. 11 Pt. II wholly in force at 1.4.1997; Sch. 11 Pt. II not in force at Royal Assent see s. 149; Sch. 11 in force for certain purposes at 1.10.1996 and 1.11.1996 by S.I. 1996/2120, art. 4, Sch. 1; Sch. 11 Pt. II in force at 1.4.1997 insofar as not already in force by S.I. 1997/1005, art. 4

Number	Title	Extent of revocation
S.I. 1991/1176.	The Broadcasting (Restrictions on the Holding of Licences) Order 1991.	Article 2, and Parts II, III and IV.

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S.I. 1991/1246.	The Cable (Excepted Programmes) Order 1991.	The whole order.
S.I.1993/3199.	The Broadcasting (Restrictions on the Holding of Licences) (Amendment) Order 1993.	The whole order.
S.I. 1995/1924.	The Broadcasting (Restrictions on the Holding of Licences) (Amendment) Order 1995.	The whole order.

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**Status:**

Point in time view as at 01/04/1997.

**Changes to legislation:**

Broadcasting Act 1996 is up to date with all changes known to be in force on or before 30 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.