



# Broadcasting Act 1996

## 1996 CHAPTER 55

### PART I

#### DIGITAL TERRESTRIAL TELEVISION BROADCASTING

##### *Digital programme services*

#### **23 Enforcement of digital programme licences.**

- (1) If [<sup>F1</sup>OFCOM] are satisfied that the holder of a digital programme licence has failed to comply with any condition of the licence or with any direction given by [<sup>F1</sup>OFCOM] under or by virtue of any provision of this Part, they may (subject to the following provisions of this section) serve on him—
- (a) a notice requiring him to pay, within a specified period, a specified financial penalty to [<sup>F1</sup>OFCOM], or
  - (b) a notice providing that the licence is to expire on a specified date, which shall be at least one year from the date of service of the notice.

- (2) The amount of any financial penalty imposed on any person in pursuance of subsection (1)(a) shall not exceed [<sup>F2</sup>the maximum penalty given by subsection (2A).]

[<sup>F3</sup>(2A) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
  - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.]
- (4) In [<sup>F4</sup>subsection (2A)] “relevant accounting period”, in relation to a [<sup>F5</sup>television multiplex service or general multiplex service, means the last accounting period of the multiplex provider] .
- (5) Where, in the case of any [<sup>F6</sup>television multiplex service or general multiplex service, the first accounting period of the multiplex provider] throughout which the holder of the digital programme licence provides a digital programme service for broadcasting

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by means of the multiplex service (“the first period”) has <sup>F7</sup>not ended when the penalty is imposed, then for the purposes of this section] the share of multiplex revenue attributable to the holder of the digital programme licence in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which <sup>F1</sup>OFCOM] estimate to be the share of multiplex revenue attributable to him for the first period.

<sup>F8</sup>(5A) In subsections (4) and (5) “multiplex provider” has the same meaning as in section 14.]

<sup>F9</sup>(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.]

(6) <sup>F1</sup>OFCOM] shall not serve on any person such a notice as is mentioned in subsection (1)(a) or (b) unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(7) Where a licence is due to expire on a particular date by virtue of a notice served on any person under subsection (1)(b), <sup>F1</sup>OFCOM] may, on the application of that person, revoke that notice by a further notice served on him at any time before that date, if they are satisfied that, since the date of the earlier notice, his conduct in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

(8) Subject to subsection (9), section 40(1) to (4) (power to direct licensee to broadcast correction or <sup>F10</sup>statement of findings] or not to repeat programme) and section 42 (power to revoke Channel 3 or 5 licence) of the 1990 Act shall apply in relation to a digital programme licence as they apply in relation to a Channel 3 licence.

(9) In its application in relation to a digital programme licence, section 42 of the 1990 Act shall have effect—

- (a) with the substitution for the reference in subsection (1)(a) to Part I of that Act of a reference to this Part, and
- (b) with the omission of subsection (4) and of the reference to that subsection in subsection (6).

(10) It is hereby declared that any exercise by <sup>F1</sup>OFCOM] of their powers under subsection (1) in respect of any failure to comply with any condition of a digital programme licence shall not preclude the exercise by them of their powers under section 40 of the 1990 Act in respect of that failure.

#### Textual Amendments

- F1** Words in s. 23 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F2** Words in s. 23(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(1\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F3** S. 23(2A) substituted for s. 23(3) (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(2\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F4** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 13 para. 14\(3\)\(6\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F5** Words in s. 23(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)
- F6** Words in s. 23(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 15 para. 92\(4\)](#) (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with art. 11)

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- F7** Words in s. 23(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 14(4)(6) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F8** S. 23(5A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 92(5)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F9** S. 23(5B) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 13 para. 14(5)(6) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F10** Words in s. 23(8) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 92(6)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C1** S. 23(1) modified (20.7.2004) by The Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 (S.I. 2004/1975), art. 1, **Sch. para. 4(b)** (with art. 5)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 97(1)-(2A) substituted for s. 97(1)(2) by [2003 c. 21 s. 299\(1\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 97(5A)(5B) inserted by [2003 c. 21 s. 299\(4\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 101(1)-(1D) substituted for s. 101(1) by [2003 c. 21 s. 300\(2\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)
- s. 101(5) inserted by [2003 c. 21 s. 300\(4\)](#) (Ss. 299(1)(3)(4), 300 were due to be commenced on 30.6.2004 by S.I. 2003/3142, art. 4(3), but that commencing provision was omitted (8.6.2004) by virtue of S.I. 2004/1492, art. 2)