



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 2

#### REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

#### *Preliminary*

#### **211 Regulation of independent television services**

- (1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act—
- (a) services falling within subsection (2) that are provided otherwise than by the BBC or the Welsh Authority; and
  - (b) services falling within subsection (3) that are provided otherwise than by the BBC.
- (2) The services referred to in subsection (1)(a) are—
- (a) television broadcasting services that are provided from places in the United Kingdom with a view to their being broadcast otherwise than only from a satellite;
  - (b) television licensable content services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive;
  - (c) digital television programme services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of that Directive;
  - (d) restricted television services that are provided from places in the United Kingdom; and

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- (e) additional television services that are provided from places in the United Kingdom.
- (3) The services referred to in subsection (1)(b) are—
  - (a) television multiplex services that are provided from places in the United Kingdom; and
  - (b) digital additional television services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive.

### **212 Abolition of function of assigning television frequencies**

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies for the purposes of any of the following—

- (a) services falling to be licensed under Part 1 of the 1990 Act;
- (b) S4C; or
- (c) television multiplex services falling to be licensed under Part 1 of the 1996 Act.

### **213 Abolition of licensing for local cable systems**

On and after the television transfer date no licence shall be required under Part 2 of the 1990 Act for the provision of a local delivery service.

### *Channels 3 and 5*

### **214 Digital Channel 3 and Channel 5 licences**

- (1) This section applies to the grant by OFCOM, at any time on or after the television transfer date, of a licence under Part 1 of the 1990 Act to provide a Channel 3 service or to provide Channel 5.
- (2) The licence must—
  - (a) be a licence to provide the licensed service with a view to its being broadcast in digital form; and
  - (b) contain such condition (if any) requiring the provider of the service to ensure that the whole or a part of the service is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (3) The conditions included in a licence by virtue of subsection (2)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (4) Where the licence contains a condition falling within subsection (2)(b), it must also contain a condition that—
  - (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
  - (b) the times at which they are broadcast,
 are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.
- (5) The licence—

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- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
  - (b) shall be renewable, on one or more occasions, under section 216.
- (6) For the purposes of subsection (5) a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (7) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (8) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of the licensed service;
  - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in the licensed service; and
  - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of the licensed service as is provided in digital form.
- (9) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (8).

## **215 Replacement of existing Channel 3 and Channel 5 licences**

- (1) It shall be the duty of OFCOM to make an offer under this section to every person who, when the offer is made, is the holder of a licence (an “existing licence”)—
- (a) to provide a Channel 3 service; or
  - (b) to provide Channel 5.
- (2) The offer made to a person under this section—
- (a) must be an offer to exchange his existing licence for a replacement licence; and
  - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence offered must be one granted in accordance with the provisions of—
- (a) Part 1 of the 1990 Act; and
  - (b) section 214 of this Act;
- but sections 15 to 17A of the 1990 Act (award of licences) are not to apply in the case of the replacement licence.
- (4) Subject to subsection (5), where OFCOM make an offer under this section to a person, the service which they are proposing to license by the replacement licence must be a service which—
- (a) is provided with a view to its being broadcast in digital form; but

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- (b) subject to that and to any requirements of section 214, appears to OFCOM to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence.
- (5) An offer under this section may, to such extent as OFCOM think fit, propose the grant of a licence to provide a service for an area or at times which, though substantially the same as in the case of the existing licence, are not identical.
- (6) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
  - (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
  - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.
- (7) That offer must also propose the conditions for allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (8) An offer under this section must set out—
  - (a) the terms of the proposed replacement licence;
  - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
  - (c) the period for which the offer is open;
  - (d) the date on which the proposed replacement licence will be granted if the offer is accepted;
  - (e) the time as from which it is proposed that that licence will take effect if the offer is accepted; and
  - (f) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (9) The times set out under subsection (8) must—
  - (a) in the case of the time set out under paragraph (e), be in the period of twelve months beginning with the television transfer date; and
  - (b) in the case of the time set out under paragraph (f), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (10) Where a person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
  - (a) he is entitled, on the date set out in the offer, to be granted, in accordance with Part 1 of the 1990 Act and section 214 of this Act, a replacement licence under that Part in the terms, and on the conditions, so set out;
  - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct; and
  - (c) the service which he is authorised to provide by the replacement licence, so far as it is provided in digital form, shall be a qualifying service for the purposes of Part 1 of the 1996 Act.

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- (11) Where the person to whom an offer has been made under this section—
- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
  - (b) rejects the offer before the end of that period,
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (8)(f).
- (12) In this section “qualifying revenue” has the same meaning as in section 19 of the 1990 Act.

## **216 Renewal of Channel 3 and 5 licences**

- (1) The holder of—
- (a) a licence to provide a Channel 3 service, or
  - (b) a licence to provide Channel 5,
- may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
- (a) begins four years before the end of the current licensing period; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
- (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to every person who, at the time of the determination, holds a licence in respect of which there is right to apply for renewal under this section.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
- (a) decide whether they will be renewing the licence;
  - (b) if they decide that they will be, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
  - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if references to the award of a licence were references to its renewal.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
- (a) the public service remit for the licensed service;
  - (b) programming quotas;
  - (c) news and current affairs programmes; and
  - (d) programme production and regional programming.

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- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in—
- (a) the area for which it would be provided; or
  - (b) the times of the day, or days of the week, between or on which it would be provided.
- (8) In all cases in which—
- (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
  - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.
- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions, subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to the requirements imposed by section 217(4).
- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
  - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under section 15 of the 1990 Act.

## **217 Financial terms of licence renewed under s. 216**

- (1) The determination under section 216(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period; and
  - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which the holder of that licence will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 15 of the 1990 Act.

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- (3) For the purposes of subsection (1)(b)—
  - (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) The renewed licence is required, as renewed, to include conditions requiring the licence holder to pay to OFCOM—
  - (a) in addition to any fees required to be paid by virtue of section 4(1)(b) of the 1990 Act, but
  - (b) instead of the amounts payable under the corresponding provision applicable under the conditions of the licence to the period before the renewal takes effect,  
the amounts specified in subsection (5).
- (5) Those amounts are—
  - (a) in respect of the first complete calendar year falling within the renewal period, the amount determined under subsection (1)(a);
  - (b) in respect of each subsequent year falling wholly or partly within the renewal period, that amount increased by the appropriate percentage; and
  - (c) in respect of each accounting period of the licence holder falling within the renewal period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (6) The percentage specified for the purposes of subsection (5)(c) in respect of an accounting period must be the amount determined for that period under subsection (1)(b).
- (7) In this section—
  - “the appropriate percentage” and “qualifying revenue” each has the same meaning as in section 19 of the 1990 Act; and
  - “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.

#### *The public teletext service*

### **218 Duty to secure the provision of a public teletext service**

- (1) OFCOM must do all that they can to secure the provision, in accordance with this Chapter and Part 1 of the 1996 Act, of a teletext service that is available nationwide.
- (2) The service must consist of—
  - (a) a single teletext service provided in digital form with a view to its being broadcast by means of a television multiplex service; and
  - (b) for so long as Channel 4, S4C and one or more Channel 3 services are broadcast in analogue form, an analogue teletext service.
- (3) The service, if licensed to do so in accordance with section 219, may continue to include an analogue teletext service after it is no longer required under subsection (2)(b) to include such a service.
- (4) The analogue teletext service that must be or may be comprised in the public teletext service is a single additional television service that uses the combined spare capacity

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available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 and S4C (or any of them) are broadcast in analogue form.

- (5) For so long as the public teletext service must consist of both a teletext service provided in digital form and an analogue teletext service, OFCOM must secure that both services are provided by the same person.
- (6) But nothing in this section—
- (a) requires the contents of the two services comprised in the public teletext service to be the same;
  - (b) prevents the service from including different items for different parts of the United Kingdom or prevents the different items from being made available only in the parts of the United Kingdom for which they are included; or
  - (c) prevents the licence holder from making arrangements authorised by virtue of section 220 for the provision of the whole or a part of the public teletext service by another.
- (7) OFCOM must exercise their powers—
- (a) to make frequencies available for the purposes of Channel 3 services, Channel 4 and S4C; and
  - (b) to make determinations for the purposes of section 48(2)(b) of the 1990 Act (determinations of spare capacity),
- in a manner that takes account of their duty under this section.

## **219 Licensing of the public teletext service**

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of the public teletext service is a licence under Part 1 of that Act complying with this section.
- (2) The licence—
- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
  - (b) shall be renewable, on one or more occasions, under section 222.
- (3) For the purposes of subsection (2) a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (4) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (5) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of any charges on persons in respect of their reception in the United Kingdom of the licensed service.
- (6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).



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- (7) The service authorised by a licence under this section, so far as it comprises a service provided in digital form, is a qualifying service for the purposes of Part 1 of the 1996 Act.
- (8) Schedule 10 (which makes further provision about the award and grant of the licence for the public teletext service and about the conditions and enforcement of that licence) shall have effect.

## **220 Delegation of provision of public teletext service**

- (1) The licence for the provision of the public teletext service may—
  - (a) include provision enabling the licence holder to authorise an eligible person to provide the whole or a part of the public teletext service on his behalf; and
  - (b) impose conditions subject to and in accordance with which the whole or a part of that service may be provided by a person authorised by the licence holder.
- (2) The conditions of the licence to provide the public teletext service apply in relation to its provision by a person authorised to do so on the licence holder's behalf as they apply to its provision by the licence holder.
- (3) A contravention of those conditions by a person so authorised shall be treated for the purposes of this Chapter and the 1990 Act as a contravention on the part of the licence holder.
- (4) In this section “eligible person” means a person who is not a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to the licence for the public teletext service.

## **221 Replacement of existing public teletext provider's licence**

- (1) It shall be the duty of OFCOM to make an offer under this section to the person who, when the offer is made, is the holder of the licence to provide the existing service (the “existing licence”).
- (2) The offer made to a person under this section—
  - (a) must be an offer to exchange his existing licence for a replacement licence; and
  - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence is to be one which is granted—
  - (a) for the purposes of section 218 of this Act; and
  - (b) in accordance with section 219 of this Act and the provisions of Part 1 of the 1990 Act;but Part 1 of Schedule 10 to this Act is not to apply in the case of the replacement licence.
- (4) Where OFCOM make an offer under this section, the service which they are proposing to license by or under the replacement licence must be a service which comprises both—
  - (a) a service that appears to OFCOM to be equivalent in all material respects to the existing service; and

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- (b) a service that appears to them to be equivalent in all material respects to the teletext service in digital form which that person is required to provide by virtue of section 30 of the 1996 Act.
- (5) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
  - (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
  - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.
- (6) That offer must also propose conditions allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (7) An offer under this section must set out—
  - (a) the terms of the proposed replacement licence;
  - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
  - (c) the period for which the offer is open;
  - (d) the time as from which it is proposed the replacement licence will take effect if the offer is accepted; and
  - (e) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (8) The times set out under subsection (7) must—
  - (a) in the case of the time set out under paragraph (d), be in the period of twelve months beginning with the television transfer date; and
  - (b) in the case of the time set out under paragraph (e), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (9) Where the person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
  - (a) he is entitled to be granted the replacement licence in the terms, and on the conditions, set out in the offer; and
  - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct.
- (10) Where the person to whom an offer has been made under this section—
  - (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
  - (b) rejects the offer before the end of that period,the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (7)(e).
- (11) In this section “the existing service” means the teletext service which—

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- (a) is being provided immediately before the television transfer date on the combined spare capacity available for the provision of additional television services on frequencies on which Channel 3 services and Channel 4 are provided; and
  - (b) is the service by reference to which the Independent Television Commission have discharged their duty under section 49(2) of the 1990 Act.
- (12) In this section “qualifying revenue” means the revenue which would be qualifying revenue (within the meaning of section 52 of the 1990 Act) in relation to the holder of a licence to provide the analogue teletext service comprised in the public teletext service.

## **222 Renewal of public teletext licence**

- (1) The holder of the licence to provide the public teletext service may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
  - (a) begins four years before the end of the current licensing period; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
  - (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the holder, at the time of the determination, of the licence to provide the public teletext service.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
  - (a) decide whether they will be renewing the licence;
  - (b) if they decide that they will be, determine in accordance with section 223 the financial terms on which the licence will be renewed; and
  - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if—
  - (a) references to the award of a licence were references to its renewal; and
  - (b) the reference in subsection (7)(a) to section 19(1) of that Act were a reference to paragraph 7 of Schedule 10.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
  - (a) the public service remit for the public teletext service;
  - (b) news; and
  - (c) regional matters.
- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for the public teletext service which would differ in any material respect from the licensed service.

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- (8) In all cases in which—
- (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
  - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.
- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to paragraph 7 of Schedule 10.
- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
  - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under paragraph 1 of Schedule 10.

### **223 Financial terms of licence renewed under s. 222**

- (1) The determination under section 222(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period;
  - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which he will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with Part 1 of Schedule 10.
- (3) For the purposes of subsection (1)(b)—
- (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) In this section “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.

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- (5) Part 3 of Schedule 10 applies for construing this section as it applies for construing that Schedule.

*Meaning of initial expiry date*

**224 Meaning of “initial expiry date”**

- (1) Subject to any postponement under this section, the date which is the initial expiry date for the purposes of this Part is 31st December 2014.
- (2) The Secretary of State may (on one or more occasions) by order postpone the initial expiry date.
- (3) The Secretary of State’s power to postpone the initial expiry date—
- (a) is to be exercisable before 30th June 2013 only if he has fixed a date after 30th June 2013 as the date for digital switchover; and
  - (b) is not to be exercisable on or after 30th June 2013 if he has fixed 30th June 2013 or an earlier date as the date for digital switchover.
- (4) Where the Secretary of State makes an order under this section at a time after he has fixed a date for digital switchover, the date to which the initial expiry date is postponed must be a date not less than eighteen months after the date for digital switchover.
- (5) The Secretary of State must exercise his power to postpone the initial expiry date if it at any time appears to him that that date would otherwise fall within the period of eighteen months immediately following the date fixed for digital switchover.
- (6) Where an order under this section extends a licensing period for which a licence has been granted in accordance with section 214 or 219, the 1990 Act and this Part shall have effect (subject to subsection (7)) as if the licence had originally been granted for the extended period.
- (7) Where an order under this section extends the period for which a licence is to continue in force—
- (a) that order shall not affect the earliest time at which an application for the renewal of that licence may be made in accordance with section 216(2)(a) or 222(2)(a);
  - (b) as soon as reasonably practicable after making the order, OFCOM must make such modification of any determination made by them in the case of that licence for the purposes of section 216(2)(b) or 222(2)(b) as they consider appropriate in consequence of the extension; and
  - (c) neither section 216(3)(a) nor section 222(3)(a) applies to the making of that modification.
- (8) In this section a reference to the date for digital switchover is a reference to the date fixed by the Secretary of State for the purposes of this section as the date which appears to him, in consequence of directions given by him for the purposes of the conditions of the licences for the relevant public broadcasting services, to be the date after which none of those services will be broadcast to any significant extent in analogue form.
- (9) In this section “the relevant public broadcasting service” means any of the following—
- (a) the services comprised in Channel 3; and
  - (b) Channel 5.

*Reviews relating to licensing of Channels 3 & 5 and teletext*

**225 Application for review of financial terms of replacement licences**

- (1) The holder of a replacement licence granted under section 215 or 221 may apply to OFCOM, at any time in the first or any subsequent review period, for a review of the financial terms on which that licence is held.
- (2) For the purposes of this section the first review period is the period which—
  - (a) begins four years before the first notional expiry date; and
  - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the first notional expiry date.
- (3) For the purposes of this section a subsequent review period in the case of a replacement licence is so much (if any) of the following period as falls before the end of the initial expiry date, namely, the period which—
  - (a) begins four years before a subsequent notional expiry date; and
  - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from that notional expiry date.
- (4) A determination for the purposes of subsection (2)(b) or (3)(b) in respect of a replacement licence—
  - (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the person who, at the time of the determination, holds the licence in question.
- (5) No application under this section for a review of the financial terms on which a replacement licence is held is to be made—
  - (a) at any time when an application under section 226 for a review of those terms is pending; or
  - (b) at any time in the period of twelve months following the day on which a determination by OFCOM on such an application is notified to the licence holder.
- (6) For the purposes of this section an application for a review under section 226 is pending from the time when the application is made until the end of the day on which OFCOM's determination on the review is notified to the licence holder.
- (7) In this section—
 

“the first notional expiry date”, in relation to a replacement licence, means the date with which (apart from this Act) the existing licence would have expired if not renewed;

“subsequent notional expiry date”, in relation to a replacement licence, means—

  - (a) in a case in which an application by the licence holder for a review under this section was made during the review period beginning four years before the last notional expiry date, the tenth anniversary of the date on which OFCOM's determination on that review was notified to the licence holder; and
  - (b) in any other case, the tenth anniversary of the last notional expiry date;

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“tender notice” means a notice under section 15(1) of the 1990 Act or (as the case may be) paragraph 1 of Schedule 10.

- (8) In subsection (7) “existing licence” has the same meaning as in section 215 or (as the case may be) 221.

## **226 Application for review of financial terms in consequence of new obligations**

- (1) This section applies where an order is made under section 411 that brings section 272, 273 or 274 (or any two or more of them) into force for the purpose of including conditions in the regulatory regime for—
- (a) a Channel 3 service;
  - (b) Channel 5; or
  - (c) the public teletext service.
- (2) The holder of a licence in which conditions mentioned in section 272, 273 or 274 will fall to be included when the order comes into force may apply to OFCOM, at any time in the review period, for a review of the financial terms on which the licence is held.
- (3) For the purposes of this section the review period in the case of an order under section 411 is the period which—
- (a) begins with the day on which the order is made; and
  - (b) ends with the time at which, by virtue of the order, one or more of sections 272, 273 and 274 come into force in the case of the licence in question.
- (4) If in the case of the same order there is more than one time falling within subsection (3) (b), the review period ends with the later or latest of them.

## **227 Reviews under ss. 225 and 226**

- (1) This section applies where an application is made under section 225 or 226 for a review of the financial terms on which a licence is held.
- (2) As soon as reasonably practicable after receiving the application, OFCOM must—
- (a) determine the amount to be paid to them under the conditions of the licence for the first calendar year falling wholly or partly within the period under review to begin after the application date; and
  - (b) determine the percentage to be used for computing the payments to be made to them under those conditions in respect of each accounting period falling within the period under review to begin after that date.
- (3) The amount determined under subsection (2)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence being granted afresh on an application made in accordance with—
- (a) section 15 of the 1990 Act (licences for Channel 3 service or Channel 5); or
  - (b) paragraph 3 of Schedule 10 to this Act.
- (4) The determination required by subsection (2)(b) is a determination of the percentage of qualifying revenue for each accounting period that is to be paid to OFCOM.
- (5) For the purposes of subsection (2)(b)—
- (a) different percentages may be determined for different accounting periods; and

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- (b) the percentages that may be determined for an accounting period include a nil percentage.
- (6) In making their determinations on an application under section 226 OFCOM are to have regard, in particular, to any additional costs that are likely to be incurred by the licence holder in consequence of the commencement of so much of section 272, 273 or 274 (or any two or more of them) as is brought into force by the commencement order in question.
- (7) References in this section to qualifying revenue for an accounting period are to be construed—
  - (a) in the case of the holder of a licence to provide a Channel 3 service or Channel 5, in accordance with section 19 of and Part 1 of Schedule 7 to the 1990 Act; and
  - (b) in the case of the holder of the licence to provide the public teletext service, in accordance with Part 3 of Schedule 10 to this Act.
- (8) In this section—
  - “the application date”, in relation to a review, means the date of the making under section 225 or 226 of the application for the review; and
  - “the period under review”, in relation to a review of the financial terms of a licence, means so much of the period for which the licence will (if not renewed) continue in force after the application date.

## **228 Giving effect to reviews under ss. 225 and 226**

- (1) As soon as reasonably practicable after making a determination under section 227 on an application under section 225 or 226, OFCOM must give a notification of their determination to the applicant.
- (2) The notification must set out—
  - (a) the determination made by OFCOM;
  - (b) the modifications of the applicant’s licence that are required to give effect to the determination;
  - (c) a date by which the applicant must notify OFCOM whether or not he accepts the determination and modifications; and
  - (d) a subsequent date by which the applicant’s licence will cease to have effect if he does not.
- (3) The modifications set out in accordance with subsection (2)(b) must secure that the amount falling to be paid under the conditions of the applicant’s licence for each calendar year subsequent to that for which an amount has been determined in accordance with section 227(2)(a) is the amount so determined as increased by the appropriate percentage.
- (4) In the case of a determination on an application under section 225, the date specified in accordance with subsection (2)(d) must not fall before whichever is the earlier of—
  - (a) the next notional expiry date after the application for the review; and
  - (b) the end of the licensing period in which that application was made.
- (5) Where the applicant notifies OFCOM that he accepts the determination—
  - (a) his licence is to have effect with the modifications set out in OFCOM’s notification; and



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- (b) all such adjustments by way of payment or repayment as may be necessary for giving effect to the modifications are to be made in respect of any payments already made for years or periods affected by the modifications.
- (6) Where the applicant does not, before the date specified in accordance with paragraph (c) of subsection (2), notify OFCOM that he accepts the determination, his licence shall have effect as if the period for which it is to continue in force ended with the time specified in accordance with paragraph (d) of that subsection.
- (7) Where the time at which a licence would cease to have effect in accordance with subsection (6) is the end of a licensing period, that subsection does not affect any rights of the licence holder with respect to the renewal of his licence from the end of that period.
- (8) In this section—
  - “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;
  - “licensing period” means—
    - (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
    - (b) any subsequent period of ten years beginning with the end of the previous licensing period;
  - “notional expiry date” means a first or subsequent notional expiry date within the meaning of section 225.

## **229 Report in anticipation of new licensing round**

- (1) OFCOM must, in anticipation of the end of each licensing period—
  - (a) prepare a report under this section; and
  - (b) submit it to the Secretary of State no later than thirty months before the end of that period.
- (2) A report under this section must set out OFCOM’s opinion on the effect of each of the matters mentioned in subsection (3) on the capacity of the holders of relevant licences to contribute, in the next licensing period, to the fulfilment of the purposes of public service television broadcasting in the United Kingdom at a cost to the licence holders that is commercially sustainable.
- (3) Those matters are—
  - (a) the arrangements that (but for an order under section 230) would allow for the renewal of relevant licences from the end of the current licensing period; and
  - (b) the conditions included in the regulatory regimes for the services provided under relevant licences.
- (4) A report under this section must also include the recommendations (if any) which OFCOM consider, in the light of the opinion set out in the report, should be made to the Secretary of State for the exercise by him of—
  - (a) his power under section 230; or
  - (b) any of the powers to make statutory instruments that are conferred on him by Chapter 4 of this Part.

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- (5) Where the Secretary of State makes an order under section 224 after receiving a report under this section in anticipation of the end of the licensing period that is extended by the order—
- (a) he may require OFCOM to prepare a supplementary report in the light of the postponement of the beginning of the next licensing period; and
  - (b) it shall be the duty of OFCOM, within such period as may be specified by the Secretary of State, to prepare the required supplementary report and to submit it to him.
- (6) In this section—
- “licensing period” means—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period;
- “relevant licence” means—
- (a) a licence to provide a Channel 3 service;
  - (b) a licence to provide Channel 5; or
  - (c) the licence to provide the public teletext service.

### **230 Orders suspending rights of renewal**

- (1) This section applies where the Secretary of State has received and considered a report submitted to him by OFCOM under section 229.
- (2) If—
  - (a) the report contains a recommendation by OFCOM for the making of an order under this section, or
  - (b) the Secretary of State considers, notwithstanding the absence of such a recommendation, that it would be appropriate to do so,
 he may by order provide that licences for the time being in force that are of the description specified in the order are not to be renewable under section 216 or 222 from the end of the licensing period in which he received the report.
- (3) An order under this section preventing the renewal of licences from the end of a licensing period must be made at least eighteen months before the end of that period.
- (4) The Secretary of State is not to make an order under this section preventing the renewal of licences from the end of the initial licensing period unless he has fixed a date before the end of that period as the date for digital switchover.
- (5) Where the Secretary of State postpones the date for digital switchover after making an order under this section preventing the renewal of licences from the end of the initial licensing period, the order shall have effect only if the date to which digital switchover is postponed falls before the end of that period.
- (6) Subsection (5) does not affect the power of the Secretary of State to make another order under this section after postponing the date for digital switchover.
- (7) An order under this section with respect to Channel 3 licences must be an order of one of the following descriptions—
  - (a) an order applying to every licence to provide a Channel 3 service;

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- (b) an order applying to every licence to provide a national Channel 3 service; or
  - (c) an order applying to every licence to provide a regional Channel 3 service.
- (8) An order under this section does not affect—
- (a) the person to whom a licence may be granted on an application made under section 15 of the 1990 Act or under paragraph 3 of Schedule 10 to this Act; or
  - (b) rights of renewal in respect of licences first granted so as to take effect from the beginning of a licensing period beginning after the making of the order, or from a subsequent time.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) Subsection (8) of section 224 applies for construing references in this section to the date for digital switchover as it applies for the purposes of that section.
- (11) In this section—
- “initial licensing period” means the licensing period ending with the initial expiry date; and
  - “licensing period” has the same meaning as in section 229.

#### *Replacement of Channel 4 licence*

### **231 Replacement of Channel 4 licence**

- (1) On the commencement of this subsection—
- (a) Channel 4 shall cease to be licensed under the licence in force for the purposes of section 24(3) of the 1990 Act immediately before the commencement of this subsection; and
  - (b) a licence granted for those purposes in accordance with the following provisions of this section shall come into force as the licence under which Channel 4 is licensed.
- (2) It shall be the duty of OFCOM, as soon as practicable after the television transfer date—
- (a) to prepare a draft of a licence under Part 1 of the 1990 Act to replace the licence that is likely to be in force for the purposes of section 24(3) of the 1990 Act when subsection (1) of this section comes into force;
  - (b) to notify C4C of the terms and conditions of the replacement licence they propose; and
  - (c) after considering any representations made by C4C, to grant such a replacement licence to C4C so that it takes effect in accordance with paragraph (b) of subsection (1) of this section.
- (3) A replacement licence proposed or granted under this section—
- (a) must be a licence to provide a service with a view to its being broadcast in digital form; and
  - (b) must contain such conditions (if any) requiring C4C to ensure that the whole or a part of Channel 4 is also provided for broadcasting in analogue form as OFCOM consider appropriate.

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- (4) The conditions included in a licence by virtue of subsection (3)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (5) Where a replacement licence proposed or granted under this section contains a condition falling within subsection (3)(b), it must also contain a condition that—
  - (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
  - (b) the times at which they are broadcast,
 are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.
- (6) The terms of a replacement licence proposed or granted under this section must provide for it to continue in force until the end of 2014.
- (7) But—
  - (a) such a licence may be renewed, on one or more occasions, for such period as OFCOM may think fit in relation to the occasion in question; and
  - (b) the provisions of this section (apart from subsections (1), (2) and (6)) are to apply in the case of a licence granted by way of a renewal of a licence granted under this section as they apply in the case of the replacement licence.
- (8) The conditions of a replacement licence proposed or granted under this section must include the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (9) The conditions of such a licence must also include a condition prohibiting the imposition, whether directly or indirectly, of the following—
  - (a) charges on persons in respect of their reception in the United Kingdom of Channel 4;
  - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in Channel 4; and
  - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of Channel 4 as is provided in digital form.
- (10) It shall be unlawful to impose a charge in contravention of a condition falling within subsection (9).

*Television licensable content services*

**232 Meaning of “television licensable content service”**

- (1) In this Part “television licensable content service” means (subject to section 233) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or both of the following means—
  - (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or
  - (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.

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- (2) A service falls within this subsection if it—
- (a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and
  - (b) consists of television programmes or electronic programme guides, or both.
- (3) Where—
- (a) a service consisting of television programmes, an electronic programme guide or both (“the main service”) is provided by a person as a service to be made available for reception by members of the public, and
  - (b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,
- subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).
- (4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by that person with the main service only if what is comprised in the other service is something over which that person has general control.
- (5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—
- (a) for the transmission of visual images or sounds (or both) by the person providing the service to users of the service; and
  - (b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.
- (6) In this section—
- “electronic programme guide” means a service which consists of—
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
  - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;
- “relevant ancillary service”, in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to—
- (a) assistance for disabled people in relation to some or all of the programmes included in the main service;
  - (b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or
  - (c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

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

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### **233 Services that are not television licensable content services**

- (1) A service is not a television licensable content service to the extent that it is provided with a view to its being broadcast by means of a multiplex service.
- (2) A service is not a television licensable content service to the extent that it consists of a service the provision of which is authorised by—
  - (a) a licence to provide a television broadcasting service;
  - (b) the licence to provide the public teletext service; or
  - (c) a licence to provide additional television services.
- (3) A service is not a television licensable content service to the extent that it is provided by means of an electronic communications service if—
  - (a) it forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
  - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.
- (4) A service is not a television licensable content service if it is a two-way service (within the meaning of section 232).
- (5) A service is not a television licensable content service if—
  - (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
  - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)—
  - (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
  - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a television licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—
  - (a) persons who have a business interest in the programmes included in the service; or
  - (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or watching them—
  - (a) for the purposes of a business carried on by him; or
  - (b) for the purposes of his employment.
- (9) In this section—

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“business premises”, in relation to a person, means premises at or from which any business of that person is carried on;

“multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service;

“premises” includes a vehicle;

“vehicle” includes a vessel, aircraft or hovercraft.

- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
  - (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

### **234 Modification of ss. 232 and 233**

- (1) The Secretary of State may by order modify any of the provisions of section 232 or 233 if it appears to him appropriate to do so having regard to any one or more of the following—
- (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes;
  - (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
  - (c) the practicability of applying different levels of regulation in relation to different services;
  - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
  - (e) technological developments that have occurred or are likely to occur.
- (2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a television licensable content service for the purposes of the provisions of this Act that are so specified.
- (3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **235 Licensing of television licensable content services**

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of a television licensable content service is a licence granted under Part 1 of that Act on an application complying with this section.
- (2) An application for a licence to provide a television licensable content service—
- (a) must be made in such manner,
  - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
  - (c) must be accompanied by such fee (if any),
- as OFCOM may determine.

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- (3) Where an application is made to OFCOM in accordance with subsection (2) for a licence to provide a television licensable content service, OFCOM are entitled to refuse the application only if—
  - (a) they are required to do so by section 3(3) of the 1990 Act (licences to be held only by fit and proper persons);
  - (b) they are required to do so by section 5 of the 1990 Act (restrictions on the holding of licences); or
  - (c) they are satisfied that, if the application were to be granted, the provision of the service would be likely to involve contraventions of—
    - (i) standards set under section 319 of this Act; or
    - (ii) the provisions of a code of practice in force under Part 5 of the 1996 Act (fairness).
- (4) The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.
- (5) A single licence to provide a television licensable content service may authorise the provision of a service which consists (to any extent) of different programmes to be broadcast simultaneously, or virtually so.
- (6) A licence to provide a television licensable content service shall continue in force until such time as it is surrendered or is revoked in accordance with any of the provisions of this Chapter or of the 1990 Act.

### **236 Direction to licensee to take remedial action**

- (1) This section applies if OFCOM are satisfied—
  - (a) that the holder of a licence to provide a television licensable content service has contravened a condition of the licence; and
  - (b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).
- (2) OFCOM may direct the licence holder to include a correction or a statement of findings (or both) in the licensed service.
- (3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.
- (4) OFCOM are not to give a person a direction under this section unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.
- (5) Where the holder of a licence includes a correction or a statement of findings in the licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (6) If OFCOM are satisfied that the inclusion of a programme in a television licensable content service involved a contravention of a condition of the licence to provide that service, they may direct the holder of the licence not to include that programme in that service on any future occasion.
- (7) Where OFCOM—
  - (a) give a direction to a BBC company under subsection (2), or



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(b) receive representations from a BBC company by virtue of subsection (4), they must send a copy of the direction or representations to the Secretary of State.

(8) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.

### **237 Penalties for contravention of licence condition or direction**

(1) If OFCOM are satisfied that the holder of a licence to provide a television licensable content service—

- (a) has contravened a condition of the licence, or
- (b) has failed to comply with a direction given by OFCOM under or by virtue of a provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act,

they may serve on him a notice requiring him to pay them, within a specified period, a specified penalty.

(2) The amount of the penalty under this section must not exceed the maximum penalty given by subsection (3).

(3) The maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(4) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3) is to be construed as referring to 5 per cent of the amount which OFCOM estimate will be the qualifying revenue for that accounting period.

(5) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, are to apply for the purposes of subsection (3) as they apply for the purposes of Part 1 of that Act.

(6) OFCOM are not to serve a notice on a person under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.

(7) Where OFCOM—

- (a) serve a notice on a BBC company under subsection (1), or
  - (b) receive representations from a BBC company by virtue of subsection (6),
- they must send a copy of the notice or representations to the Secretary of State.

(8) An exercise by OFCOM of their powers under subsection (1) does not preclude any exercise by them of their powers under section 236 in respect of the same contravention.

(9) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3)(a).

(10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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

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## **238 Revocation of television licensable content service licence**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—
  - (a) that the holder of the licence is in contravention of a condition of the licence or is failing to comply with a direction given by them under or by virtue of any provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act; and
  - (b) that the contravention or failure, if not remedied, would justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1);
  - (b) specify the respects in which, in their opinion, the licence holder is contravening the condition or failing to comply with the direction; and
  - (c) state that OFCOM will revoke the licence unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified.
- (3) If, at the end of the period specified in a notice under subsection (2), OFCOM are satisfied—
  - (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,they shall serve a notice on him revoking his licence.
- (4) If OFCOM are satisfied in the case of a licence to provide a television licensable content service—
  - (a) that the holder of the licence has ceased to provide the licensed service, and
  - (b) that it is appropriate for them to do so,they shall serve a notice on him revoking his licence.
- (5) If OFCOM are satisfied—
  - (a) that the holder of a licence to provide a television licensable content service has provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,they may serve a notice on him revoking his licence.
- (6) A notice under this section revoking a licence to provide a television licensable content service takes effect as from the time when it is served on the licence holder.
- (7) OFCOM are not to serve a notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (8) Where OFCOM—
  - (a) serve a notice on a BBC company under this section, or
  - (b) receive representations from a BBC company by virtue of subsection (7),they must send a copy of the notice or representations to the Secretary of State.

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

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- (9) Nothing in this section applies to the revocation of a licence in exercise of the power conferred by section 239.

### **239 Action against licence holders who incite crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—
- (a) that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder;
  - (b) that, in doing so, he has contravened conditions contained by virtue of Chapter 4 of this Part in the licence to provide that service; and
  - (c) that the contravention is such as to justify the revocation of the licence.
- (2) A notice under this subsection must—
- (a) state that OFCOM are satisfied as mentioned in subsection (1);
  - (b) specify the respects in which, in their opinion, the licence holder has contravened the condition mentioned in paragraph (b) of that subsection;
  - (c) state that OFCOM may revoke the licence after the end of the period of twenty-one days beginning with the day on which the notice is served on the licence holder; and
  - (d) inform the licence holder of his right to make representations to OFCOM within that period about the matters appearing to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) shall be to suspend the licence as from the time when the notice is served on the licence holder until either—
- (a) the revocation of the licence takes effect; or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder within the period specified for the purposes of subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they shall serve a notice of revocation on the licence holder.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from such time as may be specified in the notice.
- (6) A notice of revocation under subsection (4) must not specify a time for it to take effect that falls before the end of the period of twenty-eight days beginning with the day on which the notice is served on the licence holder.

### **240 Abolition of separate licences for certain television services**

- (1) The authorisations that are to be capable of being granted on or after the television transfer date by or under a licence under Part 1 of the 1990 Act do not include the authorisation of the provision, as such, of—
- (a) any satellite television service (as defined, disregarding its repeal by this Act, in section 43(1) of the 1990 Act); or
  - (b) any licensable programme service (as defined, disregarding its repeal by this Act, in section 46(1) of that Act).

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

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- (2) Subsection (1) does not affect OFCOM’s power, by means of a licence authorising the provision of a service falling within section 211(1), to authorise the provision of so much of any formerly regulated television service as is comprised in the licensed service.
- (3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a television licensable content service—
- (a) shall have effect, on and after the television transfer date, as a licence under Part 1 of the 1990 Act authorising the provision of the television licensable content service comprised in the licensed service;
  - (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of this Chapter or of the 1990 Act; and
  - (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the television transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 3 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (4)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.
- (5) In this section—
- “formerly regulated television service” means a service mentioned in subsection (1); and
- “relevant existing licence”, means any licence which—
- (a) was granted by the Independent Television Commission under Part 1 of the 1990 Act before the television transfer date; and
  - (b) is in force immediately before the television transfer date as a licence authorising the provision of a formerly regulated service.

### *Television multiplex services*

## **241 Television multiplex services**

- (1) Subject to the following provisions of this section, references in Part 1 of the 1996 Act to a multiplex service, other than those comprised in express references to a general multiplex service, shall have effect as references to any service (“a television multiplex service”) which—
- (a) falls within subsection (2); and
  - (b) is provided for broadcasting for general reception but otherwise than from a satellite.
- (2) A service falls within this subsection if—
- (a) it consists in the packaging together of two or more services which include at least one relevant television service and are provided for inclusion together in the service by a combination of the relevant information in digital form; or
  - (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one service is for the time being comprised in digital form in what is provided.

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

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- (3) The provision, at a time after the commencement of this section, of a television multiplex service the provision of which is not authorised by or under a licence under Part 1 of the 1996 Act is not to be an offence under section 13 of the 1990 Act.
- (4) Accordingly, after the commencement of this section, a licence under Part 1 of the 1996 Act shall be required for the provision of a television multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) that is contained in a wireless telegraphy licence, or is deemed to be so contained.
- (5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only television multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 1 of the 1996 Act.
- (6) Where immediately before the coming into force of this section—
  - (a) a television multiplex service is licensed under Part 1 of the 1996 Act; and
  - (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).
- (7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the television multiplex service in question—
  - (a) ceases to be licensed under Part 1 of the 1996 Act in respect of that service, or
  - (b) ceases to exist,OFCOM may revoke the wireless telegraphy licence.
- (8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.
- (9) In subsection (2) “relevant television service” means any of the following—
  - (a) any Channel 3 service in digital form;
  - (b) Channel 4 in digital form;
  - (c) Channel 5 in digital form;
  - (d) S4C Digital;
  - (e) any digital television programme service;
  - (f) the digital public teletext service.

## **242 Composition of services in television multiplexes**

- (1) In subsection (1) of section 12 of the 1996 Act—
  - (a) in paragraph (c), (digital programmes services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 18” there shall be inserted “, by the BBC”;
  - (b) in paragraph (d), (digital additional services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 25” there shall be inserted “, by the BBC”;
  - (c) after that paragraph there shall be inserted—
    - “(da) that the only digital sound programme services broadcast under the licence are services provided by the holder of

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

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- a national digital sound programme licence (within the meaning of section 60) or by the BBC;”
- (d) in paragraph (e), after “digital programme services” there shall be inserted “, digital sound programme services”;
- (e) in paragraph (f), after “digital programme service” there shall be inserted “, a digital sound programme service”; and
- (f) for paragraph (h) (conditions as to composition of multiplex service), there shall be substituted—
- “(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).”
- (2) After that subsection there shall be inserted—
- “(1A) The services falling within this subsection are—
- (a) qualifying services;
- (b) digital programme services licensed under this Part or provided by the BBC;
- (c) digital sound programme services provided by the BBC;
- (d) programme-related services; and
- (e) relevant technical services.”
- (3) In subsection (3) of that section—
- (a) after the words “digital programme services”, in the first place where they occur, there shall be inserted “or digital sound programme services”; and
- (b) for “digital programme services broadcast under the licence” there shall be substituted “so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services,”.
- (4) In subsection (4) of that section (interpretation of subsection (1)(h))—
- (a) for “(1)(h)” there shall be substituted “(1A)”;
- (b) in paragraph (a), for “the qualifying teletext service” there shall be substituted “the digital public teletext service”;
- (c) in paragraph (b)(i), after “the 1990 Act” there shall be inserted “, or in one or more digital sound programme services provided by the BBC,”
- (d) in paragraph (c), for “digital programme services” there shall be substituted “services falling within subsection (1A) which are comprised in the multiplex in question”.
- (5) After that subsection there shall be inserted—
- “(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent. as OFCOM—
- (a) consider appropriate; and
- (b) specify in the condition.”
- (6) In subsection (5) of that section (power to change percentage in subsection (1)(h)), for “(1)(h)” there shall be substituted “(4A)”.

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

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## **243 Powers where frequencies reserved for qualifying services**

- (1) The Secretary of State may by order provide, in relation to the matters mentioned in subsection (2)—
  - (a) for any or all of the provisions of sections 7 to 16 and of sections 18 and 19 of the 1996 Act to have effect with the modifications specified in the order; and
  - (b) for provision made by the order to have effect in place of any or all of those provisions.
- (2) Those matters are—
  - (a) licences under Part 1 of the 1996 Act, and
  - (b) the awarding and grant of such licences,in a case in which the licence is, or is to be, a licence to provide a service for broadcasting on any one or more reserved frequencies.
- (3) An order under this section may require OFCOM to include conditions falling within subsection (4) in any Broadcasting Act licence to provide a television multiplex service to be broadcast on a reserved frequency.
- (4) Conditions falling within this subsection are conditions that OFCOM consider appropriate for securing that, in consideration for the making by any relevant public service broadcaster of such payments as are from time to time—
  - (a) agreed between the broadcaster and the holder of the licence to provide the television multiplex service, or
  - (b) in default of agreement, determined by OFCOM in accordance with the order, the holder of that licence will use digital capacity reserved in accordance with conditions imposed under section 12 of the 1996 Act or any order under this section for the broadcasting of services provided by that broadcaster.
- (5) Subsection (3) is not to be construed as restricting the provision that may be made under subsection (1).
- (6) A frequency is a reserved frequency for the purposes of this section if it is one as respects which OFCOM have made a determination, in exercise of their functions under the enactments relating to the management of the radio spectrum, that the frequency should be reserved for the broadcasting of television multiplex services.
- (7) In this section “relevant public service broadcaster” means any of the following—
  - (a) the holder of a licence to provide a Channel 3 service;
  - (b) C4C;
  - (c) the holder of a licence to provide Channel 5;
  - (d) the Welsh Authority;
  - (e) the public teletext provider.

### *Local digital television services*

## **244 Local digital television services**

- (1) The Secretary of State may by order provide for—
  - (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to sound services), or

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

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- (b) any provision of Part 1 of the 1990 Act or of Part 1 of the 1996 Act (regulation of television services),
- to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.
- (2) The Secretary of State is not to make an order under this section in relation to a description of services except where—
- (a) the description is of services to be provided in digital form with a view to their being included in a television multiplex service;
  - (b) the description is confined to services falling within one or both of subsections (3) and (4); and
  - (c) the Secretary of State is satisfied that the making of an order under this section in relation to that description of services will make possible, facilitate or encourage the provision of services so falling.
- (3) Services fall within this subsection if they are—
- (a) intended for reception only at a particular establishment or otherwise on particular premises; or
  - (b) provided for the purposes only of a particular event.
- (4) Services fall within this subsection if the Secretary of State considers that they are services in relation to which all the following conditions are satisfied—
- (a) they are intended for reception only within a particular area or locality;
  - (b) their provision meets, or would meet, the needs of the area or locality where they are received;
  - (c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and
  - (d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.
- (5) Services shall be taken for the purposes of subsection (4) to meet the needs of an area or locality if, and only if—
- (a) their provision brings social or economic benefits to the area or locality, or to different categories of persons living or working in that area or locality; or
  - (b) they cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of people who do so live and work).
- (6) In subsections (4) and (5), the references to persons living or working in an area or locality include references to persons undergoing education or training in that area or locality.
- (7) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.
- (8) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1)



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

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includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.

- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.