



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

CHAPTER 3

REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES

Preliminary

245 Regulation of independent radio 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 specified in subsection (2) that are provided from places in the United Kingdom and otherwise than by the BBC;
 - (b) services so specified that do not fall within paragraph (a) but are provided by a person, other than the BBC, whose principal place of business is in the United Kingdom.
- (2) The services referred to in subsection (1)(a) are—
 - (a) sound broadcasting services to which subsection (3) applies;
 - (b) radio licensable content services;
 - (c) additional radio services;
 - (d) radio multiplex services;
 - (e) digital sound programme services;
 - (f) digital additional sound services.
- (3) This subsection applies to a sound broadcasting service which—
 - (a) is provided with a view to its being broadcast otherwise than only from a satellite; and

Status: This is the original version (as it was originally enacted).

- (b) is a national service, local service or restricted service.
- (4) For the purposes of this section—
- (a) a service is a national service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in any such minimum area of the United Kingdom as may be determined in accordance with section 98(2) of the 1990 Act;
 - (b) a service is a local service if it is a sound broadcasting service which (without being a national service) is provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in a particular area or locality in the United Kingdom; and
 - (c) a service is a restricted service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception—
 - (i) within a particular establishment in the United Kingdom or at another defined location in the United Kingdom; or
 - (ii) for the purposes of a particular event taking place within the United Kingdom.
- (5) The services that are to be treated for the purposes of this section as provided from places in the United Kingdom include every radio licensable content service which would not fall to be so treated apart from this subsection but which—
- (a) is provided with a view to its being broadcast from a satellite;
 - (b) is a service the broadcasting of which involves its transmission to the satellite by means of an electronic communications network from a place in the United Kingdom; and
 - (c) is not a service the provision of which is licensed or otherwise authorised under the laws of another EEA State.
- (6) The services that are to be treated as so provided also include every service provided by a BBC company, a C4 company or an S4C company.
- (7) A reference in subsection (4)(b) to an area of the United Kingdom does not include an area which comprises or includes the whole of England.

246 Abolition of function of assigning radio frequencies

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

- (a) for any of the purposes of Part 3 of the 1990 Act (regulation of radio services); or
- (b) for the purposes of the provision of any radio multiplex services.

Radio licensable content services

247 Meaning of “radio licensable content services”

- (1) In this Part “radio licensable content service” means (subject to section 248) 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—

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

- (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.
- (2) A service falls within this subsection if it—
- (a) consists of sound programmes; and
 - (b) 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.

248 Services that are not radio licensable content services

- (1) A service is not a radio licensable content service to the extent that—
- (a) it is provided with a view to its being broadcast by means of a multiplex service;
 - (b) it is a sound broadcasting service to which subsection (3) of section 245 applies; or
 - (c) it is comprised in a television licensable content service.
- (2) A service is not a radio 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 services of radio programmes or television programmes (or both) for reception by members of the public.
- (3) A service is not a radio licensable content service if it is a two-way service.
- (4) A service is a two-way service for the purposes of subsection (3) 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 sounds by the person providing the service to users of the service; and
 - (b) for the transmission of sounds by those users for reception by the person providing the service or by other users of the service.
- (5) A service is not a radio 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.

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

- (7) A service is not a radio 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 allowing them to be listened to by persons falling within sub-paragraph (a) or by 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 listening to them—
- (a) for the purposes of a business carried on by him; or
 - (b) for the purposes of his employment.
- (9) In this section—
- “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.

249 Modification of ss. 247 and 248

- (1) The Secretary of State may by order modify any of the provisions of section 247 or 248 if it appears to him appropriate to do so having regard to any one or more of the following—
- (a) the protection which is expected by members of the public as respects the contents of sound programmes;
 - (b) the practicability of applying different levels of regulation in relation to different services;
 - (c) the financial impact for providers of particular services of any modification of the provisions of that section; and
 - (d) 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 radio 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.

250 Licensing of radio licensable content services

- (1) The licence that is required for the purposes of section 97 of the 1990 Act in respect of a radio licensable content service is a licence granted under Part 3 of that Act on an application complying with this section.
- (2) An application for a licence under Part 3 of the 1990 Act to provide a radio 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.
- (3) Sections 109 to 111A of the 1990 Act (enforcement of licences) apply in relation to licences for radio licensable content services as they apply in relation to licences under Chapter 2 of Part 3 of the 1990 Act but with—
 - (a) the substitution of the word “or” for paragraph (b) of subsection (1) of section 110 (power to shorten licence period); and
 - (b) the omission of “(b)” in subsection (4) of that section and of subsection (5) of that section (which refer to the power disapplied by paragraph (a) of this subsection).

251 Abolition of separate licences for certain sound services

- (1) The authorisations that are to be capable of being granted on or after the radio transfer date by or under a licence under Part 3 of the 1990 Act do not include the authorisation of the provision, as such, of—
 - (a) any satellite service (as defined, disregarding its repeal by this Act, in section 84(2)(b) of the 1990 Act); or
 - (b) any licensable sound programme service (as defined, disregarding its repeal by this Act, in section 112(1) of that Act).
- (2) Subsection (1) does not affect OFCOM’s power, by means of a licence authorising the provision of a service falling within section 245(1), to authorise the provision of so much of any formerly regulated radio 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 radio licensable content service—
 - (a) shall have effect, on and after the radio transfer date, as a licence under Part 3 of the 1990 Act authorising the provision of the radio 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 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 radio transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 86 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 (5)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.

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

(5) In this section—

“formerly regulated radio service” means a service mentioned in subsection (1); and

“relevant existing licence” means any licence which—

- (a) was granted by the Radio Authority under Part 3 of the 1990 Act before the radio transfer date; and
- (b) is in force immediately before the radio transfer date as a licence authorising the provision of a formerly regulated service.

Licence periods etc.

252 Extension of licence periods

(1) In subsection (1) of section 86 of the 1990 Act (period of licences), for the words from “for such period” onwards there shall be substituted “(subject to a suspension of the licence under section 111B)—

- (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
- (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.”

(2) For subsection (3) of that section there shall be substituted—

“(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.”

253 Extension and modification of existing licences

(1) A person who immediately before the radio transfer date holds a pre-transfer national licence or a pre-transfer local licence is entitled, in accordance with the following provisions of this section, to apply to OFCOM for an extension of the licence.

(2) The period for which a licence may be extended on such an application is a period ending not more than four years after the end of the period for which it was granted originally or (if it has been renewed) for which it was last renewed.

(3) An application under subsection (1) may only be made in the period which—

- (a) begins three years before the date on which the licence would otherwise expire; and
- (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a notice under section 98(1) or 104(1) of the 1990 Act if they were proposing to grant a fresh licence to take effect from that date.

(4) A determination for the purposes of subsection (3)(b)—

- (a) must be made at least one year before the day determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.

(5) An application under subsection (1)—

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

- (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.
- (6) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (7), they shall—
 - (a) modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit; and
 - (b) make such other modifications as appear to them to be necessary for the purpose of securing that the provisions of the licence correspond to those that would be contained in a national sound broadcasting licence or (as the case may be) a local sound broadcasting licence granted after the radio transfer date.
- (7) Those matters are—
 - (a) the ability of the licence holder to maintain the service for the period of the extension; and
 - (b) the likelihood of a contravention by the licence holder of a requirement imposed by—
 - (i) a condition included in the licence by virtue of section 106 of the 1990 Act; or
 - (ii) a condition of the licence varied in accordance with subsection (8).
- (8) For the purposes of the modification under this section of a national licence, OFCOM—
 - (a) shall determine an amount which is to be payable to OFCOM by the licence holder in respect of the first complete calendar year falling within the period for which the licence is extended; and
 - (b) may, in relation to any accounting period of the licence holder during the period of the extension, modify a condition included in the licence in pursuance of section 102(1)(c) of the 1990 Act (additional payments to be made in respect of national licences) by specifying a different percentage of the qualifying revenue for that accounting period from that which was previously specified in the condition.
- (9) The amount determined by OFCOM under subsection (8)(a) must be the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being extended) being granted afresh on an application made in accordance with section 98 of the 1990 Act.
- (10) For the purposes of subsection (8)(b)—
 - (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage.
- (11) The modifications set out in accordance with subsection (6)(b) must secure—
 - (a) that the amount falling to be paid under the conditions of the licence for each calendar year subsequent to that for which an amount has been determined in accordance with subsection (8)(a) is the amount so determined as increased by the appropriate percentage; and

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

- (b) that such adjustments as are appropriate are made as respects sums already paid in respect of any year or accounting period to which a modification under subsection (8) applies.
- (12) Where OFCOM have granted a person’s application under this section, the extensions and modifications take effect only if that person—
- (a) has been notified by OFCOM of their proposals for modifications by virtue of subsection (6)(b) or (8)(b), and for the making of a determination under subsection (8)(a); and
 - (b) has consented to the extension on the terms proposed.
- (13) In this section—
- “the appropriate percentage” has the same meaning as in section 102 of the 1990 Act;
 - “national sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a sound broadcasting service which, under subsection (4) (a) of section 245 is a national service for the purposes of that section;
 - “pre-transfer licence” means a licence which was granted under Part 3 of the 1990 Act before the radio transfer date and has not been modified under this section or renewed at any time on or after that date;
 - “pre-transfer local licence” means a pre-transfer licence which was granted as a local licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act);
 - “pre-transfer national licence” means a pre-transfer licence granted or last renewed as a national licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act).

254 Renewal of local licences

In section 104A(5) of the 1990 Act (conditions of renewal of local licence), after paragraph (b) there shall be inserted—

- “(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;”.

255 Extension of special application procedure for local licences

In section 104B(1) of the 1990 Act (special application procedure for local licences for areas with 4.5 million residents or fewer)—

- (a) the word “and” shall be inserted at the end of paragraph (a); and
- (b) paragraph (b) (which excludes areas with more than 4.5 million residents) shall cease to have effect.

Provision of simulcast radio services

256 Definition of simulcast radio services

- (1) In section 41 of the 1996 Act (meaning of simulcast radio service), for subsection (2) there shall be substituted—

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

“(2) In this Part, a “simulcast radio service” means a service provided by a person for broadcasting in digital form and corresponding to a service which is a national service within the meaning of Part 3 of the 1990 Act and is provided by that person.”

(2) In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3), before the definition of “sound broadcasting service” there shall be inserted—

““simulcast radio service” means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;”.

(3) After that subsection there shall be inserted—

“(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act.”

257 Promotion of simulcast radio services

(1) Chapter 2 of Part 3 of the 1990 Act (sound broadcasting services) shall be amended as follows.

(2) In section 98(1) (notices of proposals to grant national licences), after paragraph (b) (ii) there shall be inserted—

“(ia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;”.

(3) In section 98(3) (applications for national licences), after paragraph (a) there shall be inserted—

“(aa) the applicant’s proposals (if any) for providing a simulcast radio service corresponding to the service;”.

(4) In section 98(7) (construction of section), after “this section” there shall be inserted—

““national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and”.

(5) In section 100 (award of national licence to person submitting highest cash bid), for subsection (2) there shall be substituted—

“(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—

- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where—

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or

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

- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

- (2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—
 - (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
 - (b) they propose to exercise their power under subsection (3).
 - (2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).
 - (2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.”
- (6) After section 100 there shall be inserted—

“100A Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.”

Multiplexes broadcasting sound programmes

258 Radio multiplex services

- (1) Subject to the following provisions of this section, references in Part 2 of the 1996 Act to a radio multiplex service shall have effect as references to any service which—
 - (a) falls within subsection (2);
 - (b) is provided for broadcasting for general reception but otherwise than from a satellite; and
 - (c) is not a television multiplex service.
- (2) A service falls within this subsection if—
 - (a) it consists in the packaging together (with or without other services) of two or more relevant sound services which are provided for inclusion together in that 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 relevant sound service is for the time being comprised in digital form in what is provided.

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

- (3) The provision, at a time after the commencement of this section, of a radio multiplex service the provision of which is not authorised by or under a licence under Part 2 of the 1996 Act is not to be an offence under section 97 of the 1990 Act.
- (4) Accordingly, after the commencement of this section, a licence under Part 2 of the 1996 Act shall be required for the provision of a radio multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) which 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 radio 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 2 of the 1996 Act.
- (6) Where immediately before the coming into force of this section—
 - (a) a radio multiplex service is licensed under Part 2 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 radio multiplex service in question—
 - (a) ceases to be licensed under Part 2 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 sound service” means any of the following—
 - (a) a digital sound programme service;
 - (b) a simulcast radio service; and
 - (c) a digital additional sound service.

259 Composition of services in radio multiplexes

- (1) Section 54 of the 1996 Act (conditions attached to radio multiplex licences) shall be amended as follows.
- (2) For paragraph (h) of subsection (1) (conditions as to composition of 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).”
- (3) After that subsection there shall be inserted—

“(1A) The services falling within this subsection are—

 - (a) digital sound programme services;
 - (b) simulcast radio services;

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

- (c) programme-related services; and
 - (d) relevant technical services.”
- (4) In subsection (2) (meaning of services referred to in paragraph (h) of subsection (1))—
- (a) for “paragraph (1)(h)” there shall be substituted “subsection (1A)”; and
 - (b) in sub-paragraph (i), for the words from “(within” to “1990 Act” there shall be substituted “(within the meaning of section 245 of the Communications Act 2003)”.
- (5) After that subsection there shall be inserted—
- “(2A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 80 per cent. as OFCOM—
- (a) consider appropriate; and
 - (b) specify in the condition.”
- (6) In subsection (3) (power to vary percentage in subsection (1)(h))—
- (a) for “subsection (1)” there shall be substituted “subsection (2A)”; and
 - (b) for “paragraph (h) of that subsection” there shall be substituted “that subsection”.

260 Digital sound services for inclusion in non-radio multiplexes

- (1) In section 60(1)(a) of the 1996 Act (national digital sound programme services defined as services broadcast with a view to being broadcast by means of a national radio multiplex service), after “national radio multiplex service” there shall be inserted “, by means of a television multiplex service or by means of a general multiplex service”.
- (2) In section 63(1) of the 1996 Act (meaning of digital additional sound service), for paragraph (a) there shall be substituted—
- “(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
 - (aa) is so provided with a view to the broadcasting being by means of a radio multiplex service or by means of a general multiplex service; and”.
- (3) After subsection (3) of section 63 of the 1996 Act there shall be inserted—
- “(3A) In this section “available for reception by members of the public” shall be construed in accordance with section 361 of the Communications Act 2003.”
- (4) In section 72(1) of the 1996 Act (interpretation of Part 2)—
- (a) after the definitions of “digital sound programme service” and “digital sound programme licence” there shall be inserted—
 - ““general multiplex service” has the same meaning as in Part 3 of the Communications Act 2003;”
 - (b) after the definition of “technical service” there shall be inserted—
 - ““television multiplex service” has the meaning given by section 241 of the Communications Act 2003.”

261 Renewal of radio multiplex licences

In section 58(2) of the 1996 Act (renewal for twelve years of radio multiplex licences granted within six years of commencement)—

- (a) for “which is granted within six years” there shall be substituted “granted within ten years”; and
- (b) for the words from “for a period” onwards there shall be substituted—
 - “(a) in the case of a licence granted within six years of that commencement, for a period of twelve years beginning with the date on which it would otherwise expire; and
 - (b) in any other case, for a period of eight years beginning with that date.”

Community radio

262 Community radio

- (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 television), or
 - (b) any provision of Part 3 of the 1990 Act or of Part 2 of the 1996 Act (regulation of radio 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 unless—
 - (a) the description is of services to be provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons; and
 - (b) he considers that the provision of services of that description confer, or would confer, significant benefits on the public or on the communities for which they are provided.
- (3) 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.
- (4) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) 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.
- (5) 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.