

SCHEDULES

SCHEDULE 13

Section 345

FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS

PART 1

BROADCASTING ACT 1990

Preliminary

- 1 The 1990 Act shall be amended as follows.

Revocation of television services licence

- 2 (1) In subsection (3) of section 18 (penalty on revocation of television services licence), for “a financial penalty of the prescribed amount” there shall be substituted “a specified financial penalty”.
- (2) For subsection (4) of that section (amount of penalty) there shall be substituted—
- “(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.
- (3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”
- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 18(2) of the 1990 Act, or
- (b) the notice revoking the licence,

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is served after the commencement of this paragraph.

Licences for Channel 3 services and for Channels 4 and 5

- 3 (1) For subsection (2) of section 41 (penalties for failure by holder of licence for Channel 3 services, Channel 4 or Channel 5 to comply with licence conditions or directions) there shall be substituted—
- “(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1)(a) shall not exceed 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”).
- (1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”
- (2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Restricted services licences

- 4 (1) In subsection (2) of section 42B (application of sections 40 to 42 to licensing of restricted services), for “subsections (3) and (4)” there shall be substituted “subsections (3) to (3C)”.
- (2) In subsection (3) of that section—
- (a) for “subsection (2)” there shall be substituted “subsections (1A) to (1C)”; and
- (b) for the words from “shall not exceed whichever is the greater” onwards there shall be substituted “is the maximum penalty given by subsection (3A).”
- (3) For subsection (4) of that section (penalties for failure to comply with conditions or directions) there shall be substituted—
- “(3A) 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”).
- (3B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.
- (3C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (3A) or (3B) above.”

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- (4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Additional television services licences

- 5 (1) For subsection (2) of section 55 (penalties for failure by holder of licence for additional television service to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 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”).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 52(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

- (2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Revocation of national sound broadcasting licence

- 6 (1) In subsection (3) of section 101 (penalty on revocation of national sound broadcasting licence), for “a financial penalty of the prescribed amount” there shall be substituted “a specified financial penalty”.

- (2) For subsection (4) of that section (amount of penalty) there shall be substituted—

“(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of—

- (a) £250,000; and
- (b) 7 per cent. of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

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(3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”

- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 101(2) of the 1990 Act, or
 - (b) the notice revoking the licence,
- is served after the commencement of this paragraph.

Licences for analogue sound services

- 7 (1) For subsection (2) of section 110 (penalties for failure by holder of national sound broadcasting licence to comply with licence conditions or directions) there shall be substituted—

“(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).

(1B) The maximum penalty is whichever is the greater of—

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

(1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above.”

- (2) In subsection (3) of that section (maximum penalty for failure by holder of a sound broadcasting licence that is not a national licence to comply with licence conditions or directions), for “£50,000” there shall be substituted “£250,000”.
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Additional radio services licences

- 8 (1) For subsection (2) of section 120 (penalties for failure by holder of additional radio services licence to comply with licence conditions or directions) there shall be substituted—

“(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 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”).

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent. of the amount

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which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above.”

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend penalties under the 1990 Act

9 (1) The Secretary of State may by order amend any of the provisions of the 1990 Act specified in sub-paragraph (2) by substituting a different sum for the sum for the time being specified in that provision.

(2) Those provisions are—

- (a) section 18(3B)(a) and (3C)(a);
- (b) section 42B(3A)(a);
- (c) section 101(3B)(a) and (3C)(a);
- (d) section 110(1B)(a) and (3).

(3) No order is to be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

PART 2

BROADCASTING ACT 1996

Preliminary

10 The 1996 Act shall be amended as follows.

Revocation of television multiplex licences

11 (1) In subsection (5) of section 11 (penalty on revocation of television multiplex licence), the words from “not exceeding” onwards shall be omitted.

(2) For subsection (6) of that section (amount of penalty) there shall be substituted—

“(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) is the maximum penalty given by subsections (5B) and (5C).

(5B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of—

- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the multiplex revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

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- (5C) In any other case, the maximum penalty is whichever is the greater of—
- (a) £500,000; and
 - (b) 7 per cent. of the multiplex revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(5D) Section 14 applies for estimating or determining multiplex revenue for the purposes of subsection (5B) or (5C) above.”

- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 11(2) of the 1996 Act, or
 - (b) the notice revoking the licence,
- is served after the commencement of this paragraph.

Attribution of television multiplex revenue

- 12 (1) In subsection (1) of section 15 (attribution of multiplex revenue for the purposes of section 17(3)), for “17(3)” there shall be substituted “17(2A) and (2B)”.
- (2) In subsection (2) of that section (attribution for the purposes of sections 23(3) and 27(3)), for “section 23(3) or section 27(3)” there shall be substituted “sections 23(2A) to (5) and 27(2A) to (5)”.
- (3) This paragraph has effect in relation only to cases in which section 17, 23 or 27 applies as amended by this Schedule.

Multiplex licences

- 13 (1) In subsection (2) of section 17 (penalty for failure by holder of television multiplex licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
 - (b) 5 per cent. of the share of multiplex revenue attributable to the licence holder for his last complete accounting period falling within the period for which his licence has been in force (“the relevant period”).
- (2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.
- (2C) Section 15(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.”
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital television programme licences

- 14 (1) In subsection (2) of section 23 (penalty for failure by holder of digital television programme licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.”
- (3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)(a)” there shall be substituted “subsection (2A)”.
- (4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.
- (5) Before subsection (6) of that section there shall be inserted—
- “(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.”
- (6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital additional television services licences

- 15 (1) In subsection (2) of section 27 (penalty for failure by holder of digital additional services licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods.”
- (3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)(a)” there shall be substituted “subsection (2A)”.
- (4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.
- (5) Before subsection (6) of that section there shall be inserted—

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“(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above.”

- (6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend digital television penalties

- 16 For section 36(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted—

“(2) The provisions referred to in subsection (1) are—

- (a) section 11(5B)(a) and (5C)(a);
- (b) section 17(2A)(a);
- (c) section 23(2A)(a); and
- (d) section 27(2A)(a).

- (3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”

Revocation of radio multiplex licences

- 17 (1) In section 53(5) (maximum penalty on revocation of radio multiplex licence), for “£50,000”, in both places, there shall be substituted “£250,000”.

- (2) This paragraph applies only in a case of a revocation in relation to which—

- (a) the notice required by section 53(2) of the 1996 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Attribution of radio multiplex revenue

- 18 (1) In subsection (1) of section 57 (attribution of multiplex revenue for the purposes of sections 59(3)), for “59(3)” there shall be substituted “59(2A) and (2B)”.

- (2) In subsection (2) of that section, (attribution for the purposes of sections 62(3) and 66(3)), for “section 62(3) or section 66(3)” there shall be substituted “sections 62(2A) to (5) and 66(2A) to (5)”.

- (3) This paragraph has effect in relation only to cases in which section 59, 62 or 66 applies as amended by this Schedule.

Contraventions of conditions of radio multiplex licences

- 19 (1) In subsection (2) of section 59 (penalty for failure by holder of radio multiplex licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”

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

“(2A) The maximum penalty is whichever is the greater of—

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- (a) £250,000; and
 - (b) 5 per cent. of the aggregate amount of the share of multiplex revenue attributable to him for his last complete accounting period falling within a period for which his licence has been in force (“the relevant period”).
- (2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent. of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.
- (2C) Section 57(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above.”
- (3) In subsection (4) of that section (maximum penalty to be imposed on holder of local radio multiplex licences for failure to comply with conditions or directions), for “£50,000” there shall be substituted “£250,000”.
- (4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital sound programme licences

- 20 (1) In subsection (2) of section 62 (penalty for failure by holder of digital sound programme licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
 - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.”
- (3) In subsection (4) of that section (meaning of “relevant accounting period”), for “subsection (3)” there shall be substituted “subsection (2A).”
- (4) In subsection (5) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.
- (5) After that subsection there shall be inserted—
- “(5A) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).
- (5B) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to television multiplex services or general multiplex services is to be in accordance with section 15(2) and (3).”

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- (6) In subsection (6) of that section (maximum penalty where licence is a local digital sound programme licence), for “£50,000” there shall be substituted “£250,000”.
- (7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Licences for digital additional sound services

- 21 (1) In subsection (2) of section 66 (penalty for failure by holder of digital additional sound services licence to comply with licence conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsection (2A).”
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) The maximum penalty is whichever is the greater of—
- (a) £250,000; and
- (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods.”
- (3) In subsection (4) of that section (maximum penalty where licence is a local digital sound programme licence), for “£50,000” there shall be substituted “£250,000”.
- (4) In subsection (5) of that section (meaning of “relevant accounting period”) for “subsection (3)” there shall be substituted “subsection (2A)”.
- (5) In subsection (6) of that section, for “not yet ended, then for the purposes of subsection (3)” there shall be substituted “not ended when the penalty is imposed, then for the purposes of this section”.
- (6) After that subsection there shall be inserted—
- “(6A) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).
- (6B) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to general multiplex services is to be in accordance with section 15(2) and (3).”
- (7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend digital television penalties

- 22 For section 69(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted—
- “(2) The provisions referred to in subsection (1) are—
- (a) section 53(5)(a) and (b)(i);
- (b) section 59(2A)(a) and (4);
- (c) section 62(2A)(a) and (6); and
- (d) section 66(2A)(a) and (4).

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

- (3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”