
STATUTORY INSTRUMENTS

2008 No. 1420

**The Television Multiplex Services
(Reservation of Digital Capacity) Order 2008**

Supplemental provisions applying to Multiplex A, Multiplex B and Multiplex 2

Modifications of the 1996 Act

11.—(1) Section 12 of the 1996 Act (conditions in television multiplex licences) shall have effect in relation to the Multiplex A licence, the Multiplex B licence and the Multiplex 2 licence with the following modifications.

(2) In that section, in relation to those licences—

- (a) subsection (1)(e) (which provides that a multiplex licence shall include conditions appropriate for securing that the licence holder does not unduly discriminate between broadcasters) shall have effect as if it were expressed to have effect subject to this Order; and
- (b) subsection (2) (which provides that certain conditions of a multiplex licence can be varied only with the holder's consent) and subsection (3) (which provides that, subject to a proviso, OFCOM must grant applications for certain variations) shall not apply to any variation to a television multiplex licence made pursuant to this Order.

(3) Section 12(1)(f) of the 1996 Act (which provides that a multiplex licence shall include conditions appropriate for securing that the licence holder does not restrict the freedom of any person entitled to use capacity on the multiplex to arrange for another person to use that capacity) shall have effect in relation to those licences as if—

- (a) it required any condition included in the licence by OFCOM by virtue of it to have effect subject to any conditions so included by virtue of this Order; and
- (b) it provided that those licences may in particular contain such conditions as OFCOM consider appropriate for securing that the holder does not, without OFCOM's prior consent, use any of the capacity reserved by virtue of this Order otherwise than for the broadcasting of services provided by—
 - (i) any holder of a Channel 3 licence, or any two or more holders of such licences acting together, or any body corporate which is controlled either by the holder of a Channel 3 licence or by two or more holders of such licences acting together;
 - (ii) the holder of a licence to provide Channel 5 or any body corporate which is controlled by the holder of such a licence;
 - (iii) C4C or a body corporate which is controlled by C4C;
 - (iv) the public teletext provider or any body corporate which is controlled by it;
 - (v) the BBC or a body corporate which is controlled by the BBC; or
 - (vi) the Welsh Authority or a body corporate which is controlled by that Authority.

Effect of reservation of capacity

12. The reservation by virtue of any provision of this Order of any digital capacity for any person on Multiplex A, Multiplex B or Multiplex 2 is without prejudice to the use by the holder of the Multiplex A licence, the Multiplex B licence or (as the case may be) the Multiplex 2 licence of digital capacity that is not subject to such a reservation for the broadcasting of any other services permitted by or under that licence.

Calculation of amounts of digital capacity

13. Where—

- (a) any condition included by virtue of this Order in a licence to provide a television multiplex service requires the reservation of an amount of digital capacity on that multiplex for any broadcaster,
- (b) the amount of capacity to be so reserved is expressed in this Order by reference to the amount of capacity that is sufficient for the broadcasting of a number of high definition or standard definition television services,
- (c) capacity on the multiplex concerned that is not subject to the reservation mentioned in sub-paragraph (a) is being used for the broadcasting of any high definition or standard definition television service, and
- (d) any question arises at any time as to how much capacity is sufficient for the broadcasting of a high definition or (as the case may be) standard definition television service,

then in determining that question, particular regard is to be had to the amount of digital capacity that the holder of the multiplex licence is in fact using at that time for the broadcasting, on such capacity as is mentioned in sub-paragraph (c), of any high definition or (as the case may require) standard definition television service.