

2021 No. 941

BROADCASTING

The Television Multiplex Services (Renewal of Multiplex Licences) Order 2021

<i>Made</i>	- - - -	<i>11th August 2021</i>
<i>Laid before Parliament</i>		<i>18th August 2021</i>
<i>Coming into force</i>	- -	<i>13th September 2021</i>

The Secretary of State, in exercise of the powers conferred by sections 243(1) and 402(3) of the Communications Act 2003(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Television Multiplex Services (Renewal of Multiplex Licences) Order 2021 and comes into force on 13th September 2021.

Interpretation

2.—(1) In this Order—

- (a) “the 1996 Act” means the Broadcasting Act 1996(b);
- (b) “the 2003 Act” means the Communications Act 2003;
- (c) “Multiplex A” means the television multiplex service which, on the day this Order is made, SDN Limited(c) is authorised to provide by virtue of the licence to that effect (“the Multiplex A licence”) granted under Part 1 of the 1996 Act by the Independent Television Commission(d) on 26th May 1998 and renewed under that Part by OFCOM on 8th May 2009(e);
- (d) “Multiplex B” means the television multiplex service which, on the day this Order is made, BBC Free to View Limited(f) is authorised to provide by virtue of the licence to that effect (“the Multiplex B licence”) granted under Part 1 of the 1996 Act by the

(a) 2003 c. 21. Those provisions of that Act were extended (with modifications) to Guernsey by S.I. 2003/3195, to the Isle of Man by S.I. 2003/3198 and to Jersey by S.I. 2003/3197.

(b) Section 405(1) of the 2003 Act defines “the 1996 Act” as meaning the Broadcasting Act 1996 (c. 55). Part 1 of that Act was extended (with modifications) to Guernsey by S.I. 2003/3192, to the Isle of Man by S.I. 2003/3193 and to Jersey by S.I. 2003/3203.

(c) A company incorporated in England and Wales under the company number 03309912.

(d) The functions of the Independent Television Commission in relation to licensing etc. of television services were transferred to OFCOM by section 2 of, and paragraph of Schedule 1 to, the 2003 Act.

(e) The renewal of the licence took effect on 16th November 2010 and the licence continues for a term of 12 years from that date. A copy of all the multiplex licences mentioned in this instrument is available from ofcom.org.uk.

(f) A company incorporated in England and Wales under the company number 04435176.

Independent Television Commission on 16th August 2002 and renewed under that Part by OFCOM on 6th February 2013(a);

- (e) “Multiplex C” means the television multiplex service which, on the day this Order is made, Arqiva Muxco Limited(b) is authorised to provide by virtue of the licence to that effect (“the Multiplex C licence”) granted under Part 1 of the 1996 Act by the Independent Television Commission on 16th August 2002 and renewed under that Part by OFCOM on 17th February 2012(c);
- (f) “Multiplex D” means the television multiplex service which, on the day this Order is made, Arqiva Muxco Limited is authorised to provide by virtue of the licence to that effect (“the Multiplex D licence”) granted under Part 1 of the 1996 Act by the Independent Television Commission on 16th August 2002 and renewed under that Part by OFCOM on 17th February 2012(d);
- (g) “Multiplex 2” means the television multiplex service which, on the day this Order is made, Digital 3 and 4 Limited(e) is authorised to provide by virtue of the licence to that effect (“the Multiplex 2 licence”) granted under Part 1 of the 1996 Act by the Independent Television Commission on 19th December 1997 and renewed under that Part by OFCOM on 3rd June 2009(f).

(2) References in this Order (however expressed)—

- (a) to the Multiplex A licence, the Multiplex B licence, the Multiplex C licence, the Multiplex D licence or the Multiplex 2 licence include references to those licences as amended from time to time by OFCOM, whether before or (so far as the context permits) after the day on which this Order is made;
- (b) to the holder of any licence, in relation to any time, are to the person who is the holder of the licence in question at that time.

(3) In relation to the Isle of Man, references in this Order to any provision of the 1996 Act or 2003 Act are to that provision as it has effect in the Isle of Man.

(4) In relation to the Bailiwick of Guernsey, references in this Order to any provision of the 1996 Act or 2003 Act are to that provision as it has effect in the Bailiwick of Guernsey.

(5) In relation to Jersey, references in this Order to any provision of the 1996 Act or 2003 Act are to that provision as it has effect in Jersey.

Modifications of the 1996 Act

3. Part 1 of the 1996 Act (digital terrestrial television broadcasting) has effect in relation to—

- (a) the Multiplex A licence,
- (b) the Multiplex B licence,
- (c) the Multiplex C licence,
- (d) the Multiplex D licence, and
- (e) the Multiplex 2 licence,

with the modifications set out in the Schedule.

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- (a) The renewal of the licence took effect on 17th November 2014 and the licence continues for a term of 12 years from that date.
 - (b) A company incorporated in England and Wales under the company number 02333949.
 - (c) The renewal of the licence took effect on 17th November 2014 and the licence continues for a term of 12 years from that date.
 - (d) The renewal of the licence took effect on 17th November 2014 and the licence continues for a term of 12 years from that date.
 - (e) A company incorporated in England and Wales under the company number 03293827.
 - (f) The renewal of the licence took effect on 20th December 2010 and the licence continues for a term of 12 years from that date.

SCHEDULE

Article 3

Modifications of the 1996 Act in relation to multiplex licences

1. Part 1 of the 1996 Act (multiplex services and digital programme services) has effect with the following modifications.

2. Section 16 (duration and renewal of multiplex licences) has effect as if—

(a) for subsection (2) there were substituted—

“(2) A relevant multiplex licence may be renewed on two occasions in accordance with this section—

(a) on the first occasion, for a period of twelve years, and

(b) on the second occasion, for a period ending on or before 31st December 2034,

beginning with the date on which it would otherwise expire.”;

(b) for subsection (3) there were substituted—

“(3) Subject to subsection (3A), an application for the renewal of a relevant multiplex licence under subsection (2) on the second occasion may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in effect and not later than the day falling three months before the relevant date.

(3A) An application for the renewal of the Multiplex A and Multiplex 2 licences under subsection (2) on the second occasion may be made by the licence holder not later than the day falling three months before the relevant date.”;

(c) subsections (4), (5), (6), (8), (9) and (11) were omitted;

(d) in subsection (7)—

(i) at the end of paragraph (a), there were inserted “or”;

(ii) paragraph (b) were omitted;

(e) in subsection (10), the words “and they shall” to the end were omitted;

(f) after subsection (11) there were inserted—

“(11A) Where the Multiplex 2 licence has been renewed on a second occasion under this section, the licence as renewed shall include such further conditions as appear to OFCOM to be appropriate for securing that the holder of the licence is a body corporate controlled by—

(a) one relevant public service broadcaster, or

(b) two or more relevant public service broadcasters taken together.

(11B) For the purposes of this subsection (11A)—

(a) “controlled” shall be construed in accordance with Part 1 of Schedule 2 to the Broadcasting Act 1990(a);

(b) “relevant public service broadcaster” has the same meaning as in section 243(7) of the Communications Act 2003;

(a) 1990 c. 42. Part 1 was amended by section 73 of, and paragraph 1 of Schedule 2 to, the 1996 Act and by section 357 of the 2003 Act. There are other amendments but none is relevant.

- (c) in the reference to a body corporate controlled by two or more persons taken together, the persons in question shall not be regarded as controlling the body corporate by virtue of sub-paragraph (a) unless they are acting together in concert.”;
 - (g) in subsection (12A)(a) at the beginning there were inserted “Subject to subsection (12B),”;
 - (h) after subsection (12A) there were inserted—
 - “(12B) Subsection (12A) does not prevent the determination of a date falling less than one year after the making of the determination where—
 - (a) the renewal of the licence in question would be the renewal on the second occasion of the—
 - (i) Multiplex A licence, or
 - (ii) Multiplex 2 licence, and
 - (b) the determination is made as soon as practicable after the day this subsection comes into force.”;
 - (i) after subsection (13) there were inserted—
 - “(14) In this section and section 16A, “a relevant multiplex licence” means any of the following—
 - (a) the Multiplex A licence;
 - (b) the Multiplex B licence;
 - (c) the Multiplex C licence;
 - (d) the Multiplex D licence; or
 - (e) the Multiplex 2 licence,
- and Multiplex A, Multiplex B, Multiplex C, Multiplex D and Multiplex 2 have the same meanings as given in the Television Multiplex Services (Renewal of Multiplex Licences) Order 2021.”.

3. Part 1 of the 1996 Act has effect as if after section 16 there were inserted—

“Revocation of multiplex licences for spectrum management reasons

16A.—(1) Where OFCOM have renewed a relevant multiplex licence on a second occasion under section 16, they may, with the consent of the Secretary of State, revoke the licence.

(2) OFCOM may only revoke the licence for reasons related to the management of the radio spectrum.

(3) OFCOM may not revoke the licence unless the proposed revocation is objectively justifiable.

(4) Where OFCOM propose to revoke the licence, they must give the holder of the licence a notification—

- (a) stating the reasons for the proposed revocation, and
- (b) specifying the period during which the person notified has an opportunity to make representations about the proposal.

(5) Where OFCOM have given a notification under subsection (4), they must, as soon as reasonably practicable after the end of the period for the making of representations—

- (a) decide whether or not to revoke the licence in accordance with their proposal, or in accordance with that proposal but with modifications;

(a) Subsection (12A) was inserted by section 360(3) of, and Schedule 15 to, the 2003 Act.

- (b) give the holder of the licence a notification of their decision.
- (6) The notification under subsection (5) must—
- (a) give reasons for the decision;
 - (b) in accordance with that decision, revoke the licence or withdraw the proposal for a revocation;
 - (c) where the decision is to revoke the licence, specify a date, not earlier than 31st December 2030 or five years after the date on which the notification is given (whichever is the later), on which the revocation takes effect.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies Part 1 of the Broadcasting Act 1996 to give OFCOM the power to further renew the Multiplex A, B, C, D and Multiplex 2 licences. These are licences to provide television multiplex services - the means by which digital terrestrial television is broadcast (i.e. digital television services received via a conventional aerial).

Section 16 is modified to allow OFCOM to renew the licences for a second time for a period ending on or before 31st December 2034. Section 16 is also modified to give OFCOM the powers to ensure that the Multiplex 2 licence continues to be held by a company controlled by one or more public service broadcasters.

This Order also modifies Part 1 of that Act to give OFCOM the power to revoke the Multiplex A, B, C, D and Multiplex 2 licences for spectrum management reasons where such licences have been renewed on a second occasion. Section 16A sets out the procedure to be followed by OFCOM which provides for a notice period of five years, allows for representations from the licence holder, and ensures that the revocation cannot take effect earlier than 31st December 2030.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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