



Jersey

# **COMMUNICATIONS (JERSEY) ORDER 2003**

**Unofficial extended UK law**

06.117

Showing the law as at 1 January 2019

**APPENDIX**





Jersey

## COMMUNICATIONS (JERSEY) ORDER 2003

### Contents

---

#### Article

1	1
2	2
3	2
4	2
5	2
6	3
7	3

#### **SCHEDULE 1** **5**

---

MODIFICATIONS WITH WHICH PROVISIONS OF THE OFFICE OF COMMUNICATIONS ACT 2002 EXTEND TO JERSEY	5
--	---

1	5
2	5
3	5

#### **SCHEDULE 2** **6**

---

MODIFICATIONS WITH WHICH PROVISIONS OF THE COMMUNICATIONS ACT 2003 EXTEND TO JERSEY	6
--	---

1	6
2	7
3	7
4	7
5	7
6	7
7	7
8	8
9	8
10	8
11	8
12	8
13	8
14	8
15	9

16	9
17	9
18	9
19	9
20	9
21	9
22	10
23	10
24	10
25	10
26	10
27	10
28	10
29	11
30	11
31	11
32	11
33	11
34	11
35	12
36	12
37	12
38	12
39	12
40	12
41	12
42	12
43	13
44	13
45	13
46	13
47	13
48	13
49	13
50	13
51	14
52	14
53	14
54	14
55	14
56	14
57	14
58	14
59	15
60	15
61	15
62	15
63	15
64	15

---

65	15
66	15
67	15
68	16
69	16
70	16
71	16
72	16
73	16
74	17
75	17
76	17
77	17
78	17
79	18
80	18
81	18
82	18
83	18
84	18
85	18
86	18
87	19
88	19
89	19
90	19
91	19
92	20
93	20
94	20
95	21
96	21
97	21
98	21
99	22
100	22
101	22
102	22
103	22
104	22
105	23
106	23
107	23
108	23
109	24
110	26
111	26

---

**COMMUNICATIONS ACT 2003** **29**


---

## CHAPTER 21 29

## PART 1 29

## FUNCTIONS OF OFCOM 29

*Transferred and assigned functions**General duties in carrying out functions**Accessible domestic communications apparatus**Media literacy**OFCOM's Content Board**Functions for the protection of consumers**Advisory committees**International matters**General information functions**Employment in broadcasting**Charging**Guarantees**Provisions supplemental to transfer of functions*

## PART 2 30

## NETWORKS, SERVICES AND THE RADIO SPECTRUM 30

## CHAPTER 1 30

## ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES 30

*Preliminary**Notification by providers**Administrative charges imposed on providers**Register of providers required to notify or to pay charges**Conditions of entitlement to provide network or service etc.**General conditions: subject-matter**General conditions: customer interests*

<i>General conditions: telephone numbers</i>	
<i>General conditions: must-carry obligations</i>	
<i>Universal service conditions</i>	
<i>Access-related conditions</i>	
<i>Privileged supplier conditions</i>	
<i>SMP conditions: procedure</i>	
<i>SMP services conditions: subject-matter</i>	
<i>SMP apparatus conditions: subject-matter</i>	
<i>Enforcement of conditions</i>	
<i>OFCOM's duty to intervene on network access issues</i>	
<i>Electronic communications code</i>	
<i>Regulation of premium rate services</i>	
<i>Offences relating to networks and services</i>	
<i>Persistent misuse of network or service</i>	
<i>Powers to deal with emergencies</i>	
<i>Restrictions in leases and licences</i>	
<i>Information provisions</i>	
<i>Abolition of telecommunications licensing etc.</i>	
<i>Local authority powers in relation to networks and services</i>	
<i>Grants for networks and services in Northern Ireland</i>	
<i>Interpretation of Chapter 1</i>	
CHAPTER 2	33
SPECTRUM USE	33
<i>General functions relating to spectrum use</i>	
<i>Reservation of spectrum for multiplex use</i>	
<i>Recognised spectrum access</i>	
<i>Crown use of the radio spectrum</i>	

---

<i>Limitations and exemptions applied to spectrum use</i>	
<i>Award and transfer of licences</i>	
<i>Variation and revocation of licences</i>	
<i>Wireless telegraphy register</i>	
<i>Information requirements</i>	
<i>Criminal proceedings etc.</i>	
<i>Construction of 1949 Act</i>	
CHAPTER 3	34
DISPUTES AND APPEALS	34
<i>Disputes</i>	
<i>Appeals</i>	
<i>Interpretation of Chapter 3</i>	
PART 3	35
TELEVISION AND RADIO SERVICES	35
CHAPTER 1	35
THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE	35
<i>The BBC</i>	
<i>C4C</i>	
<i>The Welsh Authority</i>	
<i>The Gaelic Media Service</i>	
CHAPTER 2	35
REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES	35
<i>Preliminary</i>	
<i>Channels 3 and 5</i>	
<i>The public teletext service</i>	
<i>Meaning of initial expiry date</i>	
<i>Reviews relating to licensing of Channels 3 &amp; 5 and teletext</i>	
<i>Replacement of Channel 4 licence</i>	



	<i>Television licensable content services</i>	
	<i>Television multiplex services</i>	
	<i>Local digital television services</i>	
CHAPTER 3		37
REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES		37
	<i>Preliminary</i>	
	<i>Radio licensable content services</i>	
	<i>Licence periods etc.</i>	
	<i>Provision of simulcast radio services</i>	
	<i>Multiplexes broadcasting sound programmes</i>	
	<i>Community radio</i>	
CHAPTER 4		38
REGULATORY PROVISIONS		38
	<i>Application of regulatory regimes</i>	
	<i>The public service remit for television</i>	
	<i>Must-offer obligations etc. affecting public service television</i>	
	<i>Programming quotas for public service television</i>	
	<i>News provision etc. on public service television</i>	
	<i>Independent and regional productions and programmes for public service television</i>	
	<i>Networking arrangements for Channel 3</i>	
	<i>Special obligations for Channel 4</i>	
	<i>Special obligation for the public teletext provider</i>	
	<i>Sporting and other events of national interest</i>	
	<i>Television services for the deaf and visually impaired</i>	
	<i>Programming quotas for digital television programme services</i>	
	<i>Regulation of electronic programme guides</i>	
	<i>Character and coverage of radio services</i>	

---

<i>Competition between licensed providers etc.</i>	
<i>Programme and fairness standards for television and radio</i>	
<i>Power to proscribe unacceptable foreign television and radio services</i>	
<i>Party political broadcasts on television and radio</i>	
<i>Monitoring of programmes</i>	
<i>International obligations</i>	
<i>Government requirements for licensed services</i>	
<i>Equal opportunities and training</i>	
<i>Corresponding rules for the BBC and Welsh Authority</i>	
<i>Enforcement against the Welsh Authority</i>	
<i>Enforcement of licence conditions</i>	
<i>Broadcasting Act licence fees</i>	
CHAPTER 5	41
MEDIA OWNERSHIP AND CONTROL	41
<i>Restrictions on licence holders</i>	
<i>Changes of control</i>	
<i>Meaning of control</i>	
CHAPTER 6	41
OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES	41
<i>Annual report on television and radio</i>	
<i>Community radio and local digital television</i>	
<i>Supplemental provisions of Part 3</i>	
PART 4	42
PART 5	42
PART 6	42
MISCELLANEOUS AND SUPPLEMENTAL	42
<i>Annual report</i>	
<i>Review of media ownership</i>	

*Guidelines as to penalties**Disclosure of information**Notifications etc. and electronic working**Other miscellaneous provisions**Supplemental***PART 1** **45****FUNCTIONS OF OFCOM** **45***Transferred and assigned functions*

- 1 Functions and general powers of OFCOM ..... 45
- [1A Saving of Telecommunications Law ..... 46
- 2 Transfer of functions of pre-commencement regulators ..... 46

*General duties in carrying out functions*

- 3 General duties of OFCOM ..... 47
- 4 Duties for the purpose of fulfilling Community obligations ..... 50
- 5 Directions in respect of networks and spectrum functions ..... 50
- 6 Duties to review regulatory burdens ..... 50
- 7 Duty to carry out impact assessments ..... 52
- 8 Duty to publish and meet promptness standards ..... 53
- 9 Secretary of State's powers in relation to promptness standards ..... 54

*Accessible domestic communications apparatus*

- 10 Duty to encourage availability of easily useable apparatus ..... 54

*Media literacy*

- 11 Duty to promote media literacy ..... 55

*OFCOM's Content Board*

- 12 Duty to establish and maintain Content Board ..... 55
- 13 Functions of the Content Board ..... 57

*Functions for the protection of consumers**Advisory committees*

- 20 Advisory committees for different parts of the United Kingdom ..... 58
- 21 Advisory committee on elderly and disabled persons ..... 58

*International matters*

- 22 Representation on international and other bodies ..... 59
- 23 Directions for international purposes in respect of broadcasting functions ..... 60

*General information functions*

- 24 Provision of information to the Secretary of State ..... 61
- 25 Community requirement to provide information ..... 61

26	Publication of information and advice for consumers etc. ....	62
	<i>Employment in broadcasting</i>	
	<i>Charging</i>	
28	General power to charge for services .....	62
	<i>Guarantees</i>	
29	Secretary of State guarantees for OFCOM borrowing .....	63
	<i>Provisions supplemental to transfer of functions</i>	
30	Transfers of property etc. from pre-commencement regulators .....	64
31	Transitional functions and abolition of pre-commencement regulators.....	65
<b>PART 2</b>		<b>66</b>
NETWORKS, SERVICES AND THE RADIO SPECTRUM		66
<b>CHAPTER 1</b>		<b>66</b>
ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES		66
	<i>Preliminary</i>	
32	Meaning of electronic communications networks and services .....	66
	<i>Notification by providers</i>	
	<i>Administrative charges imposed on providers</i>	
	<i>Register of providers required to notify or to pay charges</i>	
	<i>Conditions of entitlement to provide network or service etc.</i>	
	<i>General conditions: subject-matter</i>	
	<i>General conditions: customer interests</i>	
	<i>General conditions: telephone numbers</i>	
	<i>General conditions: must-carry obligations</i>	
	<i>Universal service conditions</i>	
	<i>Access-related conditions</i>	
	<i>Privileged supplier conditions</i>	
	<i>SMP conditions: procedure</i>	
	<i>SMP services conditions: subject-matter</i>	
	<i>SMP apparatus conditions: subject-matter</i>	

*Enforcement of conditions**OFCOM's duty to intervene on network access issues**Electronic communications code**Regulation of premium rate services**Offences relating to networks and services**Persistent misuse of network or service**Powers to deal with emergencies**Restrictions in leases and licences**Information provisions*

138	Notification of contravention of information requirements .....	69
139	Penalties for contravention of information requirements .....	70
140	Suspending service provision for information contraventions .....	71
141	Suspending apparatus supply for information contraventions .....	73
142	Procedure for directions under ss. 140 and 141 .....	74
143	Enforcement of directions under ss. 140 and 141 .....	75
144	Offences in connection with information requirements .....	76
145	Statement of policy on information gathering .....	77
146	Provision of information by OFCOM .....	77

*Abolition of telecommunications licensing etc.**Local authority powers in relation to networks and services**Grants for networks and services in Northern Ireland**Interpretation of Chapter 1***CHAPTER 2** **77****SPECTRUM USE** **77***General functions relating to spectrum use*

152	General functions of OFCOM in relation to radio spectrum .....	77
153	United Kingdom Plan for Frequency Authorisation .....	79
154	Duties of OFCOM when carrying out spectrum functions .....	79
155	Advisory service in relation to interference .....	80
156	Directions with respect to the radio spectrum .....	80
157	Procedure for directions under s. 156 .....	81

*Reservation of spectrum for multiplex use*

158	Special duty in relation to television multiplexes .....	81
-----	--	----

*Recognised spectrum access*

159	Grant of recognised spectrum access.....	81
160	Effect of grant of recognised spectrum access.....	82
161	Charges in respect of grants of recognised spectrum access.....	83
162	Conversion into and from wireless telegraphy licences.....	85
	<i>Crown use of the radio spectrum</i>	
163	Payments for use of radio spectrum by the Crown.....	86
	<i>Limitations and exemptions applied to spectrum use</i>	
164	Limitations on authorised spectrum use .....	86
165	Terms etc. of wireless telegraphy licences .....	87
166	Exemption from need for wireless telegraphy licence.....	88
	<i>Award and transfer of licences</i>	
167	Bidding for wireless telegraphy licences .....	88
168	Spectrum trading .....	90
	<i>Variation and revocation of licences</i>	
169	Variation and revocation of wireless telegraphy licences.....	90
	<i>Wireless telegraphy register</i>	
170	Wireless telegraphy register.....	92
	<i>Information requirements</i>	
171	Information requirements in relation to wireless telegraphy licences.....	92
	<i>Criminal proceedings etc.</i>	
172	Contraventions of conditions for use of wireless telegraphy .....	94
173	Meaning of “repeated contravention” in s. 172 .....	95
174	Procedure for prosecutions of wireless telegraphy offences .....	97
175	Special procedure for contraventions by multiplex licence holders .....	98
176	Amount of penalty under s. 175.....	99
177	“Relevant amount of gross revenue” for the purposes of s. 176.....	99
178	Proceedings for an offence relating to apparatus use .....	100
179	Modification of penalties for certain wireless telegraphy offences .....	102
180	Fixed penalties for certain wireless telegraphy offences .....	103
181	Power of arrest .....	103
182	Forfeiture etc. of restricted apparatus .....	103
	<i>Construction of 1949 Act</i>	
183	Modification of definition of “undue interference” .....	103
184	Modification of definition of “wireless telegraphy” .....	104

## **CHAPTER 3** **104**

### **DISPUTES AND APPEALS** **104**

#### *Disputes*

185	Reference of disputes to OFCOM .....	104
186	Action by OFCOM on dispute reference.....	105
187	Legal proceedings about referred disputes.....	105

188	Procedure for resolving disputes .....	106
189	Disputes involving other member States .....	107
190	Resolution of referred disputes .....	108
191	OFCOM's power to require information in connection with dispute .....	108

*Appeals*

192	Appeals against decisions by OFCOM, the Secretary of State etc.....	109
193	Reference of price control matters to the Competition Commission .....	111
194	Composition of Competition Commission for price control references ....	111
195	Decisions of the [Royal Court of Jersey] .....	111
196	Appeals from the [Royal Court of Jersey] .....	111

*Interpretation of Chapter 3*

197	Interpretation of Chapter 3 .....	112
-----	-----------------------------------	-----

<b>PART 3</b>	<b>112</b>
---------------	------------

TELEVISION AND RADIO SERVICES	112
-------------------------------	-----

<b>CHAPTER 1</b>	<b>112</b>
------------------	------------

THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE	112
---	-----

*The BBC*

198	Functions of OFCOM in relation to the BBC .....	112
-----	---	-----

*C4C*

199	Functions of C4C .....	113
200	Removal of members of C4C .....	114
201	Deficits and surpluses of C4C.....	115
202	Borrowing limit for C4C.....	115

*The Welsh Authority*

*The Gaelic Media Service*

<b>CHAPTER 2</b>	<b>115</b>
------------------	------------

REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES	115
--	-----

*Preliminary*

211	Regulation of independent television services.....	115
212	Abolition of function of assigning television frequencies .....	116
213	Abolition of licensing for local cable systems .....	116

*Channels 3 and 5*

214	Digital Channel 3 and Channel 5 licences .....	116
215	Replacement of existing Channel 3 and Channel 5 licences.....	118
216	Renewal of Channel 3 and 5 licences.....	120
217	Financial terms of licence renewed under s. 216 .....	121

*The public teletext service*

218	Duty to secure the provision of a public teletext service.....	122
219	Licensing of the public teletext service .....	123
220	Delegation of provision of public teletext service.....	124
221	Replacement of existing public teletext provider's licence.....	124
222	Renewal of public teletext licence.....	126
223	Financial terms of licence renewed under s. 222.....	128
	<i>Meaning of initial expiry date</i>	
224	Meaning of "initial expiry date" .....	129
	<i>Reviews relating to licensing of Channels 3 &amp; 5 and teletext</i>	
225	Application for review of financial terms of replacement licences.....	130
226	Application for review of financial terms in consequence of new obligations.....	131
227	Reviews under ss. 225 and 226 .....	131
228	Giving effect to reviews under ss. 225 and 226 .....	133
229	Report in anticipation of new licensing round .....	134
230	Orders suspending rights of renewal .....	135
	<i>Replacement of Channel 4 licence</i>	
231	Replacement of Channel 4 licence .....	136
	<i>Television licensable content services</i>	
232	Meaning of "television licensable content service" .....	137
233	Services that are not television licensable content services .....	139
234	Modification of ss. 232 and 233 .....	140
235	Licensing of television licensable content services .....	141
236	Direction to licensee to take remedial action .....	142
237	Penalties for contravention of licence condition or direction .....	142
238	Revocation of television licensable content service licence .....	143
239	Action against licence holders who incite crime or disorder .....	145
240	Abolition of separate licences for certain television services .....	146
	<i>Television multiplex services</i>	
241	Television multiplex services .....	147
242	Composition of services in television multiplexes .....	148
243	Powers where frequencies reserved for qualifying services.....	149
	<i>Local digital television services</i>	
244	Local digital television services.....	150
<b>CHAPTER 3</b>		<b>152</b>
<b>REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES</b>		<b>152</b>
	<i>Preliminary</i>	
245	Regulation of independent radio services.....	152
246	Abolition of function of assigning radio frequencies .....	153
	<i>Radio licensable content services</i>	
247	Meaning of "radio licensable content services" .....	154
248	Services that are not radio licensable content services .....	154



249	Modification of ss. 247 and 248 .....	156
250	Licensing of radio licensable content services.....	156
251	Abolition of separate licences for certain sound services.....	157
	<i>Licence periods etc.</i>	
252	Extension of licence periods .....	157
253	Extension and modification of existing licences .....	158
254	Renewal of local licences .....	160
255	Extension of special application procedure for local licences .....	160
	<i>Provision of simulcast radio services</i>	
256	Definition of simulcast radio services.....	160
257	Promotion of simulcast radio services.....	161
	<i>Multiplexes broadcasting sound programmes</i>	
258	Radio multiplex services .....	162
259	Composition of services in radio multiplexes .....	163
260	Digital sound services for inclusion in non-radio multiplexes .....	164
261	Renewal of radio multiplex licences .....	165
	<i>Community radio</i>	
262	Community radio .....	165
<b>CHAPTER 4</b>		<b>166</b>
<b>REGULATORY PROVISIONS</b>		<b>166</b>
	<i>Application of regulatory regimes</i>	
263	Application of regulatory regimes .....	166
	<i>The public service remit for television</i>	
264	OFCOM reports on the fulfilment of the public service remit .....	167
265	Public service remits of licensed providers .....	171
266	Statements of programme policy .....	171
267	Changes of programme policy .....	171
268	Statements of service policy by the public teletext provider.....	171
269	Changes of service policy .....	171
270	Enforcement of public service remits.....	171
271	Power to amend public service remits .....	171
	<i>Must-offer obligations etc. affecting public service television</i>	
272	Must-offer obligations in relation to networks .....	172
273	Must-offer obligations in relation to satellite services.....	172
274	Securing reception of must-provide services in certain areas .....	172
275	Must-provide services for the purposes of s. 274 .....	172
276	Co-operation with the public teletext provider.....	173
	<i>Programming quotas for public service television</i>	
277	Programming quotas for independent productions.....	174
278	Programming quotas for original productions .....	175

<i>News provision etc. on public service television</i>	
279	News and current affairs programmes..... 177
280	Appointed news providers for Channel 3..... 178
281	Disqualification from appointment as news provider..... 179
282	Power to repeal or modify Channel 3 news provider provisions ..... 180
283	News providers for Channel 5 ..... 180
284	News provision on the public teletext service ..... 180
<i>Independent and regional productions and programmes for public service television</i>	
285	Code relating to programme commissioning ..... 181
286	Regional programme-making for Channels 3 and 5 ..... 183
287	Regional programmes on Channel 3 ..... 184
288	Regional programme-making for Channel 4 ..... 187
289	Regional matters in the public teletext service ..... 187
<i>Networking arrangements for Channel 3</i>	
290	Proposals for arrangements ..... 188
291	Obligation as to making and continuance of approved arrangements..... 188
292	OFCOM's power to impose arrangements ..... 189
293	Review of approved networking arrangements etc. .... 190
294	Supplemental provision about networking arrangements ..... 191
<i>Special obligations for Channel 4</i>	
295	Involvement of C4 Corporation in programme-making ..... 191
296	Schools programmes on Channel 4 ..... 191
297	Channel 4 contribution towards national television archive ..... 192
<i>Special obligation for the public teletext provider</i>	
298	Conditions prohibiting interference with other services ..... 192
<i>Sporting and other events of national interest</i>	
299	Categorisation of listed events ..... 193
300	Effects of categorisation of listed events ..... 194
301	Code relating to listed events..... 195
302	Regulations about coverage of listed events ..... 195
<i>Television services for the deaf and visually impaired</i>	
303	Code relating to provision for the deaf and visually impaired ..... 196
304	Procedure for issuing and revising code under s. 303..... 199
305	Meaning of "relevant date" in s. 303 ..... 199
306	Power to modify targets in s. 303..... 200
307	Observance of code under s. 303 ..... 200
308	Assistance for the visually impaired with the public teletext service ..... 201
<i>Programming quotas for digital television programme services</i>	
309	Quotas for independent programmes..... 201
<i>Regulation of electronic programme guides</i>	
310	Code of practice for electronic programme guides..... 201
311	Conditions to comply with code under s. 310..... 203

	<i>Character and coverage of radio services</i>	
312	Character and coverage of sound broadcasting services .....	203
313	Consultation about change of character of local services .....	204
314	Local content and character of local sound broadcasting services .....	205
315	Variations of radio multiplex licences affecting service characteristics .....	206
	<i>Competition between licensed providers etc.</i>	
	<i>Programme and fairness standards for television and radio</i>	
319	OFCOM's standards code .....	207
320	Special impartiality requirements .....	209
321	Objectives for advertisements and sponsorship .....	210
322	Supplementary powers relating to advertising .....	212
323	Modification of matters to be taken into account under s. 319 .....	212
324	Setting and publication of standards .....	213
325	Observance of standards code .....	214
326	Duty to observe fairness code .....	215
327	Standards with respect to fairness .....	216
328	Duty to publicise OFCOM's functions in relation to complaints .....	217
	<i>Power to proscribe unacceptable foreign television and radio services</i>	
329	Proscription orders .....	217
330	Effect of proscription order .....	219
331	Notification for enforcing proscription .....	219
332	Penalties for contravention of notification under s. 331 .....	220
	<i>Party political broadcasts on television and radio</i>	
	<i>Monitoring of programmes</i>	
334	Retention and production of recordings .....	221
	<i>International obligations</i>	
335	Conditions securing compliance with international obligations .....	222
	<i>Government requirements for licensed services</i>	
336	Government requirements for licensed services .....	222
	<i>Equal opportunities and training</i>	
337	Promotion of equal opportunities and training .....	223
	<i>Corresponding rules for the BBC and Welsh Authority</i>	
338	Corresponding rules for the BBC * * * .....	223
	<i>Enforcement against the Welsh Authority</i>	
	<i>Enforcement of licence conditions</i>	
344	Transmission of statement of findings .....	224
345	Financial penalties imposable on licence holders .....	224
346	Recovery of fees and penalties .....	224
	<i>Broadcasting Act licence fees</i>	

347	Statement of charging principles.....	224
-----	---------------------------------------	-----

---

<b>CHAPTER 5</b>	<b>226</b>
------------------	------------

---

MEDIA OWNERSHIP AND CONTROL	226
-----------------------------	-----

*Restrictions on licence holders*

348	Modification of disqualification provisions .....	226
349	Licence holding by local authorities .....	227
350	Relaxation of licence-holding restrictions .....	227

*Changes of control*

351	Changes of control of Channel 3 services.....	228
352	Action following review under s. 351.....	231
353	Changes of control of Channel 5 .....	232
354	Action following review under s. 353.....	234
355	Variation of local licence following change of control .....	235
356	Action following review under s. 355.....	236

*Meaning of control*

357	Meaning of “control” .....	237
-----	----------------------------	-----

---

<b>CHAPTER 6</b>	<b>237</b>
------------------	------------

---

OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES	237
--	-----

*Annual report on television and radio*

358	Annual factual and statistical report .....	237
-----	---	-----

*Community radio and local digital television*

359	Grants to providers.....	239
-----	--------------------------	-----

*Supplemental provisions of Part 3*

360	Amendments of the 1990 and 1996 Acts .....	240
361	Meaning of “available for reception by members of the public” .....	240
362	Interpretation of Part 3 .....	241

---

<b>PART 4</b>	<b>247</b>
---------------	------------

---

<b>PART 5</b>	<b>247</b>
---------------	------------

---

<b>PART 6</b>	<b>247</b>
---------------	------------

---

MISCELLANEOUS AND SUPPLEMENTAL	247
--------------------------------	-----

*Annual report*

390	Annual report on the Secretary of State’s functions.....	247
-----	--	-----

*Review of media ownership*

391	Review of media ownership .....	248
-----	---------------------------------	-----

*Guidelines as to penalties*

392	Penalties imposed by OFCOM .....	248
-----	----------------------------------	-----

<i>Disclosure of information</i>	
393	General restrictions on disclosure of information..... 249
<i>Notifications etc. and electronic working</i>	
394	Service of notifications and other documents..... 251
395	Notifications and documents in electronic form ..... 252
396	Timing and location of things done electronically..... 253
<i>Other miscellaneous provisions</i>	
<i>Supplemental</i>	
399	Expenses..... 254
400	Destination of licence fees and penalties ..... 254
401	Power of OFCOM to retain costs of carrying out spectrum functions ..... 256
402	Power of Secretary of State to make orders and regulations ..... 256
[403	Regulations and orders made by OFCOM..... 256
404	Criminal liability of company directors etc. .... 257
405	General interpretation ..... 257
406	Minor and consequential amendments, transitionals and repeals..... 261
407	Pre-consolidation amendments..... 262
408	Transitional provision for anticipatory carrying out of functions..... 262
409	Modifications consequential on regulations implementing Directives..... 262
[410	Application of enactments to territorial sea and other waters..... 262
411	Short title, commencement and extent ..... 262
<b>SCHEDULES</b>	<b>263</b>
<b>SCHEDULE 1</b>	<b>263</b>
<hr/>	
FUNCTIONS TRANSFERRED TO OFCOM 263	
<i>Wireless telegraphy functions</i>	
1	263
2	263
<i>Functions in relation to the licensing etc. of television services</i>	
<i>Functions in relation to C4C</i>	
<i>Functions in relation to the licensing of radio services</i>	
<i>Functions in relation to the proscription of foreign satellite services</i>	
<i>Functions in relation to Gaelic broadcasting</i>	
<i>Functions in relation to the national television archive</i>	
<i>Warrants to enter and search premises to enforce broadcasting licences provisions</i>	
<i>Variation of existing Channel 3 and Channel 5 licences</i>	
<i>Reports for the purposes of the review of digital broadcasting</i>	

*Functions in relation to reservation of digital capacity to the BBC*

*Functions in relation to listed events*

*Functions relating to fairness and privacy in broadcasting*

---

**SCHEDULE 2** **265**

**TRANSFER SCHEMES** **265**

*Contents of transfer scheme*

1 265

*Effect of transfer scheme*

2 266

*Retrospective modification of a transfer scheme*

3 267

*Compensation*

4 267

*Stamp duty*

*Interpretation of Schedule*

6 269

**SCHEDULES 3 AND 4** **270**

**SCHEDULE 5** **271**

---

**PROCEDURE FOR GRANTS OF RECOGNISED SPECTRUM ACCESS** **271**

*General procedure for applications*

1 271

*Information to be provided in connection with applications*

2 271

*Notice of proposed refusal of application*

3 271

*Duration of grant*

4 272

*Revocation or modification*

5 272

*Notice of proposed revocation or modification*

6 272

*Restriction on powers of revocation and modification*

7 274

*Interpretation*

8 274

**SCHEDULES 6 AND 7 275**

**SCHEDULE 8 276**

DECISIONS NOT SUBJECT TO APPEAL 276

*Prosecutions and civil proceedings*

*This Act*

*Wireless Telegraphy Act 1949*

*Wireless Telegraphy Act 1998*

**SCHEDULE 9 278**

ARRANGEMENTS ABOUT CARRYING ON OF C4C'S ACTIVITIES 278

*Notification of requirement to submit proposals*

1 278

*Submission of proposed arrangements*

2 278

*Consideration and approval of proposals*

3 279

*Duration of approval and modification of arrangements*

4 280

*Publication of approved arrangements*

5 280

*Duty of C4C to act in accordance with the approved arrangements*

6 280

*Enforcement of duties*

7 281

*Penalty for contravention of the arrangements*

8 281

*OFCOM's duty to take account of need to support C4C's primary functions*

9 282

*Interpretation of Schedule*

10 282

<b>SCHEDULE 10</b>	<b>283</b>
LICENSING THE PUBLIC TELETEXT SERVICE	283
PART 1	283
	<i>Notice of proposal to grant licence</i>
1	283
	<i>Guidance as to applications</i>
2	284
	<i>Applications for the licence</i>
3	284
	<i>Notice inviting public representations</i>
4	285
	<i>Determination of applications</i>
5	285
	<i>Revocation of award</i>
6	287
PART 2	288
	<i>Payments to be made in respect of the public teletext service</i>
7	288
	<i>Corrections and statements of findings by the public teletext provider</i>
8	289
	<i>Enforcement of the licence for the public teletext service</i>
9	289
	<i>Power to shorten licence period</i>
10	290
	<i>Revocation for contravention of condition or direction</i>
11	290
	<i>Penalty on revocation</i>
12	290
	<i>Power to modify penalties in paragraph 12</i>
13	291
PART 3	291
14	291
15	292



---

**SCHEDULE 11** **293**


---

**APPROVAL, IMPOSITION AND MODIFICATION OF NETWORKING ARRANGEMENTS** **293**
*Application of Schedule*

1           293

*Approval required for modifications*

2           293

*Procedure for giving approval*

3           293

*Decision of OFCOM whether or not to approve arrangements or modifications*

4           294

*Notification of decisions on imposition of arrangements*

5           295

*Competition tests applying to OFCOM's decisions*

6           295

*Other matters to be taken into account*

7           295

*Duty to refuse approval in certain cases*

8           296

*Appeals against decisions relating to competition test*

9           296

*Decisions on an appeal*

10          297

*Appeals against decisions of the Tribunal*

11          298

*Information for OFCOM*

12          298

*Enforcement of information provisions*

13          299

*Confidentiality and defamation*

14          300

*Interpretation of Schedule*

15          300

---

**SCHEDULE 12** **301**


---

**CORRESPONDING OBLIGATIONS OF THE BBC AND WELSH AUTHORITY** **301**

PART 1		301
	<i>Quotas for independent productions</i>	
1	301	
	<i>Duty to publicise complaints procedures etc.</i>	
2	303	
PART 2		303
<b>SCHEDULE 13</b>		<b>304</b>
FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS		304
PART 1		304
	<i>Preliminary</i>	
1	304	
	<i>Revocation of television services licence</i>	
2	304	
	<i>Licences for Channel 3 services and for Channels 4 and 5</i>	
3	305	
	<i>Restricted services licences</i>	
4	305	
	<i>Additional television services licences</i>	
5	306	
	<i>Revocation of national sound broadcasting licence</i>	
6	306	
	<i>Licences for analogue sound services</i>	
7	307	
	<i>Additional radio services licences</i>	
8	308	
	<i>Power to amend penalties under the 1990 Act</i>	
9	308	
PART 2		309
	<i>Preliminary</i>	
10	309	
	<i>Revocation of television multiplex licences</i>	
11	309	
	<i>Attribution of television multiplex revenue</i>	

12	310	
		<i>Multiplex licences</i>
13	310	
		<i>Digital television programme licences</i>
14	310	
		<i>Digital additional television services licences</i>
15	311	
		<i>Power to amend digital television penalties</i>
16	312	
		<i>Revocation of radio multiplex licences</i>
17	312	
		<i>Attribution of radio multiplex revenue</i>
18	312	
		<i>Contraventions of conditions of radio multiplex licences</i>
19	312	
		<i>Digital sound programme licences</i>
20	313	
		<i>Licences for digital additional sound services</i>
21	314	
		<i>Power to amend digital television penalties</i>
22	315	
<b>SCHEDULE 14</b>		<b>316</b>
MEDIA OWNERSHIP RULES		316
PART 1		316
		<i>Ban on newspaper proprietors holding Channel 3 licences</i>
1	316	
		<i>Restrictions on participation</i>
2	316	
		<i>National and local newspapers and their respective national and local market shares</i>
3	317	
		<i>Construction of references to running a newspaper</i>
4	318	
		<i>Coverage area for a Channel 3 service</i>
5	318	

		<i>Power to amend Part 1 of Schedule</i>	
[6	319		
PART 2			319
		<i>Restriction on holding of national radio multiplex licences</i>	
7	319		
		<i>Restriction on holding of local radio multiplex licences</i>	
8	319		
		<i>Connected persons rules etc.</i>	
9	320		
		<i>Power to amend Part 2 of Schedule</i>	
[10	320		
PART 3			320
		<i>Restriction on holding of local sound broadcasting licences</i>	
11	320		
		<i>Restriction applying to local digital sound programme services</i>	
12	321		
		<i>Powers supplemental to powers under paragraphs 11 and 12</i>	
13	323		
		<i>Transitional provision for orders under paragraphs 11 and 12</i>	
14	324		
PART 4			326
		<i>Approval required for religious bodies etc. to hold licences</i>	
15	326		
		<i>Power to amend Part 4 of Schedule</i>	
[16	326		
PART 5			327
		<i>Procedure for orders</i>	
17	327		
		<i>Interpretation of Schedule</i>	
18	327		
<b>SCHEDULE 15</b>			<b>328</b>
AMENDMENTS OF BROADCASTING ACTS			328
PART 1			328
		<i>Licences under Part 1</i>	

1	328	
		<i>General licence conditions</i>
2	328	
		<i>Restrictions on licence holding</i>
3	329	
		<i>Repeal of previous regulatory regime</i>
4	330	
		<i>Prohibition on providing television services without a licence</i>
5	330	
		<i>Television broadcasting on Channel 3</i>
6	330	
		<i>Applications for Channel 3 licences</i>
7	330	
		<i>Procedure on consideration of applications for Channel 3 licences</i>
8	331	
		<i>Television broadcasting on Channel 3</i>
9	332	
		<i>Financial conditions of licence and failures to begin a service</i>
10	332	
		<i>Changes of control in period after award of licence</i>
11	333	
		<i>Temporary provision of Channel 3 service for an additional area</i>
12	333	
		<i>Appointment of members of C4 Corporation</i>
13	333	
		<i>Channel 4 licence</i>
14	333	
		<i>Channel 5</i>
15	333	
		<i>Application to Channel 5 of Channel 3 provisions</i>
16	333	
		<i>Announcement of programme Schedules</i>
17	334	
		<i>Enforcement of conditions of Channel 3, Channel 4 and Channel 5 licences</i>

18 334

*Restricted services*

19 334

*Additional television services*

20 334

*Licensing of additional television services*

21 336

*Applications for additional services licences*

22 336

*Procedure on application etc. for additional television services licences*

23 336

*Additional payments in respect of additional television services licences*

24 337

*Duration of additional television services licences*

25 337

*Additional television services not to interfere with other transmissions*

26 338

*Enforcement of additional television services licences*

27 338

*The Welsh Authority*

*Distribution of licensed public service channels*

29 338

*Enforcement of licences held by BBC companies*

30 339

*Interpretation of Part 1*

31 339

*Licensing functions of OFCOM*

32 339

*Licences under Part 3 of the 1990 Act*

33 340

*General licence conditions*

34 340

*Restrictions on holding licences*

35 340

---

	<i>Disqualification of persons convicted of transmission offences</i>
36	341
	<i>Offence of providing regulated radio services</i>
37	342
	<i>Applications for national licences</i>
38	342
	<i>Consideration of applications for a national licence</i>
39	343
	<i>Award of national licences</i>
40	343
	<i>Failure to begin providing licensed service</i>
41	343
	<i>Additional payments in respect of national licences</i>
42	344
	<i>Restrictions affecting change in control of holder of national licence</i>
43	344
	<i>Renewal of national licences</i>
44	344
	<i>Applications for local licences</i>
45	345
	<i>Renewal of local licences</i>
46	346
	<i>Special procedure for applications for local licences</i>
47	346
	<i>Special requirements relating to grant of local licences</i>
48	347
	<i>Requirements as to character and coverage of services</i>
49	347
	<i>Enforcement of licences</i>
50	347
	<i>Power to suspend licences to provide radio licensable content services from a satellite</i>
51	347
	<i>Additional radio services</i>
52	348

	<i>Licensing of additional radio services</i>
53	349
	<i>Applications for additional radio services licences</i>
54	349
	<i>Procedure for awarding additional radio services licences</i>
55	349
	<i>Additional payments in respect of additional radio services licences</i>
56	350
	<i>Additional radio services not to interfere with other transmissions</i>
57	350
	<i>Enforcement of additional radio services licences</i>
58	350
	<i>Interpretation</i>
59	350
	<i>Duty to provide advance information about programmes</i>
60	351
	<i>Proscription of foreign satellite services</i>
61	351
	<i>Financing of Gaelic Broadcasting</i>
	<i>Gaelic Broadcasting in Scotland</i>
	<i>Maintenance of the national television archive</i>
64	351
	<i>Modification of networking arrangements</i>
65	352
	<i>Search warrants</i>
66	352
	<i>Notices</i>
67	353
	<i>Interpretation</i>
68	353
	<i>Disqualified persons</i>
69	353
	<i>C4C</i>
70	354



		<i>The Welsh Authority</i>	
		<i>Computation of qualifying revenue</i>	
72	354		
		<i>The Gaelic Television Committee</i>	
PART 2			355
		<i>Multiplex services and digital programme services</i>	
74	355		
		<i>Meaning of qualifying service</i>	
75	355		
		<i>Licences under Part 1</i>	
76	356		
		<i>Licence conditions</i>	
77	356		
		<i>Restrictions on digital licence holding</i>	
78	356		
		<i>Multiplex licences</i>	
79	357		
		<i>Award of multiplex licences</i>	
80	358		
		<i>Power to require two or more multiplex licences to be granted to one person</i>	
81	358		
		<i>Award of multiplex licences subject to conditions</i>	
82	358		
		<i>Failure to provide licensed service and revocation</i>	
83	358		
		<i>Conditions attached to multiplex licences</i>	
84	359		
		<i>Additional payments in respect of multiplex licences</i>	
85	359		
		<i>Multiplex revenue</i>	
86	359		
		<i>Attribution of multiplex revenue to multiplex providers</i>	
87	360		
		<i>Duration of multiplex licences</i>	

88	361	
		<i>Enforcement of multiplex licences</i>
89	361	
		<i>Licensing of digital programme services</i>
90	361	
		<i>Conditions of licences for digital programme services</i>
91	362	
		<i>Duration and enforcement of multiplex licenses</i>
92	362	
		<i>Digital additional services</i>
93	363	
		<i>Licensing of digital additional services</i>
94	364	
		<i>Conditions of digital additional services licence</i>
95	364	
		<i>Enforcement of digital additional television services licences</i>
96	365	
		<i>Digital broadcasting of Gaelic programmes</i>
		<i>Review of digital television broadcasting</i>
98	365	
		<i>Enforcement of licences held by BBC companies</i>
99	365	
		<i>Interpretation of Part 1</i>
100	366	
		<i>Radio multiplex services</i>
101	366	
		<i>Licences under Part 2 of the 1996 Act</i>
102	367	
		<i>General licence conditions</i>
103	367	
		<i>Restrictions on holding licences</i>
104	368	
		<i>National radio multiplex licences</i>
105	369	

---

	<i>Award of national radio multiplex licences</i>
106	369
	<i>Reservation of capacity for independent national broadcasters</i>
107	369
	<i>Reservation of digital capacity for BBC</i>
108	370
	<i>Local radio multiplex licences</i>
109	371
	<i>Award of local multiplex licences</i>
110	371
	<i>Power to require two or more local radio multiplex licences to be granted to one person</i>
111	372
	<i>Failure to begin to provide licensed service</i>
112	372
	<i>Conditions which may be attached to radio multiplex licences</i>
113	372
	<i>Additional payments to be made in respect of national radio multiplex licences</i>
114	372
	<i>Multiplex revenue</i>
115	372
	<i>Attribution of radio multiplex revenue</i>
116	373
	<i>Duration and renewal of radio multiplex licences</i>
117	374
	<i>Enforcement of radio multiplex licences</i>
118	374
	<i>Digital sound programme licensing</i>
119	374
	<i>Conditions of digital sound programme licences</i>
120	375
	<i>Enforcement of digital sound programme licences</i>
121	375
	<i>Digital additional sound services</i>
122	376

		<i>Conditions of digital additional sound service</i>	
123	376		
		<i>Enforcement of digital additional sound services licences</i>	
124	376		
		<i>Review of digital radio broadcasting</i>	
125	377		
		<i>Interpretation</i>	
126	377		
		<i>Listed events</i>	
127	378		
128	378		
129	378		
130	378		
131	378		
		<i>Broadcasting standards</i>	
132	379		
133	379		
134	379		
135	379		
136	379		
137	380		
		<i>Disqualification on grounds related to political objects</i>	
138	380		
		<i>Offence of providing false information</i>	
139	381		
		<i>Disqualification for supplying false information</i>	
140	381		
		<i>Interpretation</i>	
141	381		
		<i>Computation of qualifying revenue</i>	
142	382		
<b>SCHEDULE 16</b>			<b>383</b>
<b>SCHEDULE 17</b>			<b>384</b>
<b>MINOR AND CONSEQUENTIAL AMENDMENTS</b>			<b>384</b>
		<i>Interpretation</i>	
1	384		
		<i>Official Secrets Act 1911</i>	

*Law of Property Act 1925**Public Health Act 1925**London Overground Wires, etc Act 1933**Wireless Telegraphy Act 1949*

6	386
7	386
8	386
9	387
10	387
11	387
12	388
13	388
14	388
15	389
16	390
17	390
18	390

*Coast Protection Act 1949**National Parks and Access to the Countryside Act 1949**London County Council (General Powers) Act 1949**Local Government (Miscellaneous Provisions) Act 1953**Army Act 1955**Air Force Act 1955**Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955**Naval Discipline Act 1957**Opencast Coal Act 1958**Pipe-lines Act 1962**London County Council (General Powers) Act 1963**Harbours Act 1964**New Towns Act (Northern Ireland) 1965**Marine, &c., Broadcasting (Offences) Act 1967*

32	391
33	391
34	392

35	392
36	392

*Wireless Telegraphy Act 1967*

*Countryside Act 1968*

*Greater London Council (General Powers) Act 1969*

*Harbours Act (Northern Ireland) 1970*

*Thames Barrier and Flood Prevention Act 1972*

*Fair Trading Act 1973*

*Drainage (Northern Ireland) Order 1973*

*Water and Sewerage Services (Northern Ireland) Order 1973*

*Consumer Credit Act 1974*

*House of Commons Disqualification Act 1975*

*Northern Ireland Assembly Disqualification Act 1975*

*Welsh Development Agency Act 1975*

*Building Regulations (Northern Ireland) Order 1979*

*Local Government, Planning and Land Act 1980*

*Highways Act 1980*

*New Towns Act 1981*

*Acquisition of Land Act 1981*

*Housing (Northern Ireland) Order 1981*

*Civil Aviation Act 1982*

*Representation of the People Act 1983*

*Telecommunications Act 1984*

63	394
[64	394
[65	394
66	394
67	394
68	394
69	395
70	395

71	395
72	395
73	395
74	395
75	395

*Cinemas Act 1985*

*Surrogacy Arrangements Act 1985*

*Bankruptcy (Scotland) Act 1985*

*Housing Act 1985*

*Airports Act 1986*

*Gas Act 1986*

*Insolvency Act 1986*

*Company Directors Disqualification Act 1986*

*Channel Tunnel Act 1987*

*Consumer Protection (Northern Ireland) Order 1987*

*Income and Corporation Taxes Act 1988*

*Norfolk and Suffolk Broads Act 1988*

*Malicious Communications Act 1988*

*Copyright, Designs and Patents Act 1988*

*Housing Act 1988*

*Road Traffic Act 1988*

*Water Act 1989*

*Road Traffic (Driver Licensing and Information Systems) Act 1989*

*Electricity Act 1989*

*Local Government and Housing Act 1989*

*Insolvency (Northern Ireland) Order 1989*

*Town and Country Planning Act 1990*

*Planning (Listed Buildings and Conservation Areas) Act 1990*

*London Local Authorities (No. 2) Act 1990*

*New Roads and Street Works Act 1991*

*Coal Mining Subsidence Act 1991*

*Water Industry Act 1991*

*Water Resources Act 1991*

*Land Drainage Act 1991*

*Planning (Northern Ireland) Order 1991*

*Charities Act 1992*

*Carriage of Goods by Sea Act 1992*

*Electricity (Northern Ireland) Order 1992*

*Leasehold Reform, Housing and Urban Development Act 1993*

*Cardiff Bay Barrage Act 1993*

*Railways Act 1993*

*Roads (Northern Ireland) Order 1993*

*Value Added Tax Act 1994*

*Criminal Justice and Public Order Act 1994*

*Airports (Northern Ireland) Order 1994*

*Merchant Shipping Act 1995*

*Criminal Procedure (Scotland) Act 1995*

*British Waterways Act 1995*

*Street Works (Northern Ireland) Order 1995*

*Housing Act 1996*

*Housing Grants, Construction and Regeneration Act 1996*

*Channel Tunnel Rail Link Act 1996*

*Gas (Northern Ireland) Order 1996*

*Construction Contracts (Northern Ireland) Order 1997*



*Waste and Contaminated Land (Northern Ireland) Order 1997**Wireless Telegraphy Act 1998*

145	399
146	399
147	399
148	400
149	400
150	400
151	401

*Finance Act 1998**Competition Act 1998**Regional Development Agencies Act 1998**Finance Act 1999**Greater London Authority Act 1999**Electronic Communications Act 2000**Television Licences (Disclosure of Information) Act 2000**Finance Act 2000M**Regulation of Investigatory Powers Act 2000**Postal Services Act 2000**Utilities Act 2000**Freedom of Information Act 2000**Countryside and Rights of Way Act 2000**Transport Act 2000**Political Parties, Elections and Referendums Act 2000**Vehicles (Crime) Act 2001**Criminal Justice and Police Act 2001**Electronic Communications Act (Northern Ireland) 2001**Office of Communications Act 2002*

171	402
172	402

*Tobacco Advertising and Promotion Act 2002*

*Enterprise Act 2002**Income Tax (Earnings and Pensions) Act 2003***SCHEDULE 18 404****TRANSITIONAL PROVISIONS 404***General*

1 404

*Steps taken in anticipation of passing or coming into force of Act*

2 404

*Savings for agreements referring to the termination of a 1984 Act licence**Saving for agreements with special provision for 1984 Act licence holders**General saving for agreements conditional on certain Broadcasting Act licences*

5 405

*Orders under Part 2 of the Deregulation and Contracting Out Act 1994**Pre-commencement proposals relating to universal service matters**Local loop notifications**Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions**Pre-commencement proposals relating to market power determinations**Savings for licence conditions relating to accounting**Charges under Telecommunications Act licences**Enforcement of breaches of licence conditions**Saving for agreements having effect by reference to licensing regime**Fees for approvals for the purposes of licence conditions**Allocated telephone numbers**Electronic communications code**Saving for guarantees of liabilities of telecommunications code operators**Compulsory purchase**Notices under section 1D of the Wireless Telegraphy Act 1949*

		<i>Notices under regulations under section 3 of the Wireless Telegraphy Act 1998</i>
21	407	
		<i>Disputes about interconnection</i>
		<i>Appeals against wireless telegraphy and telecommunications decisions</i>
23	408	
		<i>Section 94 of the Telecommunications Act 1984</i>
		<i>Competition Commission: specialist panel members</i>
		<i>Transitory amendments to telecommunications terms in Broadcasting Act 1990</i>
26	409	
		<i>Activities of the Welsh Authority</i>
		<i>Gaelic Broadcasting</i>
		<i>Pre-transfer Broadcasting Act licences</i>
30	411	
		<i>Channels 3 and 5</i>
31	412	
		<i>Saving pending replacement of licences for Channels 3 and 5 and the public teletext service</i>
32	412	
		<i>Digital additional licences</i>
33	412	
		<i>Programme quotas</i>
34	413	
		<i>Continuity in relation to appointed news provider</i>
35	413	
		<i>Networking arrangements</i>
36	413	
		<i>Determination of qualifying revenue</i>
37	414	
		<i>Rules for political broadcasts</i>
		<i>Functions under section 88 of the 1990 Act</i>
39	414	
		<i>Notices under section 94 of the 1990 Act</i>
40	414	

---

		<i>Programme standards: television</i>
41	415	
		<i>Programme standards: radio</i>
42	415	
		<i>Standards code</i>
43	415	
		<i>Local and national radio licences</i>
44	416	
		<i>Section 111B of the 1990 Act</i>
		<i>Section 185 of the 1990 Act</i>
46	416	
		<i>Section 28 of the 1996 Act</i>
47	417	
		<i>Section 48 of the 1996 Act</i>
48	417	
		<i>Applications for extension of pre-transfer licences</i>
49	417	
		<i>Applications for renewal of licences under 1990 Act and 1996 Act</i>
50	418	
		<i>Listed events rules</i>
51	419	
		<i>Complaints to the Broadcasting Standards Commission</i>
52	420	
		<i>Codes of practice drawn up by the Broadcasting Standards Commission</i>
53	420	
		<i>Media ownership provisions</i>
54	420	
		<i>TV licences</i>
55	421	
		<i>Functions under the Enterprise Act 2002</i>
		<i>Functions under the Competition Act 1998</i>
		<i>Newspaper mergers</i>
		<i>Orders in Council under section 6 of the Continental Shelf Act 1964</i>

---

*Interpretation of Schedule*

<b>SCHEDULE 19</b>	<b>423</b>
REPEALS	423





Jersey

Order in Council 3/2004

**COMMUNICATIONS (JERSEY) ORDER 2003***Sanctioned by Order of Her Majesty in Council* 10th December 2003*Registered by the Royal Court* 2nd January 2004*In force date* 29th December 2003

**HER MAJESTY**, in exercise of the powers conferred upon Her by section 20(3) of the Wireless Telegraphy Act 1949 as it has effect by virtue of section 9(2) of the Wireless Telegraphy Act 1998, section 9(3) of the Wireless Telegraphy Act 1998, section 7(4) of the Office of Communications Act 2002 and sections 402(3)(b) and (c) and 411(6) and (8) of the Communications Act 2003, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows –

**1**

- (1) This Order may be cited as the Communications (Jersey) Order 2003.
- (2) Articles 1 to 5 and 7 and Schedule 1 shall come into force on 29th December 2003 and shall be deemed to have come into force immediately following the Broadcasting (Jersey) Order 2003.<sup>1</sup>
- (3) Article 6 and Schedule 2 shall, subject to paragraph (5), come into effect as provided in paragraph (4).
- (4) In respect of any provision of the 2003 Act that is extended to Jersey (whether with or without modifications) by this Order and that is to any extent brought into force in the United Kingdom on a date specified in the Communications Act 2003 (Commencement No. 1) Order 2003 (“the No. 1 Order”) or the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003 (“the No. 2 Order”) –
  - (a) any provision of the 2003 Act so extended, and any modification to that provision made by this Order, shall be of no effect in or in relation to Jersey in relation to any time before the date specified in the No. 1 Order or (as the case may be) the No. 2 Order as the date on which that provision is to come into force in the United Kingdom;

- (b) where any provision of the 2003 Act so extended is brought into force in the United Kingdom for certain purposes or to a certain extent, as specified in the No. 1 Order or (as the case may be) No. 2 Order, that provision, and any modification to that provision made by this Order, shall have effect in Jersey only for the purposes or to the extent so specified;
  - (c) any provision of the 2003 Act so extended, and any such modification, shall have effect in Jersey subject to any transitional or transitory provision made in the No. 1 Order or (as the case may be) No. 2 Order in relation to that provision.
- (5) Paragraph (4) shall not apply until the day following the day on which each of the Orders therein referred to as the “No. 1 Order” and the “No. 2 Order” have been registered in the Royal Court of Jersey.

## 2

In this Order—

- “the 1949 Act” means the Wireless Telegraphy Act 1949;
- “the 1990 Act” means the Broadcasting Act 1990;
- “the 1996 Act” means the Broadcasting Act 1996;
- “the 2002 Act” means the Office of Communications Act 2002;
- “the 2003 Act” means the Communications Act 2003; and
- “Jersey” means the Bailiwick of Jersey.

## 3

Article 2(b) of the Wireless Telegraphy (Jersey) Order 1998<sup>2</sup> (which inserted in section 3 of the Wireless Telegraphy Act 1998 as extended to Jersey a new subsection (5A)) is revoked.

## 4

The Secretary of State shall not —

- (a) request OFCOM under subsection (2) of section 22 of the 2003 Act to do as respects Jersey one or more of the things set out in subsection (1) of that section, or
  - (b) require OFCOM under subsection (2) of section 152 of the 2003 Act to do as respects Jersey one or more of the things set out in that subsection,
- unless he has first consulted the appropriate authorities in Jersey.

## 5

Sections 1 and 7 of, and the Schedule to, the 2002 Act shall extend to Jersey with the modifications set out in Schedule 1 to this Order.



**6**

The following provisions of the 2003 Act shall extend to Jersey with the modifications set out in Schedule 2 to this Order:

In Part 1 (Functions of OFCOM):

sections 1 to 3, 5 to 9, 11 to 13, 21 to 26 and 28 to 31;

In Part 2 (Networks, services and the radio spectrum):

Chapter 1 (Electronic communications networks and services): sections 32 and 138 to 144 for the purposes only of sections 191(5) and (6);

Chapter 2 (Spectrum use): sections 152, 154 to 167, 169 to 179, and 183 and 184;

Chapter 3 (Disputes and Appeals): sections 185 to 192 and 195 to 197;

In Part 3 (Television and radio services):

Chapter 1, (The BBC, C4C, the Welsh Authority and the Gaelic Media Service): sections 198 to 202;

Chapter 2 (Regulatory structure for independent television services): sections 211 and 212, and 214 to 230, 231 except subsections (1) and (2)(c), 232 to 244;

Chapter 3 (Regulatory structure for independent radio services): sections 245 to 253 and 256 to 262;

Chapter 4 (Regulatory provisions): sections 263, 264, 271, 275 to 315, 319 to 332, 334 to 336, 338 and 344 to 347;

Chapter 5 (Media ownership and control): sections 348 and 350 to 357;

Chapter 6 (Other provisions about Television and Radio services): sections 358 to 362;

In Part 6 (Miscellaneous and Supplemental):

sections 390 to 396, 400 and 402 to 406, 410 and 411.

Schedules 1, 2, 5, 8 to 15 and 17 to 19.

**7**

For the purposes of construing the provisions of the 2002 and 2003 Acts, as extended by this Order as part of the law of Jersey, any reference to an enactment which extends to Jersey shall, except where a contrary intention appears, be construed as a reference to that enactment as it has effect in Jersey.

**A.K. GALLOWAY**

*Clerk of the Privy Council.*



## **SCHEDULE 1**

(Article 5)

### **MODIFICATIONS WITH WHICH PROVISIONS OF THE OFFICE OF COMMUNICATIONS ACT 2002 EXTEND TO JERSEY**

**1**

In section 1, (The Office of Communications) omit subsections (2) to (9).

**2**

In section 7, (Short title, commencement and extent) omit subsections (2) to (4).

**3**

In the Schedule, omit paragraphs 1 to 11 and 21 to 24.

**SCHEDULE 2**

(Article 6)

**MODIFICATIONS WITH WHICH PROVISIONS OF THE COMMUNICATIONS ACT  
2003 EXTEND TO JERSEY****1**

The following provisions of the 2003 Act, that is –

- section 29(3)
- section 139(5)
- section 176(1)
- section 198(5)
- section 224(1)
- section 237(3)
- sections 247 and 248
- section 277(1)
- section 319(4)
- section 348(5)

Schedule 10, paragraphs 12(3)(a) and (4)(a)

shall have effect as if an order or regulations made under, respectively –

- section 29(4)
- section 139(9)
- section 176(3)
- section 198(6)
- section 224(2)
- section 237(9)
- section 249(1)
- section 277(3)
- section 323(3)
- section 348(7)

Schedule 10, paragraph 13(1)

and which is for the time being in force in the United Kingdom had extended to the Bailiwick of Jersey.

**2**

In section 1 (Functions and general powers of OFCOM), omit subsections (4) to (7).

**3**

After section 1, insert the following section –

“Saving of Telecommunications Law

**“1A**

Nothing in this Act shall apply to any matter governed by the provisions of the Telecommunications (Jersey) Law 2002.<sup>3”</sup>.

**4**

In section 3 (General duties of OFCOM) –

- (a) in subsections (2)(c), 4(a) and (l), after the words “United Kingdom” wherever they occur, insert “and the Bailiwick of Jersey”;
- (b) in subsection (12)(c), after the words “United Kingdom” where they first occur, insert “and the Bailiwick of Jersey” and omit the words “or in a part of the United Kingdom”; and
- (c) omit subsections (2)(b), (4)(e) and (13).

**5**

In section 5 (Directions in respect of networks and spectrum functions) –

- (a) after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”; and
- (b) omit subsections (4) to (7).

**6**

In section 7 (Duty to carry out impact assessments), in subsection (2)(c), after the words “United Kingdom” where they first appear, insert “and the Bailiwick of Jersey” and omit the words “or in a part of the United Kingdom”.

**7**

In section 12 (Duty to establish and maintain Content Board), in subsection (5), insert at the end “and that there is a member of the Board capable of representing persons living in the Bailiwick of Jersey”.

**8**

In section 13 (Functions of the Content Board), in subsection (3)(b), after the words “United Kingdom” insert “and the Bailiwick of Jersey”.

**9**

In section 23 (Directions for international purposes in respect of broadcasting functions) in subsection (3), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”.

**10**

In section 24 (Provision of information to the Secretary of State), in subsection (2), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”.

**11**

In section 31 (Transitional functions and abolition of pre commencement regulators) –

- (a) omit subsections (4)(a) and (5); and
- (b) in subsection (6) omit the words “for the Director General of Telecommunications and” and for the words “subsections (4)(b) and (5)” substitute “subsection (4)(b)”.

**12**

In section 139 (Penalties for contravention of information requirements), omit subsection (10).

**13**

In section 143 (Enforcement of directions under sections 140 and 141), in subsection (3)(a) for the words from “liable” to the end, substitute “liable to a fine”.

**14**

In section 144 (Offences in connection with information requirements) –

- (a) in subsection (1), for the words from “liable” to the end, substitute “liable to a fine”; and
- (b) in subsection (4) for the words from “liable” to the end, substitute “liable to a fine or to imprisonment for two years, or to both”.

**15**

In section 152 (General functions of OFCOM in relation to radio spectrum) –

- (a) in subsection (2), after the words “United Kingdom”, insert “on behalf of the Bailiwick of Jersey”; and
- (b) in subsections (3) to (5), after the words “United Kingdom”, wherever they occur insert “and the Bailiwick of Jersey”.

**16**

In section 156 (Directions with respect to the radio spectrum), after subsection (5), insert the following subsection –

- “(6) Before making an Order under this section which relates to the management of the radio spectrum in respect of the Bailiwick of Jersey, the Secretary of State shall consult the appropriate authorities of the Bailiwick of Jersey.”.

**17**

In section 157 (Procedure for directions under s.150), omit subsections (4) to (7).

**18**

In section 159 (Grant of recognised spectrum access), after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**19**

In section 169 (Variation and revocation of wireless telegraphy licences) –

- (a) in subsection (1) for the words from “For” to “substituted”, substitute “After section 1D of the Wireless Telegraphy Act 1949 (c. 54) there shall be inserted the following section -”; and
- (b) omit subsection (2).

**20**

In section 171 (Information requirements in relation to wireless telegraphy licences), in the inserted section 13B(2) of the 1949 Act inserted by this section, omit the words “(Summary offences carrying a maximum fine of level 3 on the standard scale<sup>4</sup>)”.

**21**

In section 174 (Procedure for prosecution of wireless telegraphy offences), omit subsection (7).

**22**

In section 176 (Amount of penalty under section 175), omit subsections (3) and (4).

**23**

In section 178 (Proceedings for an offence relating to apparatus use) –

- (a) in subsection (1), omit the inserted subsections (2C) and (2D) of section 11 of the 1949 Act; and
- (b) in subsection (2), omit the inserted subsections (2C) and (2D) of section 12 of that Act.

**24**

In section 179 (Modification of penalties for certain wireless telegraphy offences) –

- (a) in subsection (2), in the inserted subsection (1AA) of the 1949 Act, omit the words “on summary conviction” and for “5” substitute “3”; and
- (b) omit subsections (3) and (4).

**25**

In section 184 (Modification of definition of “wireless telegraphy”), for subsection (2) substitute the following –

- “(2) An order made by the Secretary of State under this section shall not have effect in the Bailiwick of Jersey unless it is registered in the Royal Court of Jersey and where any such order is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the order, whichever is the later.”.

**26**

In section 185 (References of disputes to OFCOM), omit subsections (1), (2)(c), (7) and (8).

**27**

In section 187 (Legal proceedings about referred disputes), in subsection (3), omit the words “or sisted” and “or sist”.

**28**

In section 190 (Resolution of referred disputes), omit subsections (2), (4)(a) and (7)(a).



**29**

In section 192 (Appeals against decisions by OFCOM, the Secretary of State, etc) omit subsections (1)(b), (c) and (d)(ii) and (iii).

**30**

In section 195 (Decisions of tribunal) –

- (a) for the word “Tribunal”, wherever it occurs, substitute “Royal Court of Jersey”;
- (b) omit subsection (7); and
- (c) for subsection (8) substitute the following subsection –
  - “(8) The power of the Superior Number of the Royal Court to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948, as amended,<sup>5</sup> shall include power to make Rules for the purposes of appeals under section 192.”.

**31**

In section 196 (Appeals from tribunal) –

- (a) for the word “Tribunal”, wherever it occurs, substitute “Royal Court of Jersey”;
- (b) for subsection (2)(a) substitute –
  - “(a) lies to the Jersey Court of Appeal,” and
- (c) in subsection (4), for the word “Court” substitute “Jersey Court of Appeal”.

**32**

In section 197 (Interpretation of Part 3) –

- (a) in subsection (1), omit the definitions of “The Tribunal” and “Tribunal rules”; and
- (b) omit subsection (3).

**33**

In section 202 (Borrowing limit for C4C), omit subsection (b).

**34**

In section 211 (Regulation of independent television services) –

- (a) in subsection 1(a), omit the words “or the Welsh Authority”;
- (b) omit subsection (2)(b) and (c); and

- (c) in subsections (2) and (3) after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**35**

In section 212 (Abolition of function of assigning television frequencies), omit paragraph (b).

**36**

In section 214(8) (Digital Channel 3 and Channel 5 licences), after the words “United Kingdom”, wherever they occur, insert “or the Bailiwick of Jersey”.

**37**

In section 218 (Duty to secure the provision of a public teletext service) –

- (a) omit “S4C” and “and S4C” wherever they occur; and
- (b) in subsection (6)(b), after the words “United Kingdom” wherever they occur, insert “or the Bailiwick of Jersey”.

**38**

In section 219 (Licensing of the public teletext service), in subsection (5), after the words “United Kingdom” insert “and to the Bailiwick of Jersey”.

**39**

In section 230 (Orders suspending rights of renewal), omit subsection (9).

**40**

In section 231 (Replacement Channel 4 licence), in subsection (9), after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**41**

In section 237 (Penalties for contravention of licence condition or direction), omit subsection (10).

**42**

In section 240 (Abolition of separate licences for certain television services), in subsection (1), omit paragraph (b) and the word “or” immediately before it.

**43**

In section 241(9) (Television multiplex services), omit paragraph (d).

**44**

In section 243(7) (Powers where frequencies reserved for qualifying services), omit paragraph (d).

**45**

In section 244 (Local digital television services), omit subsection (9).

**46**

In section 245 (Regulation of independent radio services) –

- (a) after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”;
- (b) in subsection (2), omit paragraphs (d), (e) and (f);
- (c) in subsection (6), after the words “a BBC company” insert “or” and omit “or an S4C Company”; and
- (d) omit subsection (7).

**47**

In section 249 (Modifications of ss. 247 and 248), omit paragraph (3).

**48**

In section 263 (Application of regulatory regimes), omit paragraph (5).

**49**

In section 264 (OFCOM reports on the fulfilment of the public service remit) –

- (a) after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”;
- (b) omit subsection (11)(b); and
- (c) omit subsection (12)(b).

**50**

In section 271 (Power to amend public service remits) –

- (a) after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”; and
- (b) omit subsection (7).

**51**

In section 275, (Must provide services for the purposes of s. 274), omit subsection (1)(e).

**52**

In section 277 (Programming quotas for independent productions) –

- (a) in subsection (11), after “OFCOM” insert “and” and omit the words “and the Welsh Authority”; and
- (b) omit subsection (12).

**53**

In section 278 (Programming quotas for original productions) –

- (a) in subsection (8), after “OFCOM” insert “and” and omit the words “and the Welsh Authority”; and
- (b) omit subsection (9).

**54**

In section 280 (Appointed news providers for Channel 3), after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**55**

In section 282 (power to repeal or modify Channel 3 news provider provisions), omit subsection (4).

**56**

In section 283 (News providers for Channel 5), omit subsections (4) and (9).

**57**

In section 285 (Code relating to programme commissioning), in subsection (6)(c), immediately before “the BBC” insert “and” and omit the words “the Welsh Authority”.

**58**

In section 286 (Regional programme-making for Channels 3 and 5), after the words “United Kingdom” insert “of the Bailiwick of Jersey”.

**59**

In section 287 (Regional programmes on Channel 3), after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**60**

In section 290 (Proposals for arrangements), in subsection (4)(c), after the words “United Kingdom” insert “and the Bailiwick of Jersey”.

**61**

In section 291 (Obligation as to making and continuance of approved arrangements), omit subsections (3) and (4).

**62**

In section 300 (Effects of categorisations of listed events), in the substituted section 101(1) of the 1996 Act, after the words “United Kingdom”, wherever they occur, insert “and the Bailiwick of Jersey”.

**63**

In section 303 (Code relating to provision for the deaf and visually impaired) –

- (a) in subsection (8)(d), after the words “United Kingdom” insert “and the Bailiwick of Jersey”; and
- (b) in subsection (12), omit paragraph (a).

**64**

In section 305 (Meaning of “Relevant Dates” in section 303) –

- (a) in subsection (2), omit paragraph (a); and
- (b) in subsection (3)(b) omit “and S4C Digital”.

**65**

In section 306 (Power to modify targets in s. 303), omit subsection (5).

**66**

In section 309 (Quotas for independent programmes), omit subsection (5)

**67**

In section 310 (Code of practice for electronic programme guides) –

- (a) in subsection (4), omit paragraph (e); and

- (b) in subsection (7)(a) and (c), after the words “United Kingdom” insert “and the Bailiwick of Jersey”.

**68**

In section 319 (OFCOM standards code), after “United Kingdom” wherever it appears insert “and the Bailiwick of Jersey”.

**69**

In section 321 (Objectives for advertisements and sponsorship) –

- (a) in subsection (2)(a), after “on behalf of a” insert “person or”;
- (b) in subsection (3)(a), (b), (c), (e) and (g) and, in the first place where they occur in subsection (3)(d), after the words “United Kingdom” insert “, the Bailiwick of Jersey”; and
- (c) in subsection (3)(d), in the second place where they occur, and in subsection (3)(f), after the words “United Kingdom” insert “or the Bailiwick of Jersey”.

**70**

In section 322 (Supplementary powers relating to advertising), in subsection (4), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”.

**71**

In section 323 (Modifications of matters to be taken into account), omit subsection (3).

**72**

In section 324 (Setting of publication of standards), omit subsection (3)(a).

**73**

In section 329 (Proscription orders) –

- (a) in subsection (5), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”;
- (b) in subsection (7)(a), after the words “United Kingdom” insert “or the Bailiwick of Jersey”;
- (c) in subsection (7)(b)(i), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”; and
- (d) in subsection (7)(b)(ii), after the words “United Kingdom” wherever they occur insert “and the Bailiwick of Jersey”.

**74**

In section 330 (Effect of Proscription Order), in subsection (4)(b) after the words “United Kingdom” insert “or the Bailiwick of Jersey”.

**75**

In section 331 (Notification for Enforcing a Proscription), omit subsection (5)(b).

**76**

In section 332 (Penalties for Contravention of Notification under section 331) –

(a) for subsection (7) substitute the following –

“(7) An order made by the Secretary of State in the United Kingdom under section 332(1) Act shall not have effect in the Bailiwick of Jersey until it has been registered in the Royal Court, and where such an order is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the Order, whichever is the later”; and

(b) omit subsection (8).

**77**

In section 335 (Conditions securing compliance with international obligations) after the words “United Kingdom”, wherever they occur, insert “on behalf of the Bailiwick of Jersey”.

**78**

In section 336 (Government requirements for Licensed Services) –

- (a) in subsection (1), for the words “Secretary of State or any other Minister of the Crown” substitute “the Economic Development Committee of the States of Jersey” and omit the words “in connection with any of his functions, the Secretary of State or that minister”;
- (b) in subsection (2), after the words “Broadcasting Act Licences” insert “in the Bailiwick of Jersey”;
- (c) in subsection (5), for the words “Secretary of State” substitute “the Economic Development Committee of the States of Jersey” and after “Broadcasting Act Licenses” insert “in the Bailiwick of Jersey”;
- (d) in subsection (6)(a), after the words “Broadcasting Act Licence” insert “in the Bailiwick of Jersey”;
- (e) in subsection (6)(b), for the words “ Secretary of State” substitute “Economic Development Committee of the States of Jersey”;
- (f) in subsection (8), for the words “Secretary of State” substitute “Economic Development Committee of the States of Jersey or any other Committee of the States”; and

(g) omit subsection (9).

**79**

In section 338 (Corresponding rules for the BBC), omit the words “and the Welsh authority”.

**80**

In section 347 (Statement of charging principles), in subsection (7) omit the words “or the Welsh authority”.

**81**

In section 348 (Modification of disqualification provisions), omit subsections (6) and (7).

**82**

In section 351 (Changes of control of Channel 3 services), for the words “United Kingdom” wherever they occur insert “or the Bailiwick of Jersey”.

**83**

In section 358 (Annual factual and statistical report), in subsection (2)(a), after the words “United Kingdom” insert “and the Bailiwick of Jersey”.

**84**

In section 359 (Grants to providers), omit subsection (6).

**85**

In section 361 (Meaning of “available for reception by members of the public”) –

- (a) in subsection (6) after the words “United Kingdom” insert “or the Bailiwick of Jersey”; and
- (b) omit subsections (7) and (8).

**86**

In section 362 (Interpretation of Part 3) –

- (a) in subsection (2)(1), omit the definitions of “S4C”, “S4C Digital” and “S4C company”;
- (b) in subsection (3), omit paragraph (c); and



- (c) in subsection (5), after the words “United Kingdom” wherever they occur, insert “or the Bailiwick of Jersey”.

**87**

In section 391 (Review of media ownership), omit the words “; and”, at the end of subsections 2(d) and 4(c) and omit subsections 2(e) and 4(d).

**88**

In section 392 (Penalties imposed by OFCOM) –

- (a) in subsection (6) omit the words “or any other enactment (apart from the Competition Act 1998 (c.41))”; and
- (b) omit paragraph (7).

**89**

In section 393 (General restrictions on disclosure of information) –

- (a) in subsection (2), omit paragraphs (b), (c), and (d);
- (b) in subsection (2)(f), after the words “United Kingdom” insert “on behalf of the Bailiwick of Jersey”;
- (c) omit subsections (3) and (4);
- (d) in subsection (5), omit paragraphs (d) to (i) and (m) to (p);
- (e) omit subsections (8) and (9);
- (f) in subsection (10), for the words from “liable” to the end substitute “liable to imprisonment for a term not exceeding two years or to a fine or to both”; and
- (g) omit subsection (11).

**90**

In section 394 (Service of notifications and other documents) –

- (a) in subsection (7), for “section 7 of the Interpretation Act 1978” substitute “Article 12 of the Interpretation (Jersey) Law 1954<sup>6</sup>”; and
- (b) in subsection (8), after the words “United Kingdom” wherever they occur insert “or the Bailiwick of Jersey”.

**91**

In section 400 (Destination of licence fees) –

- (a) in subsection (1) –
  - (i) omit paragraph (b);
  - (ii) in paragraph (c), after “under” insert “section 3 or 3A of”;

(b) for subsection (2) substitute –

“(2) OFCOM shall, after consultation with the Economic Development Committee of the States of Jersey, pay to the Treasurer of the States to be credited to the annual income of the States such proportion of the amount to which this section applies as appears to OFCOM to be appropriate.”;

(c) omit subsection (3);

(d) for subsection (4)(b) substitute –

“(b) the sums paid to the Treasurer of the States;”;

(e) omit subsection (6); and

(f) after subsection (8), add the following new subsection –

“(9) Any fines imposed for offences under this Act shall be paid to the Crown for the benefit of the Crown revenues in Jersey”.

## 92

For section 403 (Regulations and Orders made by OFCOM), substitute –

### “403

Any statutory instrument made by OFCOM pursuant to this Act shall not have effect in the Bailiwick of Jersey unless it is registered in the Royal Court of Jersey and where any such statutory instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.”.

## 93

In section 404 (Criminal liability of company directors, etc) –

(a) omit subsection (2);

(b) omit subsection (4)(e); and

(c) after subsection (5) insert the following new subsection –

“(6) A person who aids, abets, counsels, or procures the commission of an offence under this Act shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.”.

## 94

In section 405 (General interpretation) –

(a) in subsection (1), in the definition of “international obligation of the United Kingdom” –

(i) omit the words “any Community obligation and”;

- (ii) after the words “United Kingdom” in the second place where they occur, insert “on behalf of the Bailiwick of Jersey”;
- (b) after the definition of “other Member State”, insert the following definition –
  - “ ‘police officer’ means a member of the Honorary Police or the States of Jersey Police Force;”;
- (c) after the definition of “TV licence”, insert the following definition –
  - “ ‘standard scale’ means the standard scale of fines for the time being in the Criminal Justice (Standard Scale of Fines) (Jersey) Law, 1993;”;
- (d) in the definition of “subordinate legislation”, omit paragraph (b);
- (e) omit the definition of “Welsh Authority”; and
- (f) omit subsection (6).

**95**

In section 406 (Minor and consequential amendments, transitionals, and repeals) –

- (a) omit subsections (2) to (5); and
- (b) omit subsections (8) and (9).

**96**

For section 410 (Application of enactments to territorial sea and other waters) substitute –

**“410**

The provisions of this Act as extended to the Bailiwick of Jersey including any amendments or repeals of any other enactments, shall apply in the Bailiwick of Jersey and the territorial sea adjacent thereto.”.

**97**

In section 411 (Short title, commencement and extent), omit subsections (2) to (8).

**98**

In Schedule 1 (Functions transferred to OFCOM) –

- (a) omit paragraph 1(1)(b) and (c) and (3); and
- (b) omit paragraphs 3 to 14.

**99**

In Schedule 2 (Transfer Schemes), omit paragraph 5.

**100**

In Schedule 5 (Procedure for grants of recognised Spectrum Access), in paragraphs 6(12)(b) and 7(4), after the words “United Kingdom” in each place where they occur, insert “on behalf of the Bailiwick of Jersey”.

**101**

In Schedule 8 (Decisions not subject to appeal), omit paragraphs 3 to 13, 16, 22, 23, 25 and 26.

**102**

In Schedule 9 (Arrangements about carrying on C4C’s activities) omit paragraph 7(2)(b).

**103**

In Schedule 10 (Licensing the public teletext service), omit paragraph 13(2).

**104**

In Schedule 11 (Approval, imposition and modification of Networking arrangements) –

- (a) in paragraph 5(3)(a), after the words “Office of Fair Trading” insert “and to the Economic Development Committee of the States of Jersey if the subject matter of the report is concerned with anything connected with the Bailiwick of Jersey”;
- (b) omit paragraph 6;
- (c) in paragraphs 9, 10 and 11 (except sub-paragraph (4)), for the word “Tribunal” wherever it occurs, substitute “Royal Court of Jersey”;
- (d) omit paragraph 10(7);
- (e) in paragraph 11(2), for the words from “section” to the end substitute “to the Jersey Court of Appeal”;
- (f) in paragraph 11(4), for the words from “permission” to the end substitute “leave of the Royal Court of Jersey or the Jersey Court of Appeal”;
- (g) in paragraph 13(1) to (11), for the word “court” wherever it occurs substitute “Royal Court of Jersey”;
- (h) in paragraph 13(11), for the words from “liable” to the end substitute “liable to a fine or to imprisonment for two years, or to both”;
- (i) omit paragraph 13(12); and

- (j) in paragraph 15, omit the definition of “the Tribunal”, and the definition of “Tribunal rules”.

**105**

In Schedule 12 (Corresponding obligations of the BBC and the Welsh Authority) –

- (a) in part 1, omit paragraph 1(13); and
- (b) omit Part 2.

**106**

In Schedule 13 (Financial penalties under the Broadcasting Acts) –

- (a) omit paragraphs 2(3), 3(2), 4(4), 5(2), 6(3), 7(3), 8(2), 9(3), 11(3), 13(3), 14(6), 15(6), 16(3), 17(2), 19(4), 20 (7), 21(7) and 22(3); and
- (b) omit the section 36(3) of the 1990 Act inserted by paragraph 16.

**107**

In Schedule 14 (Media ownership rules) –

- (a) in paragraph 3(1), after the words “United Kingdom” in the first place where they occur insert “or the Bailiwick of Jersey” and for the words “a part of the United Kingdom” substitute “the Bailiwick of Jersey”;
- (b) for paragraph 6 substitute the following paragraph –

“6. The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order vary or repeal any of the restrictions imposed by this Part of this Schedule.”;
- (c) for paragraph 10 substitute the following paragraph –

“10. The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order vary or repeal any of the restrictions imposed under this Part of this Schedule.”;
- (d) in paragraphs 11 and 12, for the words “Secretary of State” wherever they occur substitute “Economic Development Committee of the States of Jersey”;
- (e) for paragraph 16 substitute the following paragraph –

“16. The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order repeal or otherwise modify the restriction imposed by this Part of this Schedule.”; and
- (f) omit paragraph 17(2).

**108**

In Schedule 15 (amendments of Broadcasting Acts) –

- (a) omit paragraphs 20(8), 28, and 31(2) 60(b), 62 and 63, 71, 73, 97 and 133;
- (b) in paragraph 32(4), for “Subsections (3) and (4)” substitute “Subsection (3)”;
- (c) in paragraph 32(5) for “(7)” substitute “(6)”;
- (d) for paragraph 66(3) substitute the following –
  - “(3) In subsection (2) (definition of “relevant authority”), omit all the words after “police force.”;
- (e) in paragraph 74(4), for the words “For subsection (4A) there shall be substituted” substitute “After subsection (4) there shall be inserted” and in the section 1(4A) of the 1996 Act inserted by this paragraph, after “State” in each place where it occurs, insert “or the Bailiwick of Jersey”;
- (f) in paragraph 75, omit sub-paragraphs (d) and (e);
- (g) in paragraph 93(2) –
  - (i) in the substituted subsection (1)(b) of section 24 of the 1996 Act after the words “the United Kingdom” insert “and the Bailiwick of Jersey”;
  - (ii) in the substituted subsection (1)(c) of that section, omit the words “a public television service of the Welsh Authority”; and
  - (iii) in the inserted subsection (3A) of that section, omit the definition of “public television service of the Welsh Authority” and in the definition of “relevant public service broadcaster” omit paragraph (e);
- (h) in paragraph 93(5), in the inserted section 24(3A) of the 1996 Act, omit the definition of “public television service of the Welsh Authority” and, in the definition of “relevant public service broadcaster”, omit paragraph (e);
- (i) in paragraph 98(3), omit the words “the public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)”;
- (j) in paragraph 100, omit sub-paragraph (c);
- (k) in paragraph 108(4), after the word “for” insert “the”; and
- (l) omit paragraph 127(2).

**109**

In Schedule 17 (Minor and consequential amendments) –

- (a) omit paragraphs 2 to 5, 19 to 32, 37 to 63, 67 and 68, 70 to 144, 152 to 171 and 173 to 175;
- (b) for paragraph 8 substitute the following –
  - “8. After section 1C of that Act there shall be inserted –
    - “Procedures for the grant of licences

- 1D-(1) An application for the grant of a wireless telegraphy licence shall be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) Where the person applying for a licence fails to provide any information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with the terms, provisions and limitations in the licence, OFCOM may refuse to grant the licence.
- (3) No statutory instrument made by OFCOM under this section shall have effect in the Bailiwick of Jersey until it has been registered in the Royal Court and where any such instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.”;
- (c) in paragraph 14(8), omit the word “and” at the end of sub-paragraph (a) and omit sub-paragraph (b);
- (d) in paragraph 15(2), for the words “any constable” substitute “any police officer”;
- (e) in paragraph 15(3), for the words “he is to be” to the end substitute “shall execute the warrant accompanied by one or more police officers”;
- (f) in paragraph 16(2), for the inserted section 16(1A) of the 1949 Act substitute –
- “(1A) No statutory instrument made by OFCOM under this Act shall have effect in the Bailiwick of Jersey unless it has been registered in the Royal Court and where any such instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.”;
- (g) in paragraph 33(1) after the words “section 5” insert the words “of the Marine etc. Broadcasting (Offences) Act 1967”;
- (h) for paragraph 64 substitute the following –
- “64. In sections 79 and 83 of the Telecommunications Act 1984 (wireless telegraphy provisions), for the words “The Secretary of State” wherever occurring there shall be substituted “OFCOM.”;
- (i) for paragraph 65 there shall be substituted the following –
- “65. After section 79(6)(a) of that Act (seizure of apparatus) insert the following paragraph –
- ‘(b) any proceedings for forfeiture under Schedule 7 to the Communications Act 2003.’ ”;
- (j) for paragraph 66(2) substitute the following –
- “(2) In subsection (1)(b), after ‘property’ insert ‘or proceedings for forfeiture under Schedule 7 to the Communications Act 2003’.
- (2A) In subsection 2(b), after ‘offences)’ insert ‘or proceedings for forfeiture under the said Schedule 7.’ ”;

- (k) in paragraph 69(2), omit “under section 80 or 81 above”;
- (l) in paragraph 150, omit subsections (2) and (3) of the inserted section 6 of the Wireless Telegraphy Act 1998;
- (m) in paragraph 172, omit sub-paragraphs (2)(a) and (b) and (3).

**110**

In Schedule 18 (Transitional provisions) –

- (a) omit paragraphs 2(4), 3, 4, 6 to 20, 22, 24 and 25, 26(8), 27 to 29, 38, 45, 56 to 64.
- (b) in paragraph 23(1)(c), omit sub-paragraph (ii) and the word “or” immediately before it;
- (c) in paragraphs 23(5) to (7), for the word “Tribunal” wherever it occurs, substitute “Royal Court”;
- (d) in paragraph 26(3) omit the words “; or” at the end of sub-paragraph (i) and omit sub-paragraph (ii);
- (e) in paragraph 43(3) –
  - (i) in subparagraph (a) omit the words “or the Welsh Authority, and
  - (ii) in subparagraph (b) omit the words from “and” to the end.

**111**

In Schedule 19 (Repeals) –

- (a) omit all the entries except for those relating to –
  - Wireless Telegraphy Act 1949;
  - Marine, etc, Broadcasting Offences Act 1967;
  - Telecommunications Act 1984;
  - Broadcasting Act 1990;
  - Broadcasting Act 1996;
  - Wireless Telegraphy Act 1998, and
  - Office of Communications Act 2002;
- (b) in the entries for the Wireless Telegraphy Act 1949, omit those for sections 1(1A) and 1F;
- (c) omit the entries for the Telecommunications Act 1984, except those relating to sections 91 and 92(4);
- (d) in the entries for the Broadcasting Act 1990, omit those for –
  - Chapter 4 of Part 1,
  - Sections 56(1)(b), 57, 60(1) to (3) and (6), 61A, and 62,
  - Part 2,
  - Sections 134, 183, 187(1) and (2), 188(2), 189 to 191,



Paragraph 4 of Part 1 of Schedule 4  
Paragraphs 2(1) and 13(2) of Schedule 6,  
Schedule 12  
Paragraphs 1(d) and 1(5) of Part 2 of Schedule 18,  
Schedule 19,  
Schedule 20, and  
Schedule 22;

- (e) in the entries for the Broadcasting Act 1996, omit those for –  
Section 1(1A) and (2), 21, 29(2), 90, 91, 95(3) to (7), 127,  
Paragraphs 4, 8, 10, 16, 18, and 20 to 27(a) of Schedule 10.



# COMMUNICATIONS ACT 2003

## CHAPTER 21

### CONTENTS

#### PART 1

#### FUNCTIONS OF OFCOM

##### *Transferred and assigned functions*

- 1 Functions and general powers of OFCOM
- 1A Saving of Telecommunications Law
- 2 Transfer of functions of pre-commencement regulators

##### *General duties in carrying out functions*

- 3 General duties of OFCOM
- 4 \* \* \* \* \*
- 5 Directions in respect of networks and spectrum functions
- 6 Duties to review regulatory burdens
- 7 Duty to carry out impact assessments
- 8 Duty to publish and meet promptness standards
- 9 Secretary of State's powers in relation to promptness standards

##### *Accessible domestic communications apparatus*

- 10 \* \* \* \* \*

##### *Media literacy*

- 11 Duty to promote media literacy

##### *OFCOM's Content Board*

- 12 Duty to establish and maintain Content Board
- 13 Functions of the Content Board

##### *Functions for the protection of consumers*

- \* \* \* \* \*

##### *Advisory committees*

- 20 \* \* \* \* \*
- 21 Advisory committee on elderly and disabled persons

*International matters*

- 22 Representation on international and other bodies
- 23 Directions for international purposes in respect of broadcasting functions

*General information functions*

- 24 Provision of information to the Secretary of State
- 25 Community requirement to provide information
- 26 Publication of information and advice for consumers etc.

*Employment in broadcasting*

\* \* \* \* \*

*Charging*

- 28 General power to charge for services

*Guarantees*

- 29 Secretary of State guarantees for OFCOM borrowing

*Provisions supplemental to transfer of functions*

- 30 Transfers of property etc. from pre-commencement regulators
- 31 Transitional functions and abolition of pre-commencement regulators

**PART 2****NETWORKS, SERVICES AND THE RADIO SPECTRUM****CHAPTER 1****ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES***Preliminary*

- 32 Meaning of electronic communications networks and services

*Notification by providers*

\* \* \* \* \*

*Administrative charges imposed on providers*

\* \* \* \* \*

*Register of providers required to notify or to pay charges*

\* \* \* \* \*

*Conditions of entitlement to provide network or service etc.*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: customer interests*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: telephone numbers*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: must-carry obligations*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Universal service conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Access-related conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Privileged supplier conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP conditions: procedure*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP services conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP apparatus conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Enforcement of conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*OFCOM's duty to intervene on network access issues*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Electronic communications code*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Regulation of premium rate services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Offences relating to networks and services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Persistent misuse of network or service*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Powers to deal with emergencies*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Restrictions in leases and licences*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Information provisions*

135	*	*	*	*	*	*	*
-----	---	---	---	---	---	---	---

136	*	*	*	*	*	*	*
-----	---	---	---	---	---	---	---

137	*	*	*	*	*	*	*
-----	---	---	---	---	---	---	---

138	Notification of contravention of information requirements					
-----	---	--	--	--	--	--

139	Penalties for contravention of information requirements					
-----	---	--	--	--	--	--

140	Suspending service provision for information contraventions					
-----	---	--	--	--	--	--

141	Suspending apparatus supply for information contraventions					
-----	--	--	--	--	--	--

142	Procedure for directions under ss. 140 and 141					
-----	--	--	--	--	--	--

143	Enforcement of directions under ss. 140 and 141					
-----	---	--	--	--	--	--

144	Offences in connection with information requirements					
-----	--	--	--	--	--	--

145	*	*	*	*	*	*	*
-----	---	---	---	---	---	---	---

146	*	*	*	*	*	*	*
-----	---	---	---	---	---	---	---

*Abolition of telecommunications licensing etc.*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Local authority powers in relation to networks and services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Grants for networks and services in Northern Ireland*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Interpretation of Chapter 1*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

**CHAPTER 2****SPECTRUM USE***General functions relating to spectrum use*

- 152 General functions of OFCOM in relation to radio spectrum
- 153 \* \* \* \* \*
- 154 Duties of OFCOM when carrying out spectrum functions
- 155 Advisory service in relation to interference
- 156 Directions with respect to the radio spectrum
- 157 Procedure for directions under s. 156

*Reservation of spectrum for multiplex use*

- 158 Special duty in relation to television multiplexes

*Recognised spectrum access*

- 159 Grant of recognised spectrum access
- 160 Effect of grant of recognised spectrum access
- 161 Charges in respect of grants of recognised spectrum access
- 162 Conversion into and from wireless telegraphy licences

*Crown use of the radio spectrum*

- 163 Payments for use of radio spectrum by the Crown

*Limitations and exemptions applied to spectrum use*

- 164 Limitations on authorised spectrum use
- 165 Terms etc. of wireless telegraphy licences
- 166 Exemption from need for wireless telegraphy licence

*Award and transfer of licences*

- 167 Bidding for wireless telegraphy licences
- 168 \* \* \* \* \*

*Variation and revocation of licences*

- 169 Variation and revocation of wireless telegraphy licences

*Wireless telegraphy register*

- 170 Wireless telegraphy register

*Information requirements*

- 171 Information requirements in relation to wireless telegraphy licences

*Criminal proceedings etc.*

172	Contraventions of conditions for use of wireless telegraphy					
173	Meaning of “repeated contravention” in s. 172					
174	Procedure for prosecutions of wireless telegraphy offences					
175	Special procedure for contraventions by multiplex licence holders					
176	Amount of penalty under s. 175					
177	“Relevant amount of gross revenue” for the purposes of s. 176					
178	Proceedings for an offence relating to apparatus use					
179	Modification of penalties for certain wireless telegraphy offences					
180	*	*	*	*	*	*
181	*	*	*	*	*	*
182	*	*	*	*	*	*

*Construction of 1949 Act*

183	Modification of definition of “undue interference”
184	Modification of definition of “wireless telegraphy”

**CHAPTER 3****DISPUTES AND APPEALS***Disputes*

185	Reference of disputes to OFCOM
186	Action by OFCOM on dispute reference
187	Legal proceedings about referred disputes
188	Procedure for resolving disputes
189	Disputes involving other member States
190	Resolution of referred disputes
191	OFCEM’s power to require information in connection with dispute

*Appeals*

192	Appeals against decisions by OFCOM, the Secretary of State etc.					
193	*	*	*	*	*	*
194	*	*	*	*	*	*
195	Decisions of the [Royal Court of Jersey]					
196	Appeals from the [Royal Court of Jersey]					



*Interpretation of Chapter 3*

197 Interpretation of Chapter 3

**PART 3****TELEVISION AND RADIO SERVICES****CHAPTER 1****THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE***The BBC*

198 Functions of OFCOM in relation to the BBC

*C4C*

199 Functions of C4C

200 Removal of members of C4C

201 Deficits and surpluses of C4C

202 Borrowing limit for C4C

*The Welsh Authority*

\* \* \* \* \*

*The Gaelic Media Service*

\* \* \* \* \*

**CHAPTER 2****REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES***Preliminary*

211 Regulation of independent television services

212 Abolition of function of assigning television frequencies

213 \* \* \* \* \*

*Channels 3 and 5*

214 Digital Channel 3 and Channel 5 licences

215 Replacement of existing Channel 3 and Channel 5 licences

216 Renewal of Channel 3 and 5 licences

217 Financial terms of licence renewed under s. 216

*The public teletext service*

218 Duty to secure the provision of a public teletext service

219 Licensing of the public teletext service

220 Delegation of provision of public teletext service

221 Replacement of existing public teletext provider's licence

222 Renewal of public teletext licence

223 Financial terms of licence renewed under s. 222

*Meaning of initial expiry date*

224 Meaning of "initial expiry date"

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

225 Application for review of financial terms of replacement licences

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

227 Reviews under ss. 225 and 226

228 Giving effect to reviews under ss. 225 and 226

229 Report in anticipation of new licensing round

230 Orders suspending rights of renewal

*Replacement of Channel 4 licence*

231 Replacement of Channel 4 licence

*Television licensable content services*

232 Meaning of "television licensable content service"

233 Services that are not television licensable content services

234 Modification of ss. 232 and 233

235 Licensing of television licensable content services

236 Direction to licensee to take remedial action

237 Penalties for contravention of licence condition or direction

238 Revocation of television licensable content service licence

239 Action against licence holders who incite crime or disorder

240 Abolition of separate licences for certain television services

*Television multiplex services*

241 Television multiplex services

242 Composition of services in television multiplexes

243 Powers where frequencies reserved for qualifying services

*Local digital television services*

244 Local digital television services

**CHAPTER 3****REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES***Preliminary*

245 Regulation of independent radio services

246 Abolition of function of assigning radio frequencies

*Radio licensable content services*

247 Meaning of “radio licensable content services”

248 Services that are not radio licensable content services

249 Modification of ss. 247 and 248

250 Licensing of radio licensable content services

251 Abolition of separate licences for certain sound services

*Licence periods etc.*

252 Extension of licence periods

253 Extension and modification of existing licences

254 \* \* \* \* \*

255 \* \* \* \* \*

*Provision of simulcast radio services*

256 Definition of simulcast radio services

257 Promotion of simulcast radio services

*Multiplexes broadcasting sound programmes*

258 Radio multiplex services

259 Composition of services in radio multiplexes

260 Digital sound services for inclusion in non-radio multiplexes

261 Renewal of radio multiplex licences

*Community radio*

262 Community radio

**CHAPTER 4****REGULATORY PROVISIONS***Application of regulatory regimes*

263 Application of regulatory regimes

*The public service remit for television*

264 OFCOM reports on the fulfilment of the public service remit

265 \* \* \* \* \*

266 \* \* \* \* \*

267 \* \* \* \* \*

268 \* \* \* \* \*

269 \* \* \* \* \*

270 \* \* \* \* \*

271 Power to amend public service remits

*Must-offer obligations etc. affecting public service television*

272 \* \* \* \* \*

273 \* \* \* \* \*

274 \* \* \* \* \*

275 Must-provide services for the purposes of s. 274

276 Co-operation with the public teletext provider

*Programming quotas for public service television*

277 Programming quotas for independent productions

278 Programming quotas for original productions

*News provision etc. on public service television*

279 News and current affairs programmes

280 Appointed news providers for Channel 3

281 Disqualification from appointment as news provider

282 Power to repeal or modify Channel 3 news provider provisions

283 News providers for Channel 5

284 News provision on the public teletext service

*Independent and regional productions and programmes for public service television*

285 Code relating to programme commissioning

286 Regional programme-making for Channels 3 and 5

- 287 Regional programmes on Channel 3
- 288 Regional programme-making for Channel 4
- 289 Regional matters in the public teletext service

*Networking arrangements for Channel 3*

- 290 Proposals for arrangements
- 291 Obligation as to making and continuance of approved arrangements
- 292 OFCOM's power to impose arrangements
- 293 Review of approved networking arrangements etc.
- 294 Supplemental provision about networking arrangements

*Special obligations for Channel 4*

- 295 Involvement of C4 Corporation in programme-making
- 296 Schools programmes on Channel 4
- 297 Channel 4 contribution towards national television archive

*Special obligation for the public teletext provider*

- 298 Conditions prohibiting interference with other services

*Sporting and other events of national interest*

- 299 Categorisation of listed events
- 300 Effects of categorisation of listed events
- 301 Code relating to listed events
- 302 Regulations about coverage of listed events

*Television services for the deaf and visually impaired*

- 303 Code relating to provision for the deaf and visually impaired
- 304 Procedure for issuing and revising code under s. 303
- 305 Meaning of "relevant date" in s. 303
- 306 Power to modify targets in s. 303
- 307 Observance of code under s. 303
- 308 Assistance for the visually impaired with the public teletext service

*Programming quotas for digital television programme services*

- 309 Quotas for independent programmes

*Regulation of electronic programme guides*

- 310 Code of practice for electronic programme guides
- 311 Conditions to comply with code under s. 310

*Character and coverage of radio services*

- 312 Character and coverage of sound broadcasting services
- 313 Consultation about change of character of local services
- 314 Local content and character of local sound broadcasting services
- 315 Variations of radio multiplex licences affecting service characteristics

*Competition between licensed providers etc.*

\* \* \* \* \*

*Programme and fairness standards for television and radio*

- 319 OFCOM's standards code
- 320 Special impartiality requirements
- 321 Objectives for advertisements and sponsorship
- 322 Supplementary powers relating to advertising
- 323 Modification of matters to be taken into account under s. 319
- 324 Setting and publication of standards
- 325 Observance of standards code
- 326 Duty to observe fairness code
- 327 Standards with respect to fairness
- 328 Duty to publicise OFCOM's functions in relation to complaints

*Power to proscribe unacceptable foreign television and radio services*

- 329 Proscription orders
- 330 Effect of proscription order
- 331 Notification for enforcing proscription
- 332 Penalties for contravention of notification under s. 331

*Party political broadcasts on television and radio*

\* \* \* \* \*

*Monitoring of programmes*

- 334 Retention and production of recordings

*International obligations*

- 335 Conditions securing compliance with international obligations

*Government requirements for licensed services*

- 336 Government requirements for licensed services

*Equal opportunities and training*

\* \* \* \* \*

*Corresponding rules for the BBC and Welsh Authority*

338 Corresponding rules for the BBC and the Welsh Authority

*Enforcement against the Welsh Authority*

\* \* \* \* \*

*Enforcement of licence conditions*

344 Transmission of statement of findings

345 Financial penalties imposable on licence holders

346 Recovery of fees and penalties

*Broadcasting Act licence fees*

347 Statement of charging principles

**CHAPTER 5****MEDIA OWNERSHIP AND CONTROL***Restrictions on licence holders*

348 Modification of disqualification provisions

349 \* \* \* \* \*

350 Relaxation of licence-holding restrictions

*Changes of control*

351 Changes of control of Channel 3 services

352 Action following review under s. 351

353 Changes of control of Channel 5

354 Action following review under s. 353

355 Variation of local licence following change of control

356 Action following review under s. 355

*Meaning of control*

357 Meaning of “control”

**CHAPTER 6****OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES***Annual report on television and radio*

358 Annual factual and statistical report

*Community radio and local digital television*

359 Grants to providers

*Supplemental provisions of Part 3*

360 Amendments of the 1990 and 1996 Acts

361 Meaning of “available for reception by members of the public”

362 Interpretation of Part 3

**PART 4**

\* \* \* \* \*

**PART 5**

\* \* \* \* \*

**PART 6****MISCELLANEOUS AND SUPPLEMENTAL***Annual report*

390 Annual report on the Secretary of State’s functions

*Review of media ownership*

391 Review of media ownership

*Guidelines as to penalties*

392 Penalties imposed by OFCOM

*Disclosure of information*

393 General restrictions on disclosure of information

*Notifications etc. and electronic working*

394 Service of notifications and other documents

395 Notifications and documents in electronic form

396 Timing and location of things done electronically

*Other miscellaneous provisions*

\* \* \* \* \*

*Supplemental*

399 \* \* \* \* \*

400 Destination of licence fees and penalties



401	*	*	*	*	*	*	*
402	Power of Secretary of State to make orders and regulations						
403	Regulations and orders made by OFCOM						
404	Criminal liability of company directors etc.						
405	General interpretation						
406	Minor and consequential amendments, transitionals and repeals						
407	*	*	*	*	*	*	*
408	*	*	*	*	*	*	*
409	*	*	*	*	*	*	*
410	Application of enactments to territorial sea and other waters						
411	Short title, commencement and extent						

## Schedule 1 – Functions transferred to OFCOM

## Schedule 2 – Transfer schemes

Schedule 3 – \*

Schedule 4 – \*

## Schedule 5 – Procedure for grants of recognised spectrum access

Schedule 6 – \*

Schedule 7 – \*

## Schedule 8 – Decisions not subject to appeal

## Schedule 9 – Arrangements about carrying on of C4C's activities

## Schedule 10 – Licensing the public teletext service

Part 1 – Applications for and award of licence

Part 2 – Conditions and enforcement of licence

Part 3 – Interpretation of Schedule

## Schedule 11 – Approval, imposition and modification of networking arrangements

## Schedule 12 – Corresponding obligations of the BBC and Welsh Authority

Part 1 – The BBC

Part 2 – The Welsh Authority

## Schedule 13 – Financial penalties under the Broadcasting Acts

Part 1 – Broadcasting Act 1990

Part 2 – Broadcasting Act 1996

## Schedule 14 – Media ownership rules

Part 1 – Channel 3 services

Part 2 – Radio multiplex services

Part 3 – Local sound programme services

Part 4 – Religious bodies etc.

Part 5 – Supplemental provisions of Schedule

Schedule 15 – Amendments of Broadcasting Acts

Part 1 – Amendments of the 1990 Act

Part 2 – Amendments of the 1996 Act

Schedule 16 – \*                      \*                      \*                      \*                      \*                      \*                      \*

Schedule 17 – Minor and Consequential Amendments

Schedule 18 – Transitional Provisions

Schedule 19 – Repeals

**ELIZABETH II****COMMUNICATIONS ACT 2003**

## 2003 CHAPTER 21

**AN ACT** to confer functions on the Office of Communications; to make provision about the regulation of the provision of electronic communications networks and services and of the use of the electro-magnetic spectrum; to make provision about the regulation of broadcasting and of the provision of television and radio services; to make provision about mergers involving newspaper and other media enterprises and, in that connection, to amend the Enterprise Act 2002; and for connected purposes.

[17th July 2003]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows<sup>8</sup> –

**PART 1****FUNCTIONS OF OFCOM***Transferred and assigned functions***1 Functions and general powers of OFCOM**

- (1) The Office of Communications ("OFCOM") shall have the following functions –
  - (a) the functions transferred to OFCOM under section 2; and
  - (b) such other functions as may be conferred on OFCOM by or under any enactment (including this Act).
- (2) OFCOM shall also have any functions in relation to telephone numbers that are conferred on them by the law of the Isle of Man or of any of the Channel Islands.
- (3) OFCOM may do anything which appears to them to be incidental or conducive to the carrying out of their functions, including borrow money.

- (4) OFCOM are not to borrow money except with the consent of the Secretary of State, or in accordance with a general authorisation given by him.
- (5) OFCOM's powers under subsection (3) include, in particular –
  - (a) power to undertake research and development work in connection with any matter in relation to which they have functions;
  - (b) power to promote the carrying out of such research and development by others, or otherwise to arrange for it to be carried out by others;
  - (c) power to institute and carry on criminal proceedings in England and Wales or Northern Ireland for an offence relating to a matter in relation to which they have functions; and
  - (d) power, in such cases and in such circumstances as they may think fit, to make payments (where no legal liability arises) to persons adversely affected by the carrying out by OFCOM of any of their functions.
- (6) In exercise of their powers under subsection (3), OFCOM must establish and maintain separate offices in each of the following parts of the United Kingdom –
  - (a) England;
  - (b) Wales;
  - (c) Scotland; and
  - (d) Northern Ireland.
- (7) Part 2 of the Deregulation and Contracting Out Act 1994 (c. 40) (contracting out) is to have effect in relation to the functions conferred on OFCOM by or under any enactment as if –
  - (a) OFCOM were an office holder within the meaning of that Part; and
  - (b) a power of OFCOM to make subordinate legislation were excluded from section 69 of that Act to the extent only that it is exercisable by statutory instrument.
- (8) In this section “telephone numbers” has the same meaning as in Chapter 1 of Part 2.

### **[1A Saving of Telecommunications Law**

Nothing in this Act shall apply to any matter governed by the provisions of the Telecommunications (Jersey) Law 2002.<sup>9]</sup>

## **2 Transfer of functions of pre-commencement regulators**

- (1) As from such date as the Secretary of State may appoint for the coming into force of this section, the functions that are set out in Schedule 1 (functions of the Secretary of State and of the pre-commencement regulators) shall become functions of OFCOM in accordance with that Schedule.

- (2) References in any enactment to a person who is a person from whom functions are transferred by virtue of this section are to have effect, so far as necessary for the purposes of the transfers, as references to OFCOM.
- (3) The functions of OFCOM are to include the carrying out of the transferred functions, at times after the time when they become functions of OFCOM, in relation to anything occurring before that time.
- (4) The provisions of this section have effect subject to –
  - (a) the modifications made by this Act of the enactments relating to the transferred functions; and
  - (b) any express transitional or consequential provisions made by or under this Act in relation to those enactments.

*General duties in carrying out functions*

### **3 General duties of OFCOM**

- (1) It shall be the principal duty of OFCOM, in carrying out their functions –
  - (a) to further the interests of citizens in relation to communications matters; and
  - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following –
  - (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;
  - (b) \* \* \* \* \*
  - (c) the availability throughout the United Kingdom [and the Bailiwick of Jersey] of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
  - (d) the maintenance of a sufficient plurality of providers of different television and radio services;
  - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
  - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both –
    - (i) unfair treatment in programmes included in such services; and
    - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

- (3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to –
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principles appearing to OFCOM to represent the best regulatory practice.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances –
- (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey];
  - (b) the desirability of promoting competition in relevant markets;
  - (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
  - (d) the desirability of encouraging investment and innovation in relevant markets;
  - (e) \* \* \* \* \*
  - (f) the different needs and interests, so far as the use of the electromagnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
  - (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
  - (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
  - (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
  - (j) the desirability of preventing crime and disorder;
  - (k) the opinions of consumers in relevant markets and of members of the public generally;
  - (l) the different interests of persons in the different parts of the United Kingdom [and the Bailiwick of Jersey], of the different ethnic communities within the United Kingdom [and the Bailiwick of Jersey] and of persons living in rural and in urban areas;
  - (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.
- (5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

- (6) Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.
- (7) Where it appears to OFCOM that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.
- (8) Where OFCOM resolve a conflict in an important case between their duties under paragraphs (a) and (b) of subsection (1), they must publish a statement setting out –
  - (a) the nature of the conflict;
  - (b) the manner in which they have decided to resolve it; and
  - (c) the reasons for their decision to resolve it in that manner.
- (9) Where OFCOM are required to publish a statement under subsection (8), they must –
  - (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
  - (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters to which the decision relates.
- (10) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.
- (11) A case is an important case for the purposes of subsection (8) or (10) only if –
  - (a) it involved one or more of the matters mentioned in subsection (12); or
  - (b) it otherwise appears to OFCOM to have been of unusual importance.
- (12) Those matters are –
  - (a) a major change in the activities carried on by OFCOM;
  - (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
  - (c) matters likely to have a significant impact on the general public in the United Kingdom [and the Bailiwick of Jersey] \* \* \*.
- (13) \* \* \* \* \*
- (14) In this section –  
 “citizens” means all members of the public in the United Kingdom;

“communications matters” means the matters in relation to which OFCOM have functions;

“general duties”, in relation to OFCOM, means –

- (a) their duties under subsections (1) to (5); and
- (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;

“relevant markets” means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

#### **4 Duties for the purpose of fulfilling Community obligations**

\* \* \* \* \*

#### **5 Directions in respect of networks and spectrum functions**

- (1) This section applies to the following functions of OFCOM –
  - (a) their functions under Part 2; and
  - (b) their functions under the enactments relating to the management of the radio spectrum that are not contained in that Part.
- (2) It shall be the duty of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.
- (3) The Secretary of State’s power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes –
  - (a) in the interests of national security;
  - (b) in the interests of relations with the government of a country or territory outside the United Kingdom [and the Bailiwick of Jersey];
  - (c) for the purpose of securing compliance with international obligations of the United Kingdom [and the Bailiwick of Jersey];
  - (d) in the interests of the safety of the public or of public health.

- (4) \* \* \* \*
- (5) \* \* \* \*
- (6) \* \* \* \*
- (7) \* \* \* \*

#### **6 Duties to review regulatory burdens**

- (1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve –
  - (a) the imposition of burdens which are unnecessary; or



- (b) the maintenance of burdens which have become unnecessary.
- (2) In reviewing their functions under this section it shall be the duty of OFCOM –
  - (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
  - (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.
- (3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular –
  - (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and
  - (b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.
- (4) OFCOM must, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to secure that regulation by OFCOM does not involve the imposition or maintenance of unnecessary burdens.
- (5) The first statement to be published under this section –
  - (a) must be published as soon as practicable after the commencement of this section; and
  - (b) shall be a statement for the period of twelve months beginning with the day of its publication.
- (6) A subsequent statement –
  - (a) must be published during the period to which the previous statement related; and
  - (b) must be a statement for the period of twelve months beginning with the end of the previous period.
- (7) It shall be the duty of OFCOM, in carrying out their functions at times during a period for which a statement is in force under this section, to have regard to that statement.
- (8) OFCOM may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.
- (9) Where OFCOM revise a statement, they must publish the revision as soon as practicable.
- (10) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

## **7 Duty to carry out impact assessments**

- (1) This section applies where –
  - (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and
  - (b) it appears to them that the proposal is important;but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.
- (2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following –
  - (a) to involve a major change in the activities carried on by OFCOM;
  - (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
  - (c) to have a significant impact on the general public in the United Kingdom [and the Bailiwick of Jersey] \* \* \*.
- (3) Before implementing their proposal, OFCOM must either –
  - (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
  - (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.
- (4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.
- (5) An assessment carried out under this section –
  - (a) may take such form, and
  - (b) must relate to such matters,as OFCOM consider appropriate.
- (6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.
- (7) Where OFCOM publish an assessment under this section –
  - (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM's opinion, are likely to be affected to a significant extent by its implementation;
  - (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
  - (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.

- (8) Where OFCOM are required (apart from this section) –
  - (a) to consult about a proposal to which this section applies, or
  - (b) to give a person an opportunity of making representations about it,the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.
- (9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) must set out –
  - (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
  - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.
- (10) The publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected if their proposal is implemented.

## **8 Duty to publish and meet promptness standards**

- (1) It shall be the duty of OFCOM to publish a statement setting out the standards they are proposing to meet with respect to promptness in –
  - (a) the carrying out of their different functions; and
  - (b) the transaction of business for purposes connected with the carrying out of those functions.
- (2) This section does not require standards to be set out with respect to anything which (apart from this section) is required to be done by a time, or within a period, provided for by or under an enactment.
- (3) OFCOM may, if they think fit, at any time revise the statement for the time being in force under this section.
- (4) It shall be the duty of OFCOM –
  - (a) in carrying out their functions, and
  - (b) in transacting business for purposes connected with the carrying out of their functions,to have regard to the statement for the time being in force under this section.
- (5) Where OFCOM revise a statement under this section, they must publish the revision as soon as practicable.
- (6) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

- (7) OFCOM's report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (annual report) for each financial year must contain a statement by OFCOM summarising the extent to which they have complied during that year with the standards set out under this section.

## **9 Secretary of State's powers in relation to promptness standards**

- (1) Where the Secretary of State considers that the statement published by OFCOM under section 8 is not adequate for securing that they meet satisfactory promptness standards, he may give them a notification to that effect.
- (2) If the period of three months after the date of the giving of a notification under subsection (1) expires without OFCOM taking steps which the Secretary of State is satisfied remedy the situation, he may give them a direction under this section.
- (3) A direction under this section is one requiring OFCOM to issue a new or revised statement under section 8 in accordance with the direction.
- (4) Before giving a direction under this section, the Secretary of State must –
  - (a) give OFCOM an opportunity of making representations to him about his proposed direction; and
  - (b) have regard to any representations made to him by them.
- (5) Where the Secretary of State gives a direction to OFCOM under this section, he must publish a copy of it in such manner as he considers appropriate for bringing it to the attention of persons who, in his opinion, are likely to be affected by OFCOM's promptness standards.
- (6) It shall be the duty of OFCOM to revise their statement under section 8 in accordance with any direction of the Secretary of State under this section.
- (7) In this section "promptness standards" means standards of promptness in –
  - (a) the carrying out by OFCOM of their different functions; and
  - (b) the transaction by them of business for purposes connected with the carrying out of those functions.
- (8) No notification is to be given under subsection (1) at any time in the period of twelve months beginning with the commencement of section 8.

*Accessible domestic communications apparatus*

## **10 Duty to encourage availability of easily useable apparatus**

\* \* \* \* \*

*Media literacy***11 Duty to promote media literacy**

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated –
  - (a) to bring about, or to encourage others to bring about, a better public understanding of the nature and characteristics of material published by means of the electronic media;
  - (b) to bring about, or to encourage others to bring about, a better public awareness and understanding of the processes by which such material is selected, or made available, for publication by such means;
  - (c) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which access to material published by means of the electronic media is or can be regulated;
  - (d) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which persons to whom such material is made available may control what is received and of the uses to which such systems may be put; and
  - (e) to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received, that are both effective and easy to use.
- (2) In this section, references to the publication of anything by means of the electronic media are references to its being –
  - (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
  - (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

*OFCOM's Content Board***12 Duty to establish and maintain Content Board**

- (1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to be known as “the Content Board”.
- (2) The Content Board shall consist of –
  - (a) a chairman appointed by OFCOM; and
  - (b) such number of other members appointed by OFCOM as OFCOM think fit.

- (3) The chairman of the Content Board must be a non-executive member of OFCOM but is not to be the chairman of OFCOM.
- (4) At least one of the other members of the Content Board must also be a non-executive member of OFCOM other than the chairman of OFCOM.
- (5) In appointing persons to be members of the Content Board, OFCOM must secure that, for each of the following parts of the United Kingdom –
  - (a) England,
  - (b) Scotland,
  - (c) Wales, and
  - (d) Northern Ireland,there is a different member of the Board capable of representing the interests and opinions of persons living in that part of the United Kingdom [and that there is a member of the Board capable of representing persons living in the Bailiwick of Jersey].
- (6) In appointing a person for the purposes of subsection (5)(a), OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions of persons living in all the different regions of England.
- (7) The validity of any proceedings of the Content Board shall not be affected by any failure by OFCOM to comply with subsection (5) or (6).
- (8) It shall be the duty of OFCOM when appointing members of the Content Board to secure, so far as practicable, that a majority of the members of the Board (counting the chairman) consists of persons who are neither members nor employees of OFCOM.
- (9) The following shall be disqualified from being the chairman or another member of the Content Board –
  - (a) governors and employees of the BBC;
  - (b) members and employees of the Welsh Authority; and
  - (c) members and employees of C4C.
- (10) Before appointing a person to be the chairman or another member of the Content Board, OFCOM must satisfy themselves that he will not have any financial or other interest which would be likely prejudicially to affect the carrying out by him of any of his functions as chairman or member of the Content Board.
- (11) A person is not to be taken to have such an interest by reason only that he is or will be a member or employee of OFCOM.
- (12) Every person whom OFCOM propose to appoint to be the chairman or another member of the Content Board, shall, whenever requested to do so by OFCOM, furnish OFCOM with any information they consider necessary for the performance of their duty under subsection (10).
- (13) In addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act 2002 (c. 11), OFCOM may –

- (a) pay to, or in respect of, any member of the Content Board who is not a member or employee of OFCOM, such sums by way of pensions, allowances or gratuities as OFCOM may determine; and
  - (b) provide for the making of such payments to or in respect of any such member of the Content Board.
- (14) In subsection (13) –
  - (a) the reference to pensions, allowances and gratuities includes a reference to similar benefits payable on death or retirement; and
  - (b) the reference to providing for the payment of a pension, allowance or gratuity to, or in respect of, a person includes a reference to the making of payments towards the provision or payment of a pension, allowance or gratuity, or of any such similar benefits, to or in respect of that person.

### **13 Functions of the Content Board**

- (1) The Content Board shall have such functions as OFCOM, in exercise of their powers under the Schedule to the Office of Communications Act 2002 (c. 11), may confer on the Board.
- (2) The functions conferred on the Board must include, to such extent and subject to such restrictions and approvals as OFCOM may determine, the carrying out on OFCOM's behalf of –
  - (a) functions in relation to matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks; and
  - (b) functions in relation to the promotion of public understanding or awareness of matters relating to the publication of matter by means of the electronic media.
- (3) In determining what functions to confer on the Content Board, OFCOM must have particular regard to the desirability of securing that the Board have at least a significant influence on decisions which –
  - (a) relate to the matters mentioned in subsection (2); and
  - (b) involve the consideration of different interests and other factors as respects different parts of the United Kingdom [and the Bailiwick of Jersey].
- (4) It shall be the duty of the Content Board to ensure, in relation to –
  - (a) the carrying out of OFCOM's functions under Part 3 of this Act, Parts 1 and 3 of the 1990 Act and Parts 1 and 2 of the 1996 Act,
  - (b) the matters with respect to which functions are conferred on the Board, and
  - (c) such other matters mentioned in subsection (2) as OFCOM may determine,that OFCOM are aware of the different interests and other factors which, in the Board's opinion, need to be taken into account as respects the

different parts of the United Kingdom in relation to the carrying out of OFCOM's functions.

- (5) The power of OFCOM to determine the Content Board's functions includes power to authorise the Board to establish committees and panels to advise the Board on the carrying out of some or all of the Board's functions.
- (6) The power of OFCOM to authorise the establishment of a committee or panel by the Content Board includes power to authorise the establishment of a committee or panel that includes persons who are not members of the Board.
- (7) In this section references to the publication of anything by means of the electronic media are references to its being –
  - (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
  - (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

*Functions for the protection of consumers*

\* \* \* \* \*

*Advisory committees*

## **20 Advisory committees for different parts of the United Kingdom**

\* \* \* \* \*

## **21 Advisory committee on elderly and disabled persons**

- (1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c. 11) (committees of OFCOM) to establish and maintain a committee to provide the advice specified in this section.
- (2) The committee shall consist of –
  - (a) a chairman appointed by OFCOM; and
  - (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include –
  - (a) persons who are familiar with the needs of the elderly; and
  - (b) persons who are familiar with the needs of persons with disabilities.



- (4) The function of the committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests, in relation to communications matters, of –
  - (a) the elderly; and
  - (b) persons with disabilities.
- (5) The committee may also, at the request of the Consumer Panel, provide advice about those interests to the Consumer Panel.
- (6) The consent of OFCOM is required for the giving of advice under subsection (5).
- (7) In this section “communications matters” has the same meaning as in section 3.

*International matters*

## **22 Representation on international and other bodies**

- (1) It shall be the duty of OFCOM to do, as respects the United Kingdom, such of the following things as they are required to do by the Secretary of State –
  - (a) provide representation on behalf of Her Majesty’s Government in the United Kingdom on international and other bodies having communications functions;
  - (b) become or serve as a member of an international or other body having such functions;
  - (c) subscribe to such a body;
  - (d) provide representation on behalf of Her Majesty’s Government in the United Kingdom at international meetings about communications.
- (2) OFCOM shall also have the power, if requested to do so by the Secretary of State, to do one or more of those things as respects any of the Channel Islands, the Isle of Man or a British overseas territory.
- (3) It shall be the duty of OFCOM to carry out their functions under this section in accordance with such general or specific directions as may be given to them by the Secretary of State.
- (4) The Secretary of State –
  - (a) is not entitled to direct OFCOM to comply with a request made under subsection (2); but
  - (b) may give directions about how OFCOM are to carry out any representative role that they undertake in accordance with such a request.
- (5) In this section –
  - “communications functions” means –
    - (a) functions relating to the use of the electro-magnetic spectrum for wireless telegraphy;

- (b) functions relating to the regulation of television or radio broadcasting or the provision of television and radio services; and
  - (c) any other function which relates to, or is connected with, a matter in respect of which OFCOM have functions;
- “international meetings about communications” means international meetings relating to, or to matters connected with, one or more of the following –
- (a) the use of the electro-magnetic spectrum for wireless telegraphy;
  - (b) the regulation of television or radio broadcasting or of the provision of television and radio services;
  - (c) any other matter in respect of which OFCOM have functions.
- (6) In relation to –
- (a) a part of the British Islands outside the United Kingdom, or
  - (b) a British overseas territory,
- the references in subsection (5) to matters in respect of which OFCOM have functions include references to matters corresponding, in the case of that part of those Islands or of that territory, to matters in respect of which OFCOM’s functions are confined to the United Kingdom.
- (7) In subsection (5) “television or radio broadcasting” includes the provision by means other than broadcasting of services similar to those provided by television or radio broadcasts.

## **23 Directions for international purposes in respect of broadcasting functions**

- (1) This section applies to –
  - (a) OFCOM’s functions under the enactments relating to broadcasting; and
  - (b) the matters in relation to which those functions are conferred.
- (2) It shall be the duty of OFCOM –
  - (a) to carry out those functions in accordance with any general or specific directions given to them by the Secretary of State for the purpose mentioned in subsection (3); and
  - (b) to carry out such other functions in relation to the matters to which this section applies as they are required to carry out by any general or specific directions so given.
- (3) The Secretary of State is not to give a direction under this section except for the purpose of securing compliance, in relation to a matter to which this section applies, with an international obligation of the United Kingdom [on behalf of the Bailiwick of Jersey].
- (4) A direction under this section must be contained in an order made by the Secretary of State.
- (5) In this section “the enactments relating to broadcasting” means –

- (a) the 1990 Act;
- (b) the 1996 Act;
- (c) Part 3 of this Act; and
- (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

*General information functions*

**24 Provision of information to the Secretary of State**

- (1) It shall be the duty of OFCOM to comply with a direction by the Secretary of State to provide him with information falling within subsection (2).
- (2) The information that may be the subject of a direction under this section is any information reasonably required by the Secretary of State for the purpose of enabling him to secure compliance with an international obligation of the United Kingdom [on behalf of the Bailiwick of Jersey].
- (3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

**25 Community requirement to provide information**

- (1) This section applies if –
  - (a) the European Commission requires OFCOM to provide it with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks, electronic communications services or associated facilities; and
  - (b) the information is information obtained by OFCOM in the course of carrying out any of their functions under –
    - (i) Part 2; or
    - (ii) the enactments relating to the management of the radio spectrum that are not contained in that Part.
- (2) It shall be the duty of OFCOM to comply with the requirement.
- (3) If information provided to the European Commission under this section has been obtained by OFCOM from a person who is or, at the time the information was obtained from him, was –
  - (a) a communications provider, or
  - (b) a person making associated facilities available,OFCOM must notify him that they have provided the information to the Commission.
- (4) It shall be for OFCOM to determine the manner in which a notification is given under subsection (3).

**26 Publication of information and advice for consumers etc.**

- (1) OFCOM may arrange for the publication of such information and advice about matters in relation to which they have functions as it appears to them to be appropriate to make available to the persons mentioned in subsection (2).
- (2) Those persons are –
  - (a) the customers of communications providers;
  - (b) the customers of persons who make associated facilities available;
  - (c) persons who use electronic communications networks, electronic communications services or associated facilities; and
  - (d) persons to whom radio and television services are provided or who are otherwise able or likely to take advantage of any of those services.
- (3) In arranging for the publication of information or advice under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (4) and (5).
- (4) A matter is confidential under this subsection if –
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (5) A matter is confidential under this subsection if –
  - (a) it relates to the private affairs of an individual; and
  - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (6) The publication of information or advice under this section must be in such manner as OFCOM consider appropriate.

*Employment in broadcasting*

\* \* \* \* \*

*Charging***28 General power to charge for services**

- (1) OFCOM may provide a service to which this section applies to any person on such terms as to the making of payments to OFCOM –
  - (a) as they may determine in advance; or
  - (b) as may be agreed between that person and OFCOM.
- (2) This section applies to a service which is provided by OFCOM to a person in the course of carrying out their functions and is neither –
  - (a) a service which OFCOM are under a duty to provide to that person; nor

- (b) one in respect of which express provision is made by or under an enactment for authorising or forbidding the payment of fees or charges.
- (3) In this section references to providing a service to a person include references to a service consisting in –
  - (a) the giving of advice to that person;
  - (b) the entry of his particulars in a register or other record kept by OFCOM otherwise than in pursuance of an express statutory duty to keep the register or record; or
  - (c) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

### *Guarantees*

## **29 Secretary of State guarantees for OFCOM borrowing**

- (1) The Secretary of State may guarantee –
  - (a) the repayment of the principal of any borrowing by OFCOM;
  - (b) the payment of interest on any such borrowing; and
  - (c) the discharge of other financial obligations incurred by OFCOM in connection with any such borrowing.
- (2) The power of the Secretary of State to give a guarantee under this section is a power (subject to subsection (3)) to give it in such manner and on such conditions as he thinks fit.
- (3) The Secretary of State must not give a guarantee under this section if the aggregate of –
  - (a) the amounts that he may be required to pay for fulfilling that guarantee, and
  - (b) the amounts that he may be required to pay for fulfilling other guarantees previously given under this section and still in force,exceeds £5 million.
- (4) The Secretary of State may by order substitute another amount for the amount for the time being specified in subsection (3).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.
- (6) Immediately after a guarantee is given under this section, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (7) Where any sum is paid by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before each House of Parliament as soon as practicable after the end of each of the financial years –
  - (a) beginning with the one in which the sum is paid; and

- (b) ending with the one in which OFCOM's liabilities under subsection (8) in respect of that sum are finally discharged.
- (8) If sums are paid by the Secretary of State in fulfilment of a guarantee given under this section OFCOM must pay him –
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may determine, on amounts outstanding under this subsection.
- (9) Payments to the Secretary of State under subsection (8) must be made at such times and in such manner as he may determine.

*Provisions supplemental to transfer of functions*

### **30 Transfers of property etc. from pre-commencement regulators**

- (1) The Secretary of State may, by a direction to any of the pre-commencement regulators, require that regulator to make one or more schemes for the transfer from that regulator to OFCOM of such of the regulator's property, rights and liabilities as may be specified or described in the direction.
- (2) Where a pre-commencement regulator is required to make a scheme, the scheme must be made by such date as may be specified in the direction.
- (3) Before making a scheme in pursuance of a direction under subsection (1), a pre-commencement regulator must consult OFCOM.
- (4) A pre-commencement regulator who makes a scheme in pursuance of a direction under subsection (1) shall submit that scheme to the Secretary of State for approval.
- (5) A scheme that is required to be so submitted shall have effect only if, and to the extent that, it is approved by the Secretary of State.
- (6) The Secretary of State, in approving a scheme, may do so subject to such modifications as he thinks fit.
- (7) Where the Secretary of State approves a scheme subject to modifications specified by him, it shall have effect with those modifications.
- (8) A scheme approved by the Secretary of State under this section shall come into force either –
  - (a) if no time is appointed under paragraph (b), at the time when the approval is given; or
  - (b) if the Secretary of State appoints a later time for the coming into force of the scheme (whether when approving the scheme or by subsequently varying a time appointed under this paragraph), at that later time.
- (9) Where a scheme is submitted to the Secretary of State under this section, he must –
  - (a) consult OFCOM about any proposal of his to approve the scheme; and

- (b) consult both OFCOM and the pre-commencement regulator in question about any modifications subject to which he proposes to give his approval, or about any proposal of his to refuse approval.
- (10) The Secretary of State may, after consulting OFCOM, himself make a scheme for the transfer of property, rights and liabilities –
  - (a) from a pre-commencement regulator to OFCOM; or
  - (b) from himself to OFCOM;
 and such a scheme shall come into force on such day as the Secretary of State may appoint (whether in the scheme or subsequently).
- (11) The Secretary of State is not to make a scheme for the transfer of property, rights and liabilities from a pre-commencement regulator to OFCOM unless –
  - (a) that regulator has failed to comply with a direction under subsection (1); or
  - (b) that regulator has complied with such a direction by submitting a scheme to the Secretary of State that he has decided not to approve (with or without modifications).
- (12) Schedule 2 (which makes further provision about schemes under this section) shall have effect.

### **31 Transitional functions and abolition of pre-commencement regulators**

- (1) It shall be the duty of the pre-commencement regulators to take all such steps as are necessary or expedient for ensuring that OFCOM are able effectively to carry out OFCOM's functions from the time when they are vested in OFCOM.
- (2) The pre-commencement regulators, in taking those steps, must comply with every direction given to them by the Secretary of State.
- (3) The pre-commencement regulators and OFCOM shall each have a duty to provide the Secretary of State with all such information and assistance as he may require for the purposes of, or in connection with –
  - (a) his power to give directions under subsection (1) of section 30; and
  - (b) his powers and duties in relation to the approval and making of schemes under that section.
- (4) On such day as the Secretary of State may by order appoint –
  - (a) \* \* \* \* \*
  - (b) the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority shall cease to exist.
- (5) \* \* \* \* \*
- (6) Different days may be appointed under this section \* \* \* for each of the different bodies mentioned in [subsection (4)(b)].

**PART 2****NETWORKS, SERVICES AND THE RADIO SPECTRUM****CHAPTER 1****ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES***Preliminary***32 Meaning of electronic communications networks and services**

- (1) In this Act “electronic communications network” means –
- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
  - (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals –
    - (i) apparatus comprised in the system;
    - (ii) apparatus used for the switching or routing of the signals; and
    - (iii) software and stored data.
- (2) In this Act “electronic communications service” means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.
- (3) In this Act “associated facility” means a facility which –
- (a) is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
  - (b) is so available for the purpose of –
    - (i) making the provision of that network or service possible;
    - (ii) making possible the provision of other services provided by means of that network or service; or
    - (iii) supporting the provision of such other services.
- (4) In this Act –
- (a) references to the provision of an electronic communications network include references to its establishment, maintenance or operation;
  - (b) other person; and
  - (c) references, where one or more persons are employed or engaged to make facilities available under the direction or control of another



person, to the person by whom any associated facilities are made available are confined to references to that other person.

- (5) Paragraphs (a) and (b) of subsection (4) apply in relation to references in subsection (1) to the provision of a transmission system as they apply in relation to references in this Act to the provision of an electronic communications network.
- (6) The reference in subsection (1) to a transmission system includes a reference to a transmission system consisting of no more than a transmitter used for the conveyance of signals.
- (7) In subsection (2) “a content service” means so much of any service as consists in one or both of the following –
  - (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
  - (b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.
- (8) In this section references to the conveyance of signals include references to the transmission or routing of signals or of parts of signals and to the broadcasting of signals for general reception.
- (9) For the purposes of this section the cases in which software and stored data are to be taken as being used for a particular purpose include cases in which they –
  - (a) have been installed or stored in order to be used for that purpose; and
  - (b) are available to be so used.
- (10) In this section “signal” includes –
  - (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
  - (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

#### *Notification by providers*

\* \* \* \* \*

#### *Administrative charges imposed on providers*

\* \* \* \* \*

#### *Register of providers required to notify or to pay charges*

\* \* \* \* \*

#### *Conditions of entitlement to provide network or service etc.*

\* \* \* \* \*

*General conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: customer interests*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: telephone numbers*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*General conditions: must-carry obligations*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Universal service conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Access-related conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Privileged supplier conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP conditions: procedure*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP services conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*SMP apparatus conditions: subject-matter*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Enforcement of conditions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*OFCOM's duty to intervene on network access issues*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Electronic communications code*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Regulation of premium rate services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Offences relating to networks and services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Persistent misuse of network or service*

\* \* \* \* \*

*Powers to deal with emergencies*

\* \* \* \* \*

*Restrictions in leases and licences*

\* \* \* \* \*

*Information provisions*

\* \* \* \* \*

**138 Notification of contravention of information requirements**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 135 or 136, they may give that person a notification under this section.
- (2) A notification under this section is one which –
  - (a) sets out the determination made by OFCOM;
  - (b) specifies the requirement and contravention in respect of which that determination has been made; and
  - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are –
  - (a) making representations about the matters notified; and
  - (b) complying with any notified requirement of which he remains in contravention.
- (4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either –
  - (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if –
  - (a) OFCOM have reasonable grounds for believing that the contravention is a repeated contravention;
  - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and

- (c) the shorter period has been specified in the notification.
- (8) A notification under this section –
  - (a) may be given in respect of more than one contravention; and
  - (b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
- (9) Where a notification under this section has been given to a person in respect of a contravention of a requirement, OFCOM may give a further notification in respect of the same contravention of that requirement if, and only if –
  - (a) the contravention is one occurring after the time of the giving of the earlier notification;
  - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
  - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.
- (10) For the purposes of this section a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if –
  - (a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement; and
  - (b) the subsequent notification is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of section 139(2) that the contravention to which the previous notification related did occur.

### **139 Penalties for contravention of information requirements**

- (1) This section applies where –
  - (a) a person (“the notified person”) has been given a notification under section 138;
  - (b) OFCOM have allowed the notified person an opportunity of making representations about the matters notified; and
  - (c) the period allowed for the making of the representations has expired.
- (2) OFCOM may impose a penalty on the notified person if –
  - (a) they are satisfied that he has, in one or more of the respects notified, been in contravention of the requirement notified under section 138;
  - (b) he has not, during the period allowed under that section, complied with the notified requirement; and

- (c) no proceedings for an offence under section 144 have been brought against the notified person in respect of the contravention.
- (3) Where a notification under section 138 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.
- (4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.
- (5) The amount of a penalty imposed under this section is to be such amount not exceeding £50,000 as OFCOM determine to be both –
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (6) In making that determination OFCOM must have regard to –
  - (a) any representations made to them by the notified person; and
  - (b) any steps taken by him towards complying with the requirements contraventions of which have been notified to him under section 138.
- (7) Where OFCOM impose a penalty on a person under this section, they shall –
  - (a) within one week of making their decision to impose the penalty, notify that person of that decision and of their reasons for that decision; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (8) A penalty imposed under this section –
  - (a) must be paid to OFCOM; and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (9) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (5).
- (10) \* \* \* \* \*

#### **140 Suspending service provision for information contraventions**

- (1) OFCOM may give a direction under this section to a person who is a communications provider or who makes associated facilities available (“the contravening provider”) if they are satisfied –
  - (a) that he is or has been in serious and repeated contravention of requirements imposed under sections 135 and 136, or either of them;

- (b) the requirements are not requirements imposed for purposes connected with the carrying out of OFCOM's functions in relation to SMP apparatus conditions;
  - (c) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
  - (d) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) A direction under this section is –
  - (a) a direction that the entitlement of the contravening provider to provide electronic communications networks or electronic communications services, or to make associated facilities available, is suspended (either generally or in relation to particular networks, services or facilities); or
  - (b) a direction that that entitlement is restricted in the respects set out in the direction.
- (3) A direction under this section –
  - (a) must specify the networks, services and facilities to which it relates; and
  - (b) except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this section –
  - (a) in providing for the effect of a suspension or restriction to be postponed, may provide for it to take effect only at a time determined by or in accordance with the terms of the direction; and
  - (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening provider as appear to OFCOM to be appropriate for the purpose of protecting that provider's customers.
- (5) Those conditions may include a condition requiring the making of payments –
  - (a) by way of compensation for loss or damage suffered by the contravening provider's customers as a result of the direction; or
  - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (6) If OFCOM consider it appropriate to do so (whether or not in consequence of any representations or proposals made to them), they may revoke a direction under this section or modify its conditions –
  - (a) with effect from such time as they may direct;
  - (b) subject to compliance with such requirements as they may specify; and

- (c) to such extent and in relation to such networks, services or facilities, or parts of a network, service or facility, as they may determine.
- (7) For the purposes of this section there are repeated contraventions by a person of requirements imposed under sections 135 and 136, or either of them, to the extent that –
  - (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
  - (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements or of requirements under different sections.

#### **141 Suspending apparatus supply for information contraventions**

- (1) OFCOM may give a direction under this section to a person who supplies electronic communications apparatus (“the contravening supplier”) if they are satisfied –
  - (a) that he is or has been in serious and repeated contravention of requirements imposed under section 135;
  - (b) that an attempt, by the imposition of penalties under section 139 or the bringing of proceedings for an offence under section 144, to secure compliance with the contravened requirements has failed; and
  - (c) that the giving of the direction is appropriate and proportionate to the seriousness (when repeated as they have been) of the contraventions.
- (2) A direction under this section is –
  - (a) a direction to the contravening supplier to cease to act as a supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description); or
  - (b) a direction imposing such restrictions as may be set out in the direction on the supply by that supplier of electronic communications apparatus (either generally or in relation to apparatus of a particular description).
- (3) A direction under this section takes effect, except so far as it otherwise provides, for an indefinite period beginning with the time at which it is notified to the person to whom it is given.
- (4) A direction under this section –

- (a) may provide for a prohibition or restriction to take effect only at a time determined by or in accordance with the terms of the direction; and
  - (b) in connection with a prohibition or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the contravening supplier as appear to OFCOM to be appropriate for the purpose of protecting that supplier's customers.
- (5) Those conditions may include a condition requiring the making of payments –
  - (a) by way of compensation for loss or damage suffered by the contravening supplier's customers as a result of the direction; or
  - (b) in respect of annoyance, inconvenience or anxiety to which they have been put in consequence of the direction.
- (6) If OFCOM consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction under this section or modify its conditions –
  - (a) with effect from such time as they may direct;
  - (b) subject to compliance with such requirements as they may specify; and
  - (c) to such extent and in relation to such apparatus or descriptions of apparatus as they may determine.
- (7) For the purposes of this section contraventions by a person of requirements imposed under section 135 are repeated contraventions if –
  - (a) in the case of a previous notification given to that person under section 138, OFCOM have determined for the purposes of section 139(2) that such a contravention did occur; and
  - (b) in the period of twelve months following the day of the making of that determination, one or more further notifications have been given to that person in respect of contraventions of such requirements;

and for the purposes of this subsection it shall be immaterial whether the notifications related to the same contravention or to different contraventions of the same or different requirements.

## **142 Procedure for directions under ss. 140 and 141**

- (1) Except in an urgent case, OFCOM are not to give a direction under section 140 or 141 unless they have –
  - (a) notified the contravening provider or contravening supplier of the proposed direction and of the conditions (if any) which they are proposing to impose by that direction;
  - (b) provided him with an opportunity of making representations about the proposals and of proposing steps for remedying the situation; and



- (c) considered every representation and proposal made to them during the period allowed by them for the contravening provider or the contravening supplier to take advantage of that opportunity.
- (2) That period must be one ending not less than one month after the day of the giving of the notification.
- (3) As soon as practicable after giving a direction under section 140 or 141 in an urgent case, OFCOM must provide the contravening provider or contravening supplier with an opportunity of –
  - (a) making representations about the effect of the direction and of any of its conditions; and
  - (b) proposing steps for remedying the situation.
- (4) A case is an urgent case for the purposes of this section if OFCOM –
  - (a) consider that it would be inappropriate, because the contraventions in question fall within subsection (5), to allow time, before giving a direction under section 140 or 141, for the making and consideration of representations; and
  - (b) decide for that reason to act in accordance with subsection (3), instead of subsection (1).
- (5) The contraventions fall within this subsection if they have resulted in, or create an immediate risk of –
  - (a) a serious threat to the safety of the public, to public health or to national security;
  - (b) serious economic or operational problems for persons (apart from the contravening provider or contravening supplier) who are communications providers or persons who make associated facilities available; or
  - (c) serious economic or operational problems for persons who make use of electronic communications networks, electronic communications services or associated facilities.
- (6) In this section –
  - “contravening provider” has the same meaning as in section 140; and
  - “contravening supplier” has the same meaning as in section 141.

### **143 Enforcement of directions under ss. 140 and 141**

- (1) A person is guilty of an offence if he provides an electronic communications network or electronic communications service, or makes available any associated facility –
  - (a) while his entitlement to do so is suspended by a direction under section 140; or
  - (b) in contravention of a restriction contained in such a direction.
- (2) A person is guilty of an offence if he supplies electronic communications apparatus –

- (a) while prohibited from doing so by a direction under section 141; or
  - (b) in contravention of a restriction contained in such a direction.
- (3) A person guilty of an offence under this section shall be [liable to a fine] –
- (a) \* \* \* \*
  - (b) \* \* \* \*
- (4) Sections 94 to 99 apply in relation to a contravention of conditions imposed by a direction under section 140 or 141 as they apply in relation to a contravention of conditions set under section 45.

#### **144 Offences in connection with information requirements**

- (1) A person who fails to provide information in accordance with a requirement of OFCOM under section 135 or 136 is guilty of an offence and shall be [liable to a fine] –
- (a) \* \* \* \*
  - (b) \* \* \* \*
- (2) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show –
- (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
  - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (3) A person is guilty of an offence if –
- (a) in pursuance of any requirement under section 135 or 136, he provides any information that is false in any material particular; and
  - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.
- (4) A person guilty of an offence under subsection (3) shall be [liable to a fine or to imprisonment for two years, or to both].
- (5) Proceedings for an offence under subsection (1) may be brought in respect of a contravention by a person of a requirement imposed under section 135 or 136 only if –
- (a) OFCOM have given the person a notification under section 138 in respect of that contravention;
  - (b) the period allowed under that section for doing the things mentioned in subsection (3) of that section has expired without the required information having been provided; and
  - (c) OFCOM have not imposed a financial penalty under section 139 in respect of that contravention.

**145 Statement of policy on information gathering**

\* \* \* \* \*

**146 Provision of information by OFCOM**

\* \* \* \* \*

*Abolition of telecommunications licensing etc.*

\* \* \* \* \*

*Local authority powers in relation to networks and services*

\* \* \* \* \*

*Grants for networks and services in Northern Ireland*

\* \* \* \* \*

*Interpretation of Chapter 1*

\* \* \* \* \*

**CHAPTER 2****SPECTRUM USE***General functions relating to spectrum use***152 General functions of OFCOM in relation to radio spectrum**

- (1) It shall be a function of OFCOM –
  - (a) to give such advice in relation to the use of the electro-magnetic spectrum for wireless telegraphy,
  - (b) to provide such other services, and
  - (c) to maintain such records,
 as they consider appropriate for the purpose of facilitating or managing the use of that spectrum for wireless telegraphy.
- (2) It shall be a function of OFCOM, in relation to the use of the electro-magnetic spectrum for wireless telegraphy –
  - (a) to give such further advice,
  - (b) to provide such other services, and
  - (c) to maintain such other records,
 as the Secretary of State may, for the purpose of securing compliance with the international obligations of the United Kingdom [on behalf of the Bailiwick of Jersey], require them to provide.

- (3) The advice, the other services and the records that OFCOM may give, provide or maintain under this section include advice, other services and records with respect to the use of the electro-magnetic spectrum at places outside the United Kingdom [and the Bailiwick of Jersey].
- (4) The powers of OFCOM to carry out research, or to arrange for others to carry out research, are to be exercisable, in particular, for ascertaining, for the purpose of carrying out their functions under this section, information about –
  - (a) the demands for use of the electro-magnetic spectrum for wireless telegraphy in the United Kingdom [and the Bailiwick of Jersey];
  - (b) the effects, in the United Kingdom [and the Bailiwick of Jersey], of any such use of that spectrum;
  - (c) likely future developments in relation to those matters; and
  - (d) any other connected matters that OFCOM think relevant.
- (5) OFCOM may make a grant to any person if, in their opinion, the making of the grant is likely to promote –
  - (a) the efficient use in the United Kingdom [and the Bailiwick of Jersey] of the electro-magnetic spectrum for wireless telegraphy; or
  - (b) the efficient management of that use.
- (6) A grant –
  - (a) may be made to a person holding a wireless telegraphy licence or a grant of recognised spectrum access under section 159 or to any other person; and
  - (b) is to be made on such terms and conditions as OFCOM consider appropriate;and those terms and conditions may include terms requiring the repayment of the grant in specified circumstances.
- (7) The consent of the Treasury is to be required –
  - (a) for the making of a grant under subsection (5); and
  - (b) for the terms and conditions on which such a grant is made.
- (8) Where OFCOM are required to give advice or provide another service to a person under this section, they are to be entitled to make the giving of the advice or the provision of the other service conditional on the payment to them of such sums –
  - (a) as they may determine in advance; or
  - (b) as may be agreed between them and that person.
- (9) In this section references to providing a service to a person include references to a service consisting in –
  - (a) the entry of that person's particulars in a register or other record kept by OFCOM for the purpose of carrying out their functions under this section; or

- (b) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

### **153 United Kingdom Plan for Frequency Authorisation**

\* \* \* \* \*

### **154 Duties of OFCOM when carrying out spectrum functions**

- (1) It shall be the duty of OFCOM, in carrying out their functions under the enactments relating to the management of the radio spectrum, to have regard, in particular, to –
  - (a) the extent to which the electro-magnetic spectrum is available for use, or further use, for wireless telegraphy;
  - (b) the demand for use of that spectrum for wireless telegraphy; and
  - (c) the demand that is likely to arise in future for the use of that spectrum for wireless telegraphy.
- (2) It shall also be their duty, in carrying out their functions under those enactments to have regard, in particular, to the desirability of promoting –
  - (a) the efficient management and use of the part of the electro-magnetic spectrum available for wireless telegraphy;
  - (b) the economic and other benefits that may arise from the use of wireless telegraphy;
  - (c) the development of innovative services; and
  - (d) competition in the provision of electronic communications services.
- (3) In the application of this section to the functions of OFCOM under the enactments relating to the management of the radio spectrum other than section 2 of the Wireless Telegraphy Act 1998 (c. 6) exercise of power to prescribe wireless telegraphy licence fees), OFCOM may disregard such of the matters mentioned in the preceding subsections as appear to them –
  - (a) to be matters to which they are not required to have regard apart from this section; and
  - (b) to have no application to the case in question.
- (4) Where it appears to OFCOM that any of their duties under this section conflict with one or more of their duties under sections 3 to 6, priority must be given to their duties under those sections.
- (5) Where it appears to OFCOM that any of their duties under this section conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

**155 Advisory service in relation to interference**

- (1) It shall be a function of OFCOM to provide a service consisting in the giving of advice and assistance to persons complaining of interference with wireless telegraphy.
- (2) In this section “interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54).

**156 Directions with respect to the radio spectrum**

- (1) The Secretary of State may by order give general or specific directions to OFCOM about the carrying out by OFCOM of their functions under the enactments relating to the management of the radio spectrum.
- (2) The directions that may be given under this section include a direction requiring OFCOM to secure that such frequencies of the electro-magnetic spectrum as may be specified in the direction are kept available or become available –
  - (a) for such uses or descriptions of uses, or
  - (b) for such users or descriptions of users,as may be so specified.
- (3) The directions that may be given under this section include a direction requiring OFCOM to exercise their powers under the provisions mentioned in subsection (4) –
  - (a) in such cases,
  - (b) in such manner,
  - (c) subject to such restrictions and constraints, and
  - (d) with a view to achieving such purposes,as may be specified in the direction or as may be determined by the Secretary of State in accordance with the order.
- (4) Those provisions are –
  - (a) the proviso to section 1 of the Wireless Telegraphy Act 1949 (exemptions from requirement of wireless telegraphy licence); and
  - (b) sections 1 to 3A of the Wireless Telegraphy Act 1998 (c. 6) (payments in respect of wireless telegraphy licences and grants of recognised spectrum access).
- (5) This section is not to be construed as restricting the power of the Secretary of State under section 5, without the making of an order, to give a direction for any of the purposes for the time being specified in subsection (3) of that section.
- [(6) Before making an Order under this section which relates to the management of the radio spectrum in respect of the Bailiwick of Jersey, the Secretary of State shall consult the appropriate authorities of the Bailiwick of Jersey.]

**157 Procedure for directions under s. 156**

- (1) An order containing a direction under section 156, if it is not one falling within subsection (2) or (3) of that section, must state the purpose for which the direction is given.
- (2) Before making an order containing a direction under section 156, the Secretary of State must consult both –
  - (a) OFCOM; and
  - (b) such other persons as he thinks fit.
- (3) Subsection (2) does not apply where the Secretary of State considers that the urgency of the case makes it inexpedient to carry out the consultation before making the order.
- (4) \* \* \* \* \*
- (5) \* \* \* \* \*
- (6) \* \* \* \* \*
- (7) \* \* \* \* \*

*Reservation of spectrum for multiplex use***158 Special duty in relation to television multiplexes**

- (1) This section applies where OFCOM, in exercise of their functions under the enactments relating to the management of the radio spectrum, have reserved frequencies for the broadcasting of television programmes.
- (2) It shall be the duty of OFCOM, in the carrying out of their functions under those enactments, to exercise their powers so as to secure, so far as practicable, that the requirement of subsection (3) is satisfied.
- (3) That requirement is that sufficient capacity is made available on the reserved frequencies for ensuring, in the case of every licensed television multiplex service, that the qualifying services are broadcast by means of that multiplex service.
- (4) In subsection (3) “licensed television multiplex service” means a television multiplex service the provision of which is authorised by a licence under Part 1 of the 1996 Act.
- (5) In this section “qualifying service” and “television multiplex service” each has the same meaning as in Part 3 of this Act.

*Recognised spectrum access***159 Grant of recognised spectrum access**

- (1) This section applies where –
  - (a) a person is proposing to use or to continue to use a station or apparatus for wireless telegraphy;

- (b) the circumstances of the use are circumstances specified for the purposes of this section in regulations made by OFCOM;
- (c) that use does not require a wireless telegraphy licence but will involve the emission of electro-magnetic energy with a view to the reception of anything at places in the United Kingdom [and the Bailiwick of Jersey] or in the territorial waters adjacent to the United Kingdom [and the Bailiwick of Jersey];

and for the purposes of this section it is immaterial whether the emissions are from a place within the United Kingdom [and the Bailiwick of Jersey] or from a place outside the United Kingdom [and the Bailiwick of Jersey].

- (2) On an application by that person, OFCOM may make a grant of recognised spectrum access in respect of any use by him of anything for wireless telegraphy that is specified in the grant.
- (3) A grant of recognised spectrum access made to a person shall set out, by reference to such factors as OFCOM think fit (including, so far as they think fit, frequencies, times and places of reception and strength and type of signal), the respects in which the use of anything by that person for wireless telegraphy is recognised by the grant.
- (4) A grant of recognised spectrum access to a person is made by giving him a notification containing the grant.
- (5) A grant of recognised spectrum access may be made subject to such restrictions and conditions as OFCOM think fit, including, in particular, restrictions or conditions as to strength or type of signal, as to times of use and as to the sharing of frequencies.
- (6) The restrictions and conditions of a grant of recognised spectrum access made to a person must not duplicate obligations already imposed on him by general conditions set under section 45.
- (7) Where a grant of recognised spectrum access is made subject to restrictions and conditions, the restrictions and conditions must be set out in the notification by which the grant is made.
- (8) Schedule 5 (which makes provision about the grant, revocation and modification of recognised spectrum access) shall have effect.
- (9) Section 403 applies to the power of OFCOM to make regulations under subsection (1).
- (10) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

## **160 Effect of grant of recognised spectrum access**

- (1) This section applies to the following functions of OFCOM –
  - (a) their functions under section 1 of the Wireless Telegraphy Act 1949 (c. 54) (licensing of the use of the radio spectrum) with respect to the granting of wireless telegraphy licences;
  - (b) their functions under section 159 of this Act with respect to the making of grants of recognised spectrum access; and



- (c) any of their other functions under the enactments relating to the management of the radio spectrum in the carrying out of which it is appropriate for them to have regard to –
  - (i) whether wireless telegraphy licences are in force; or
  - (ii) the terms, provisions or limitations of wireless telegraphy licences that are for the time being in force.
- (2) In carrying out the functions to which this section applies it shall be the duty of OFCOM to take into account –
  - (a) the existence of any grant of recognised spectrum access that is for the time being in force, and
  - (b) the provisions imposing the restrictions and conditions subject to which the grant has effect,to the same extent as they would take into account a wireless telegraphy licence with terms, provisions or limitations making equivalent provision.

#### **161 Charges in respect of grants of recognised spectrum access**

- (1) The Wireless Telegraphy Act 1998 (c. 6) (which makes provision about the sums that may be charged in respect of the issue and renewal of wireless telegraphy licences etc.) shall be amended as follows.
- (2) In section 1 (charges for wireless telegraphy licences) –
  - (a) in subsection (1), after “this Act” there shall be inserted –
    - “(a) references to a grant of recognised spectrum access are references to a grant made under section 159 of the Communications Act 2003 (recognised spectrum access); and
    - (b)”;
  - (b) in subsection (2), for the words from “or renewal”, where they first occur, to “is issued” there shall be substituted “of a wireless telegraphy licence or the making of a grant of recognised spectrum access and, where regulations under this section so provide, subsequently at such times during the term of the licence or grant and such times in respect of its variation, modification or revocation, as may be prescribed by the regulations, there shall be paid to OFCOM by the person to whom the licence is issued or the grant made”; and
  - (c) in subsection (4), for the words from “or renewal”, where they first occur, to “the licence” there shall be substituted “of a licence or the making of a grant of recognised spectrum access, OFCOM may, on the issue of the licence or the making of the grant,”.
- (3) After section 3 of that Act there shall be inserted the following section –

**“3A Bidding for grants of recognised spectrum access**

- (1) Having regard to the desirability of promoting the optimal use of the electro-magnetic spectrum, OFCOM may by regulations provide that, in such cases as may be specified in the regulations, applications for grants of recognised spectrum access must be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to OFCOM in respect of the grant.
- (2) Regulations under this section may make provision with respect to the grants to which they apply and the restrictions and conditions subject to which such grants are made.
- (3) The regulations may, in particular –
  - (a) require the applicant’s bid to specify the amount which he is willing to pay;
  - (b) require that amount to be expressed –
    - (i) as a cash sum;
    - (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the use of wireless telegraphy to which the grant relates);
    - (iii) as a combination of the two; or
    - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
  - (c) require that amount to be expressed in terms of –
    - (i) the making of a single payment;
    - (ii) the making of periodic payments;
    - (iii) a combination of the two; or
    - (iv) (at the applicant’s choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
  - (d) specify requirements (such as, for example, technical or financial requirements, requirements relating to the use of wireless telegraphy to which the grant relates and requirements intended to restrict the holding of two or more grants of recognised spectrum access by any one person) which must be met by applicants for a grant;
  - (e) require any such applicant to pay a deposit to OFCOM;
  - (f) specify circumstances in which such a deposit is, or is not, to be refundable;
  - (g) specify matters to be taken into account by OFCOM (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to make a grant of recognised spectrum access;

- (h) specify the other restrictions and conditions subject to which a grant to which the regulations apply is to be made; and
  - (i) make any provision referred to in section 1(3).
- (4) Regulations under this section are not to be construed as binding OFCOM to make a grant on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.
- (5) A grant of recognised spectrum access made in accordance with regulations under this section shall specify either –
  - (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the grant; or
  - (b) the method for determining that sum or those sums;and that sum or those sums shall be paid to OFCOM by the person to whom the grant is made in accordance with the conditions of the grant.
- (6) In determining the sum or sums payable in respect of a grant, regard may be had to bids made for other grants of recognised spectrum access and for wireless telegraphy licences.
- (7) Regulations under this section may provide that where a person –
  - (a) makes an application for a grant of recognised spectrum access in accordance with a procedure provided for by such regulations, but
  - (b) subsequently refuses the grant applied for,that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the grant.
- (8) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the making of a grant of recognised spectrum access as it applies to sums that will or may become payable under regulations under that section.”

## 162 Conversion into and from wireless telegraphy licences

- (1) OFCOM may by regulations make provision for –
  - (a) the conversion, on the application of the licence holder, of a wireless telegraphy licence into a grant of recognised spectrum access; and
  - (b) the conversion, on the application of the holder of the grant, of a grant of recognised spectrum access into a wireless telegraphy licence.
- (2) Section 403 applies to the power of OFCOM to make regulations under this section.

*Crown use of the radio spectrum***163 Payments for use of radio spectrum by the Crown**

- (1) The Secretary of State may, out of money provided by Parliament, make payments to OFCOM of such amounts as he considers appropriate in respect of –
  - (a) the establishment and use by or on behalf of the Crown, of a station for wireless telegraphy;
  - (b) the installation and use by or on behalf of the Crown, of apparatus for wireless telegraphy;
  - (c) any grant of recognised spectrum access made to the Crown.
- (2) The payments made under this section shall be made at such times and, so far as made in relation to use, in relation to such periods as the Secretary of State considers appropriate.
- (3) Expressions used in this section and in the Wireless Telegraphy Act 1949 (c. 54) have the same meanings in this section as in that Act.

*Limitations and exemptions applied to spectrum use***164 Limitations on authorised spectrum use**

- (1) If they consider it appropriate, for the purpose of securing the efficient use of the electro-magnetic spectrum, to impose limitations on the use of particular frequencies, OFCOM must make an order imposing the limitations.
- (2) An order under this section may do one or both of the following –
  - (a) specify frequencies for the use of which OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access; or
  - (b) specify uses for which, on specified frequencies, OFCOM will grant or make only a limited number of wireless telegraphy licences and grants of recognised spectrum access.
- (3) Where OFCOM make an order under this section, it must set out the criteria which OFCOM will apply in determining in accordance with the order –
  - (a) the limit on the number of wireless telegraphy licences and grants of recognised spectrum access to be granted or made for the specified frequencies or uses;
  - (b) the persons to whom licences will be granted or grants of spectrum access made.
- (4) OFCOM must satisfy themselves that any criteria set out by virtue of subsection (3) are –
  - (a) objectively justifiable in relation to the frequencies or uses to which they relate;

- (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
  - (c) proportionate to what they are intended to achieve; and
  - (d) in relation to what they are intended to achieve, transparent.
- (5) It shall be the duty of OFCOM to exercise the following powers in accordance with the orders for the time being in force under this section –
  - (a) their powers under the Wireless Telegraphy Act 1949 and the Wireless Telegraphy Act 1998 (c. 6) with respect to wireless telegraphy licences; and
  - (b) their powers under the Wireless Telegraphy Act 1998 and this Chapter with respect to grants of recognised spectrum access.
- (6) OFCOM must keep under review any order for the time being in force under this section.
- (7) It shall be the duty of OFCOM to make an order revoking or amending the provisions of an order under this section if, on reviewing it, they consider it necessary to do so for the purpose of securing the efficient use of the electro-magnetic spectrum.
- (8) An order under this section may make provision by reference to determinations which –
  - (a) are made from time to time by OFCOM in accordance with the provisions of such an order; and
  - (b) are published by them from time to time in such manner as may be provided for in such an order.
- (9) Section 403 applies to the power of OFCOM to make an order under this section.

## 165 Terms etc. of wireless telegraphy licences

In section 1 of the Wireless Telegraphy Act 1949 (c. 54), after subsection (2) (terms, provisions and limitations of the licence) there shall be inserted –

“(2A) Those terms, provisions and limitations may also include, in particular –

- (a) terms, provisions and limitations as to strength or type of signal, as to times of use and as to the sharing of frequencies;
- (b) terms, provisions or limitations imposing prohibitions on the transmission or broadcasting of particular matters by the holder of the licence; and
- (c) terms or provisions requiring the transmission or broadcasting of particular matters by that person.

(2B) A licence under this section may be granted either –

- (a) in relation to a particular station or particular apparatus; or

- (b) in relation to any station or apparatus falling within a description specified in the licence;

and such a description may be expressed by reference to such factors (including factors confined to the manner in which it is established, installed or used) as OFCOM think fit.

- (2C) The terms, provisions and limitations of a licence granted under this section to a person must not duplicate obligations already imposed on him by general conditions set under section 45 of the Communications Act 2003.”

## 166 Exemption from need for wireless telegraphy licence

After section 1 of the Wireless Telegraphy Act 1949 there shall be inserted –

### “1AA Exemption from need for wireless telegraphy licence

- (1) If OFCOM are satisfied that the condition in subsection (2) is satisfied as respects the use of stations or apparatus of any particular description, they shall make regulations under section 1 of this Act exempting the establishment, installation and use of any station or apparatus of that description from the prohibition in that section.
- (2) That condition is that the use of stations or apparatus of that description is not likely to involve any undue interference with wireless telegraphy.”

### *Award and transfer of licences*

## 167 Bidding for wireless telegraphy licences

- (1) Section 3 of the Wireless Telegraphy Act 1998 (c. 6) (bidding for wireless telegraphy licences) shall be amended as follows.
- (2) The following shall cease to have effect –
  - (a) in subsection (1), the words “or determined by him under” and paragraph (a) (requirement to set out procedure for bidding in a notice issued under regulations); and
  - (b) subsection (2) (matters to be included in regulations).
- (3) In subsection (3) (provision that may be contained in regulations) –
  - (a) for paragraph (a) there shall be substituted –
    - “(a) require the applicant’s bid to specify the amount he is willing to pay;
    - (aa) require that amount to be expressed –
      - (i) as a cash sum;

- (ii) as a sum determined by reference to a variable (such as income attributable wholly or in part to the holding of the licence);
    - (iii) as a combination of the two; or
    - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;
  - (ab) require that amount to be expressed in terms of –
    - (i) the making of a single payment;
    - (ii) the making of periodic payments;
    - (iii) a combination of the two; or
    - (iv) (at the applicant's choice) in any one of the ways falling within the preceding sub-paragraphs that is authorised by the regulations;”
- (b) in paragraph (f), for “any licence” there shall be substituted “a licence to which the regulations apply”; and
- (c) the word “and” shall be inserted at the end of paragraph (f) and paragraph (h) shall cease to have effect.
- (4) For subsection (4) (notice not to create binding obligation to grant licence) there shall be substituted –
  - “(4) Regulations under this section are not to be construed as binding OFCOM to grant a licence on the completion of the procedure provided for in the regulations except in such circumstances as may be provided for in the regulations.”
- (5) For subsection (5) (licence to specify the amount payable in accordance with the applicant's bid) there shall be substituted –
  - “(5) A wireless telegraphy licence granted in accordance with regulations under this section shall specify either –
    - (a) the sum or sums which in consequence of the bids made are, in accordance with the regulations, to be payable in respect of the licence; or
    - (b) the method for determining that sum or those sums;and that sum or those sums shall be paid to OFCOM by the person to whom the licence is granted in accordance with the terms of the licence.”
- (6) For subsection (6) there shall be substituted –
  - “(5A) In determining the sum or sums payable in respect of a wireless telegraphy licence, regard may be had to bids made for other wireless telegraphy licences and for grants of recognised spectrum access.
  - (5B) Regulations under this section may provide that where a person –
    - (a) makes an application for a licence in accordance with a procedure provided for by such regulations, but

(b) subsequently refuses the licence applied for,  
that person shall make such payments to OFCOM as may be determined in accordance with the regulations by reference to bids made for the licence.

- (6) Subsection (4) of section 1 is to apply in relation to sums that will or may become payable under regulations under this section subsequently to the grant of a wireless telegraphy licence as it applies to sums that will or may become payable under regulations under that section.”

## 168 Spectrum trading

\* \* \* \* \*

### *Variation and revocation of licences*

## 169 Variation and revocation of wireless telegraphy licences

- (1) [After section 1D of the Wireless Telegraphy Act 1949 (c. 54) there shall be inserted the following section] –

### **“1E Variation or revocation of a licence**

- (1) Where OFCOM propose to vary or revoke a wireless telegraphy licence, they shall give the person holding the licence a notification under this subsection –
- (a) stating the reasons for the proposed variation or revocation; and
  - (b) specifying the period during which the person notified has an opportunity to do the things specified in subsection (2).
- (2) Those things are –
- (a) making representations about the proposal; and
  - (b) if the proposal is the result of a contravention of a term, provision or limitation of the licence, complying with that term, provision or limitation.
- (3) Subject to subsections (4) to (6), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for doing those things either –
- (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.



- (5) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (6) The person notified shall also have a shorter period if –
  - (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
  - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.
- (7) A case is an urgent case if the failure to vary or revoke the licence will result in, or create an immediate risk of –
  - (a) a serious threat to the safety of the public, to public health or to national security; or
  - (b) serious economic or operational problems for persons, other than the person in contravention, who –
    - (i) use stations or apparatus for wireless telegraphy; or
    - (ii) are communications providers or make associated facilities available.
- (8) Subsection (1) does not apply to a proposal to vary or revoke a licence if the proposal is made at the request or with the consent of the licence holder.
- (9) For the purposes of this section a contravention of a term, provision or limitation of a licence is a repeated contravention, in relation to a proposal to vary or revoke a licence, if it falls within subsection (10).
- (10) A contravention falls within this subsection if –
  - (a) a previous notification under subsection (1) has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence; and
  - (b) the subsequent notification under that subsection is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of subsection (11) that the contravention to which the previous notification related did occur.
- (11) Where OFCOM have given a notification under subsection (1), they shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification –
  - (a) decide whether or not to vary or revoke the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and

- (b) give the person holding the licence a notification of their decision.
  - (12) The notification under subsection (11) –
    - (a) must be given no more than one week after the making of the decision to which it relates; and
    - (b) must, in accordance with that decision, either vary or revoke the licence or withdraw the proposal for a variation or revocation.
  - (13) The reference in subsection (10) to a contravention of a term, provision or limitation of the same licence includes a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.
  - (14) In this section, ‘communications provider’ and ‘associated facility’ have the same meaning as in the Communications Act 2003.”
- (2) \* \* \* \*

*Wireless telegraphy register*

## 170 Wireless telegraphy register

- (1) OFCOM may by regulations make provision for the establishment and maintenance of a register of relevant information.
- (2) OFCOM are to include relevant information in the register if, and only if, it is relevant information of a description prescribed by regulations under this section.
- (3) Information is relevant information for the purposes of subsection (1) if it relates to –
  - (a) the issue, renewal, transfer, variation or revocation of wireless telegraphy licences; or
  - (b) the making, renewal, transfer, modification or revocation of grants of recognised spectrum access.
- (4) Subject to such conditions (including conditions as to payment) as may be prescribed by regulations under this section, a register established by virtue of subsection (1) shall be open to inspection by the public.
- (5) Section 403 applies to the power of OFCOM to make regulations under this section.

*Information requirements*

## 171 Information requirements in relation to wireless telegraphy licences

- (1) In Part 3 of the Wireless Telegraphy Act 1949 (c. 54) (supplemental provisions), before section 14 there shall be inserted –

**“13A Information requirements**

- (1) Subject to the following provisions of this section, OFCOM may require a person who is using or has established, installed or used a station or apparatus for wireless telegraphy to provide OFCOM with all such information relating to –
  - (a) the establishment, installation or use of the station or apparatus, and
  - (b) any related matters,as OFCOM may require for statistical purposes.
- (2) OFCOM are not to require the provision of information under this section except –
  - (a) by a demand for the information that sets out OFCOM’s reasons for requiring the information and the statistical purposes for which it is required; and
  - (b) where the making of a demand for that information is proportionate to the use to which the information is to be put in the carrying out of OFCOM’s functions.
- (3) A demand for information required under this section must be contained in the notice served on the person from whom the information is required.
- (4) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (5) A person who fails to provide information in accordance with a requirement of OFCOM under this section is guilty of an offence.
- (6) In proceedings against a person for an offence under subsection (1) it shall be a defence for that person to show –
  - (a) that it was not reasonably practicable for him to comply with the requirement within the period specified by OFCOM; but
  - (b) that he has taken all reasonable steps to provide the required information after the end of that period.
- (7) A person is guilty of an offence if –
  - (a) in pursuance of any requirement under this section, he provides information that is false in any material particular; and
  - (b) at the time he provides it, he either knows it to be false or is reckless as to whether or not it is false.

**13B Statement of policy on information gathering**

- (1) It shall be the duty of OFCOM to prepare and publish a statement of their general policy with respect to –
  - (a) the exercise of their powers under section 13A; and

- (b) the uses to which they are proposing to put information obtained under that section.
  - (2) OFCOM may from time to time revise that statement as they think fit.
  - (3) Where OFCOM make or revise their statement of policy under this section, they must publish that statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
  - (4) It shall be the duty of OFCOM, in exercising the powers conferred on them by section 13A, to have regard to the statement for the time being in force under this section.”
- (2) In section 14(1A) of that Act \* \* \*, before paragraph (f) there shall be inserted –
- “(ea) any offence under section 13A(1) of this Act; or”.

*Criminal proceedings etc.*

## **172 Contraventions of conditions for use of wireless telegraphy**

- (1) Where OFCOM determine that there are reasonable grounds for believing that a person is contravening, or has contravened –
  - (a) a term, provision or limitation of a wireless telegraphy licence, or
  - (b) a term, provision or limitation of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement),
 they may give that person a notification under this section.
- (2) A notification under this section is one which –
  - (a) sets out the determination made by OFCOM;
  - (b) specifies the term, provision or limitation, and the contravention, in respect of which that determination has been made; and
  - (c) specifies the period during which the person notified has an opportunity of doing the things specified in subsection (3).
- (3) Those things are –
  - (a) making representations about the matters notified; and
  - (b) complying with any notified term, provision or limitation of which he remains in contravention.
- (4) Subject to subsections (5) to (7), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (5) OFCOM may, if they think fit, allow a longer period for doing those things either –
  - (a) by specifying a longer period in the notification; or

- (b) by subsequently, on one or more occasions, extending the specified period.
- (6) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (7) The person notified shall also have a shorter period if –
  - (a) OFCOM have reasonable grounds for believing that the case is a case of repeated contravention;
  - (b) they have determined that, in those circumstances, a shorter period would be appropriate; and
  - (c) the shorter period has been specified in the notification.

### **173 Meaning of “repeated contravention” in s. 172**

- (1) For the purposes of section 172 a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if –
  - (a) in the case of a contravention of a term, provision or limitation of a licence, it falls within subsection (2) or (3); or
  - (b) in the case of a contravention of a term, provision or limitation of an exemption, it falls within subsection (4) or (5).
- (2) A contravention of a term, provision or limitation of a licence falls within this subsection if –
  - (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of a term, provision or limitation of the same licence;
  - (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
  - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (3) A contravention of a term, provision or limitation of a licence falls within this subsection if –
  - (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of a term, provision or limitation of the same licence; and
  - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.
- (4) A contravention of a term, provision or limitation of an exemption falls within this subsection if –
  - (a) a previous notification under section 172 has been given in respect of the same contravention or in respect of another contravention of the same term, provision or limitation;

- (b) the person who was given that notification subsequently took steps for remedying the notified contravention; and
  - (c) the subsequent notification is given no more than twelve months after the day of the giving of the previous notification.
- (5) A contravention of a term, provision or limitation of an exemption falls within this subsection if –
  - (a) the person concerned has been convicted of an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) in respect of the contravention to which the notification relates or in respect of another contravention of the same term, provision or limitation; and
  - (b) the subsequent notification is given before the end of the period of twelve months from the contravention in respect of which that person was convicted of that offence.
- (6) In calculating the periods of twelve months mentioned in subsections (3)(b) and (5)(b), the period between the institution of the criminal proceedings which led to the conviction and the conclusion of those proceedings shall be left out of account.
- (7) For the purposes of subsection (6) criminal proceedings shall be taken to be concluded when no further appeal against conviction may be brought without the permission of the court and –
  - (a) in a case where there is no fixed period within which that permission can be sought, permission has been refused or has not been sought; or
  - (b) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.
- (8) References in this section to remedying a contravention include references to each of the following –
  - (a) doing any thing the failure to do which, or the failure to do which within a particular period or before a particular time, constituted the whole or a part of the contravention;
  - (b) paying an amount to a person by way of compensation for loss or damage suffered by that person in consequence of the contravention;
  - (c) paying an amount to a person by way of compensation in respect of annoyance, inconvenience or anxiety to which he has been put in consequence of the contravention; and
  - (d) otherwise acting in a manner that constitutes an acknowledgement that the notified contravention did occur.
- (9) References in this section to a contravention of a term, provision or limitation of a licence include a reference to a contravention of a term, provision or limitation contained in a previous licence of which the licence in question is a direct or indirect renewal.

**174 Procedure for prosecutions of wireless telegraphy offences**

- (1) This section applies to proceedings against a person (“the defendant”) for an offence under section 1 of the Wireless Telegraphy Act 1949 consisting in the contravention of –
  - (a) the terms, provisions or limitations of a wireless telegraphy licence; or
  - (b) the terms, provisions or limitations of an exemption under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (exemptions from licensing requirement).
- (2) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section unless, before they are brought, OFCOM have –
  - (a) given the defendant a notification under section 172 in respect of the contravention to which the proceedings relate; and
  - (b) considered any representations about the matters notified which were made by the defendant within the period allowed under that section.
- (3) Proceedings to which this section applies are not to be brought at any time after the coming into force of this section in respect of a contravention if –
  - (a) it is a contravention to which a notification given to that person under section 172 relates; and
  - (b) that person has, during the period allowed under that section, complied with the notified term, provision or limitation.
- (4) Subsection (2) does not apply where OFCOM have certified that it would be inappropriate to follow the procedure in section 172 because of an immediate risk of –
  - (a) a serious threat to the safety of the public, to public health or to national security; or
  - (b) serious economic or operational problems for persons (other than the defendant) who –
    - (i) use stations or apparatus for wireless telegraphy; or
    - (ii) are communications providers or make associated facilities available.
- (5) Where –
  - (a) proceedings to which this section applies are brought by virtue of subsection (4) without a notification having been given to the defendant, and
  - (b) the defendant is convicted in those proceedings of the offence under section 1 of the Wireless Telegraphy Act 1949,the court, in determining how to deal with that person, shall have regard, in particular, to the matters specified in subsection (6).
- (6) Those matters are –

- (a) whether the defendant has ceased to be in contravention of the terms, provisions or limitations in question and (if so) when; and
  - (b) any steps taken by the defendant (whether before or after the commencement of the proceedings) for securing compliance with the obligations imposed on him by virtue of those terms, provisions or limitations.
- (7) \* \* \* \* \*
- (8) In this section, “stations for wireless telegraphy” and “apparatus for wireless telegraphy” have the same meanings as in the Wireless Telegraphy Act 1949 (c. 54).

### **175 Special procedure for contraventions by multiplex licence holders**

- (1) OFCOM may impose a penalty on a person if –
  - (a) that person is or has been in contravention in any respect of the terms, provisions or limitations of a general multiplex licence;
  - (b) the contravention relates to terms, provisions or limitations falling within section 1(2A)(b) or (c) of the Wireless Telegraphy Act 1949 (terms, provisions and limitations about service content);
  - (c) OFCOM have notified that person that it appears to them that those terms, provisions or limitations have been contravened in that respect; and
  - (d) that contravention is not one in respect of which proceedings for an offence under that Act have been brought against that person.
- (2) Where OFCOM impose a penalty on a person under this section, they shall –
  - (a) notify that person of that decision and of their reasons for that decision; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (3) A penalty imposed under this section –
  - (a) must be paid to OFCOM; and
  - (b) if not paid within the period fixed by them, is to be recoverable by them accordingly.
- (4) No proceedings for an offence under the Wireless Telegraphy Act 1949 shall be commenced against a person in respect of a contravention in respect of which a penalty has been imposed by OFCOM under this section.
- (5) For the purposes of this section a licence is a general multiplex licence, in relation to the time of a contravention, if –
  - (a) it is a wireless telegraphy licence containing terms, provisions or limitations by virtue of which the services for the purposes of which the use of the licensed station or apparatus is authorised are



confined to, or are allowed to include, one or more multiplex services; and

- (b) at that time, there is no licence under Part 1 or 2 of the 1996 Act in force in respect of a multiplex service to be broadcast using that station or apparatus.
- (6) In this section “multiplex service” means –
  - (a) a service for broadcasting for general reception that consists in the packaging together of two or more services that are provided for inclusion together in that service by a combination of the relevant information in digital form; or
  - (b) a service provided with a view to its being a service falling within paragraph (a) but in the case of which only one service is for the time being comprised in digital form in what is provided.

### **176 Amount of penalty under s. 175**

- (1) The amount of a penalty imposed under section 175 is to be such amount, not exceeding the greater of the following, as OFCOM think fit, namely –
  - (a) £250,000; and
  - (b) 5 per cent. of the relevant amount of gross revenue.
- (2) In subsection (1) “the relevant amount of gross revenue” means the amount specified in section 177.
- (3) \* \* \* \* \*
- (4) \* \* \* \* \*

### **177 “Relevant amount of gross revenue” for the purposes of s. 176**

- (1) The relevant amount of gross revenue for the purposes of section 176, in relation to a penalty imposed on a person, is –
  - (a) where the last accounting period of that person which falls before the contravention was a period of twelve months, the relevant part of his gross revenue for that period; and
  - (b) in any other case, the amount which, by making any appropriate apportionments or other adjustments of the relevant part of his gross revenue for the accounting period or periods mentioned in subsection (2), is computed to be the amount representing the annual rate for the relevant part of his gross revenues.
- (2) The accounting period or periods referred to in subsection (1) are –
  - (a) every accounting period of his to end within the period of twelve months immediately preceding the contravention; and
  - (b) if there is no such accounting period, the accounting period of his which is current at the time of the contravention.
- (3) In this section, a reference to the relevant part of a person’s gross revenue, in relation to a contravention of the terms, provisions or

limitations of a licence, is a reference to so much of his gross revenue as is attributable to the provision of the service to which that licence relates.

- (4) For the purposes of this section –
- (a) the gross revenue of a person for a period, and
  - (b) the extent to which a part of a person's gross revenue is attributable to the provision of any service,
- shall be ascertained in accordance with such principles as may be set out in a statement made by OFCOM.
- (5) Such a statement may provide for the amount of a person's gross revenue for an accounting period that is current when the amount falls to be calculated to be taken to be the amount estimated by OFCOM, in accordance with the principles set out in the statement, to be the amount that will be his gross revenue for that period.
- (6) OFCOM may revise a statement made under subsection (4) from time to time.
- (7) A statement made or revised under this section may set out different principles for different cases.
- (8) Before making or revising a statement under this section, OFCOM must consult the Secretary of State and the Treasury.
- (9) OFCOM must –
- (a) publish the statement made under subsection (4) and every revision of it; and
  - (b) send a copy of the statement and of every such revision to the Secretary of State;
- and the Secretary of State must lay copies of the statement and of every such revision before each House of Parliament.
- (10) Section 13A of the Wireless Telegraphy Act 1949 (c. 54) is to apply for the purpose of ascertaining the amount of a person's gross revenue for any period for the purposes of section 176 of this Act and this section as it applies for the purpose of obtaining information for statistical purposes about matters relating to the establishment, installation or use by that person of a station or apparatus.
- (11) In this section –
- “accounting period”, in relation to a person, means a period in respect of which accounts of the undertaking carried on by him are prepared or, if one such period is comprised in another, whichever of those periods is or is closest to a twelve month period; and
- “gross revenue”, in relation to a person, means the gross revenue of an undertaking carried on by that person.

## **178 Proceedings for an offence relating to apparatus use**

- (1) Section 11 of the Wireless Telegraphy Act 1949 (notices enforcing regulations on the use of apparatus) shall have effect with the following

amendments in relation to any notice under subsection (1) or (2) of that section that is served after the coming into force of this subsection –

- (a) paragraph (i) of the proviso to subsection (1) shall be omitted; and
- (b) for subsections (3) to (6) there shall be substituted –

“(2A) Where an appeal with respect to a notice under this section is pending –

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and
- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

(2B) For the purposes of this section an appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on such an appeal is pending unless –

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision on the appeal; or
- (b) no further appeal against a decision made on the appeal or on any such further appeal may be brought without the permission of the court and –
  - (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
  - (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

(2C) \* \* \* \* \*

(2D) \* \* \* \* \*

(2) Section 12 of that Act (enforcement of regulations as to sales of apparatus etc.) shall have effect in relation to any notices served under subsection (1) of that section after the coming into force of this section with the substitution of the following subsections for subsections (2) to (4) –

“(1A) Where an appeal with respect to a notice under subsection (1) of this section is pending –

- (a) proceedings for an offence of contravening that notice (whether instituted before or after the bringing of the appeal) shall be stayed until the appeal has been finally determined; and

- (b) any such proceedings shall be discharged if the notice is set aside in consequence of the appeal;

but this subsection does not affect proceedings in which a person has been convicted at a time when there was no pending appeal.

- (1B) For the purposes of this section any appeal under section 192 of the Communications Act 2003 with respect to a notice under this section or a further appeal relating to the decision on that appeal is pending unless –

- (a) that appeal has been brought to a conclusion or withdrawn and there is no further appeal pending in relation to the decision; or
- (b) no further appeal against any decision made on the appeal or on any such further appeal may be brought without the permission of the court and –
- (i) in a case where there is no fixed period within which that permission can be sought, that permission has been refused or has not been sought; or
- (ii) in a case where there is a fixed period within which that permission can be sought, that permission has been refused or that period has expired without permission having been sought.

- (1C) \* \* \* \*
- (1D) \* \* \* \*

## 179 Modification of penalties for certain wireless telegraphy offences

- (1) In subsection (1) of section 14 of the Wireless Telegraphy Act 1949 (c. 54) (either way offences), for paragraphs (aa) and (ab) there shall be substituted –

- “(aa) any offence under section 1(1) of this Act consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41));
- (ab) any offence under section 1A of this Act where the relevant contravention of section 1 would constitute an offence falling within paragraph (aa);”.

- (2) After subsection (1A), there shall be inserted –

“(1AA) A person committing –

- (a) an offence under section 1(1) of this Act other than –
- (i) one which falls within subsection (1)(aa), or
- (ii) one which falls within subsection (1A)(a), or
- (b) an offence under section 1A of this Act other than –

- (i) one which falls within subsection (1)(ab), or
  - (ii) one which falls within subsection (1A)(aa),
- shall be liable, \* \* \* to imprisonment for a term not exceeding six months or to a fine not exceeding level [3] on the standard scale,<sup>10</sup> or to both.”
- (3) \* \* \* \* \*
- (4) \* \* \* \* \*

### 180 Fixed penalties for certain wireless telegraphy offences

\* \* \* \* \*

### 181 Power of arrest

\* \* \* \* \*

### 182 Forfeiture etc. of restricted apparatus

\* \* \* \* \*

### *Construction of 1949 Act*

### 183 Modification of definition of “undue interference”

For subsection (5) of section 19 of the Wireless Telegraphy Act 1949 (c. 54) (meaning of undue interference) there shall be substituted –

- “(5) Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful.
- (5A) For the purposes of this Act interference is harmful if –
  - (a) it creates dangers, or risks of danger, in relation to the functioning of any service provided by means of wireless telegraphy for the purposes of navigation or otherwise for safety purposes; or
  - (b) it degrades, obstructs or repeatedly interrupts anything which is being broadcast or otherwise transmitted –
    - (i) by means of wireless telegraphy; and
    - (ii) in accordance with a licence under this Act, regulations under the proviso to section 1(1) of this Act or a grant of recognised spectrum access under Chapter 2 of Part 2 of the Communications Act 2003 or otherwise lawfully.”

**184 Modification of definition of “wireless telegraphy”**

- (1) The Secretary of State may by order modify the definition of “wireless telegraphy” in section 19(1) of the Wireless Telegraphy Act 1949 by substituting a different frequency for the frequency (at the passing of this Act, 3,000 GHz) that is for the time being specified in that definition.
- [(2) An order made by the Secretary of State under this section shall not have effect in the Bailiwick of Jersey unless it is registered in the Royal Court of Jersey and where any such order is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the order, whichever is the later.]

**CHAPTER 3****DISPUTES AND APPEALS***Disputes***185 Reference of disputes to OFCOM**

- (1) \* \* \* \* \*
- (2) This section also applies in the case of any other dispute if –
  - (a) it relates to rights or obligations conferred or imposed by or under this Part or any of the enactments relating to the management of the radio spectrum that are not contained in this Part;
  - (b) it is a dispute between different communications providers; and
  - (c) \* \* \* \* \*
- (3) Any one or more of the parties to the dispute may refer it to OFCOM.
- (4) A reference made under this section is to be made in such manner as OFCOM may require.
- (5) The way in which a requirement under subsection (4) –
  - (a) is to be imposed, or
  - (b) may be withdrawn or modified,
 is by a notice published in such manner as OFCOM consider appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in their opinion, are likely to be affected by it.
- (6) Requirements imposed under subsection (4) may make different provision for different cases.
- (7) \* \* \* \* \*
- (8) \* \* \* \* \*

**186 Action by OFCOM on dispute reference**

- (1) This section applies where a dispute is referred to OFCOM under and in accordance with section 185.
- (2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.
- (3) Unless they consider –
  - (a) that there are alternative means available for resolving the dispute,
  - (b) that a resolution of the dispute by those means would be consistent with the Community requirements set out in section 4, and
  - (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used for resolving it,their decision must be a decision that it is appropriate for them to handle the dispute.
- (4) As soon as reasonably practicable after OFCOM have decided –
  - (a) that it is appropriate for them to handle the dispute, or
  - (b) that it is not,they must inform each of the parties to the dispute of their decision and of their reasons for it.
- (5) The notification must state the date of the decision.
- (6) Where –
  - (a) OFCOM decide that it is not appropriate for them to handle the dispute, but
  - (b) the dispute is not resolved by other means before the end of the four months after the day of OFCOM's decision,the dispute may be referred back to OFCOM by one or more of the parties to the dispute.

**187 Legal proceedings about referred disputes**

- (1) Where a dispute is referred or referred back to OFCOM under this Chapter, the reference is not to prevent –
  - (a) the person making it,
  - (b) another party to the dispute,
  - (c) OFCOM, or
  - (d) any other person,from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.
- (2) Nor is the reference or reference back to OFCOM under this Chapter of a dispute to prevent OFCOM from –

- (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of any obligation imposed by or under any an enactment;
  - (b) exercising any of their other powers under any enactment in relation to a contravention of such an obligation; or
  - (c) taking any other step in preparation for or with a view to doing anything mentioned in the preceding paragraphs.
- (3) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed \* \* \* –
  - (a) OFCOM are required to make a determination for resolving the dispute only if the stay \* \* \* is lifted or expires; and
  - (b) the period during which the stay \* \* \* is in force must be disregarded in determining the period within which OFCOM are required to make such a determination.
- (4) Subsection (1) is subject to section 190(8) and to any agreement to the contrary binding the parties to the dispute.
- (5) In this section “legal proceedings” means civil or criminal proceedings in or before a court.

## **188 Procedure for resolving disputes**

- (1) This section applies where –
  - (a) OFCOM have decided under section 186(2) that it is appropriate for them to handle a dispute; or
  - (b) a dispute is referred back to OFCOM under section 186(6).
- (2) OFCOM must –
  - (a) consider the dispute; and
  - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 186(6), that procedure may involve allowing the continuation of a procedure that has already been begun for resolving the dispute by alternative means.
- (5) Except in exceptional circumstances and subject to section 187(3), OFCOM must make their determination no more than four months after the following day –
  - (a) in a case falling within subsection (1)(a), the day of the decision by OFCOM that it is appropriate for them to handle the dispute; and
  - (b) in a case falling within subsection (1)(b), the day on which the dispute is referred back to them.



- (6) Where it is practicable for OFCOM to make their determination before the end of the four month period, they must make it as soon in that period as practicable.
- (7) OFCOM must –
  - (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute; and
  - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (8) The publication of information under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention, to the extent that they consider appropriate, of members of the public.

### **189 Disputes involving other member States**

- (1) This section applies where it appears to OFCOM that a dispute referred or referred back to them under this Chapter relates partly to a matter falling within the jurisdiction of the regulatory authorities of another member State.
- (2) A dispute relates to matters falling within the jurisdiction of the regulatory authorities of another member State to the extent that –
  - (a) it relates to the carrying on of activities by one or both of the parties to the dispute in more than one member State or to activities carried on by different parties to the dispute in different member States; and
  - (b) the activities to which the dispute relates, so far as they are carried on in another member State, are carried on in the member State for which those authorities are the regulatory authorities.
- (3) For the purposes of subsection (2) the activities that are carried on in a member State include anything done by means of an electronic communications network, or part of such a network, which is situated in that member State.
- (4) Before taking any steps under this Chapter in relation to the reference or the dispute, OFCOM must consult the other regulatory authorities within whose jurisdiction the matter falls.
- (5) It shall be the duty of OFCOM to secure that steps taken in relation to the reference or dispute (whether taken by them or by the other regulatory authorities) are, so far as practicable, agreed between OFCOM and those authorities.
- (6) Accordingly, section 188 is to have effect in relation to the reference as if the period for making a determination which is specified in subsection (5) of that section were such period (if any) as may be agreed between –
  - (a) OFCOM; and
  - (b) the other regulatory authorities within whose jurisdiction the matter falls.

**190 Resolution of referred disputes**

- (1) Where OFCOM make a determination for resolving a dispute referred to them under this Chapter, their only powers are those conferred by this section.
- (2) \* \* \* \* \*
- (3) Their main power in the excepted case is just to make a declaration setting out the rights and obligations of the parties to the dispute.
- (4) Nothing in this section prevents OFCOM from exercising the following powers in consequence of their consideration under this Chapter of any dispute –
  - (a) \* \* \* \* \*
  - (b) their powers to vary, modify or revoke wireless telegraphy licences or grants of recognised spectrum access;
  - (c) their power to make, amend or revoke regulations under section 1 or 3 of the Wireless Telegraphy Act 1949 (c. 54).
- (5) In the case of a dispute referred back to OFCOM under section 186(6) –
  - (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve the dispute by alternative means; and
  - (b) the determination made by OFCOM may include provision ratifying decisions so made.
- (6) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute –
  - (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM, or in connection with it; and
  - (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute.
- (7) OFCOM are not, under subsection (6)(b), to require payments to be made to them by a party to the dispute except –
  - (a) \* \* \* \* \*
  - (b) where it appears to OFCOM that the reference of the dispute by that party was frivolous or vexatious or that that party has otherwise abused the right of reference conferred by this Chapter.
- (8) A determination made by OFCOM for resolving a dispute referred or referred back to them under this Chapter binds all the parties to the dispute.
- (9) Subsection (8) is subject to section 192.

**191 OFCOM's power to require information in connection with dispute**

- (1) Where a dispute has been referred or referred back to OFCOM under this Chapter, they may require any person to whom subsection (2) applies to

provide them with all such information as they may require for the purpose of –

- (a) deciding whether it is appropriate for them to handle the dispute;
  - (b) determining whether it is necessary for them to consult the regulatory authorities of another member State; or
  - (c) considering the dispute and making a determination for resolving it.
- (2) This subsection applies to –
- (a) a party to the dispute; and
  - (b) a person who is not a party to the dispute but appears to OFCOM to have information that is relevant to the matters mentioned in subsection (1)(a) to (c).
- (3) A person required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by OFCOM.
- (4) In fixing the period within which information is to be provided in accordance with a requirement under this section OFCOM must have regard, in particular, to –
- (a) their obligation to make a determination for resolving the dispute within the period specified in section 188;
  - (b) the nature of the dispute; and
  - (c) the information that is required.
- (5) Sections 138 to 144 apply for the enforcement of a requirement under this section as they apply for the enforcement of requirements under section 135 or 136.
- (6) In its application for the enforcement of this section, section 138 is to have effect as if it allowed OFCOM to specify such period of less than one month for doing the things mentioned in subsection (3) of that section as they consider appropriate for the purpose of enabling them to comply with an obligation of theirs to make a determination within a particular period.

### *Appeals*

## **192 Appeals against decisions by OFCOM, the Secretary of State etc.**

- (1) This section applies to the following decisions –
- (a) a decision by OFCOM under this Part, the Wireless Telegraphy Act 1949 (c. 54) or the Wireless Telegraphy Act 1998 (c. 6) that is not a decision specified in Schedule 8;
  - (b) \* \* \* \*
  - (c) \* \* \* \*
  - (d) a decision by the Secretary of State to which effect is given by one of the following –

- (i) a specific direction under section 5 that is not about the making of a decision specified in Schedule 8;
  - (ii) \* \* \* \*
  - (iii) \* \* \* \*
  - (iv) a specific direction under section 156 that is not about the making of a decision specified in Schedule 8.
- (2) A person affected by a decision to which this section applies may appeal against it to the Tribunal.
- (3) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.
- (5) The notice of appeal must set out –
- (a) the provision under which the decision appealed against was taken; and
  - (b) the grounds of appeal.
- (6) The grounds of appeal must be set out in sufficient detail to indicate –
- (a) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both; and
  - (b) to what extent (if any) the appellant is appealing against the exercise of a discretion by OFCOM, by the Secretary of State or by another person.
- (7) In this section and Schedule 8 references to a decision under an enactment –
- (a) include references to a decision that is given effect to by the exercise or performance of a power or duty conferred or imposed by or under an enactment; but
  - (b) include references to a failure to make a decision, and to a failure to exercise a power or to perform a duty, only where the failure constitutes a failure to grant an application or to comply with any other form of request to make the decision, to exercise the power or to perform the duty;
- and references in the following provisions of this Chapter to a decision appealed against are to be construed accordingly.
- (8) For the purposes of this section and the following provisions of this Chapter a decision to which effect is given by the exercise or performance of a power or duty conferred or imposed by or under an enactment shall be treated, except where provision is made for the making of that decision at a different time, as made at the time when the power is exercised or the duty performed.

**193 Reference of price control matters to the Competition Commission**

\* \* \* \* \*

**194 Composition of Competition Commission for price control references**

\* \* \* \* \*

**195 Decisions of the [Royal Court of Jersey]**

- (1) The [Royal Court of Jersey] shall dispose of an appeal under section 192(2) in accordance with this section.
- (2) The [Royal Court of Jersey] shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The [Royal Court of Jersey]'s decision must include a decision as to what (if any) is the appropriate action for the decision-maker to take in relation to the subject-matter of the decision under appeal.
- (4) The [Royal Court of Jersey] shall then remit the decision under appeal to the decision-maker with such directions (if any) as the [Royal Court of Jersey] considers appropriate for giving effect to its decision.
- (5) The [Royal Court of Jersey] must not direct the decision-maker to take any action which he would not otherwise have power to take in relation to the decision under appeal.
- (6) It shall be the duty of the decision-maker to comply with every direction given under subsection (4).
- (7) \* \* \* \* \*
- [(8) The power of the Superior Number of the Royal Court to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948, as amended,<sup>11</sup> shall include power to make Rules for the purposes of appeals under section 192.]
- (9) In this section “the decision-maker” means –
  - (a) OFCOM or the Secretary of State, according to who took the decision appealed against; or
  - (b) in the case of an appeal against –
    - (i) a direction, approval or consent given by a person other than OFCOM or the Secretary of State, or
    - (ii) the modification or withdrawal by such a person of such a direction, approval or consent,

that other person.

**196 Appeals from the [Royal Court of Jersey]**

- (1) A decision of the [Royal Court of Jersey] on an appeal under section 192(2) may itself be appealed.
- (2) An appeal under this section –

- [(a) lies to the Jersey Court of Appeal;]
- (b) must relate only to a point of law arising from the decision of the [Royal Court of Jersey].
- (3) An appeal under this section may be brought by –
  - (a) a party to the proceedings before the [Royal Court of Jersey]; or
  - (b) any other person who has a sufficient interest in the matter.
- (4) An appeal under this section requires the permission of the [Royal Court of Jersey] or of the [Jersey Court of Appeal] to which it is to be made.
- (5) In this section references to a decision of the [Royal Court of Jersey] include references to a direction given by it under section 195(4).

### *Interpretation of Chapter 3*

## **197 Interpretation of Chapter 3**

- (1) In this Chapter –
  - “network access” has the same meaning as in Chapter 1 of this Part;
  - \* \* \* \*
  - \* \* \* \*
- (2) References in this Chapter, in relation to a dispute, to the regulatory authorities of other member States are references to such of the authorities of the other member States as have been notified under the Framework Directive to the European Commission as the regulatory authorities of those States for the purposes of the matters to which the dispute relates.
- (3) \* \* \* \*

## **PART 3**

### **TELEVISION AND RADIO SERVICES**

## **CHAPTER 1**

### **THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE**

#### *The BBC*

## **198 Functions of OFCOM in relation to the BBC**

- (1) It shall be a function of OFCOM, to the extent that provision for them to do so is contained in –
  - (a) the BBC Charter and Agreement, and
  - (b) the provisions of this Act and of Part 5 of the 1996 Act,

to regulate the provision of the BBC's services and the carrying on by the BBC of other activities for purposes connected with the provision of those services.

- (2) For the purposes of the carrying out of that function OFCOM –
  - (a) are to have such powers and duties as may be conferred on them by or under the BBC Charter and Agreement; and
  - (b) are entitled, to the extent that they are authorised to do so by the Secretary of State or under the terms of that Charter and Agreement, to act on his behalf in relation to that Charter and Agreement.
- (3) The BBC must pay OFCOM such penalties in respect of contraventions by the BBC of provision made by or under –
  - (a) this Part, or
  - (b) the BBC Charter and Agreement,as are imposed by OFCOM in exercise of powers conferred on them by that Charter and Agreement.
- (4) The BBC are also to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the BBC as may be –
  - (a) agreed from time to time between the BBC and OFCOM; or
  - (b) (in default of agreement) fixed by the Secretary of State.
- (5) The maximum penalty that may be imposed on the BBC on any occasion by OFCOM in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000.
- (6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (5).
- (7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (8) It shall be the duty of OFCOM to have regard to their functions under this section when carrying out their functions under the 1990 Act, the 1996 Act and this Part in relation to services provided by persons other than the BBC.
- (9) In this section “the BBC's services” means such of the services provided by the BBC (excluding the services comprised in the World Service) as are of a description of service which, if provided by a BBC company, would fall to be regulated by OFCOM by virtue of section 211 or 245.

#### C4C

### 199 Functions of C4C

- (1) The activities that C4C are able to carry on include any activities which appear to them –

- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and
  - (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.
- (2) C4C's primary functions are –
  - (a) securing the continued provision of Channel 4; and
  - (b) the fulfilment of the public service remit for that Channel under section 265.
- (3) Section 24(5)(b) and (6) of the 1990 Act (power of C4C to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.
- (4) For sub-paragraphs (3) and (4) of paragraph 1 of Schedule 3 to the 1990 Act (power of C4C to do things incidental or conducive to the carrying out of their functions) there shall be substituted –
  - “(3) The Corporation may do anything which appears to them to be incidental or conducive to the carrying out of their functions.
  - (4) The powers of the Corporation under sub-paragraph (3) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so –
    - (a) to borrow money;
    - (b) to carry on activities (other than those comprised in their duty to carry out their primary functions) through Channel 4 companies; and
    - (c) to participate with others in the carrying on of any such activities.”
- (5) Schedule 9 (which makes provision for the approval by OFCOM, and for the enforcement, of arrangements made by C4C about the carrying on of their activities) shall have effect.

## 200 Removal of members of C4C

- (1) In paragraph 3 of Schedule 3 to the 1990 Act (term of office of members of C4C), after sub-paragraph (2) there shall be inserted –
  - “(2A) OFCOM may at any time, by notice to a member of the Corporation, terminate the appointment of that member.
  - (2B) Before terminating a person's appointment under sub-paragraph (2A), OFCOM must consult the Secretary of State.”
- (2) This section applies only to a member whose appointment was made, or last renewed, after the coming into force of this section.



**201 Deficits and surpluses of C4C**

- (1) Sections 26 and 27 of the 1990 Act (revenue deficits of C4C to be funded by providers of Channel 3 services and application of excess revenues of C4C) shall cease to have effect.
- (2) This section has effect in relation to a deficit or excess for a year ending after the commencement of this section.

**202 Borrowing limit for C4C**

- (1) The Secretary of State may by order provide for a limit on the borrowing that C4C is allowed to undertake.
- (2) The order may fix the limit either –
  - (a) by specifying the sum which the outstanding borrowing of C4C must not at any time exceed; or
  - (b) \* \* \* \* \*
- (3) C4C are not to borrow money if the effect of the borrowing would be to cause the amount of their outstanding borrowing to be, or to remain, in excess of the limit (if any) that is for the time being in force.
- (4) For the purposes of this section the amount of C4C's outstanding borrowing at any time is the aggregate amount outstanding at that time in respect of the principal of sums borrowed by them, but after allowing sums borrowed to repay existing loans to be applied for that purpose.
- (5) Before making an order under this section, the Secretary of State must consult C4C.
- (6) The consent of the Treasury is required for the making of an order under this section.

*The Welsh Authority*

\* \* \* \* \*

*The Gaelic Media Service*

\* \* \* \* \*

**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 \* \* \* \* \*; 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 [and the Bailiwick of Jersey] with a view to their being broadcast otherwise than only from a satellite;
  - (b) \* \* \* \*
  - (c) \* \* \* \*
  - (d) restricted television services that are provided from places in the United Kingdom [and the Bailiwick of Jersey]; and
  - (e) additional television services that are provided from places in the United Kingdom [and the Bailiwick of Jersey].
- (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) \* \* \* \*
- (c) television multiplex services falling to be licensed under Part 1 of the 1996 Act.

## 213 Abolition of licensing for local cable systems

\* \* \* \*

*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 –
  - (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 [or the Bailiwick of Jersey] of the licensed service;
  - (b) charges on persons in respect of their reception in the United Kingdom [or the Bailiwick of Jersey] 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 [or the Bailiwick of Jersey] 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
  - (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.
- (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.
- (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.

- (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, \* \* \* 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 available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 \* \* \* (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 the Bailiwick of Jersey] or prevents the different items from being made available only in the parts of the United Kingdom [or the Bailiwick of Jersey] 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
  - (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 [and to the Bailiwick of Jersey] of the licensed service.
- (6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).
- (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
  - (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 –
  - (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.
- (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.
- (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;

“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
  - (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
  - (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.
- (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;
  - (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) \* \* \* \*
- (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) \* \* \* \*
- (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) \* \* \* \*
- (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.
- (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 [and the Bailiwick of Jersey] of Channel 4;
  - (b) charges on persons in respect of their reception in the United Kingdom [and the Bailiwick of Jersey] 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 [and the Bailiwick of Jersey] 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.
- (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.

### **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 –
- “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.
- (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
  - (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) \* \* \* \* \*

### **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.
- (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); \* \* \*
  - (b) \* \* \* \* \*
- (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.
- (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) \* \* \* \* \*
    - (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 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)”.

## **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) \* \* \* \* \*
  - (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
  - (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) 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) \* \* \* \* \*

### 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 the Bailiwick of Jersey] 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 [and the Bailiwick of Jersey].
- (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) \* \* \* \* \*
  - (e) \* \* \* \* \*
  - (f) \* \* \* \* \*
- (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

- (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 [and the Bailiwick of Jersey] 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 the Bailiwick of Jersey]; 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 [and the Bailiwick of Jersey] or at another defined location in the United Kingdom [and the Bailiwick of Jersey]; or
    - (ii) for the purposes of a particular event taking place within the United Kingdom [and the Bailiwick of Jersey].
- (5) The services that are to be treated for the purposes of this section as provided from places in the United Kingdom [and the Bailiwick of Jersey] 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 the Bailiwick of Jersey]; 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 [or], a C4 company \* \* \*.
- (7) \* \* \* \* \*

## 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 –
  - (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.
- (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 subparagraph (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) \* \* \* \* \*

**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.
- (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) –
  - (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

- (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

\* \* \* \* \*

## 255 Extension of special application procedure for local licences

\* \* \* \* \*

### *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 –
  - “(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 –
  - “(iia) 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

- (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.
- (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;
- (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.

## CHAPTER 4

### REGULATORY PROVISIONS

#### *Application of regulatory regimes*

#### **263 Application of regulatory regimes**

- (1) It shall be the duty of OFCOM, by exercising –
- (a) their powers under the 1990 Act and the 1996 Act, and
  - (b) their powers under this Part,
- to secure that the holder of every Broadcasting Act licence at all times holds his licence on the conditions which are for the time being included, under this Chapter and Chapter 5 of this Part, in the regulatory regime for the licensed service.
- (2) It shall also be the duty of OFCOM to do all that they can to secure that the holder of every such licence complies, in relation to the licensed service, with the conditions so included in the regulatory regime for that service.
- (3) Where –

- (a) the licence for a Channel 3 service, for Channel 4, for Channel 5 or for the public teletext service (“the main service”) authorises or requires a corresponding or additional service to be provided in analogue form, and
- (b) the regulatory regime for the main service imposes obligations in relation to programmes and other items included in that service,  
those obligations are to apply equally to programmes that are included in the analogue service without being included in the main service.
- (4) The Secretary of State may by order provide for conditions which are included by virtue of a provision of this Act in the regulatory regime for any service to cease to be so included.
- (5) \* \* \* \* \*
- (6) This section does not restrict OFCOM’s powers and duties apart from this section to impose obligations by means of the inclusion of conditions in a Broadcasting Act licence.

*The public service remit for television*

**264 OFCOM reports on the fulfilment of the public service remit**

- (1) It shall be the duty of OFCOM –
  - (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
  - (b) as soon as practicable after the end of each such subsequent period as may be selected by OFCOM for the purposes of this section,  
to satisfy, for that period, the review and reporting obligations of subsection (3).
- (2) The period selected by OFCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OFCOM have satisfied those review and reporting obligations.
- (3) The review and reporting obligations for a period are –
  - (a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey]; and
  - (b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey], to prepare a report on the matters found on the review.
- (4) The purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey] are –

- (a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
  - (b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
  - (c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
  - (d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to –
    - (i) the contents of the programmes;
    - (ii) the quality of the programme making; and
    - (iii) the professional skill and editorial integrity applied in the making of the programmes.
- (5) When –
- (a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey] are fulfilled, and
  - (b) reviewing and reporting on that matter,
- OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).
- (6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey] is compatible with this subsection if it ensures –
- (a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;
  - (b) that cultural activity in the United Kingdom [and the Bailiwick of Jersey], and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;
  - (c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom [and the Bailiwick of Jersey] and from around the world;
  - (d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;

- (e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;
  - (f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
  - (g) that the programmes included in those services that deal with religion and other beliefs include –
    - (i) programmes providing news and other information about different religions and other beliefs;
    - (ii) programmes about the history of different religions and other beliefs; and
    - (iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);
  - (h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;
  - (i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom [and the Bailiwick of Jersey], and locally in different parts of the United Kingdom [and the Bailiwick of Jersey];
  - (j) that those services (taken together), so far as they include programmes made in the United Kingdom [and the Bailiwick of Jersey], include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.
- (7) In carrying out a review under this section OFCOM must consider –
- (a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and
  - (b) the sources of income available to each of them for meeting those costs.
- (8) Every report under this section must –
- (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey] have been satisfied;
  - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;

- (c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and
  - (d) set out OFCOM's conclusions on the current state of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey].
- (9) In performing their duties under this section, OFCOM must have regard, in particular, to –
  - (a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;
  - (b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and
  - (c) such matters arising at times before the coming into force of this section as OFCOM consider material.
- (10) Every report prepared by OFCOM under this section must be published by them –
  - (a) as soon as practicable after its preparation is complete; and
  - (b) in such manner as they consider appropriate.
- (11) The following are relevant television services for the purposes of this section –
  - (a) the television broadcasting services provided by the BBC;
  - (b) \* \* \* \* \*
  - (c) every Channel 3 service;
  - (d) Channel 4;
  - (e) Channel 5;
  - (f) the public teletext service.
- (12) The following are public service broadcasters for the purposes of this section –
  - (a) the BBC;
  - (b) \* \* \* \* \*
  - (c) the providers of the licensed public service channels; and
  - (d) the public teletext provider.
- (13) In this section –
 

“belief” means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines; and

“drama” includes contemporary and other drama in a variety of different formats.



**265 Public service remits of licensed providers**

\* \* \* \* \*

**266 Statements of programme policy**

\* \* \* \* \*

**267 Changes of programme policy**

\* \* \* \* \*

**268 Statements of service policy by the public teletext provider**

\* \* \* \* \*

**269 Changes of service policy**

\* \* \* \* \*

**270 Enforcement of public service remits**

\* \* \* \* \*

**271 Power to amend public service remits**

- (1) The Secretary of State may by order modify any one or more of the following –
  - (a) the public service remit for any licensed public service channel or for the public teletext service;
  - (b) the purposes of public service television broadcasting in the United Kingdom [and the Bailiwick of Jersey] (within the meaning given by subsection (4) of section 264);
  - (c) the matters to which OFCOM are to have regard under subsections (5) and (6) of that section.
- (2) The Secretary of State is not to make an order under this section except where –
  - (a) OFCOM have made a recommendation for the making of such an order in their most recent report under section 229 or 264; or
  - (b) subsection (3) applies to the order.
- (3) This subsection applies to an order if –
  - (a) it is made by the Secretary of State less than twelve months after the date on which he has received a report under section 229;
  - (b) he has considered that report; and

- (c) he is satisfied that the making of the order is required, notwithstanding the absence of a recommendation by OFCOM, by circumstances or other matters which are dealt with in that report or which (in his opinion) should have been.
- (4) Before including a recommendation for the making of an order under this section in a report under section 229 or 264, OFCOM must consult –
  - (a) members of the public in the United Kingdom [and the Bailiwick of Jersey];
  - (b) such public service broadcasters as they consider are likely to be affected if the Secretary of State gives effect to the recommendation they are proposing to make; and
  - (c) such of the other persons providing television and radio services as OFCOM consider appropriate.
- (5) Before making an order under this section, the Secretary of State must consult the persons mentioned in subsection (6) about its terms (even if the order is the one recommended by OFCOM).
- (6) Those persons are –
  - (a) OFCOM;
  - (b) such public service broadcasters as they consider are likely to be affected by the order; and
  - (c) such of the other persons providing television and radio services as he considers appropriate.
- (7) \* \* \* \* \*
- (8) In this section “public service broadcaster” means any of the persons who are public service broadcasters for the purposes of section 264.

*Must-offer obligations etc. affecting public service television*

## **272 Must-offer obligations in relation to networks**

\* \* \* \* \*

## **273 Must-offer obligations in relation to satellite services**

\* \* \* \* \*

## **274 Securing reception of must-provide services in certain areas**

\* \* \* \* \*

## **275 Must-provide services for the purposes of s. 274**

- (1) For the purposes of section 274 the list of must-provide services is as follows –

- (a) every service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
  - (b) the Channel 3 services so far as provided in digital form;
  - (c) Channel 4 so far as provided in digital form;
  - (d) Channel 5 so far as provided in digital form;
  - (e) \* \* \* \* \*
  - (f) the digital public teletext service.
- (2) The Secretary of State may by order modify the list of must-provide services in subsection (1).
- (3) In determining whether it is appropriate, by an order under subsection (2), to add a service to the list of must-provide services or to remove a service from that list, the Secretary of State must have regard, in particular, to –
- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
  - (b) the likely effect of the proposed modification as respects the costs to be borne, under arrangements entered into or imposed under section 274, by the persons who, after the coming into force of the modification, would have to be parties to those arrangements; and
  - (c) the extent to which that effect is proportionate to the benefit mentioned in paragraph (a).

## **276 Co-operation with the public teletext provider**

- (1) The regulatory regime for every Channel 3 service and for Channel 4 includes the conditions that OFCOM consider appropriate for securing that the provider of the service or channel grants access to the facilities mentioned in subsection (2) –
  - (a) to the public teletext provider; and
  - (b) to any person authorised by virtue of section 220 to provide the whole or a part of the public teletext service on his behalf.
- (2) Those facilities are the facilities that are reasonably required by the public teletext provider or the authorised person for the purposes of, or in connection with, the provision of the public teletext service.
- (3) A licence holder granting access to facilities in pursuance of a condition imposed under this section may require the public teletext provider or authorised person to pay a reasonable charge in respect of the facilities.
- (4) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

*Programming quotas for public service television***277 Programming quotas for independent productions**

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In this section –
  - (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this section;
  - (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this section; and
  - (c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.
- (4) The Secretary of State may also by order provide for the regulatory regime for every licensed public service channel to include conditions falling within subsection (5), either instead of or as well as those falling within subsection (1).
- (5) The conditions falling within this subsection are those that OFCOM consider appropriate for securing that, in each year, not less than the percentage specified in the order of the programming budget for that year for that channel is applied in the acquisition of independent productions.
- (6) The power to make an order under subsection (4) includes power to provide that conditions that have previously ceased under such an order to be included in the regulatory regime for every licensed public service channel are again so included, in addition to or instead of the conditions already so included (apart from the exercise of that power) by virtue of this section.
- (7) The Secretary of State is not to make an order for the regulatory regime of every licensed public service channel to include or exclude conditions falling within subsection (1) or conditions falling within subsection (5) unless –
  - (a) OFCOM have made a recommendation to him for those conditions to be included or excluded; and
  - (b) the order gives effect to that recommendation.

- (8) The regulatory regime for every licensed public service channel also includes a condition requiring the provider of the channel to comply with directions given to him by OFCOM for the purpose of –
- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in his compliance with the requirements of conditions imposed by virtue of subsection (1) or (4); and
  - (b) thereby increasing the percentage applicable for the purposes of those conditions to the subsequent year or years.
- (9) For the purposes of conditions imposed by virtue of this section –
- (a) the amount of the programming budget for a licensed public service channel for a year, and
  - (b) the means of determining the amount of that budget that is applied for any purpose,
- are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.
- (10) The powers of the Secretary of State to make orders under this section do not include –
- (a) power to specify different percentages for the purposes of subsection (1), or of a condition falling within subsection (5), for different regional Channel 3 services or for different national Channel 3 services; or
  - (b) power to make different provision for different licensed public service channels as to whether conditions falling within subsection (1) or conditions falling within subsection (5), or both, are included in the regulatory regimes for those services.
- (11) Before making an order under this section the Secretary of State must consult OFCOM, [and] the BBC \* \* \*.
- (12) \* \* \* \* \*
- (13) In this section –
- “acquisition”, in relation to a programme, includes commissioning and the acquisition of a right to include it in a service or to have it broadcast;
- “programme” does not include an advertisement; and
- “programming budget” means the budget for the production and acquisition of qualifying programmes.

## 278 Programming quotas for original productions

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing –
- (a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time

- allocated to the broadcasting of all the programmes included in the channel; and
- (b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.
- (2) The proportion determined by OFCOM for the purposes of subsection (1) –
- (a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and
- (b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.
- (3) A condition contained in a licence by virtue of this section may provide –
- (a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;
- (b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.
- (4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.
- (7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.
- (8) Before making an order under this section the Secretary of State must consult OFCOM [and], the BBC \* \* \*.
- (9) \* \* \* \* \*
- (10) In this section –
- “peak viewing time”, in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and
- “programme” does not include an advertisement.

- (11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.

*News provision etc. on public service television*

**279 News and current affairs programmes**

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing –
- (a) that the programmes included in the channel include news programmes and current affairs programmes;
  - (b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and
  - (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.
- (2) That regime also includes the conditions that OFCOM consider appropriate for securing that, in each year –
- (a) the time allocated to the broadcasting of news programmes included in the service, and
  - (b) the time allocated to the broadcasting of current affairs programmes so included,
- each constitutes no less than what appears to OFCOM to be an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the channel.
- (3) It further includes the conditions that OFCOM consider appropriate for securing that the time allocated –
- (a) to the broadcasting of news programmes included in the service, and
  - (b) to the broadcasting of current affairs programmes so included,
- is, in each case, split in what appears to OFCOM to be an appropriate manner between peak viewing times and other times.
- (4) The proportion determined by OFCOM for the purposes of subsection (2) may, for the purposes of subsection (3), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.
- (5) In this section “peak viewing time”, in relation to a licensed public service channel, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that channel.
- (6) Before determining for the purposes of this section –
- (a) the proportion of time to be allocated to the broadcasting of news programmes or current affairs programmes; or
  - (b) what constitutes a peak viewing time for a channel,

OFCOM must consult the provider of the channel or (as the case may be) the person who is proposing to provide it.

- (7) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

## **280 Appointed news providers for Channel 3**

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing the nationwide broadcasting, on the regional Channel 3 services (taken together), of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom [and the Bailiwick of Jersey].
- (2) The conditions imposed under this section must include a condition requiring the holder of a regional Channel 3 licence to do all that he can to ensure –
- (a) that arrangements for the appointment of a single body corporate as the appointed news provider are maintained between all the holders of regional Channel 3 licences; and
  - (b) that, at all times while he is providing a regional Channel 3 service, there is in force an appointment made in accordance with those arrangements.
- (3) The arrangements that are required to be maintained by virtue of conditions imposed under subsection (2) must provide –
- (a) for the terms on which a body is appointed as the appointed news provider to include the terms appearing to OFCOM to be appropriate for securing that the body's finances are adequate, throughout the period of its appointment, to ensure that the Channel 3 news obligations are capable of being met; and
  - (b) for the approval of OFCOM to be required for the purposes of paragraph (a) to the terms on which an appointment is made.
- (4) The conditions imposed under this section must include the conditions that OFCOM consider appropriate for securing that arrangements maintained between –
- (a) the holders of regional Channel 3 licences, and
  - (b) the body which is the appointed news provider,
- ensure that that body is subject to an obligation, enforceable by OFCOM, to provide OFCOM with all such information as they may require for the purpose of carrying out their functions.
- (5) The conditions imposed under this section must include a condition requiring the news programmes included in a regional Channel 3 service –
- (a) to be programmes provided by the body which is for the time being the appointed news provider for the purposes of this section; and



- (b) to be so included in that service as to be broadcast simultaneously with the broadcasting of news programmes included, in accordance with conditions imposed under this subsection, in other regional Channel 3 services.
- (6) Those conditions must also require the news programmes provided by the appointed news provider which, in accordance with a condition imposed under subsection (5), are included in a regional Channel 3 service to be programmes that are presented live.
- (7) OFCOM –
  - (a) may issue guidance as to the terms that will satisfy requirements imposed by virtue of subsection (3)(a); and
  - (b) must have regard to guidance for the time being in force under this subsection when considering whether to give an approval for the purposes of provision made by virtue of subsection (3)(b).
- (8) For the purposes of this section the Channel 3 news obligations are –
  - (a) the requirements of any conditions imposed in relation to regional Channel 3 services under section 279; and
  - (b) the nationwide broadcasting on the regional Channel 3 services (taken together) of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom [and the Bailiwick of Jersey].
- (9) Conditions imposed under this section are not to require arrangements to make provision falling within subsection (3)(a) or (b) or (4) in relation to appointments made before the commencement of this section.
- (10) Section 32 of the 1990 Act (nomination of bodies eligible for appointment as news providers) shall cease to have effect.

## **281 Disqualification from appointment as news provider**

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing –
  - (a) that a body is not appointed as the appointed news provider if it falls within subsection (2); and
  - (b) that the appointment of a body as the appointed news provider ceases to have effect if it becomes a body falling within that subsection.
- (2) A body falls within this subsection if –
  - (a) it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or
  - (b) there would be a contravention of Part 1 of Schedule 14 to this Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided.

**282 Power to repeal or modify Channel 3 news provider provisions**

- (1) If it appears to the Secretary of State appropriate to do so, he may by order repeal or otherwise modify any of the provisions of section 280 or 281.
- (2) Except in a case to which subsection (3) applies, the Secretary of State must consult OFCOM before making an order under this section.
- (3) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (4) \* \* \* \*

**283 News providers for Channel 5**

- (1) If it appears to the Secretary of State appropriate to do so, he may by order make provision requiring news programmes included in Channel 5 to be provided by a person appointed as a news provider in accordance with the order.
- (2) An order under this section may make provision in relation to Channel 5 that corresponds, with such modifications as the Secretary of State thinks fit, to any provision made in relation to regional Channel 3 services by section 280 or 281.
- (3) Subsection (2) applies irrespective of any repeal or other modification by an order under this Act of section 280 or 281.
- (4) \* \* \* \*
- (5) The Secretary of State is not to make an order under this section for the imposition of obligations in relation to Channel 5 unless he is satisfied that Channel 5's share of the audience for television broadcasting services is broadly equivalent to that of the services comprising Channel 3.
- (6) An order under this section must require a licence holder to have a reasonable opportunity of making representations to OFCOM before his licence is varied in pursuance of the order.
- (7) Except in a case to which subsection (8) applies, the Secretary of State must consult OFCOM before making an order under this section.
- (8) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (9) \* \* \* \*

**284 News provision on the public teletext service**

- (1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing –
  - (a) that the service includes what appears to OFCOM to be a suitable quantity and variety of news items; and

- (b) that the news items included in the service are up to date and regularly revised.
- (2) Conditions imposed under this section in relation to a time when the public teletext service comprises both –
  - (a) an analogue teletext service, and
  - (b) a teletext service provided in digital form,must apply to both services but may make different provision for each of them.

*Independent and regional productions and programmes for public service television*

**285 Code relating to programme commissioning**

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provider of the channel draws up and from time to time revises a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions.
- (2) That regime also includes the conditions that OFCOM consider appropriate for securing that the provider of every licensed public service channel –
  - (a) at all times complies with a code of practice which has been drawn up by him by virtue of this section and is for the time being in force; and
  - (b) exercises his power to revise his code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this section.
- (3) The conditions imposed under this section must ensure that the code for the time being in force in the case of every licensed public service channel secures, in the manner described in guidance issued by OFCOM –
  - (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
  - (b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
  - (c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;
  - (d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and exclusivity of those rights;
  - (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;

- (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
  - (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.
- (4) The conditions imposed under this section must also ensure that the drawing up or revision of a code by virtue of this section is in accordance with guidance issued by OFCOM as to –
  - (a) the times when the code is to be drawn up or reviewed with a view to revision;
  - (b) the consultation to be undertaken before a code is drawn up or revised; and
  - (c) the publication of every code or revised code.
- (5) The provision that may be included in a condition imposed under this section includes –
  - (a) provision requiring a draft of a code or of any revision of a code to be submitted to OFCOM for approval;
  - (b) provision for the code or revision to have effect only if approved by OFCOM; and
  - (c) provision for a code or revision that is approved by OFCOM subject to modifications to have effect with those modifications.
- (6) OFCOM –
  - (a) must issue and may from time to time revise guidance for the purposes of this section;
  - (b) must ensure that there is always guidance for those purposes in force;
  - (c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), [and] the BBC \* \* \*; and
  - (d) must publish their guidance or revised guidance in such manner as they think appropriate.
- (7) Guidance issued by OFCOM for the purposes of this section must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.
- (8) Conditions imposed under this section requiring a code to be drawn up or approved may include transitional provision for treating a code drawn up before the imposition of the condition –
  - (a) as satisfying the requirements of that condition; and
  - (b) as a code approved by OFCOM for the purposes of conditions so imposed.

- (9) In this section “independent production” has the same meaning as in section 277.

## **286 Regional programme-making for Channels 3 and 5**

- (1) The regulatory regime for every Channel 3 service includes the conditions (if any) that OFCOM consider appropriate in the case of that service for securing –
- (a) that what appears to OFCOM to be a suitable proportion of Channel 3 programmes made in the United Kingdom [of the Bailiwick of Jersey] are programmes made in the United Kingdom [of the Bailiwick of Jersey] outside the M25 area;
  - (b) that the Channel 3 programmes that are made in the United Kingdom [of the Bailiwick of Jersey] outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
  - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the providers of Channel 3 services on Channel 3 programmes made in the United Kingdom [of the Bailiwick of Jersey] is referable to programme production at different production centres outside the M25 area; and
  - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (2) In the case of a national Channel 3 service, subsection (1) requires the inclusion of conditions in the licence for the service only where OFCOM consider, having regard to the nature of the service, that it would be appropriate for conditions falling within that subsection to be so included.
- (3) The regulatory regime for Channel 5 includes the conditions that OFCOM consider appropriate for securing –
- (a) that what appears to OFCOM to be a suitable proportion of the programmes made in the United Kingdom [of the Bailiwick of Jersey] for viewing on that Channel are programmes made in the United Kingdom [of the Bailiwick of Jersey] outside the M25 area;
  - (b) that the programmes for such viewing that are made in the United Kingdom [of the Bailiwick of Jersey] outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
  - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the provider of Channel 5 on programmes made in the United Kingdom [of the Bailiwick of Jersey] for viewing on that Channel is referable to programme production at different production centres outside the M25 area; and
  - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

- (4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (7) In this section –
  - “Channel 3 programmes” means programmes made for viewing on Channel 3 in more than one area for which regional Channel 3 services are provided, including any programme made for viewing on a national Channel 3 service other than a regional programme;
  - “expenditure”, in relation to a programme, means –
    - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
    - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
  - “programme” does not include an advertisement; and
  - “regional programme” means a programme made with a view to its inclusion in a national Channel 3 service as a programme of particular interest to persons living within a particular area of the United Kingdom [of the Bailiwick of Jersey].

## **287 Regional programmes on Channel 3**

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing –
  - (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;
  - (b) that the regional programmes included in the service are of high quality;
  - (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in that area;
  - (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;

- (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing –
    - (i) at peak viewing times; and
    - (ii) at times immediately preceding or following those times.
- (2) The regulatory regime for every local Channel 3 service includes the conditions that OFCOM consider appropriate for securing –
  - (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of local programmes;
  - (b) that, in the case of each part of an area or each community for which the service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
  - (c) that the local programmes included in the service are of high quality;
  - (d) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the local programmes included in the service consists of programmes made in the area for which the service is provided;
  - (e) that the local news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
  - (f) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other local programmes that are included in the service consists of programmes broadcast for viewing –
    - (i) at peak viewing times; and
    - (ii) at times immediately preceding or following those times.
- (3) In the case of a local Channel 3 service, the conditions included in the regulatory regime for the service include conditions falling within subsection (1) to the extent only that it appears to OFCOM that the requirements of subsection (1) are not adequately met by conditions falling within subsection (2).
- (4) In the case of a national Channel 3 service in the case of which OFCOM consider that it would be appropriate to impose conditions under this subsection, the regulatory regime for the service includes the conditions that OFCOM consider appropriate for securing –
  - (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within particular areas of the United Kingdom [and the Bailiwick of Jersey];

- (b) that the regional programmes included in the service are of high quality;
  - (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in the area by reference to which they are regional programmes;
  - (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
  - (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing –
    - (i) at peak viewing times; and
    - (ii) at times immediately preceding or following those times.
- (5) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (6) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (7) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes in question.
- (8) In this section –
- “local Channel 3 service” means a regional Channel 3 service the provision of which includes the provision (in pursuance of a determination under section 14(3) of the 1990 Act) of different programmes for different parts of an area or for different communities living within an area;
- “local programme”, in relation to a service provided for different parts of an area or for different communities, means a programme included in that service for any of the parts of that area or for any of those communities, and “local news programme” is to be construed accordingly;
- “peak viewing time”, in relation to a service, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that service;
- “programme” does not include an advertisement;
- “regional programme” –
- (a) in relation to a regional Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within the area for which the service is provided;
  - (b) in relation to a national Channel 3 service, means a programme included in that service with a view to its being of particular



interest to persons living within a particular area of the United Kingdom [and the Bailiwick of Jersey];  
and “regional news programme” is to be construed accordingly.

## **288 Regional programme-making for Channel 4**

- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing –
  - (a) that what appears to OFCOM to be a suitable proportion of programmes made in the United Kingdom for viewing on Channel 4 are programmes made in the United Kingdom outside the M25 area;
  - (b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
  - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of C4C on programmes made in the United Kingdom for viewing on Channel 4 is referable to programme production at different production centres outside the M25 area; and
  - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (2) Before imposing a condition under this section, OFCOM must consult C4C.
- (3) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (4) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (5) In this section –

“expenditure”, in relation to a programme, means –

  - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
  - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast; and

“programme” does not include an advertisement.

## **289 Regional matters in the public teletext service**

- (1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the service includes what appears to them to be an appropriate proportion of material

that is of particular interest to persons living in different parts of the United Kingdom.

- (2) Conditions imposed under this section in relation to a time when the public teletext service comprises both –
  - (a) an analogue teletext service, and
  - (b) a teletext service provided in digital form,must apply to both services but may make different provision for each of them.

*Networking arrangements for Channel 3*

## **290 Proposals for arrangements**

- (1) An application for a regional Channel 3 licence, in addition to being accompanied by the proposals mentioned in section 15(3)(b) of the 1990 Act, must be accompanied by the applicant's proposals for participating in networking arrangements.
- (2) OFCOM may publish general guidance to applicants for regional Channel 3 licences as to the kinds of proposals which they are likely to consider satisfactory.
- (3) The publication of guidance under subsection (2) is to be in such manner as OFCOM consider appropriate.
- (4) Arrangements are networking arrangements for the purposes of this Part if they –
  - (a) apply to all the holders of regional Channel 3 licences;
  - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services; and
  - (c) are made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of services which is able to compete effectively with other television programme services provided in the United Kingdom [and the Bailiwick of Jersey].

## **291 Obligation as to making and continuance of approved arrangements**

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that approved networking arrangements are in force whenever –
  - (a) the licence holder is providing the licensed service; and
  - (b) no networking arrangements imposed by OFCOM under section 292 are in force.

(2) In this section “approved networking arrangements” means networking arrangements which are for the time being approved by OFCOM in accordance with Schedule 11.

(3) \* \* \* \*

(4) \* \* \* \*

## 292 OFCOM’s power to impose arrangements

(1) This section applies on each occasion on which OFCOM –

- (a) are proposing to award one or more regional Channel 3 licences; and
- (b) for that purpose publish a notice under section 15(1) of the 1990 Act.

(2) OFCOM must –

- (a) determine the date by which the holders of the licences awarded and all other regional Channel 3 providers (if any) must have entered into networking arrangements (the “networking date”); and
- (b) set out that date in that notice.

(3) The networking date must be the date by which, in OFCOM’s opinion, the networking arrangements must have been entered into if approved networking arrangements are to be fully in force before the persons awarded licences begin to provide their licensed services.

(4) If –

- (a) no suitable networking arrangements exist by the networking date, or
- (b) the suitable networking arrangements that exist at that date cease to apply to all regional Channel 3 providers on or after that date,

OFCOM may impose on all regional Channel 3 providers the networking arrangements that OFCOM consider appropriate.

(5) For the purposes of subsection (4) arrangements are suitable networking arrangements if it appears to OFCOM that they –

- (a) have been submitted to them for approval or have been approved by them; and
- (b) will be in force as approved networking arrangements when the persons awarded licences begin to provide their licensed services.

(6) Arrangements imposed under this section come into force on the date determined by OFCOM.

(7) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with the provisions of any networking arrangements imposed under this section.

(8) Where –

- (a) networking arrangements are imposed under this section,

- (b) other networking arrangements are entered into between the licence holders bound by the imposed arrangements, and
  - (c) the other arrangements entered into are approved by OFCOM,
- the imposed arrangements shall cease to have effect on the coming into force of the other arrangements as approved networking arrangements.
- (9) In this section –
- “approved networking arrangements” has the same meaning as in section 291; and
- “regional Channel 3 providers” means persons who will be licensed to provide regional Channel 3 services and will be providing such services when the licences to be awarded come into force.

### **293 Review of approved networking arrangements etc.**

- (1) It shall be the duty of OFCOM from time to time to carry out general reviews of the networking arrangements (whether approved or imposed by OFCOM) that are in force.
- (2) The first such review must be carried out no later than six months after the date on which the offers made under section 215(1) close or (if those offers close on different dates) the latest of those dates.
- (3) Every subsequent review must be carried out no more than one year after the previous one.
- (4) OFCOM may also, at any other time, carry out a review of whether those arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11.
- (5) If, on a review under this section, OFCOM are satisfied that modifications are required of the networking arrangements for the time being in force, they may –
  - (a) require the holders of regional Channel 3 licences to give effect to the modifications proposed by OFCOM; or
  - (b) in the case of arrangements imposed by OFCOM, make those modifications themselves.
- (6) OFCOM must not exercise any of their powers under this Act or the 1990 Act so as to modify the requirements imposed on the holder of a regional Channel 3 licence by approved networking arrangements that are already in force except –
  - (a) following a review under this section; or
  - (b) with the consent of the licence holder.
- (7) The regulatory regime for every Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that modifications proposed by OFCOM under this section are given effect to.
- (8) In this section “approved networking arrangements” has the same meaning as in section 291.

**294 Supplemental provision about networking arrangements**

- (1) Schedule 11 (which makes provision about the approval of networking arrangements and the imposition or modification of such arrangements) shall have effect.
- (2) The obligations arising under conditions imposed in accordance with sections 291 to 293 are subject to the rights of appeal conferred by that Schedule.

*Special obligations for Channel 4***295 Involvement of C4 Corporation in programme-making**

- (1) The regulatory regime for Channel 4 includes a condition requiring C4C not to be involved, except to such extent as OFCOM may allow, in the making of programmes to be broadcast on Channel 4.
- (2) In this section “programme” does not include an advertisement.

**296 Schools programmes on Channel 4**

- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing that what appears to them to be a suitable proportion of the programmes which are included in Channel 4 are schools programmes.
- (2) A licence under the 1990 Act to provide Channel 4 may also include conditions authorised by the following provisions of this section.
- (3) The conditions authorised by this section include conditions requiring C4C –
  - (a) to finance the production of schools programmes; and
  - (b) to acquire schools programmes provided by other persons.
- (4) The conditions authorised by this section include conditions requiring C4C to ensure that schools programmes on Channel 4 –
  - (a) are of high quality; and
  - (b) are suitable to meet the needs of schools throughout the United Kingdom.
- (5) The conditions authorised by this section include conditions specifying the minimum number of hours in term time, or within normal school hours, that are to be allocated to the broadcasting of schools programmes on Channel 4.
- (6) The conditions authorised by this section include conditions requiring C4C to provide such material for use in connection with the schools programmes broadcast by them as may be necessary to secure that effective use is made of those programmes in schools.
- (7) The conditions authorised by this section include conditions requiring C4C from time to time to consult such persons who –

- (a) are concerned with schools or with the production of schools programmes, or
  - (b) have an interest in schools or in the production of schools programmes,
- as OFCOM think fit.
- (8) Before imposing a condition under this section, OFCOM must consult C4C.
  - (9) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
  - (10) In determining for the purposes of subsection (1) what proportion of the programmes included in Channel 4 should be schools programmes, OFCOM must take into account services, facilities and materials which C4C provide to schools, or make available for schools, otherwise than by the inclusion of programmes in Channel 4.
  - (11) Section 34 of the 1990 Act (requirement as to schools programmes in relation to all licensed public service channels taken together) shall cease to have effect.
  - (12) In this section “schools programmes” means programmes which are intended for use in schools.

## **297 Channel 4 contribution towards national television archive**

- (1) Section 185 of the 1990 Act (contributions towards maintenance of the national television archive) shall be amended as follows.
- (2) In subsections (1) and (3), after “Channel 3” there shall be inserted “, Channel 4”.
- (3) In subsection (5), at the end there shall be inserted –
  - “ ‘Channel 4 licence’ means –
  - (a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and
  - (b) a licence renewing that licence on the first or any subsequent occasion.”
- (4) This section has effect in relation only to financial years beginning after the television transfer date.

*Special obligation for the public teletext provider*

## **298 Conditions prohibiting interference with other services**

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the provision of so much of the public teletext service as is provided in analogue form does not cause interference with –

- (a) the television broadcasting service or services on whose frequency or frequencies it is provided; or
- (b) any other wireless telegraphy transmissions.

*Sporting and other events of national interest*

**299 Categorisation of listed events**

- (1) For subsections (1) and (2) of section 97 of the 1996 Act (listed events), there shall be substituted –

“(1) The Secretary of State may, for the purposes of this Part, maintain a list of sporting and other events of national interest, and an event for the time being included in the list is referred to in this Part as a ‘listed event’.

(1A) A list maintained under subsection (1) must be divided into two categories, and those categories are referred to in this Part as ‘Group A’ and ‘Group B’.

(1B) Each listed event must be allocated either to Group A or to Group B.

(2) Before drawing up such a list, or revising or ceasing to maintain it, the Secretary of State must consult –

- (a) OFCOM,
- (b) the BBC,
- (c) the Welsh Authority, and
- (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired.

(2A) For the purposes of subsection (2)(d), a relevant event is an event which the Secretary of State proposes –

- (a) to include in a list maintained under subsection (1),
- (b) to omit from such a list, or
- (c) to move from one category in such a list to the other.”

- (2) In subsection (3)(b) of that section, the words “by the Commission” and “by them” shall be omitted.

- (3) In subsection (5) of that section –

- (a) for the words “addition of any relevant event to” there shall be substituted “inclusion of any event in”; and
- (b) in paragraph (a), for “addition” there shall be substituted “inclusion”.

- (4) After that subsection, there shall be inserted –

“(5A) The allocation or transfer of an event to group A does not affect the validity of a contract entered into before the day on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed allocation or transfer.

- (5B) The Secretary of State may direct that, for the transitional purposes set out in the direction, the transfer of a Group B event to Group A is not to affect the application to that event of provisions of this Part relating to a Group B event.”

### 300 Effects of categorisation of listed events

- (1) In section 99(1) of the 1996 Act (avoidance of contracts for exclusive rights to televise listed events), for “listed event” there shall be substituted “Group A listed event”.
- (2) In section 101 of that Act (restriction on televising of listed events), for subsection (1) there shall be substituted –

“(1) A television programme provider who –

- (a) is providing a service (‘the first service’) falling within either category, and
- (b) is providing it with a view to its being available (within the meaning of Part 3 of the Communications Act 2003) for reception by members of the public in the United Kingdom [and the Bailiwick of Jersey], or in any area of the United Kingdom [and the Bailiwick of Jersey],

must not include live coverage of a listed event in that service unless it is authorised by subsection (1A), (1B) or (1C).

(1A) Live coverage of a listed event is authorised by this subsection if –

- (a) a television programme provider (other than the provider of the first service) has acquired the right to include live coverage of the event in his service (‘the second service’); and
- (b) the second service –
  - (i) falls into a different category from the first service, and
  - (ii) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.

(1B) Live coverage of a listed event is authorised by this subsection if OFCOM have consented in advance to inclusion of that coverage in the first service.

(1C) Live coverage of a listed event is authorised by this subsection if –

- (a) the listed event is a Group B event,
- (b) rights to provide coverage of the event have been acquired by one or more persons in addition to the provider of the first service,
- (c) that additional coverage constitutes adequate alternative coverage of the event, and



- (d) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made under section 104ZA for the purposes of this paragraph.
- (1D) Subsections (1) to (1C) apply to the coverage of a part of a listed event as they apply to the coverage of the whole of that event.”
- (3) In subsection (2) of that section, for “under subsection (1)” there shall be substituted “for the purposes of subsection (1B).”
- (4) After subsection (4) of that section there shall be inserted –
  - “(5) References in this section to a category of service are references to a category of service set out in section 98(1).”
- (5) In section 102(2) of that Act (penalties), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.
- (6) In section 103(2) of that Act (reports to the Secretary of State), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.

### 301 Code relating to listed events

- (1) For subsection (1) of section 104 of the 1996 Act (code in relation to listed events) there shall be substituted –
  - “(1) OFCOM shall draw up, and may from time to time revise, a code giving guidance –
    - (a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101(1B) or section 101B(1); and
    - (b) as to the matters which they will take into account in determining for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) or section 101B(1).”
- (2) Where OFCOM are required to draw up a code by virtue of this section –
  - (a) they shall do so as soon as practicable after the commencement of this section; but
  - (b) the code shall have no effect in relation to any time before the commencement of section 300 of this Act.

### 302 Regulations about coverage of listed events

- (1) After section 104 of the 1996 Act there shall be inserted –

**“104ZA Regulations about coverage of listed events**

- (1) OFCOM may make regulations for determining for the purposes of this Part –
  - (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is or is not to be treated as live;
  - (b) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage; and
  - (c) the requirements that must be satisfied for the purposes of section 101(1C)(d) by persons who have acquired rights to provide adequate alternative coverage.
- (2) The power conferred by subsection (1)(a) does not include power to define ‘live’ for the purposes of section 101B.
- (3) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to the power of OFCOM to make regulations under this section.”
- (2) In section 105(1) (interpretation of Part 4), before the definition of “Channel 4” there shall be inserted –
  - “ ‘adequate alternative coverage’ and ‘live’ are to be construed in accordance with any regulations under section 104ZA;”.

*Television services for the deaf and visually impaired***303 Code relating to provision for the deaf and visually impaired**

- (1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to –
  - (a) the extent to which the services to which this section applies should promote the understanding and enjoyment by –
    - (i) persons who are deaf or hard of hearing,
    - (ii) persons who are blind or partially-sighted, and
    - (iii) persons with a dual sensory impairment,
 of the programmes to be included in such services; and
  - (b) the means by which such understanding and enjoyment should be promoted.
- (2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.
- (3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively,

must be fulfilled by reference to averages computed over each of the following –

- (a) the twelve month period beginning with the anniversary in question; and
  - (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.
- (4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which –
  - (a) is a service to which this section applies, and
  - (b) has a relevant date after the passing of this Act,as consists of programmes that are not excluded programmes must be accompanied by subtitling.
- (5) The obligations to be fulfilled from the tenth anniversary of the relevant date are –
  - (a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
  - (b) that at least 80 per cent. of so much of every other service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by subtitling;
  - (c) that at least 10 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and
  - (d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated into, sign language.
- (6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.
- (7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.
- (8) In complying with subsection (7), OFCOM must have regard, in particular, to –
  - (a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;
  - (b) the size of the intended audience for the programmes;
  - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;

- (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom [and the Bailiwick of Jersey];
  - (e) the technical difficulty of providing the assistance; and
  - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- (9) The exclusions that may be set out in the code under subsection (7) –
  - (a) may include different descriptions of programmes in relation to different services to which this section applies; and
  - (b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in the service.
- (10) The requirements that may be imposed by the code include, in particular –
  - (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
  - (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
  - (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.
- (11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).
- (12) This section applies to the following services –
  - (a) \* \* \* \* \*
  - (b) any licensed public service channel;
  - (c) a digital television programme service but not an electronic programme guide;
  - (d) a television licensable content service but not an electronic programme guide;
  - (e) a restricted television service.
- (13) In this section –
  - “electronic programme guide” means a service which –
    - (a) is or is included in a television licensable content service or a digital television programme service; and
    - (b) consists of –
      - (i) 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

- (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“programme” does not include an advertisement.

### **304 Procedure for issuing and revising code under s. 303**

- (1) Before drawing up a code under section 303 or reviewing or revising it in pursuance of that section, OFCOM must consult –
  - (a) such persons appearing to them to represent the interests of persons falling within subsection (1)(a)(i), (ii) or (iii) of that section as OFCOM think fit; and
  - (b) such persons providing services to which that section applies as OFCOM think fit.
- (2) OFCOM must publish the code drawn up under section 303, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to –
  - (a) persons who are deaf or hard of hearing,
  - (b) persons who are blind or partially sighted, and
  - (c) persons with a dual sensory impairment,
 they consider appropriate.

### **305 Meaning of “relevant date” in s. 303**

- (1) In relation to a service, the relevant date for the purposes of section 303 is –
  - (a) in a case to which any of subsections (2) to (4) applies, the date given by that subsection; and
  - (b) in any other case, the date (whether before or after the passing of this Act) when the provision of that service began or begins.
- (2) In the case of a service the provision of which began before the television transfer date but which is not –
  - (a) \* \* \* \* \*
  - (b) a licensed public service channel, or
  - (c) a digital television programme service,
 the relevant date is the date of the coming into force of this section.
- (3) In the case of –
  - (a) a Channel 3 service the provision of which began before the date of the passing of this Act, and
  - (b) Channel 4 \* \* \*,

the relevant date is 1st January 2000.

- (4) In the case of Channel 5, so far as it consists of a service the provision of which began before the date of the passing of this Act, the relevant date is 1st January 1998.
- (5) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 303 and this section as a continuation of a service previously provided by him.

### **306 Power to modify targets in s. 303**

- (1) Where it appears to the Secretary of State, in the case of services of a particular description, that the obligation specified in section 303(4) has been or is likely to be fulfilled in their case before the anniversary so specified, he may by order modify section 303 so as to do one or both of the following –
  - (a) increase the percentage so specified in relation to services of that description;
  - (b) substitute a different anniversary for the anniversary by which that obligation must be fulfilled in the case of such services.
- (2) The Secretary of State may by order modify section 303 so as to do one or both of the following –
  - (a) substitute a later anniversary for the anniversary by which the obligations specified in subsection (5) of that section must be fulfilled;
  - (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of that subsection.
- (3) The provision that may be made by an order under this section includes –
  - (a) modifications for requiring the code to set out additional obligations to be fulfilled once the obligations previously required to be set out in the code have been fulfilled; and
  - (b) savings for the obligations previously set out in the code.
- (4) Before making an order under this section the Secretary of State must consult OFCOM.
- (5) \* \* \* \* \*

### **307 Observance of code under s. 303**

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the code maintained by them under section 303 is observed in the provision of those services.
- (2) This section applies to every service to which section 303 applies which is licensed by a Broadcasting Act licence.

**308 Assistance for the visually impaired with the public teletext service**

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing, so far as it is reasonable and practicable, by the inclusion of features in that service, to do so, that persons with disabilities affecting their sight are able to make use of the service.

*Programming quotas for digital television programme services***309 Quotas for independent programmes**

- (1) The regulatory regime for every digital television programme service that is not comprised in a licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In subsection (1) –
  - (a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of that subsection;
  - (b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of that subsection; and
  - (c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.
- (4) Before making an order under this section the Secretary of State must consult OFCOM.
- (5) \* \* \* \* \*
- (6) In this section “programme” does not include an advertisement.

*Regulation of electronic programme guides***310 Code of practice for electronic programme guides**

- (1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.
- (2) The practices required by the code must include the giving, in the manner provided for in the code, of such degree of prominence as OFCOM consider appropriate to –

- (a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and
  - (b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.
- (3) The practices required by the code must also include the incorporation of such features in electronic programme guides as OFCOM consider appropriate for securing that persons with disabilities affecting their sight or hearing or both –
  - (a) are able, so far as practicable, to make use of such guides for all the same purposes as persons without such disabilities; and
  - (b) are informed about, and are able to make use of, whatever assistance for disabled people is provided in relation to the programmes listed or promoted.
- (4) Subject to subsection (5), in subsection (2) the reference to the public service channels is a reference to any of the following –
  - (a) any service of television programmes provided by the BBC in digital form so as to be available for reception by members of the public;
  - (b) any Channel 3 service in digital form;
  - (c) Channel 4 in digital form;
  - (d) Channel 5 in digital form;
  - (e) \* \* \* \* \*
  - (f) the digital public teletext service.
- (5) The Secretary of State may by order –
  - (a) add any programme service to the services for the time being specified in subsection (4) as public service channels; or
  - (b) delete a service from that subsection.
- (6) Before making an order under subsection (5) the Secretary of State must consult OFCOM.
- (7) In this section “intended audience”, in relation to a service of any description, means –
  - (a) if the service is provided only for a particular area or locality of the United Kingdom [and the Bailiwick of Jersey], members of the public in that area or locality;
  - (b) if it is provided for members of a particular community, members of that community; and
  - (c) in any other case, members of the public in the United Kingdom [and the Bailiwick of Jersey].
- (8) 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.

### **311 Conditions to comply with code under s. 310**

- (1) The regulatory regime for every service consisting in or including an electronic programme guide includes whatever conditions (if any) OFCOM consider appropriate for securing that the code maintained by them under section 310 is observed in the provision of those services.
- (2) In this section “electronic programme guide” has the same meaning as in section 310.

#### *Character and coverage of radio services*

### **312 Character and coverage of sound broadcasting services**

- (1) Section 106 of the 1990 Act (requirements as to character and coverage of local and national radio services) shall be amended as follows.
- (2) In subsection (1), the words from “except” onwards shall be omitted.
- (3) After subsection (1) (duty to ensure character preserved subject to departures that do not restrict service) there shall be inserted –

“(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied –

- (a) that the departure would not substantially alter the character of the service;
- (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.

- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.”

- (4) For subsection (5) (restriction on power to extend licence to new area or locality) there shall be substituted –

“(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them –

- (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
- (b) that the increase that would result is justifiable in the exceptional circumstances of the case.”

- (5) After subsection (6) of that section there shall be inserted –

“(7) In this section ‘relevant independent radio services’ means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003 –

- (a) sound broadcasting services;
- (b) radio licensable content services;
- (c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.”

### 313 Consultation about change of character of local services

After section 106 of the 1990 Act there shall be inserted –

#### “106ZA Consultation about change of character of local services

- (1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying –

- (a) the proposed departure; and
- (b) the period in which representations may be made to OFCOM about the proposal.

- (2) That period must end not less than 28 days after the date of publication of the notice.

- (3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the departure.

- (4) OFCOM –

- (a) are not required to publish a notice under this section, and

(b) may specify a period of less than 28 days in such a notice as the period for representations,

if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.

(5) OFCOM are not required under this section –

(a) to publish any matter that is confidential in accordance with subsection (6) or (7); or

(b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(6) A matter is confidential under this subsection if –

(a) it relates specifically to the affairs of a particular body; and

(b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(7) A matter is confidential under this subsection if –

(a) it relates specifically to the private affairs of an individual; and

(b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.”

### **314 Local content and character of local sound broadcasting services**

(1) It shall be the duty of OFCOM to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure –

(a) that programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that OFCOM consider appropriate in that case; and

(b) that, where such programmes are included in such a service, what appears to OFCOM to be a suitable proportion of them consists of locally-made programmes.

(2) OFCOM must –

(a) draw up guidance as to how they consider the requirements of subsection (1)(a) and (b) should be satisfied; and

(b) have regard to that guidance in carrying out their functions in relation to local sound broadcasting services.

(3) The guidance may be different for different descriptions of services.

(4) OFCOM may revise the guidance from time to time.

(5) Before drawing up or revising the guidance, OFCOM must consult –

- (a) such persons as appear to them to represent the interests of persons for whom local sound broadcasting services are or would be provided;
  - (b) persons holding licences to provide local sound broadcasting services or persons appearing to represent such persons, or both; and
  - (c) such other persons as they consider appropriate.
- (6) OFCOM must publish the guidance and every revision of it in such manner as they consider appropriate.
- (7) In this section –
  - “local material”, in relation to a local sound broadcasting service, means material which is of particular interest –
    - (a) to persons living or working within the area or locality for which the service is provided;
    - (b) to persons living or working within a part of that area or locality; or
    - (c) to particular communities living or working within that area or locality or a part of it;
  - “locally-made”, in relation to programmes included in a local sound broadcasting service, means made wholly or partly at premises in the area or locality for which that service is provided;
  - “material” includes news, information and other spoken material and music; and
  - “programme” does not include an advertisement.
- (8) References in this section to persons living or working within an area or locality include references to persons undergoing education or training in that area or locality.

### 315 Variations of radio multiplex licences affecting service characteristics

For subsection (6) of section 54 of the 1996 Act (variations of radio multiplex licence affecting service characteristics) there shall be substituted –

- “(6) Where the licence holder applies to OFCOM for the variation of a condition which –
  - (a) was imposed under subsection (1)(b), and
  - (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.
- (6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to

appeal to a variety of tastes and interests would be unacceptably diminished.

(6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied –

- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
- (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation.”

*Competition between licensed providers etc.*

\* \* \* \* \*

*Programme and fairness standards for television and radio*

### 319 OFCOM's standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are –
  - (a) that persons under the age of eighteen are protected;
  - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
  - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
  - (d) that news included in television and radio services is reported with due accuracy;
  - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
  - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
  - (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;

- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
  - (i) that the international obligations of the United Kingdom [and the Bailiwick of Jersey] with respect to advertising included in television and radio services are complied with;
  - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
  - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
  - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters –
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
  - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
  - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
  - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
  - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
  - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include –
- (a) minimum standards applicable to all programmes included in television and radio services; and

- (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve –
  - (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
  - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom [and the Bailiwick of Jersey] as the Secretary of State may notify to them for the purposes of this section.
- (8) In this section “news” means news in whatever form it is included in a service.

### **320 Special impartiality requirements**

- (1) The requirements of this section are –
  - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
  - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
  - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are –
  - (a) matters of political or industrial controversy; and
  - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require –
  - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
  - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section –

- (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
  - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters –
  - (a) the application of the requirement specified in subsection (1)(b);
  - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
  - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately) –
  - (a) matters of major political or industrial controversy, and
  - (b) major matters relating to current public policy,as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.
- (7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

### **321 Objectives for advertisements and sponsorship**

- (1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j) –
  - (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and
  - (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).
- (2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is –
  - (a) an advertisement which is inserted by or on behalf of a [person or] body whose objects are wholly or mainly of a political nature;
  - (b) an advertisement which is directed towards a political end; or
  - (c) an advertisement which has a connection with an industrial dispute.
- (3) For the purposes of this section objects of a political nature and political ends include each of the following –



- (a) influencing the outcome of elections or referendums, whether in the United Kingdom[, the Bailiwick of Jersey] or elsewhere;
  - (b) bringing about changes of the law in the whole or a part of the United Kingdom[, the Bailiwick of Jersey] or elsewhere, or otherwise influencing the legislative process in any country or territory;
  - (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom[, the Bailiwick of Jersey] or elsewhere;
  - (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom[, the Bailiwick of Jersey] or of a country or territory outside the United Kingdom [or the Bailiwick of Jersey];
  - (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
  - (f) influencing public opinion on a matter which, in the United Kingdom [or the Bailiwick of Jersey], is a matter of public controversy;
  - (g) promoting the interests of a party or other group of persons organised, in the United Kingdom[, the Bailiwick of Jersey] or elsewhere, for political ends.
- (4) OFCOM –
- (a) shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and
  - (b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.
- (5) OFCOM must, from time to time, consult the Secretary of State about –
- (a) the descriptions of advertisements that should not be included in programme services; and
  - (b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services.
- (6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.
- (7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of –
- (a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or

- (b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.
- (8) In this section “programme service” does not include a service provided by the BBC.

### **322 Supplementary powers relating to advertising**

- (1) The regulatory regime for each of the following –
  - (a) every television programme service licensed by a Broadcasting Act licence,
  - (b) the public teletext service, and
  - (c) every other teletext service so licensed that consists in an additional television service or a digital additional television service,includes a condition requiring the person providing the service to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (2).
- (2) Those matters are –
  - (a) the maximum amount of time to be given to advertisements in any hour or other period;
  - (b) the minimum interval which must elapse between any two periods given over to advertisements;
  - (c) the number of such periods to be allowed in any programme or in any hour or day; and
  - (d) the exclusion of advertisements from a specified part of a licensed service.
- (3) Directions under this section –
  - (a) may be either general or specific;
  - (b) may be qualified or unqualified; and
  - (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- (4) In giving a direction under this section, OFCOM must take account of such of the international obligations of the United Kingdom [on behalf of the Bailiwick of Jersey] as the Secretary of State may notify to them for the purposes of this section.

### **323 Modification of matters to be taken into account under s. 319**

- (1) The Secretary of State may by order modify the list of matters in section 319(4) to which OFCOM are to have regard when setting or revising standards.

- (2) Before making an order under this section, the Secretary of State must consult OFCOM.
- (3) \* \* \* \*

### 324 Setting and publication of standards

- (1) Before setting standards under section 319, OFCOM must publish, in such manner as they think fit, a draft of the proposed code containing those standards.
- (2) After publishing the draft code and before setting the standards, OFCOM must consult every person who holds a relevant licence and such of the following as they think fit –
  - (a) persons appearing to OFCOM to represent the interests of those who watch television programmes;
  - (b) persons appearing to OFCOM to represent the interests of those who make use of teletext services; and
  - (c) persons appearing to OFCOM to represent the interests of those who listen to sound programmes.
- (3) After publishing the draft code and before setting the standards, OFCOM must also consult –
  - (a) \* \* \* \*
  - (b) the BBC, about so much of the draft code as contains standards other than those for advertising or sponsorship; and
  - (c) such of the persons mentioned in subsection (4) as OFCOM think fit, about so much of the draft code as contains standards for advertising or sponsorship.
- (4) Those persons are –
  - (a) persons appearing to OFCOM to represent the interests of those who will have to take account of the contents of the proposed standards for advertising or sponsorship;
  - (b) bodies and associations appearing to OFCOM to be concerned with the application of standards of conduct in advertising; and
  - (c) professional organisations appearing to OFCOM to be qualified to give relevant advice in relation to the advertising of particular products.
- (5) If it appears to OFCOM that a body exists which represents the interests of a number of the persons who hold relevant licences, they may perform their duty under subsection (2) of consulting such persons, so far as it relates to the persons whose interests are so represented, by consulting that body.
- (6) OFCOM may set standards under section 319 either –
  - (a) in the terms proposed in a draft code published under subsection (1); or

- (b) with such modifications as OFCOM consider appropriate in the light of the consultation carried out as a result of subsections (2) to (5).
- (7) Subsections (1) to (6) apply to a proposal by OFCOM to revise standards set under section 319 as they apply to a proposal to set such standards.
- (8) Where OFCOM set standards under section 319, they must publish the code containing the standards in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the standards.
- (9) Where OFCOM revise standards set under section 319, they shall so publish the code containing the standards as revised.
- (10) Where OFCOM publish a code under subsection (8) or (9), they shall send a copy of it –
  - (a) to the Secretary of State;
  - (b) except in the case of a code containing standards for advertising or sponsorship, to the BBC; and
  - (c) if the code relates to television programme services, to the Welsh Authority.
- (11) A code (or draft code) contains standards for advertising or sponsorship for the purposes of this section to the extent that it sets standards under section 319 for securing any of the objectives mentioned in any of paragraphs (g) to (k) of subsection (2) of that section.
- (12) In this section “relevant licence”, in relation to a draft code, means –
  - (a) to the extent that the draft code relates to –
    - (i) television programme services,
    - (ii) the public teletext service, or
    - (iii) an additional television service,a licence under Part 1 of the 1990 Act (independent television services), under section 18 of the 1996 Act (digital television programme services) under section 25 of that Act (digital additional television services) or under section 219 of this Act; and
  - (b) to the extent that the draft code relates to radio programme services, any licence under Part 3 of the 1990 Act (independent radio services), under section 60 of the 1996 Act (digital sound programme service) or under section 64 of that Act (digital additional services).

### **325 Observance of standards code**

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing –
  - (a) that standards set under section 319 are observed in the provision of that service; and

- (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.
- (2) It shall be the duty of OFCOM themselves to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.
- (3) OFCOM may from time to time make a report to the Secretary of State on any issues with respect to OFCOM's standards code which –
  - (a) have been identified by them in the course of carrying out their functions; and
  - (b) appear to them to raise questions of general broadcasting policy.
- (4) The conditions of a licence which is granted by OFCOM for a programme service must, for the purpose of securing compliance –
  - (a) with OFCOM's standards code, so far as it relates to advertising and the sponsorship of programmes, and
  - (b) with any such requirements as are mentioned in section 321(4) which relate to advertising and sponsorship but go beyond that code,include a condition requiring the licence holder to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (5).
- (5) Those matters are –
  - (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
  - (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances).
- (6) OFCOM's powers and duties under this section are not to be construed as restricting any power of theirs, apart from this section –
  - (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
  - (b) to include conditions in a licence requiring the holder of a licence to comply with directions given by OFCOM or by any other person.

### **326 Duty to observe fairness code**

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance –

- (a) in connection with the provision of that service, and
- (b) in relation to the programmes included in that service,

of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

### 327 Standards with respect to fairness

- (1) Part 5 of the 1996 Act (functions of the Broadcasting Standards Commission which are transferred to OFCOM so far as they relate to codes of practice and complaints with respect to fairness and privacy) shall be amended as follows.
- (2) No person shall be entitled to make a standards complaint under that Part at any time after the coming into force of this section, and no person shall be required to entertain any such complaint that is so made.
- (3) In section 115 (consideration of fairness complaint) –
  - (a) in subsection (4) (matters to be provided in response to a fairness complaint), after paragraph (d) there shall be inserted –

“(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;”
  - (b) in subsection (7) (requests in relation to which the relevant person is required to secure the compliance of another), after paragraph (c) there shall be inserted –

“(ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;”.
- (4) For subsection (7) of section 119 (directions on determination of fairness complaint) there shall be substituted –

“(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.

(7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.

(7B) It is hereby declared that, where –

  - (a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and
  - (b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,

the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.

(7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint –

(a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but

(b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM.”

(5) For subsection (2) of section 120 of that Act (reports on supplementary action taken in response to findings on fairness complaint) there shall be substituted –

“(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by him or by any other person responsible for the making or provision of the relevant programme.”

### **328 Duty to publicise OFCOM’s functions in relation to complaints**

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing that –

(a) the procedures which, by virtue of section 325, are established and maintained for handling and resolving complaints about the observance of standards set under section 319, and

(b) their functions under Part 5 of the 1996 Act in relation to that service,

are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Conditions included in a licence by virtue of subsection (1) may require the holder of the licence to comply with every direction given to him by OFCOM for the purpose mentioned in that subsection.

*Power to proscribe unacceptable foreign television and radio services*

### **329 Proscription orders**

(1) Where –

- (a) a foreign service to which this section applies comes to OFCOM's attention, and
  - (b) they consider that the service is unacceptable and should be the subject of an order under this section,

they must send a notification to the Secretary of State giving details of the service and their reasons for considering that an order should be made.
- (2) A service is not to be considered unacceptable by OFCOM unless they are satisfied that –
  - (a) programmes containing objectionable matter are included in the service; and
  - (b) that the inclusion of objectionable matter in programmes so included is occurring repeatedly.
- (3) Matter is objectionable for the purposes of subsection (2) only if –
  - (a) it offends against taste or decency;
  - (b) it is likely to encourage or to incite the commission of crime;
  - (c) it is likely to lead to disorder; or
  - (d) it is likely to be offensive to public feeling.
- (4) Where the Secretary of State has received a notification under this section in the case of a service, he may make an order –
  - (a) identifying the service in such manner as he thinks fit; and
  - (b) proscribing it.
- (5) The Secretary of State is not to make an order proscribing a service unless he is satisfied that the making of the order is –
  - (a) in the public interest; and
  - (b) compatible with the international obligations of the United Kingdom [on behalf of the Bailiwick of Jersey].
- (6) The television and sound services to which this section applies are –
  - (a) television licensable content services provided otherwise than by broadcasting from a satellite;
  - (b) digital television programme services;
  - (c) digital additional television services;
  - (d) radio licensable sound services provided otherwise than by being broadcast from a satellite;
  - (e) digital sound programme services; and
  - (f) digital additional sound services.
- (7) A service to which this section applies is a foreign service if it –
  - (a) is a service capable of being received in the United Kingdom [or the Bailiwick of Jersey] for the provision of which no Broadcasting Act licence is either in force or required to be in force; but



- (b) is also a service for the provision of which such a licence would be required –
  - (i) in the case of a service falling within subsection (6)(a) to (c), if the person providing it were under the jurisdiction of the United Kingdom [on behalf of the Bailiwick of Jersey] for the purposes of the Television without Frontiers Directive; and
  - (ii) in any other case, if the person providing it provided it from a place in the United Kingdom [and the Bailiwick of Jersey] or were a person whose principal place of business is in the United Kingdom [and the Bailiwick of Jersey].

### **330 Effect of proscription order**

- (1) This section applies where a service is for the time being proscribed by an order under section 329.
- (2) The proscribed service is not to be included in –
  - (a) a multiplex service; or
  - (b) a cable package.
- (3) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.
- (4) In this section “cable package” means (subject to subsection (5)) a service by means of which programme services are packaged together with a view to their being distributed –
  - (a) by means of an electronic communications service;
  - (b) so as to be available for reception by members of the public in the United Kingdom [or the Bailiwick of Jersey]; and
  - (c) without the final delivery of the programme services to the persons to whom they are distributed being by wireless telegraphy.
- (5) Programme services distributed by means of an electronic communications service do not form part of a cable package if –
  - (a) the distribution of those services forms only part of a service provided by means of that electronic communications service; and
  - (b) the purposes for which the service of which it forms a part is provided do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.

### **331 Notification for enforcing proscription**

- (1) Where OFCOM determine that there are reasonable grounds for believing that there has been a contravention of section 330 in relation to a multiplex service or a cable package, they may give a notification under this section to –
  - (a) the provider of that multiplex service; or

- (b) the person providing the cable package.
- (2) A notification under this section is one which –
  - (a) sets out the determination made by OFCOM; and
  - (b) requires the person to whom it is given to secure that the proscribed service (so long as it remains proscribed) is not –
    - (i) included in the notified person’s multiplex service, or
    - (ii) distributed as part of his cable package,

at any time more than seven days after the day of the giving of the notification.
- (3) If it is reasonably practicable for a person to whom a notification is given under this section to secure that the proscribed service ceases to be included in that person’s multiplex service, or to be distributed as part of his cable package, before the end of that seven days, then he must do so.
- (4) It shall be the duty of a person to whom a notification is given under this section to comply with the requirements imposed by the notification and by subsection (3).
- (5) That duty shall be enforceable in civil proceedings by OFCOM –
  - (a) for an injunction;
  - (b) \* \* \* \* \*
  - (c) for any other appropriate remedy or relief.
- (6) In this section “cable package” and “multiplex service” each has the same meaning as in section 330.

### **332 Penalties for contravention of notification under s. 331**

- (1) OFCOM may impose a penalty on a person who contravenes a requirement imposed on him by or under section 331.
- (2) Before imposing a penalty on a person under this section OFCOM must give him a reasonable opportunity of making representations to them about their proposal to impose the penalty.
- (3) The amount of the penalty imposed on a person is to be such amount not exceeding £5,000 as OFCOM determine to be –
  - (a) appropriate; and
  - (b) proportionate to the contravention in respect of which it is imposed.
- (4) In making that determination OFCOM must have regard to –
  - (a) any representations made to them by the person notified under section 331; and
  - (b) any steps taken by him for complying with the requirements imposed on him under that section.
- (5) Where OFCOM impose a penalty on a person under this section, they shall –

- (a) notify the person penalised; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (6) A penalty imposed under this section must be paid to OFCOM within the period fixed by them.
- [(7) An order made by the Secretary of State in the United Kingdom under section 332(1) shall not have effect in the Bailiwick of Jersey until it has been registered in the Royal Court, and where such an order is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the Order, whichever is the later.]
- (8) \* \* \* \* \*
- (9) For the purposes of this section there is a separate contravention in respect of every day on which the proscribed service is at any time included in a person's multiplex service or distributed as part of his cable package.
- (10) In this section "multiplex service" and "cable package" each has the same meaning as in section 330.

*Party political broadcasts on television and radio*

\* \* \* \* \*

*Monitoring of programmes*

### **334 Retention and production of recordings**

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions imposing on the provider of the service –
  - (a) a requirement in respect of every programme included in the service to retain a recording of the programme in a specified form and for a specified period after its inclusion;
  - (b) a requirement to comply with any request by OFCOM to produce to them for examination or reproduction a recording retained in pursuance of the conditions in the licence; and
  - (c) a requirement, if the provider is able to do so, to comply with any request by OFCOM to produce to them a script or transcript of a programme included in the programme service.
- (2) The period specified for the purposes of a condition under subsection (1)(a) must be –
  - (a) in the case of a programme included in a television programme service, a period not exceeding ninety days; and
  - (b) in the case of a programme included in a radio programme service, a period not exceeding forty-two days.

- (3) For the purpose of maintaining supervision of the programmes included in programme services, OFCOM may themselves make and use recordings of those programmes or any part of them.
- (4) Nothing in this Part is to be construed as requiring OFCOM, in the carrying out of their functions under this Part as respects programme services and the programmes included in them, to view or listen to programmes in advance of their being included in such services.

*International obligations*

**335 Conditions securing compliance with international obligations**

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the relevant international obligations of the United Kingdom [on behalf of the Bailiwick of Jersey] are complied with.
- (2) In this section “relevant international obligations of the United Kingdom” means the international obligations of the United Kingdom [on behalf of the Bailiwick of Jersey] which have been notified to OFCOM by the Secretary of State for the purposes of this section.
- (3) This section applies to the following services –
  - (a) any Channel 3 service;
  - (b) Channel 4;
  - (c) Channel 5;
  - (d) the public teletext service;
  - (e) any television licensable content service;
  - (f) any digital television programme service;
  - (g) any additional television service;
  - (h) any digital additional television service;
  - (i) any restricted television service.
- (4) The conditions included in any licence in accordance with the other provisions of this Chapter are in addition to any conditions included in that licence in pursuance of this section and have effect subject to them.

*Government requirements for licensed services*

**336 Government requirements for licensed services**

- (1) If it appears to [the Economic Development Committee of the States of Jersey] to be appropriate to do so \* \* \* may at any time by notice require OFCOM to give a direction under subsection (2).
- (2) A direction under this subsection is a direction to the holders of the Broadcasting Act licences [in the Bailiwick of Jersey] specified in the notice under subsection (1) to include an announcement so specified in their licensed services.

- (3) The direction may specify the times at which the announcement is to be broadcast or otherwise transmitted.
- (4) Where the holder of a Broadcasting Act licence includes an announcement in his licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (5) The [Economic Development Committee of the States of Jersey] may, at any time, by notice require OFCOM to direct the holders of the Broadcasting Act licences [in the Bailiwick of Jersey] specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice.
- (6) Where –
  - (a) OFCOM have given the holder of a Broadcasting Act licence [in the Bailiwick of Jersey] a direction in accordance with a notice under subsection (5),
  - (b) in consequence of the revocation by the [Economic Development Committee of the States of Jersey] of such a notice, OFCOM have revoked such a direction, or
  - (c) such a notice has expired,
 the holder of the licence in question may include in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (7) OFCOM must comply with every requirement contained in a notice under this section.
- (8) The powers conferred by this section are in addition to any powers specifically conferred on the [Economic Development Committee of the States of Jersey or any other Committee of the States] by or under this Act or any other enactment.
- (9) \* \* \* \* \*

*Equal opportunities and training*

**337 Promotion of equal opportunities and training**

\* \* \* \* \*

*Corresponding rules for the BBC and Welsh Authority*

**338 Corresponding rules for the BBC \* \* \***

Schedule 12 (which provides for the imposition on the BBC \* \* \* of obligations corresponding to obligations included in the regulatory regime for licensed providers) shall have effect.

*Enforcement against the Welsh Authority*

\* \* \* \* \*

*Enforcement of licence conditions***344 Transmission of statement of findings**

- (1) Sections 40 and 109 of the 1990 Act (power to direct licensee to broadcast correction or apology) shall be amended as follows.
- (2) For “apology”, wherever occurring, there shall be substituted “a statement of findings”.
- (3) After subsection (5), there shall be inserted –  

“(6) 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.”

**345 Financial penalties imposable on licence holders**

Schedule 13 (which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences) shall have effect.

**346 Recovery of fees and penalties**

- (1) This section applies to the following amounts –
  - (a) any amount payable to OFCOM under a Broadcasting Act licence;
  - (b) the amount of a penalty imposed by OFCOM under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part of this Act.
- (2) Every amount to which this section applies shall be recoverable by OFCOM as a debt due to them from the person obliged to pay it.
- (3) The following liabilities –
  - (a) a person’s liability to have a penalty imposed on him under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part in respect of acts or omissions of his occurring while he was the holder of a Broadcasting Act licence, and
  - (b) a liability of a person as the holder of such a licence to pay an amount to which this section applies,are not affected by that person’s Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty or the payment of that amount.

*Broadcasting Act licence fees***347 Statement of charging principles**

- (1) OFCOM are not to fix a tariff under section 4(3) or 87(3) of the 1990 Act or under section 4(3) or 43(3) of the 1996 Act (tariffs for fees payable under Broadcasting Act licences for recovering OFCOM’s costs) unless –

- (a) at the time they do so, there is in force a statement of the principles that OFCOM are proposing to apply in fixing that tariff; and
  - (b) the tariff is fixed in accordance with those principles.
- (2) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs that it is practicable for them to make –
  - (a) that the aggregate amount of the Broadcasting Act licence fees that are required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the cost to them of the carrying out during that year of their functions relating to the regulation of broadcasting;
  - (b) that the requirement imposed by virtue of paragraph (a) is satisfied by the application to such fees of tariffs that are justifiable and proportionate to the matters in respect of which they are imposed; and
  - (c) that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.
- (3) Before making or revising a statement of principles OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (4) The making or revision of a statement of principles for the purposes of this section has to be by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (5) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement setting out, for that year –
  - (a) the aggregate amount received by them during that year in respect of Broadcasting Act licence fees required to be paid during that year;
  - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of Broadcasting Act licence fees that are required to be so paid; and
  - (c) the cost to OFCOM of the carrying out during that year of their functions relating to the regulation of broadcasting.
- (6) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (5) shall be –
  - (a) carried forward; and
  - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (2)(a) in relation to the following year.
- (7) References in this section to OFCOM's functions relating to the regulation of broadcasting do not include references to any of their functions in relation to the BBC \* \* \*.
- (8) In this section –

“Broadcasting Act licence fee” means a fee required to be paid to OFCOM in pursuance of conditions included in a Broadcasting Act licence under any of the following provisions –

- (a) section 4(1)(b) or 87(1)(c) of the 1990 Act; or
- (b) section 4(1)(b) or 43(1)(c) of the 1996 Act;

“financial year” means a period of twelve months ending with 31st March.

## CHAPTER 5

### MEDIA OWNERSHIP AND CONTROL

#### *Restrictions on licence holders*

#### **348 Modification of disqualification provisions**

- (1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), paragraphs (a) and (b) of paragraph 1(1) (individuals and bodies from outside the member States) shall cease to have effect.

- (2) In sub-paragraph (1) of paragraph 2 of that Part (disqualification of religious bodies etc.), for the words before paragraph (a) there shall be substituted –

“2 (1) The following persons are disqualified persons in relation only to licences falling within sub-paragraph (1A) –”.

- (3) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted –

“(1A) A licence falls within this sub-paragraph if it is –

- (a) a Channel 3 licence;
- (b) a Channel 5 licence;
- (c) a national sound broadcasting licence;
- (d) a public teletext licence;
- (e) an additional television service licence;
- (f) a television multiplex licence; or
- (g) a radio multiplex licence.

- (1B) In this paragraph –

‘additional television service licence’ means a licence under Part 1 of this Act to provide an additional television service within the meaning of Part 3 of the Communications Act 2003;

‘Channel 3 licence’ and ‘Channel 5 licence’ each has the same meaning as in Part 1 of this Act;

‘national sound broadcasting licence’ means a licence to provide a sound broadcasting service (within the meaning of Part 3 of this Act) which is a national service (within the meaning of that Part);



‘public teletext licence’ means a licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);

‘radio multiplex licence’ means a licence under Part 2 of the Broadcasting Act 1996 to provide a radio multiplex service within the meaning of that Part; and

‘television multiplex licence’ means a licence under Part 1 of the Broadcasting Act 1996 to provide a multiplex service within the meaning of that Part.”

- (4) In paragraph 4(2)(b) of that Part (bodies that are relevant bodies for the purposes of general disqualification on grounds of undue influence) for “as mentioned in paragraph (a)(i) or (ii) above” there shall be substituted –

- “(i) by a person falling within paragraph 1(1)(c) to (g) above;
- (ii) by a person falling within paragraph 3 above; or
- (iii) by two or more persons taken together each of whom falls within sub-paragraph (i) or (ii) (whether or not they all fall within the same sub-paragraph).”

- (5) The Secretary of State may by order make provision –

- (a) for repealing paragraph 2 of Part 2 of Schedule 2 to the 1990 Act; or
- (b) for making such other modifications of that paragraph and any enactment referring to it as he thinks fit.

- (6) \* \* \* \* \*
- (7) \* \* \* \* \*

### 349 Licence holding by local authorities

\* \* \* \* \*

### 350 Relaxation of licence-holding restrictions

- (1) Parts 3 to 5 of Schedule 2 to the 1990 Act (restrictions on accumulations of interests and on licence holding by newspaper proprietors and public telecommunications providers) shall cease to have effect.
- (2) In each of sections 5 and 88 of the 1990 Act and of sections 5 and 44 of the 1996 Act (under which the provisions of Schedule 2 to the 1990 Act are given effect), for paragraph (b) of subsection (1) there shall be substituted –

“(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and

- (c) that those requirements are not contravened in the case of a person who already holds a licence.”
- (3) Schedule 14 (which provides for the imposition of requirements which, in the case of Channel 3 services and certain radio services, replace those imposed by or under Parts 3 and 4 of Schedule 2 to the 1990 Act and requires approval for the holding of certain licences by religious bodies etc.) shall have effect.
- (4) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 11 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of licences for the provision of any local services (within the meaning of Part 3 of that Act).
- (5) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 12 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of local digital sound programme licences or the provision of local digital sound programme services.
- (6) In this section “the commencement day”, in relation paragraph 11 or 12 of Schedule 14, means the day on which the first order to be made under that paragraph comes into force.

#### *Changes of control*

### **351 Changes of control of Channel 3 services**

- (1) The regulatory regime for every Channel 3 service provided by a body corporate includes –
  - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 352.
- (2) OFCOM must carry out a review where –
  - (a) they receive notification, in accordance with a condition of a Channel 3 licence, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) to (7), of –
  - (a) the change to which the proposals may give rise; or
  - (b) the change that has taken place.

- (4) The matters mentioned in this subsection are –
  - (a) the extent to which time available for broadcasting programmes included in the service is allocated to programmes of each of the following descriptions –
    - (i) original productions;
    - (ii) news programmes; and
    - (iii) current affairs programmes;
  - (b) the extent to which programmes of each of those descriptions that are included in the service are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are –
  - (a) the extent to which Channel 3 programmes made in the [or the Bailiwick of Jersey] that are included in the service are programmes made outside the M25 area;
  - (b) the range of Channel 3 programmes made in the [or the Bailiwick of Jersey] outside that area that are included in the service;
  - (c) the extent to which the expenditure of the provider of the service on Channel 3 programmes is referable to programme production at different production centres outside the M25 area;
  - (d) the range of different such production centres to which that expenditure is referable.
- (6) The matters mentioned in this subsection are –
  - (a) the quality and range of regional programmes included in the service;
  - (b) the quality and range of other programmes included in the service which contribute to the regional character of the service;
  - (c) the quality and range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1) of the 1990 Act (nationwide Channel 3 service).
- (7) The matters mentioned in this subsection are –
  - (a) the amount of time given, in the programmes included in the service –
    - (i) to regional programmes; and
    - (ii) to programmes included in the service which contribute to the regional character of the service;
  - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided;
  - (c) the extent of the use, in connection with the service, of the services of persons employed (whether by the licence holder or any other person) within that area;

- (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area.
- (8) In relation to a national Channel 3 service, subsections (3) to (7) have effect as if –
  - (a) subsection (5) applied only where the service is subject to conditions imposed by virtue of a decision of OFCOM under section 286(2) or OFCOM otherwise consider, having regard to the nature of the service, that it is appropriate to consider the matters mentioned in that subsection;
  - (b) references to regional programmes were references to programmes which are regional programmes (within the meaning of section 287) in relation to that service and are included in it in accordance with a condition imposed under subsection (4)(a) of that section;
  - (c) references to the regional character of the service were references to the regional character of parts of the service;
  - (d) subsection (6)(c) of this section were omitted; and
  - (e) references, in relation to programmes such as are mentioned in paragraph (b), to the area for which the service is provided were references to the part of that area where the people are living to whom those programmes are likely to be of particular interest.
- (9) Where OFCOM carry out a review under subsection (2), they must publish a report of that review –
  - (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 352.
- (10) In this section –
  - “Channel 3 programmes” and “expenditure” each has the same meaning as in section 286;
  - “original production” has the same meaning as in section 278;
  - “peak viewing time” –
    - (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for the service in question; and
    - (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
  - “regional programme”, in relation to a Channel 3 service, means (subject to subsection (8)) a programme (including a news programme) which is of particular interest –
    - (a) to persons living within the area for which the service is provided;
    - (b) to persons living within a part of that area; or
    - (c) to particular communities living within that area;

“relevant change of control” means a change in the persons having control over –

- (a) a body holding the licence to provide a Channel 3 service; or
  - (b) any body which –
    - (i) is connected with a body holding such a licence; and
    - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.
- (11) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

### **352 Action following review under s. 351**

- (1) If, on a review under subsection (2) of section 351, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) to (6) of that section, they shall vary the licence in accordance with subsection (2).
- (2) The variation –
  - (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
  - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) If it appears to OFCOM, having regard to the matters mentioned in subsection (7) of section 351 –
  - (a) that the proposed change of control would be prejudicial to the regional character of the service or (as the case may be) of any parts of it, or
  - (b) that the actual change of control is so prejudicial,they may vary the licence so as to include in it such conditions relating to any of those matters as they consider appropriate.
- (4) Subject to subsection (5), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (5) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.
- (6) In subsection (5) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.

- (7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 351, of making representations to them about the variation.
- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.
- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either –
  - (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 351 have the same meanings in this section as in that.

### **353 Changes of control of Channel 5**

- (1) The regulatory regime for Channel 5 includes, in every case where it is provided by a body corporate –
  - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 354.
- (2) OFCOM must carry out a review where –
  - (a) they receive notification, in accordance with a condition of the licence to provide Channel 5, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) and (5), of –
  - (a) the change to which the proposals may give rise; or
  - (b) the change that has taken place.
- (4) The matters mentioned in this subsection are –
  - (a) the extent to which time available for broadcasting programmes included in Channel 5 is allocated to programmes of each of the following descriptions –
    - (i) original productions;

- (ii) news programmes; and
    - (iii) current affairs programmes;
  - (b) the extent to which programmes of each of those descriptions that are included in that Channel are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are –
- (a) the extent to which programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
  - (b) the range of programmes made in the United Kingdom outside that area that are included in Channel 5;
  - (c) the extent to which the expenditure of the provider of Channel 5 on programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area;
  - (d) the range of different such production centres to which that expenditure is referable.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review –
- (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 354.
- (7) In this section –
- “expenditure”, in relation to a programme, means –
- (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
  - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
- “original production” has the same meaning as in section 278;
- “peak viewing time” –
- (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for Channel 5; and
  - (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
- “relevant change of control” means a change in the persons having control over –
- (a) a body holding a licence to provide Channel 5; or
  - (b) any body which –
    - (i) is connected with a body holding such a licence; and
    - (ii) is involved, to a substantial extent, in the provision of the programmes included in that channel, or is likely to become so involved.

- (8) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

### **354 Action following review under s. 353**

- (1) If, on a review under subsection (2) of section 353, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) and (5) of that section, they shall vary the licence in accordance with subsection (2).
- (2) The variation –
- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
  - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (4) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.
- (5) In subsection (4) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (6) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (7) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 353, of making representations to them about the variation.
- (8) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.
- (9) A condition included in a licence by a variation under this section may be further varied by OFCOM either –
- (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (10) Expressions used in this section and section 353 have the same meanings in this section as in that.



**355 Variation of local licence following change of control**

- (1) The regulatory regime for every local sound broadcasting service provided by a body corporate includes –
  - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to it that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 356.
- (2) OFCOM must carry out a review where –
  - (a) they receive notification, in accordance with a condition of a local sound broadcasting licence, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsection (4), of –
  - (a) the change to which the proposals may give rise; or
  - (b) the change that has taken place.
- (4) Those matters are –
  - (a) the quality and range of programmes included in the service;
  - (b) the character of the service;
  - (c) the extent to which OFCOM's duty under section 314 is performed in relation to the service.
- (5) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a local sound broadcasting service, include, in particular, the selection of spoken material and music in programmes included in the service.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review –
  - (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 356.
- (7) In this section “relevant change of control” means a change in the persons having control over –
  - (a) a body holding the licence to provide a local sound broadcasting service; or
  - (b) any body which –
    - (i) is connected with a body holding such a licence; and
    - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.

- (8) Expressions used in this section and in Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Schedule.

### **356 Action following review under s. 355**

- (1) If, on a review under section 355, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsection (4) of that section, they must vary the local licence in accordance with subsection (2).
- (2) The variation –
- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
  - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (4) A variation under this section must not provide for the inclusion of any new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout –
- (a) the three months immediately before the relevant date; or
  - (b) such other three month period as has been notified under subsection (5).
- (5) If OFCOM consider that the performance of the licence holder during the three month period immediately preceding the relevant date is not typical of his performance during the twelve months before the relevant date they –
- (a) may determine that subsection (4) is to apply by reference to such other three month period falling within those twelve months as they may determine; and
  - (b) must notify any determination under this subsection to the licence holder.
- (6) In subsection (4) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 355, of making representations to them about the variation.

- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until that change takes place.
- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either –
  - (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 86(5)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 355 have the same meanings in this section as in that.

*Meaning of control*

**357 Meaning of “control”**

- (1) In paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act (control where a person will be able, without having at least a 50 per cent. interest in it, to have the affairs of a body conducted in accordance with his wishes) –
  - (a) for “will be able” there shall be substituted “would (if he chose to) be able in most cases or in significant respects”; and
  - (b) for “the affairs” there shall be substituted “affairs”.
- (2) It shall be the duty of OFCOM to publish guidance setting out their intentions concerning the inclusion of particular matters in the matters that they will take into account when determining whether a person has control of a body, within the meaning of paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act.
- (3) OFCOM may from time to time revise the guidance issued by them under this section.
- (4) OFCOM must publish the guidance and, where they revise it, the revised guidance in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

## CHAPTER 6

### OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES

*Annual report on television and radio*

**358 Annual factual and statistical report**

- (1) It shall be the duty of OFCOM –

- (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
  - (b) as soon as practicable after the end of every subsequent period of twelve months,
- to satisfy for that period the review and reporting requirements of this section.
- (2) For any period those obligations are –
  - (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom [and the Bailiwick of Jersey] during that period; and
  - (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.
- (3) In carrying out a review for any period under this section, OFCOM must consider, in particular, each of the following –
  - (a) the extent to which programmes included during that period in television and radio services are representative of what OFCOM consider to be the principal genres for such programmes;
  - (b) the extent to which codes made by OFCOM under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have been complied with during that period;
  - (c) the extent to which any guidance given by OFCOM under section 314 has been followed during that period;
  - (d) any trends appearing or operating during that period in the size and behaviour of the audience for radio and television services;
  - (e) the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced;
  - (f) what it is appropriate to achieve by conditions and duties under section 277 and paragraphs 1 and 7 of Schedule 12 and the effectiveness for that purpose of the conditions and duties for the time being in force;
  - (g) whether it would be appropriate to recommend to the Secretary of State that he exercises any of his powers under that section or those paragraphs;
  - (h) the extent to which work on independent productions (within the meaning of that section and those paragraphs) that are produced in the United Kingdom is done in a range of production centres outside the M25 area;
  - (i) any issues relating to intellectual property in programmes that have arisen or been of significance during that period;
  - (j) developments in technology that have occurred or become important during that period and are relevant to the provision, broadcasting or distribution of television and radio programmes;

- (k) the availability during that period of persons with skills that are used or likely to be useful in connection with the provision of television and radio services and the production of programmes for inclusion in such services;
  - (l) the availability during that period of facilities for the provision of training in such skills.
- (4) Every report under this section must set out OFCOM's findings on their consideration of the matters mentioned in subsection (3).
- (5) Every report prepared by OFCOM under this section must be published by them –
  - (a) as soon as practicable after its preparation is complete; and
  - (b) in such manner as they consider appropriate.
- (6) OFCOM's duties under this section are in addition to their duties under section 264.

*Community radio and local digital television*

**359 Grants to providers**

- (1) OFCOM may make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 262.
- (2) The Secretary of State may by order provide that OFCOM may also make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 244.
- (3) A grant made by virtue of this section may be made on such terms and conditions, and shall become repayable to OFCOM in such circumstances, as may be specified by OFCOM when making the grant.
- (4) A person is not –
  - (a) by reason of the making to him of a grant by virtue of this section, or
  - (b) by reason of any terms or conditions (including any provisions for repayment) subject to which such a grant is or has been made to him,to be a disqualified person by virtue of any provision of Schedule 2 to the 1990 Act in relation to a licence mentioned in subsection (5).
- (5) Those licences are –
  - (a) a licence under Part 1 of the 1990 Act, or under Part 1 of the 1996 Act, which is granted in accordance with any provision made by an order under section 244 of this Act; and
  - (b) a licence under Part 3 of the 1990 Act, or under Part 2 of the 1996 Act, which is granted in accordance with any provision made by an order under section 262 of this Act.

(6) \* \* \* \*

*Supplemental provisions of Part 3*

### 360 Amendments of the 1990 and 1996 Acts

- (1) In section 201 of the 1990 Act (programme services), in subsection (1) –
  - (a) for paragraphs (a) to (bb) there shall be substituted –
 

“(aa) any service which is a programme service within the meaning of the Communications Act 2003;”
  - (b) in paragraph (c), for “a telecommunication system” there shall be substituted “an electronic communications network (within the meaning of the Communications Act 2003)”.
- (2) For subsection (2) of that section there shall be substituted –
 

“(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as –

  - (a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);
  - (b) satisfies the conditions in section 248(5) of that Act; or
  - (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.

(2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as –

  - (a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);
  - (b) satisfies the conditions in section 233(5) of that Act; or
  - (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act.”
  - (3) Schedule 15 (which makes minor and consequential amendments of the 1990 Act and the 1996 Act for purposes connected with the other provisions of this Chapter) shall have effect.

### 361 Meaning of “available for reception by members of the public”

- (1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which –
  - (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but

- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (2) A service is not to be treated as available for reception by members of the public if each of the three conditions set out in subsections (3) to (5) is satisfied.
- (3) The first condition is that the service is confined to the provision of a facility –
  - (a) for the making by users of the service of individual selections of the material to be received; and
  - (b) for receiving whatever is selected.
- (4) The second condition is that it is only in response to a selection made by a user of the service that anything (whether encrypted or not) –
  - (a) is broadcast from a satellite or by means of a multiplex service; or
  - (b) is otherwise transmitted by means of an electronic communications network.
- (5) The third condition is that the individual selections that may be made do not include any that are limited to electing to be one of the recipients of material that is or has been offered for reception on the basis –
  - (a) that it is material selected by the provider of the service for the purpose of being made available for broadcasting or distribution simultaneously, or virtually so, to an audience consisting of users of the service; and
  - (b) that it will be broadcast or distributed simultaneously, or virtually so, to every member of the audience (if any) that consists of the users of the service who have elected to receive it.
- (6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom [or the Bailiwick of Jersey]).
- (7) \* \* \*
- (8) \* \* \*
- (9) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.

### 362 Interpretation of Part 3

- (1) In this Part –
  - “additional radio service” means an additional service within the meaning given by section 114(1) of the 1990 Act for the purposes of Part 3 of that Act;
  - “additional television service” (except in the expression “digital additional television service”) means an additional service within the

meaning given by section 48 of the 1990 Act for the purposes of Part 1 of the 1990 Act;

“analogue teletext service” is to be construed in accordance with section 218(4);

“ancillary service” has the same meaning as it has, by virtue of section 24(2) of the 1996 Act, in Part 1 of that Act;

“assistance for disabled people” means any of the following –

- (a) subtitling;
- (b) audio-description for the blind and partially sighted; and
- (c) presentation in, or translation into, sign language;

“available for reception by members of the public” is to be construed in accordance with section 361;

“the BBC Charter and Agreement” means the following documents, or any one or more of them, so far as they are for the time being in force –

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;
- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Act) for purposes that include the regulation of activities carried on by the BBC;

“BBC company” means –

- (a) a body corporate which is controlled by the BBC; or
- (b) a body corporate in which the BBC or a body corporate controlled by the BBC is (to any extent) a participant;

“C4 company” means –

- (a) a body corporate which is controlled by C4C; or
- (b) a body corporate in which C4C or a body corporate controlled by C4C is (to any extent) a participant;

“Channel 3”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1 of the 1990 Act (see section 71 of that Act);

“Channel 3 licence” means a licence to provide a Channel 3 service;

“a Channel 3 service” means a television broadcasting service comprised in Channel 3;

“digital additional sound service” means a digital additional service within the meaning given by section 63 of the 1996 Act for the purposes of Part 2 of that Act;

“digital additional television service” means a digital additional service within the meaning given by section 24(1) of the 1996 Act for the purposes of Part 1 of that Act;

“the digital public teletext service” means so much of the public teletext service as consists of a service provided in digital form;



“digital sound programme licence” and “digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“digital television programme service” means a digital programme service within the meaning given by section 1(4) of the 1996 Act for the purposes of Part 1 of that Act;

“EEA State” means the United Kingdom or any other State that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 22nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993, and “another EEA State” means an EEA State other than the United Kingdom;

“general multiplex service” means a multiplex service within the meaning of section 175 which is neither a television multiplex service nor a radio multiplex service;

“initial expiry date” has the meaning given by section 224;

“licensed public service channel” means any of the following services (whether provided for broadcasting in digital or in analogue form) –

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;

“local digital sound programme licence” and “local digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 60 and 72 of that Act);

“local radio multiplex licence” and “local radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“local sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a local sound broadcasting service;

“local sound broadcasting service” means a sound broadcasting service which, under subsection (4)(b) of section 245, is a local service for the purposes of that section;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25);

“national Channel 3 service” means a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided;

“national digital sound programme service” has the same meaning as in Part 2 of the 1996 Act;

“national radio multiplex licence” and “national radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“networking arrangements” has the meaning given by section 290;

“OFCOM’s standards code” means any code or codes for the time being in force containing standards set by OFCOM under section 319 (whether originally or by way of any revision of any standards previously so set);

“provision”, in relation to a service, is to be construed (subject to subsection (3)) in accordance with subsection (2), and cognate expressions are to be construed accordingly;

“the public teletext provider” means –

- (a) subject to paragraph (b), the person holding the licence under section 219 to provide the public teletext service; and
- (b) in relation to a time before the grant of the first licence to be granted under that section, the person holding the Broadcasting Act licence to provide the existing service (within the meaning of section 221);

“the public teletext service” means the service the provision of which is required to be secured in accordance with section 218;

“qualifying service” has the same meaning as in Part 1 of the 1996 Act (see section 2(2) of that Act);

“radio licensable content service” has the meaning given by section 247;

“radio multiplex service” has the same meaning as (by virtue of section 258 of this Act) it has in Part 2 of the 1996 Act;

“radio programme service” means any of the following –

- (a) a service the provision of which is licensed under Part 3 of the 1990 Act;
- (b) a digital sound programme service the provision of which is licensed under Part 2 of the 1996 Act;
- (c) a digital additional sound service the provision of which is licensed under section 64 of the 1996 Act;

“regional Channel 3 licence” means a licence under Part 1 of the 1990 Act to provide a regional Channel 3 service;

“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under section 14(2) of the 1990 Act;

“restricted television service” means any restricted service within the meaning given by section 42A of the 1990 Act for the purposes of Part 1 of that Act;

“S4C” and “S4C Digital” means the services so described in section 204(3);

“S4C company” means –

- (a) a body corporate which is controlled by the Welsh Authority; or
- (b) a body corporate in which that Authority or a body corporate controlled by that Authority is (to any extent) a participant;

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

“sound broadcasting service” has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);

“standards objectives” has the meaning given by section 319(2);

“subtitling” means subtitling for the deaf or hard of hearing, whether provided by means of a teletext service or otherwise;

“television broadcasting service” means (subject to subsection (4)) a service which –

- (a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form);
- (b) is provided so as to be available for reception by members of the public; and
- (c) is not –
  - (i) a restricted television service;
  - (ii) a television multiplex service;
  - (iii) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; or
  - (iv) a service provided under the authority of a licence under Part 1 of the 1996 Act to provide a digital television programme service;

“television licensable content service” has the meaning given by section 232 of this Act;

“television multiplex service” has meaning given by section 241(1) of this Act to a multiplex service within the meaning of Part 1 of the 1996 Act;

“television programme service” means any of the following –

- (a) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) a restricted television service;

“the Television without Frontiers Directive” means Council Directive 89/552/EEC on the Co-ordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, together with any modifications of that Directive by Directive 97/36/EC of the European Parliament and the Council;

“text service” means any teletext service or other service in the case of which the visual images broadcast or distributed by means of the service consist wholly or mainly of non-representational images.

- (2) In the case of any of the following services –

- (a) a television broadcasting service or sound broadcasting service,

- (b) the public teletext service;
- (c) a television licensable content service or radio licensable content service,
- (d) a digital television programme service or digital sound programme service,
- (e) a restricted television service,
- (f) an additional television service or additional radio service,
- (g) a digital additional television service or a digital additional sound service,

the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service).

- (3) For the purposes of this Part –
  - (a) the provision of a service by the BBC does not include its provision by a BBC company;
  - (b) the provision of a service by C4C does not include its provision by a C4 company;
  - (c) \* \* \* \* \*

and, accordingly, control that is or is capable of being exercised by the BBC, C4C or the Welsh Authority over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service shall be disregarded for the purposes of subsection (2).

- (4) References in this Part to a television broadcasting service do not include references to any text service.
- (5) References in this Part to imposing a charge on a person in respect of his reception of a service in, or in a part of, the United Kingdom [or the Bailiwick of Jersey] include references to imposing charges –
  - (a) for his use of the service at a place in the United Kingdom [or the Bailiwick of Jersey] or in that part of it;
  - (b) for an entitlement of his to receive it at such place;
  - (c) for the use of a facility by means of which he exercises such an entitlement; or
  - (d) for the service's being made available for reception by him at such a place.
- (6) In subsection (1) “controlled” and “participant” each has the same meaning as in Schedule 2 to the 1990 Act.
- (7) In this section “non-representational images” means visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

**PART 4**

\* \* \* \* \*

**PART 5**

\* \* \* \* \*

**PART 6****MISCELLANEOUS AND SUPPLEMENTAL***Annual report***390 Annual report on the Secretary of State's functions**

- (1) The Secretary of State must prepare and lay before Parliament regular reports on the carrying out by him of the functions to which this section applies.
- (2) This section applies to the Secretary of State's functions under the following enactments –
  - (a) this Act;
  - (b) the Office of Communications Act 2002 (c. 11);
  - (c) the enactments relating to the management of the radio spectrum so far as not comprised in this Act;
  - (d) the 1990 Act;
  - (e) the 1996 Act.
- (3) The first report under this section must relate to the period which –
  - (a) begins with 19th March 2002 (the date of the passing of the Office of Communications Act 2002); and
  - (b) ends with the period of twelve months beginning with the first date to be appointed for the purposes of section 2 of this Act.
- (4) Every subsequent report must relate to the period of twelve months beginning with the end of the period to which the previous report related.
- (5) The obligation under this section to prepare and lay a report before Parliament is an obligation to do that as soon as reasonably practicable after the end of the period to which the report relates.
- (6) Where a report for the purposes of this section relates to a period the whole or a part of which falls before the time when the whole of this Act is in force, the functions referred to in subsection (2) are to be taken as excluding all functions under the specified enactments that will have ceased to be functions of the Secretary of State when the whole of this Act is in force.

*Review of media ownership***391 Review of media ownership**

- (1) It shall be the duty of OFCOM –
  - (a) to carry out regular reviews of the operation, taken together, of all the provisions to which this section applies; and
  - (b) to send a report on every such review to the Secretary of State.
- (2) This section applies to –
  - (a) the provisions of Schedule 2 to the 1990 Act;
  - (b) the provision made by or under Schedule 14 to this Act;
  - (c) the provisions of sections 280 and 281 of this Act;
  - (d) whatever provision (if any) has been made under section 283 of this Act; \* \* \*
  - (e) \* \* \* \* \*
- (3) The first review must be carried out no more than three years after the commencement of this section, and subsequent reviews must be carried out at intervals of no more than three years.
- (4) The report to the Secretary of State on a review must set out OFCOM's recommendations, in consequence of their conclusions on the review, for the exercise by the Secretary of State of –
  - (a) his power to make an order under section 348(5);
  - (b) his powers to make orders under Schedule 14;
  - (c) his powers under sections 282 and 283; \* \* \*
  - (d) \* \* \* \* \*
- (5) OFCOM must publish every report sent by them to the Secretary of State under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

*Guidelines as to penalties***392 Penalties imposed by OFCOM**

- (1) It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c. 41).
- (2) OFCOM may from time to time revise that statement as they think fit.
- (3) Where OFCOM make or revise their statement under this section, they must publish the statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the

attention of the persons who, in their opinion, are likely to be affected by it.

- (4) Before publishing a statement or revised statement under this section OFCOM must consult both –
  - (a) the Secretary of State, and
  - (b) such other persons as they consider appropriate,
 about the guidelines they are proposing to include in the statement.
- (5) Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.
- (6) It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act \* \* \* to have regard to the guidelines contained in the statement for the time being in force under this section.
- (7) \* \* \* \* \*

### *Disclosure of information*

## **393 General restrictions on disclosure of information**

- (1) Subject to the following provisions of this section, information with respect to a particular business which has been obtained in exercise of a power conferred by –
  - (a) this Act,
  - (b) the enactments relating to the management of the radio spectrum (so far as not contained in this Act),
  - (c) the 1990 Act, or
  - (d) the 1996 Act,
 is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made –
  - (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
  - (b) \* \* \* \* \*
  - (c) \* \* \* \* \*
  - (d) \* \* \* \* \*
  - (e) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments mentioned in subsection (5); or
  - (f) for the purpose of securing compliance with an international obligation of the United Kingdom [on behalf of the Bailiwick of Jersey].

- |     |   |   |   |   |   |
|-----|---|---|---|---|---|
| (3) | * | * | * | * | * |
| (4) | * | * | * | * | * |
- (5) The enactments and instruments referred to in subsections (2) and (4) are –
- (a) the Wireless Telegraphy Act 1949 (c. 54);
  - (b) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
  - (c) the Wireless Telegraphy Act 1967 (c. 72);
- |     |   |   |   |   |   |
|-----|---|---|---|---|---|
| (d) | * | * | * | * | * |
| (e) | * | * | * | * | * |
| (f) | * | * | * | * | * |
| (g) | * | * | * | * | * |
| (h) | * | * | * | * | * |
| (i) | * | * | * | * | * |
- (j) the 1990 Act;
  - (k) the 1996 Act;
  - (l) the Wireless Telegraphy Act 1998 (c. 6);
- |     |   |   |   |   |   |
|-----|---|---|---|---|---|
| (m) | * | * | * | * | * |
| (n) | * | * | * | * | * |
| (o) | * | * | * | * | * |
| (p) | * | * | * | * | * |
- (6) Nothing in this section –
- (a) limits the matters that may be published under section 15, 26 or 390;
  - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM by virtue of a provision of this Act or the Office of Communications Act 2002 (c. 11);
  - (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
  - (d) applies to information that has been published or made public as mentioned in paragraphs (a) to (c).
- (7) Nothing in this section applies to information obtained in exercise of the powers conferred by section 196 of the 1990 Act (powers of entry and search).
- |     |   |   |   |   |   |
|-----|---|---|---|---|---|
| (8) | * | * | * | * | * |
| (9) | * | * | * | * | * |
- (10) A person who discloses information in contravention of this section is guilty of an offence and shall be [liable to imprisonment for a term not exceeding two years or to a fine or to both].
- |      |   |   |   |   |   |
|------|---|---|---|---|---|
| (11) | * | * | * | * | * |
|------|---|---|---|---|---|



- (12) In this section “legal proceedings” means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment.

*Notifications etc. and electronic working*

**394 Service of notifications and other documents**

- (1) This section applies where provision made (in whatever terms) by or under an enactment specified in subsection (2) authorises or requires –
- (a) a notification to be given to any person; or
  - (b) a document of any other description (including a copy of a document) to be sent to any person.
- (2) Those enactments are –
- (a) this Act;
  - (b) the Office of Communications Act 2002 (c. 11);
  - (c) the enactments relating to the management of the radio spectrum (so far as not contained in this Act);
  - (d) Schedule 2 to the Telecommunications Act 1984 (c. 12);
  - (e) the 1990 Act; and
  - (f) the 1996 Act.
- (3) The notification or document may be given or sent to the person in question –
- (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (4) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (5) The notification or document may be given or sent to a firm by being given or sent to –
- (a) a partner in the firm; or
  - (b) a person having the control or management of the partnership business.
- (6) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (7) For the purposes of this section and [Article 12 of the Interpretation (Jersey) Law 1954<sup>12</sup>] (service of documents by post) in its application to this section, the proper address of a person is –
- (a) in the case of body corporate, the address of the registered or principal office of the body;

- (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
  - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (4) to (6), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
  - (d) in any other case, the last known address of the person in question.
- (8) In the case of –
  - (a) a company registered outside the United Kingdom [or the Bailiwick of Jersey],
  - (b) a firm carrying on business outside the United Kingdom [or the Bailiwick of Jersey], or
  - (c) an unincorporated body or association with offices outside the United Kingdom [or the Bailiwick of Jersey],the references in subsection (7) to its principal office include references to its principal office within the United Kingdom [or the Bailiwick of Jersey] (if any).
- (9) In this section –
  - “document” includes anything in writing; and
  - “notification” includes notice;
  - and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.
- (10) This section has effect subject to section 395.

### **395 Notifications and documents in electronic form**

- (1) This section applies where –
  - (a) section 394 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
  - (b) the notification or other document is transmitted to the recipient –
    - (i) by means of an electronic communications network; or
    - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of the enactments specified in section 394(2) as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is OFCOM –

- (a) they must have indicated their willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
  - (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
  - (c) the notification or other document must take such form as they may require.
- (4) Where the person making the transmission is OFCOM, they may (subject to subsection (5)) determine –
  - (a) the manner in which the transmission is made; and
  - (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than OFCOM –
  - (a) the recipient, or
  - (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication to any person for the purposes of subsection (5) –
  - (a) must be given to that person in such manner as he may require;
  - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
  - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
  - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.
- (7) An indication, requirement or determination given, imposed or made by OFCOM for the purposes of this section is to be given, imposed or made by being published in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (8) Subsection (9) of section 394 applies for the purposes of this section as it applies for the purposes of that section.

### **396 Timing and location of things done electronically**

- (1) The Secretary of State may by order make provision specifying, for the purposes of the enactments specified in section 394(2), the manner of determining –
  - (a) the times at which things done under those enactments by means of electronic communications networks are done; and

- (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings –
  - (a) that something done by means of an electronic communications network satisfies the requirements of the enactments specified in section 394(2) for the doing of that thing; and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

*Other miscellaneous provisions*

\*                      \*                      \*                      \*                      \*                      \*

*Supplemental*

### 399 Expenses

\*                      \*                      \*                      \*                      \*                      \*

### 400 Destination of licence fees and penalties

- (1) This section applies (subject to section 401) to the following amounts –
  - (a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));
  - (b) \*                      \*                      \*                      \*                      \*
  - (c) an amount paid to OFCOM in pursuance of an obligation imposed by or under [section 3 or 3A of] the Wireless Telegraphy Act 1998 (c. 6);
  - (d) an amount paid to OFCOM in respect of a penalty imposed by them under section 175;
  - (e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
  - (f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
  - (g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;

- (h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act.
- [(2) OFCOM shall, after consultation with the Economic Development Committee of the States of Jersey, pay to the Treasurer of the States to be credited to the annual income of the States such proportion of the amount to which this section applies as appears to OFCOM to be appropriate.]
- (3) \* \* \* \* \*
- (4) OFCOM must, in respect of each financial year, prepare an account showing –
- (a) the amounts to which this section applies that have been received by them during that year;
  - [(b) the sums paid to the Treasurer of the States;]
  - (c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement of principles under section 401 for meeting the costs of carrying out functions mentioned in subsection (4) of that section during that year;
  - (d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and
  - (e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.
- (5) OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.
- (6) \* \* \* \* \*
- (7) References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).
- (8) In this section –
- “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;
- “cash bid amount” means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;
- “financial year” has the same meaning as in the Schedule to the Office of Communications Act 2002 (c. 11);
- “numbering conditions” means conditions the setting of which is authorised by section 58 or 59; and
- “relevant revenue” means any of the following –
- (a) the amount which for the purposes of section 19, 52(1), 102(1) or 118 (1) of the 1990 Act is the amount of qualifying revenue for an accounting period;

- (b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or
  - (c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.
- [(9) Any fines imposed for offences under this Act shall be paid to the Crown for the benefit of the Crown revenues in Jersey.]

#### **401 Power of OFCOM to retain costs of carrying out spectrum functions**

\* \* \* \* \*

#### **402 Power of Secretary of State to make orders and regulations**

- (1) Every power conferred by this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations made in exercise of any such power, other than –
  - (a) an order under section 31 or 411,
  - (b) an order containing a direction under section 156, or
  - (c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power –
  - (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and
  - (c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

#### **[403 Regulations and orders made by OFCOM**

Any statutory instrument made by OFCOM pursuant to this Act shall not have effect in the Bailiwick of Jersey unless it is registered in the Royal Court of Jersey and where any such statutory instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.]

**404 Criminal liability of company directors etc.**

- (1) Where an offence under any enactment to which this section applies is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
 he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) \* \* \* \*
- (3) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) The enactments to which this section applies are every enactment contained in –
  - (a) this Act;
  - (b) the Wireless Telegraphy Act 1949 (c. 54);
  - (c) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
  - (d) the Wireless Telegraphy Act 1967 (c. 72); or
  - (e) \* \* \* \*
- (5) Section 14(2) of the Wireless Telegraphy Act 1949 (which is superseded by this section) shall cease to have effect.
- [(6) A person who aids, abets, counsels, or procures the commission of an offence under this Act shall also be guilty of the offence and liable in the same manner as a principal officer to the penalty provided for that offence.]

**405 General interpretation**

- (1) In this Act, except in so far as the context otherwise requires –
 

“the 1990 Act” means the Broadcasting Act 1990 (c. 42);

“the 1996 Act” means the Broadcasting Act 1996 (c. 55);

“access” is to be construed in accordance with subsection (4);

“apparatus” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“associated facility” has the meaning given by section 32;

“the BBC” means the British Broadcasting Corporation;

“body” (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;

“broadcast” means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;

“Broadcasting Act licence” means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of the 1996 Act;

“business” includes any trade or profession;

“C4C” means the Channel Four Television Corporation;

“communications provider” means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service;

“the Consumer Panel” means the panel established under section 16;

“consumers” has the meaning given by subsection (5);

“Content Board” means the committee of OFCOM established and maintained under section 12;

“contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;

“customers”, in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business) –

- (a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;
- (b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

“distribute”, in relation to a service, does not include broadcast, and cognate expressions shall be construed accordingly;

“electronic communications network” and “electronic communications service” have the meanings given by section 32;

“enactment” includes any enactment comprised in an Act of the Scottish Parliament or in any Northern Ireland legislation;

“the enactments relating to the management of the radio spectrum” means –

- (a) the Wireless Telegraphy Act 1949 (c. 54);
- (b) the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41);
- (c) the Wireless Telegraphy Act 1967 (c. 72) (except Part 1);
- (d) Part 6 of the Telecommunications Act 1984 (c. 12);
- (e) the Wireless Telegraphy Act 1998 (c. 6);
- (f) Chapter 2 of Part 2 of this Act; and



(g) the other provisions of this Act so far as relating to any of the enactments mentioned in the preceding paragraphs;

“frequency” includes frequency band;

“holder”, in relation to a Broadcasting Act licence, is to be construed in accordance with subsection (7), and cognate expressions are to be construed accordingly;

“information” includes accounts, estimates and projections and any document;

“intelligible” is to be construed in accordance with subsection (9);

“international obligation of the United Kingdom” includes \* \* \* any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom [on behalf of the Bailiwick of Jersey] is a party;

“modification” includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

“OFCOM” means the Office of Communications;

“other member State” means a member State other than the United Kingdom;

[“police officer” means a member of the Honorary Police or the States of Jersey Police Force;]

“pre-commencement regulator” means any of the following –

- (a) the Broadcasting Standards Commission;
- (b) the Director General of Telecommunications;
- (c) the Independent Television Commission;
- (d) the Radio Authority;

“programme” includes an advertisement and, in relation to a service, anything included in that service;

“programme service” means –

- (a) a television programme service;
- (b) the public teletext service;
- (c) an additional television service;
- (d) a digital additional television service;
- (e) a radio programme service; or
- (f) a sound service provided by the BBC;

and expressions used in this definition and in Part 3 have the same meanings in this definition as in that Part;

“provide” and cognate expressions, in relation to an electronic communications network, electronic communications service or associated facilities, are to be construed in accordance with section 32(4);

“purposes of public service television broadcasting in the United Kingdom” shall be construed in accordance with subsection (4) of

section 264 and subsections (5) and (6) of that section shall apply for the purposes of any provision of this Act referring to such purposes as they apply for the purposes of a report under that section;

“the radio transfer date” means the date on which the Radio Authority’s functions under Part 3 of the 1990 Act and Part 2 of the 1996 Act are transferred under this Act to OFCOM;

“representation”, in relation to a proposal or the contents of any notice or notification, includes an objection to the proposal or (as the case may be) to the whole or any part of those contents;

“subordinate legislation” means –

(a) any subordinate legislation, within the meaning of the Interpretation Act 1978 (c. 30); or

(b) \* \* \* \* \*

“television and radio services” means –

(a) programme services apart from those provided by the BBC; and

(b) services provided by the BBC in relation to which OFCOM have functions;

“television programme” means any programme (with or without sounds) which –

(a) is produced wholly or partly to be seen on television; and

(b) consists of moving or still images or of legible text or of a combination of those things;

“the television transfer date” means the date on which the Independent Television Commission’s functions under Part 1 of the 1990 Act and Part 1 of the 1996 Act are transferred under this Act to OFCOM;

“TV licence” means a licence for the purposes of section 363;

[“standard scale” means the standard scale of fines for the time being in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993;<sup>13</sup>]

\* \* \* \* \*

“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54);

“wireless telegraphy licence” means a licence under section 1 of the Wireless Telegraphy Act 1949.

- (2) Any power under this Act to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (3) References in this Act to OFCOM’s functions under an enactment include references to their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.
- (4) References in this Act to access –

- (a) in relation to an electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service; and
  - (b) in relation to a programme service, are references to the opportunity of viewing in an intelligible form the programmes included in the service or (as the case may be) of listening to them in such a form.
- (5) For the purposes of this Act persons are consumers in a market for a service, facility or apparatus, if they are –
  - (a) persons to whom the service, facility or apparatus is provided, made available or supplied (whether in their personal capacity or for the purposes of, or in connection with, their businesses);
  - (b) persons for whose benefit the service, facility or apparatus is provided, made available or supplied or for whose benefit persons falling within paragraph (a) arrange for it to be provided, made available or supplied;
  - (c) persons whom the person providing the service or making the facility available, or the supplier of the apparatus, is seeking to make into persons falling within paragraph (a) or (b); or
  - (d) persons who wish to become persons falling within paragraph (a) or (b) or who are likely to seek to become persons falling within one or both of those paragraphs.
- (6) \* \* \* \*
- (7) In this Act references, in relation to a time or a period, to the holder of a Broadcasting Act licence or of a particular description of such licence are references to the person who held that licence at that time or (as the case may be) to every person who held that licence for the whole or a part of that period.
- (8) For the purposes of this Act the fact that a service is not in an intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided –
  - (a) for general reception;
  - (b) for reception by particular persons; or
  - (c) for reception at a particular place or in a particular area.
- (9) For the purposes of this Act something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

#### **406 Minor and consequential amendments, transitionals and repeals**

- (1) Schedule 17 (which provides for minor and consequential amendments in connection with the other provision made by this Act) shall have effect.
- (2) \* \* \* \*
- (3) \* \* \* \*

- |      |  |   |   |   |   |
|------|--|---|---|---|---|
| (4)  | *  | * | * | * | * |
| (5)  | *  | * | * | * | * |
| (6)  | Schedule 18 (which contains transitional provisions in connection with the other provision made by this Act) shall have effect.  |   |   |   |   |
| (7)  | Subject to the provisions of Schedule 18 and to the savings and commencement provisions set out in the notes to Schedule 19, the enactments and instruments specified in Schedule 19 (which include provisions that are spent or have ceased to be of any practical utility) are hereby repealed or revoked to the extent specified in the second column of that Schedule. |   |   |   |   |
| (8)  | *  | * | * | * | * |
| (9)  | *  | * | * | * | * |
| (10) | This section has effect subject to section 408.  |   |   |   |   |

**407 Pre-consolidation amendments**

*	*	*	*	*	*	*
---	---	---	---	---	---	---

**408 Transitional provision for anticipatory carrying out of functions**

*	*	*	*	*	*	*
---	---	---	---	---	---	---

**409 Modifications consequential on regulations implementing Directives**

*	*	*	*	*	*	*
---	---	---	---	---	---	---

**[410 Application of enactments to territorial sea and other waters**

The provisions of this Act as extended to the Bailiwick of Jersey including any amendments or repeals of any other enactments, shall apply in the Bailiwick of Jersey and the territorial sea adjacent thereto.]

**411 Short title, commencement and extent**

- |     |   |   |   |   |   |
|-----|---|---|---|---|---|
| (1) | This Act may be cited as the Communications Act 2003. |   |   |   |   |
| (2) | *   | * | * | * | * |
| (3) | *   | * | * | * | * |
| (4) | *   | * | * | * | * |
| (5) | *   | * | * | * | * |
| (6) | *   | * | * | * | * |
| (7) | *   | * | * | * | * |
| (8) | *   | * | * | * | * |

## SCHEDULES

### SCHEDULE 1

#### Section 2

#### FUNCTIONS TRANSFERRED TO OFCOM

##### *Wireless telegraphy functions*

#### 1

- (1) Subject to sub-paragraphs (2) and (3), the functions of the Secretary of State under the following enactments are transferred to OFCOM –
  - (a) the Wireless Telegraphy Act 1949 (c. 54);
  - (b) \* \* \* \*
  - (c) \* \* \* \*
  - (d) the Wireless Telegraphy Act 1998 (c. 6).
- (2) The following functions remain functions of the Secretary of State –
  - (a) his functions under section 5 of the Wireless Telegraphy Act 1949 (misleading messages and interception and disclosure of wireless telegraphy messages);
  - (b) his functions under section 6 of that Act (regulations about apparatus on board ships etc.);
  - (c) his functions under section 7 of that Act (powers as to wireless personnel).
- (3) \* \* \* \*

#### 2

- (1) The functions of the Secretary of State under section 7A of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41) (powers of enforcement of marine offences under that Act) shall (with the following exception) be exercisable concurrently by the Secretary of State and OFCOM.
- (2) The exception is the functions of the Secretary of State under that section so far as they relate to powers exercisable by virtue of subsection (7) of that section.

##### *Functions in relation to the licensing etc. of television services*

\* \* \* \*

*Functions in relation to C4C*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to the licensing of radio services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to the proscription of foreign satellite services*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to Gaelic broadcasting*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to the national television archive*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Warrants to enter and search premises to enforce broadcasting licences provisions*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Variation of existing Channel 3 and Channel 5 licences*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Reports for the purposes of the review of digital broadcasting*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to reservation of digital capacity to the BBC*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions in relation to listed events*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Functions relating to fairness and privacy in broadcasting*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

## SCHEDULE 2

### Section 30

#### TRANSFER SCHEMES

##### *Contents of transfer scheme*

### 1

- (1) A transfer scheme –
  - (a) shall set out the property, rights and liabilities to be transferred by the scheme; and
  - (b) may make incidental, supplemental, consequential and transitional provision in connection with the transfer of that property and of those rights and liabilities.
- (2) The provisions of the scheme setting out the property, rights and liabilities to be transferred may do so in either or both of the following ways –
  - (a) by specifying them or describing them in particular; or
  - (b) by identifying them generally by reference to, or to a specific part of, an undertaking from which they are to be transferred.
- (3) The property, rights and liabilities that are to be capable of being transferred by a transfer scheme include –
  - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the person from whom they are transferred;
  - (b) property acquired and rights and liabilities arising in the period after the making of the scheme and before it comes into force;
  - (c) rights and liabilities arising subsequently in respect of matters occurring in that period;
  - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and
  - (e) rights and liabilities under an enactment.
- (4) The provision that may be made under sub-paragraph (1)(b) includes provision for the creation in favour of a pre-commencement regulator, the Secretary of State or OFCOM of rights or liabilities over or in respect of property transferred to OFCOM or property retained by a pre-commencement regulator or the Secretary of State.
- (5) The transfers to which effect may be given by a transfer scheme, and the rights that may be created by means of such a scheme, include transfers

that are to take effect, and rights that are to arise, in accordance with the scheme as if there were –

- (a) no such requirement to obtain a person's consent or concurrence,
- (b) no such liability in respect of any contravention of any other requirement, and
- (c) no such interference with any interest or right,

as there would be, in the case of a transaction apart from this Act (whether under any enactment or agreement or otherwise), by reason of any provision having effect in relation to the terms on which a pre-commencement regulator or the Secretary of State is entitled or subject to any property, right or liability.

*Effect of transfer scheme*

**2**

- (1) Property transferred by a transfer scheme shall, on the coming into force of the scheme, vest in OFCOM without further assurance.
- (2) Where any transfer scheme comes into force, any agreement made, transaction effected or other thing done by or in relation to the person from whom any transfers for which the scheme provides are made shall have effect, so far as necessary for the purposes of those transfers, as if –
  - (a) it had been made, effected or done by or in relation to OFCOM; and
  - (b) OFCOM were the same person in law as the person from whom the transfer is made.
- (3) Accordingly, references in any agreement, document, process or instrument of any description to the person from whom anything is transferred by means of a transfer scheme shall have effect, so far as necessary for the purpose of giving effect to the transfer from the coming into force of the scheme, as references to OFCOM.
- (4) Where any agreement, document, process or instrument of any description has effect, in relation to anything transferred by means of a transfer scheme, as referring (whether expressly or by implication) –
  - (a) to a member or to an officer of a pre-commencement regulator, or
  - (b) to an officer of the Secretary of State,that agreement, document, process or instrument shall have effect so far as necessary for the purposes of the transfers effected by the scheme and in consequence of them, as referring instead to the person mentioned in sub-paragraph (5).
- (5) That person is –
  - (a) the person nominated for the purposes of the transfer by OFCOM; or



- (b) in default of a nomination, the member or employee of OFCOM who most closely corresponds to the member or officer originally referred to.
- (6) Nothing in sub-paragraph (3) or (4) is to apply in relation to any reference in an enactment or in subordinate legislation.

*Retrospective modification of a transfer scheme*

**3**

- (1) If at any time after the coming into force of a transfer scheme it appears to the Secretary of State that it is appropriate to do so, he may by order provide for the scheme to be deemed to have come into force with such modifications (including modifications retrospective to the time of the coming into force of the scheme) as may be provided for in the order.
- (2) The power under this paragraph to provide by order for the modification of a transfer scheme shall be exercisable for the purpose only of making provision that could have been made by the scheme.
- (3) Before making an order under this paragraph the Secretary of State must consult OFCOM.

*Compensation*

**4**

- (1) Where, in consequence of any provision included in a transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party is to be entitled to such compensation as may be just in respect of –
  - (a) any diminution in the value of any of his interests or rights, or
  - (b) any increase in the burden of his liabilities,which is attributable to that modification.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which –
  - (a) an interest of the third party in any property is transformed into, or replaced by –
    - (i) an interest in only part of that property; or
    - (ii) separate interests in different parts of that property;
  - (b) a right of the third party against any of the pre-commencement regulators or against the Secretary of State is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against that regulator or (as the case may be) against the Secretary of State; or
  - (c) a liability of the third party to any of the pre-commencement regulators or to the Secretary of State is transformed into, or

replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the person by whom it was enforceable before being so transformed.

(3) Where –

- (a) a third party would, apart from any provision of a transfer scheme, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
- (b) the provisions of that scheme have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
- (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party is to be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

(4) A liability to pay compensation under this paragraph shall fall on the persons mentioned in sub-paragraph (5) who (as the case may be) –

- (a) have interests in the whole or any part of the property affected by the modification in question,
- (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
- (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

- (5) Those persons are the pre-commencement regulators and the Secretary of State.
- (6) Sub-paragraph (4) shall have effect subject to so much of any transfer scheme (including the one that gives rise to the liability) as makes provision for the transfer of any liability under that sub-paragraph to OFCOM.
- (7) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of compensation to be paid by a person, shall be referred to and determined –

- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
  - (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than –
- (a) a pre-commencement regulator; and
  - (b) the Secretary of State.

*Stamp duty*

\* \* \* \* \*

*Interpretation of Schedule*

**6**

In this Schedule “transfer scheme” means a scheme made by a pre-commencement regulator or by the Secretary of State under section 30.

## **SCHEDULES 3 AND 4**

\* \* \* \* \*

## SCHEDULE 5

### Section 159

#### PROCEDURE FOR GRANTS OF RECOGNISED SPECTRUM ACCESS

##### *General procedure for applications*

#### 1

- (1) An application for a grant of recognised spectrum access shall be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) Section 403 applies to regulations made under this paragraph.
- (3) The procedures must include provision for-
  - (a) time limits for dealing with applications for a grant of recognised spectrum access;
  - (b) requirements which must be met before a grant is made;
  - (c) the restrictions and conditions to which a grant may be made subject.

##### *Information to be provided in connection with applications*

#### 2

The grounds on which a grant of recognised spectrum access may be refused by OFCOM include a failure by the applicant to provide information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with restrictions or conditions to which the grant may be made subject.

##### *Notice of proposed refusal of application*

#### 3

- (1) Where OFCOM propose to refuse an application for a grant of recognised spectrum access, they shall give notice to the applicant-
  - (a) stating the reasons for their proposal; and
  - (b) specifying a period within which representations may be made about the proposal.
- (2) That period must be a period ending not less than one month after the day of the giving of the notice.

*Duration of grant***4**

A grant of recognised spectrum access continues in force, unless previously revoked by OFCOM, for such period as may be specified in the notification by which the grant is made.

*Revocation or modification***5**

OFCOM may revoke or modify a grant of recognised spectrum access, or the restrictions or conditions to which such a grant is subject, by a notice to the person to whom the grant was made.

*Notice of proposed revocation or modification***6**

- (1) Where OFCOM propose to revoke or modify a grant of recognised spectrum access or a restriction or condition to which such a grant is subject, they shall give a notification to the holder of the grant –
  - (a) stating the reasons for their proposal; and
  - (b) specifying the period during which the person notified has an opportunity to do the things specified in sub-paragraph (2).
- (2) Those things are –
  - (a) making representations about the proposal; and
  - (b) if the proposal is the result of a contravention of a restriction or condition of the grant, complying with it.
- (3) Subject to sub-paragraphs (4) to (6), the period for doing those things must be the period of one month beginning with the day after the one on which the notification was given.
- (4) OFCOM may, if they think fit, allow a longer period for doing those things either –
  - (a) by specifying a longer period in the notification; or
  - (b) by subsequently, on one or more occasions, extending the specified period.
- (5) The person notified shall have a shorter period for doing those things if a shorter period is agreed between OFCOM and the person notified.
- (6) The person notified shall also have a shorter period if –
  - (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
  - (b) they have determined that, in the circumstances, a shorter period would be appropriate; and

- (c) the shorter period has been specified in the notification.
- (7) A case is an urgent case if the failure to revoke or modify the grant will result in, or create an immediate risk of –
  - (a) a serious threat to the safety of the public, to public health or to national security; or
  - (b) serious economic or operational problems for persons, other than the person in contravention, who –
    - (i) use stations or apparatus for wireless telegraphy; or
    - (ii) are communications providers or make associated facilities available.
- (8) For the purposes of this paragraph a contravention of a restriction or condition of a grant of recognised spectrum access is a repeated contravention, in relation to a proposal to revoke or modify the grant, if it falls within sub-paragraph (9).
- (9) A contravention falls within this sub-paragraph if –
  - (a) a previous notification under sub-paragraph (1) has been given in respect of the same contravention or in respect of any other contravention of a restriction or condition of the same grant; and
  - (b) the subsequent notification under that sub-paragraph is given no more than twelve months after the day of the making by OFCOM of a determination for the purposes of sub-paragraph (10) that the contravention to which the previous notification related did occur.
- (10) Where OFCOM have given a notification under sub-paragraph (1), they shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification –
  - (a) decide whether or not to revoke or modify the grant of recognised spectrum access in accordance with their proposal, or in accordance with that proposal but with modifications; and
  - (b) give the holder of the grant a notification of their decision.
- (11) The notification under sub-paragraph (10) –
  - (a) must be given no more than one week after the making of the decision to which it relates; and
  - (b) must, in accordance with that decision, either revoke or modify the grant or withdraw the proposal for revocation or modification.
- (12) Nothing in this paragraph is to apply to –
  - (a) a revocation or modification to be made at the request or with the consent of the holder of the grant; or
  - (b) a revocation or modification that appears to OFCOM to be necessary or expedient for the purpose of securing compliance with an international obligation of the United Kingdom [on behalf of the Bailiwick of Jersey].

- (13) The reference in sub-paragraph (9) to a contravention of a restriction or condition of a grant includes a reference to a contravention of a restriction or condition contained in any previous grant of which the grant in question is a direct or indirect renewal.

*Restriction on powers of revocation and modification*

**7**

- (1) The conditions that OFCOM may include in a grant of recognised spectrum access include conditions restricting the exercise by them of their power to revoke or modify that grant.
- (2) Those conditions include, in particular, conditions providing that the grant may not be revoked or modified except –
- (a) with the consent of the holder of the grant; or
  - (b) in such other circumstances, and on such grounds, as may be specified in the conditions.
- (3) The circumstances or grounds –
- (a) may relate to matters relevant for the purposes of any enactment (whether relating to wireless telegraphy or not); and
  - (b) may, in particular, be made dependent on the exercise of a statutory discretion under any enactment.
- (4) Nothing in any condition included in a grant of recognised spectrum access shall restrict the power of OFCOM to revoke or modify a grant of recognised spectrum access if it appears to OFCOM to be necessary or appropriate to do so –
- (a) in the interests of national security;
  - (b) in the interests of the safety of the public or public health; or
  - (c) for the purpose of securing compliance with any international obligation of the United Kingdom [on behalf of the Bailiwick of Jersey].

*Interpretation*

**8**

In this Schedule, “stations for wireless telegraphy” and “apparatus for wireless telegraphy” each has the same meaning as in the Wireless Telegraphy Act 1949 (c. 54).



## **SCHEDULES 6 AND 7**

\* \* \* \* \*

**SCHEDULE 8**

## Section 192

**DECISIONS NOT SUBJECT TO APPEAL***Prosecutions and civil proceedings*

- 1 A decision to institute, bring or carry on any criminal or civil proceedings.
- 2 A decision (other than one under section 119) to take preliminary steps for the purpose of enabling any such proceedings to be instituted.

*This Act*

- |    |   |   |   |   |   |
|----|---|---|---|---|---|
| 3  | * | * | * | * | * |
| 4  | * | * | * | * | * |
| 5  | * | * | * | * | * |
| 6  | * | * | * | * | * |
| 7  | * | * | * | * | * |
| 8  | * | * | * | * | * |
| 9  | * | * | * | * | * |
| 10 | * | * | * | * | * |
| 11 | * | * | * | * | * |
| 12 | * | * | * | * | * |
| 13 | * | * | * | * | * |
- 14 A decision in exercise of the functions conferred on OFCOM by section 152 as to –
    - (a) the services, records and advice to be provided, maintained or given by them;
    - (b) the research to be carried out or the arrangements made for carrying it out; or
    - (c) the making or terms of any grant.
  - 15 A decision under section 155.
  - 16 \* \* \* \*
  - 17 A decision given effect to by regulations under section 159.
  - 18 A decision given effect to by regulations under section 162.
  - 19 A decision given effect to by an order under section 164.
  - 20 A decision given effect to by regulations under section 168.

- 21 A decision given effect to by regulations under section 170 and any decision under any such regulations.
- 22 \* \* \* \* \*
- 23 \* \* \* \* \*
- 24 A decision given effect to by regulations under paragraph 1 of Schedule 5.
- 25 \* \* \* \* \*
- 26 \* \* \* \* \*

*Wireless Telegraphy Act 1949*

- 27 A decision given effect to by regulations under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54).
- 28 A decision given effect to by regulations under section 1D(3) of that Act.
- 29 A decision given effect to by regulations under section 3 of that Act.
- 30 A decision given effect to by regulations under section 10 of that Act.
- 31 A decision relating to the making or revision of a statement under section 13B of that Act.
- 32 A decision for the purposes of section 15 of that Act.

*Wireless Telegraphy Act 1998*

- 33 A decision given effect to by regulations under section 1 of the Wireless Telegraphy Act 1998 (c. 6).
- 34 A decision given effect to by regulations under section 3 of that Act.
- 35 A decision given effect to by regulations under section 3A of that Act.
- 36 A decision relating to the recovery of a sum payable to OFCOM under section 4A of that Act.

**SCHEDULE 9**

## Section 199

**ARRANGEMENTS ABOUT CARRYING ON OF C4C'S ACTIVITIES***Notification of requirement to submit proposals***1**

- (1) It shall be the duty of OFCOM to give a notification under this paragraph to C4C –
  - (a) as soon as practicable after the commencement of this Schedule, and
  - (b) as soon as practicable in the last twelve months preceding each date on which the replacement licence granted in accordance with section 231 would expire if not renewed.
- (2) A notification under this paragraph is one requiring C4C to submit proposals to OFCOM in accordance with this Schedule for the relevant licence period.
- (3) A notification under this paragraph must specify the period within which C4C must submit their proposals.
- (4) The period specified under sub-paragraph (3) must be a period ending not less than three months after the day of the giving of the notification.

*Submission of proposed arrangements***2**

- (1) This paragraph applies where C4C have received a notification under paragraph 1.
- (2) C4C must, within the period set out in the notification, submit proposals to OFCOM for the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are –
  - (a) identified;
  - (b) evaluated; and
  - (c) properly managed.
- (3) The proposals must include proposals for the arrangements that C4C consider appropriate for securing the transparency objectives during the relevant licence period.
- (4) For the purposes of this Schedule the transparency objectives are –

- (a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
  - (b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.
- (5) The matters to which the proposals submitted under this paragraph may relate include, in particular, the procedures and other practices to be followed by C4C in the case of –
  - (a) the initiation and management of new ventures;
  - (b) the exercise of particular powers;
  - (c) the assessment of risks;
  - (d) the imposition of charges; and
  - (e) the keeping of records.
- (6) The determination of what is appropriate for the purposes of sub-paragraphs (3) and (4) is not to be confined to a determination of what is appropriate for securing the matters mentioned in sub-paragraph (2).
- (7) The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed in accordance with that provision.
- (8) That person must be a person other than the person for the time being holding an appointment for the purposes of paragraph 12(2) of Schedule 3 to the 1990 Act (C4C's auditor).

*Consideration and approval of proposals*

**3**

- (1) OFCOM must consider every proposal or revised proposal submitted to them by C4C under paragraph 2 or this paragraph and may do one of the following –
  - (a) approve the proposed arrangements;
  - (b) approve them with such modifications as they may notify to C4C;
  - (c) require C4C to submit revised proposals in accordance with directions given by OFCOM.
- (2) Before –
  - (a) making modifications of proposed arrangements for the purpose of approving them, or
  - (b) requiring the submission of revised proposals,OFCOM must consult C4C.

*Duration of approval and modification of arrangements***4**

- (1) Arrangements approved under this Schedule are to remain in force (subject to the following provisions of this paragraph) throughout the licence period to which they relate.
- (2) The arrangements for the time being approved under this Schedule for any licence period may be modified, by agreement between OFCOM and C4C, at any time during the licence period for which they apply.
- (3) OFCOM may carry out a review of the arrangements for the time being approved under this Schedule.
- (4) The reviews that may be carried out under this paragraph in any one licence period are confined to either –
  - (a) one review relating to all the arrangements; or
  - (b) two reviews carried out at separate times as follows –
    - (i) one (whether the first or second) relating to the arrangements for securing the transparency objectives; and
    - (ii) the other relating to other matters.
- (5) On a review under this paragraph, OFCOM may require C4C to submit proposals for modifying the arrangements for the time being approved under this Schedule so far as they relate to the matters under review.
- (6) Paragraph 3 applies where proposals are submitted to OFCOM under sub-paragraph (5) as it applies where they are submitted under paragraph 2.

*Publication of approved arrangements***5**

- (1) OFCOM must publish all arrangements approved by them under this Schedule.
- (2) The publication of anything under this paragraph must be in such manner as OFCOM consider appropriate for bringing it to the attention of members of the public.

*Duty of C4C to act in accordance with the approved arrangements***6**

It shall be the duty of C4C to act in accordance with the arrangements for the time being in force under this Schedule.

*Enforcement of duties***7**

- (1) This paragraph applies to –
  - (a) every duty of C4C under this Schedule to submit proposals to OFCOM; and
  - (b) the duty imposed on C4C by paragraph 6.
- (2) Each of those duties shall be enforceable in civil proceedings by OFCOM –
  - (a) for an injunction;
  - (b) \* \* \* \* \*
  - (c) for any other appropriate remedy or relief.

*Penalty for contravention of the arrangements***8**

- (1) OFCOM may impose a penalty on C4C if C4C have contravened –
  - (a) a requirement of this Schedule to submit proposals to OFCOM;
  - (b) a requirement of arrangements for the time being approved under this Schedule.
- (2) The amount of the penalty must not exceed 3 per cent. of C4C's qualifying revenue for their last complete accounting period before the contravention.
- (3) Before imposing a penalty on C4C under this paragraph OFCOM must give C4C a reasonable opportunity of making representations to OFCOM about their proposal to impose the penalty.
- (4) Where OFCOM impose a penalty on C4C under this paragraph, they shall –
  - (a) notify C4C; and
  - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (5) In the case of a continuing contravention –
  - (a) separate penalties may be imposed in respect of different periods during which the contravention continues;
  - (b) the notification of the penalty must specify the period in respect of which the penalty is imposed; and
  - (c) the reference in sub-paragraph (2) to the last complete accounting period before the contravention is a reference to the last complete accounting period before the end of the period in respect of which the penalty is imposed.

- (6) A penalty imposed under this paragraph must be paid to OFCOM within the period fixed by them.
- (7) 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, have effect in relation to C4C for the purposes of this paragraph as they have effect in relation to the holder of a Channel 3 licence for the purposes of Part 1 of that Act.

*OFCOM's duty to take account of need to support C4C's primary functions*

## 9

In exercising their powers under this Schedule OFCOM must have regard, in particular, to the need to secure, so far as practicable, that all significant risks that C4C's other activities will have an adverse effect on the carrying out of their primary functions are –

- (a) identified;
- (b) evaluated; and
- (c) properly managed.

### *Interpretation of Schedule*

## 10

In this Schedule –

“arrangements” means arrangements about the procedures and other practices to be followed by C4C and about other matters connected with the carrying on by them of any of their activities;

“licence period” means –

- (a) the period for which the replacement licence is granted to C4C in accordance with section 231; or
- (b) any subsequent period for which it is renewed;

“primary functions” is to be construed in accordance with section 199(2);

“relevant licence period” –

- (a) in relation to the first notification to be given under paragraph 1, the licence period mentioned in paragraph (a) of the definition of that period; and
- (b) in relation to any other such notification, the first licence period to begin after the giving of the notification;

“transparency objectives” is to be construed in accordance with paragraph 2(4).



## SCHEDULE 10

### Section 219

#### LICENSING THE PUBLIC TELETEXT SERVICE

##### PART 1

##### APPLICATIONS FOR AND AWARD OF LICENCE

##### *Notice of proposal to grant licence*

#### 1

- (1) Where OFCOM propose to grant a licence to provide the public teletext service they must publish a notice stating that they are proposing to do so.
- (2) The notice must –
  - (a) specify the digital capacity which is available for the public teletext service on television multiplex services;
  - (b) specify whether the licence will require the public teletext service to comprise a service to be provided for broadcasting in analogue form;
  - (c) invite applications for the licence;
  - (d) specify the closing date for applications;
  - (e) specify the fee payable on the making of an application for the licence; and
  - (f) specify the percentage of qualifying revenue for each accounting period of the licence holder which OFCOM have determined to be the percentage of that revenue that will have to be paid to them.
- (3) Where the licence is to comprise an analogue teletext service the notice must specify –
  - (a) the television broadcasting service or services on whose frequency or frequencies the services are to be provided; and
  - (b) the extent and nature of the spare capacity which is to be allocated by the licence.
- (4) For the purposes of sub-paragraph (2)(f) –
  - (a) different percentages may be determined and specified for different accounting periods; and
  - (b) the percentages that may be determined and specified for an accounting period include a nil percentage.

- (5) A notice under this paragraph is to be published in such manner as OFCOM consider appropriate.

*Guidance as to applications*

**2**

- (1) When publishing a notice under paragraph 1, OFCOM must publish with it some general guidance to applicants about what is likely to make proposals relating to the matters mentioned in paragraph 3(1)(c) to (e) acceptable to them.
- (2) Guidance published under this paragraph must include examples.

*Applications for the licence*

**3**

- (1) An application made in response to a notice under paragraph 1 must be accompanied by –
- (a) the fee specified in the notice as payable on the making of the application;
  - (b) a technical plan complying with sub-paragraph (2);
  - (c) the applicant's proposals for providing, or securing the provision of, a service that fulfils the public service remit for the public teletext service;
  - (d) the applicant's proposals for including news items in the service and for securing that the news items included in the service are up to date and regularly revised;
  - (e) the applicant's proposals for the inclusion in the service of material that is of particular interest to persons living in different parts of the United Kingdom;
  - (f) the applicant's cash bid in respect of the licence; and
  - (g) such information as OFCOM may reasonably require about the matters mentioned in sub-paragraph (3).
- (2) The technical plan must indicate –
- (a) the nature of the public teletext service which the applicant is proposing to provide; and
  - (b) the nature of any services the provision of which, in accordance with proposals made by another person, would be secured by the applicant in accordance with provision made under section 220.
- (3) The matters about which OFCOM may require information under sub-paragraph (1)(g) are –
- (a) the applicant's present financial position; and
  - (b) his projected financial position during the period for which the licence would be in force.

- (4) At any time after receiving an application under this Schedule and before disposing of it, OFCOM may require the applicant to furnish additional information about any one or more of the following –
  - (a) the matters that must be indicated in the technical plan;
  - (b) the applicant's proposals with respect to the matters mentioned in sub-paragraph (1)(c) to (e); and
  - (c) the matters mentioned in sub-paragraph (3).
- (5) Any information to be furnished to OFCOM under this paragraph must be in such form, and must be verified, in such manner as they may require.

*Notice inviting public representations*

**4**

- (1) As soon as reasonably practicable after the date specified in a notice under paragraph 1 as the closing date for applications, OFCOM must publish –
  - (a) the name of every person who has made an application to them in response to their notice;
  - (b) particulars of the technical plan submitted by each applicant;
  - (c) the proposals submitted by each applicant with respect to the matters mentioned in paragraph 3(1)(c) to (e);
  - (d) such other information connected with each application as OFCOM consider appropriate; and
  - (e) a notice under sub-paragraph (2).
- (2) The notice required by this paragraph is one that –
  - (a) invites representations to be made to OFCOM with respect to the other matters published under this paragraph; and
  - (b) specifies the manner in which, and the time by which, such representations have to be made.
- (3) Publication of any information or notice under this paragraph is to be in such manner as OFCOM consider appropriate.

*Determination of applications*

**5**

- (1) This paragraph applies where, in response to a notice under paragraph 1, a person has made an application for a licence to provide the public teletext service.
- (2) OFCOM must not proceed to consider whether to award the applicant the licence in accordance with the following provisions of this paragraph unless it appears to them –

- (a) that the applicant's technical plan, in so far as it involves the use of an electronic communications network, contains proposals that are acceptable to them;
  - (b) that the applicant's proposals with respect to the matters mentioned in paragraph 3(1)(c) to (e) are acceptable to them; and
  - (c) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force.
- (3) In determining whether it appears to them as mentioned in sub-paragraph (2), OFCOM must take account of any representations made to them in response to the invitation published under paragraph 4.
- (4) Sections 17 and 17A of the 1990 Act (award of licence to highest cash bidder and financial conditions) apply in relation to a licence to provide the public teletext service as they apply in relation to a Channel 3 licence, but with the modifications set out in sub-paragraphs (5) and (6).
- (5) In the application of section 17 of the 1990 Act in accordance with sub-paragraph (4) –
  - (a) any reference to an applicant is to be construed as a reference to an applicant in whose case it appears to OFCOM as mentioned in sub-paragraph (2);
  - (b) the provisions of subsection (4) down to the end of paragraph (b) are to be omitted;
  - (c) in subsection (7)(a), the reference to section 19(1) of the 1990 Act is to be construed as a reference to paragraph 7 of this Schedule;
  - (d) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b) –
    - “(b) the name of every other applicant in whose case it appeared to OFCOM as mentioned in paragraph 5(2) of Schedule 10 to the Communications Act 2003;”
  - (e) in subsection (14), the references to a notice under section 15(1) of the 1990 Act and a notice under Part 1 of that Act shall each have effect as a reference to a notice under paragraph 1 of this Schedule.
- (6) In the application of section 17A of the 1990 Act in accordance with sub-paragraph (4) –
  - (a) the reference in subsection (1)(b) to section 15(3)(g) of the 1990 Act shall have effect as a reference to paragraph 3(1)(g) of this Schedule; and
  - (b) the reference in subsection (3) to a notice under section 15(1) of the 1990 Act shall have effect as a reference to a notice under paragraph 1 of this Schedule.

*Revocation of award***6**

- (1) This paragraph applies if, at any time after a licence to provide the public teletext service has been awarded to a person, but before it has come into force –
  - (a) that person indicates to OFCOM that he does not intend to provide, or secure the provision of, the licensed service; or
  - (b) OFCOM have, for any other reason, reasonable grounds for believing that the licensed service will not be provided once the licence has come into force.
- (2) OFCOM must revoke the licence by serving a notice of revocation on the person to whom it was awarded.
- (3) OFCOM may then award the licence again in accordance with section 17 of the 1990 Act (as applied by paragraph 5 of this Schedule) as if the person whose licence is revoked had not made an application.
- (4) Sub-paragraph (3) has effect subject to subsection (14) of section 17 of the 1990 Act (as so applied) (re-publication of invitation to make applications) as if the reference in that subsection to the following provisions of Part 1 of that Act included a reference to that sub-paragraph.
- (5) Before acting under sub-paragraphs (2) and (3) in a case falling within sub-paragraph (1)(b), OFCOM must serve a notice on the person awarded the licence stating their grounds for believing that the licensed service will not be provided once the licence has come into force.
- (6) Where such a notice is required to be given, OFCOM must not revoke the licence unless they have given the person to whom it was awarded a reasonable opportunity of making representations to them about the matters by reference to which they are proposing to revoke it.
- (7) In the case of a licence to provide a service that must comprise both –
  - (a) an analogue teletext service, and
  - (b) a teletext service provided in digital form,the references in sub-paragraphs (1) and (5) to the licensed service are references to one or both of those services.

**PART 2****CONDITIONS AND ENFORCEMENT OF LICENCE***Payments to be made in respect of the public teletext service***7**

- (1) A licence to provide the public teletext service must include conditions requiring the licence holder to pay the following amounts to OFCOM (in addition to any fees required to be so paid by virtue of section 4(1)(b) of the 1990 Act) –
  - (a) a specified amount in respect of the first complete calendar year falling within the licence period;
  - (b) in respect of each subsequent year falling wholly or partly within the licence period, that amount increased by the appropriate percentage;
  - (c) in respect of each accounting period of his falling within the licence period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (2) The amount specified for the purposes of sub-paragraph (1)(a) must be –
  - (a) in the case of the replacement licence under section 221, the amount proposed in accordance with subsection (5)(a) of that section;
  - (b) in the case of a licence renewed under section 222, the amount determined under section 223(1)(a); and
  - (c) in any other case, the amount specified in the licence holder's cash bid.
- (3) The percentage specified for the purposes of sub-paragraph (1)(c) in respect of an accounting period must be –
  - (a) in the case of the replacement licence under section 221, nil;
  - (b) in the case of a licence renewed under section 222, the percentage determined under section 223(1)(b); and
  - (c) in any other case, the percentage determined and specified for the purposes of paragraph 1(2)(f) of this Schedule.
- (4) A licence to provide the public teletext service may also include conditions –
  - (a) enabling OFCOM to estimate before the beginning of an accounting period the amount due for that period by virtue of any condition imposed under this paragraph; and
  - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may, in particular, include conditions –

- (a) authorising OFCOM to revise an estimate on one or more occasions;
  - (b) requiring them to alter the amounts of the instalments payable by the licence holder to take account of the revised estimate;
  - (c) providing for the adjustment of an overpayment or underpayment.
- (6) This paragraph has effect subject to sections 225 and 226 and to the requirement in section 221(5)(b).
- (7) In this paragraph “the appropriate percentage” has the same meaning as in section 19 of the 1990 Act.

*Corrections and statements of findings by the public teletext provider*

**8**

- (1) Section 40 of the 1990 Act (power to direct correction or a statement of findings) shall have effect in relation to the public teletext service as it has effect in relation to a Channel 3 service but as if the references in subsection (4) to a programme were references to an item.
- (2) OFCOM’s powers by virtue of this paragraph in relation to any matter are not affected by any prior exercise by them in relation to that matter of their powers under either or both of paragraphs 9 and 10.

*Enforcement of the licence for the public teletext service*

**9**

- (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has –
- (a) contravened a condition of the licence, or
  - (b) failed to comply with a direction given to him by OFCOM under or by virtue of a provision of the 1990 Act, the 1996 Act or Part 3 of this Act,
- they may serve on him a notice requiring him to pay a specified financial penalty to them.
- (2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is 5 per cent. of the qualifying revenue for his last complete accounting period.
- (3) Where an accounting period by reference to which the maximum amount of a penalty falls to be calculated has not ended when the penalty is imposed, the amount taken into account in respect of that period is to be the amount estimated by OFCOM.
- (4) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

*Power to shorten licence period***10**

- (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has –
  - (a) contravened a condition of the licence, or
  - (b) failed to comply with a direction given to him by OFCOM under or by virtue of any provision of the 1990 Act, the 1996 Act or Part 3 of this Act,

they may serve on him a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

- (2) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (3) Where a licence is due to expire on a particular date by virtue of a notice served on a person under this paragraph, OFCOM may, on the application of that person, revoke that notice by a further notice served on him at any time before that date.
- (4) OFCOM may exercise their power under sub-paragraph (3) only if they are satisfied that, since the date of the earlier notice, the conduct of the licence holder in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

*Revocation for contravention of condition or direction***11**

Section 42 of the 1990 Act (revocation for contravention) shall apply in relation to the licence to provide the public teletext service as it applies in relation to a licence to provide a Channel 3 service.

*Penalty on revocation***12**

- (1) Where OFCOM revoke the licence to provide the public teletext service (whether under paragraph 6 or a provision of the 1990 Act or 1996 Act), they must serve on the licence holder a notice requiring him to pay a specified financial penalty to them.
- (2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is the maximum given by sub-paragraphs (3) and (4).
- (3) In a case where the licence is revoked under paragraph 6 or the penalty is imposed before the end of the first complete accounting period of the licence holder to begin in the licence period, 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.
- (4) 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 licence period.
- (5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.
- (6) A financial penalty that must be paid by virtue of this paragraph by a body of any description shall also be recoverable –
- (a) as a debt due to OFCOM from the person who controls the body; or
  - (b) if two or more persons control it, as a debt due jointly and severally from them all.
- (7) Sub-paragraph (6) is in addition to the provision for the recovery of penalties contained in section 346, but the amount recovered in respect of any one penalty must not exceed the full amount of that penalty.
- (8) References in this paragraph to a person controlling a body are references to his controlling it within the meaning of Schedule 2 to the 1990 Act.

*Power to modify penalties in paragraph 12*

**13**

- (1) The Secretary of State may by order substitute a different sum for the sum for the time being specified in paragraph 12(3)(a) or (4)(a).
- (2) \* \* \* \* \*

**PART 3**

INTERPRETATION OF SCHEDULE

**14**

In this Schedule “licence period”, in relation to a licence, means the period for which the licence is in force.

**15**

- (1) For the purposes of this Schedule the qualifying revenue for an accounting period of the holder of a licence to provide the public teletext service consists of the aggregate of all the following amounts –
  - (a) the amounts received or to be received by a person mentioned in sub-paragraph (2) in consideration of the inclusion in the licensed service in that period of advertisements or other items; and
  - (b) the amounts received or to be received by such a person in respect of the provision of the service from –
    - (i) a person authorised by the licence holder to provide the whole or a part of the licensed service; or
    - (ii) a person who is a connected person in relation to a person so authorised.
- (2) Those persons are –
  - (a) the licence holder; or
  - (b) a person who is a connected person in relation to the licence holder without being a person authorised by the licence holder to provide the whole or a part of the licensed service.
- (3) Part 1 of Schedule 7 to the 1990 Act applies for determining qualifying revenue for the purposes of this Schedule as it applies for the purposes of Part 1 of that Act.
- (4) Where, in the case of the licence to provide the public teletext service –
  - (a) the first complete accounting period of the licence holder to fall within the licence period does not begin at the same time as the licence period, or
  - (b) the last complete accounting period of his to fall within the licence period does not end at the same time as the licence period,references in this Schedule to an accounting period of the licence holder include references to such part of the accounting period preceding the first complete accounting period, or (as the case may be) following the last complete accounting period, as falls within the licence period.
- (5) In this paragraph “connected person” has the same meaning as in Schedule 2 to the 1990 Act.

## **SCHEDULE 11**

Sections 291 and 294

### **APPROVAL, IMPOSITION AND MODIFICATION OF NETWORKING ARRANGEMENTS**

#### *Application of Schedule*

#### **1**

- (1) This Schedule applies where OFCOM's approval of networking arrangements entered into by the holders of regional Channel 3 licences is required –
  - (a) for the purposes of conditions included in regional Channel 3 licences in accordance with section 291; or
  - (b) in order for networking arrangements made by OFCOM to cease to have effect in accordance with section 292.
- (2) This Schedule also has effect as respects –
  - (a) the imposition by OFCOM under section 292 of networking arrangements;
  - (b) the modification of such arrangements following a review under section 293; and
  - (c) the making of proposals for modifications of networking arrangements following such a review.

#### *Approval required for modifications*

#### **2**

- (1) Where networking arrangements are approved by OFCOM for purposes mentioned in paragraph 1(1), those arrangements are not to be modified unless OFCOM have approved the modifications in accordance with this Schedule.
- (2) This paragraph does not apply to modifications proposed by OFCOM under section 293.

#### *Procedure for giving approval*

#### **3**

- (1) This paragraph applies where arrangements or modifications are submitted to OFCOM for their approval.

- (2) OFCOM must publish a description of the arrangements or modifications that have been submitted.
- (3) The publication must be in such manner as OFCOM consider appropriate for bringing the matters published to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the arrangements or modifications.
- (4) After allowing a reasonable time after the publication for the making of representations, OFCOM must consider the arrangements or modifications and decide whether or not to approve them.

*Decision of OFCOM whether or not to approve arrangements or modifications*

**4**

- (1) The decision made by OFCOM under paragraph 3(4) has to be one of the following –
  - (a) a decision to approve the arrangements or modifications unconditionally;
  - (b) a decision to give a conditional approval to the arrangements or modifications;
  - (c) a decision to refuse approval.
- (2) A conditional approval is one that has effect only if effect is given, in relation to the proposed arrangements or modifications, to changes proposed by OFCOM.
- (3) Before deciding to give a conditional approval, OFCOM must consult every holder of a regional Channel 3 licence about the changes they are proposing.
- (4) When OFCOM have made their decision, they must prepare a report setting out –
  - (a) their decision; and
  - (b) their reasons for that decision.
- (5) OFCOM must publish the report and send a copy of it to –
  - (a) the Office of Fair Trading; and
  - (b) every person to whom the relevant arrangements will apply, or do apply.
- (6) The relevant arrangements are –
  - (a) the arrangements for which approval has been sought; or
  - (b) the arrangements which are the subject of the modifications for which approval has been sought.

*Notification of decisions on imposition of arrangements***5**

- (1) Where OFCOM impose arrangements they must prepare and publish a report setting out details of the imposed arrangements.
- (2) Where OFCOM carry out a review under section 293, they must prepare and publish a report setting out –
  - (a) their conclusions on the review;
  - (b) their reasons for those conclusions; and
  - (c) the modifications (if any) that they are proposing, or intend to make, following the review.
- (3) OFCOM must send a copy of a report prepared under this paragraph to –
  - (a) the Office of Fair Trading [and to the Economic Development Committee of the States of Jersey if the subject matter of the report is concerned with anything connected with the Bailiwick of Jersey]; and
  - (b) every person to whom the relevant arrangements will apply or do apply.
- (4) The relevant arrangements are –
  - (a) the arrangements which are imposed; or
  - (b) the arrangements which are the subject of the modifications proposed by OFCOM or to be made by them.

*Competition tests applying to OFCOM's decisions***6**

\* \* \* \* \*

*Other matters to be taken into account***7**

- (1) OFCOM must not –
  - (a) approve arrangements or modifications,
  - (b) impose arrangements or modify imposed arrangements, or
  - (c) propose modifications following a review under section 293,unless they consider that the arrangements, or the arrangements as proposed to be modified, are satisfactory.
- (2) OFCOM's consideration under sub-paragraph (1) must include consideration of the following two factors.

- (3) The first factor is whether the arrangements, or the arrangements as proposed to be modified, represent a satisfactory means of achieving the purpose set out in section 290(4)(c).
- (4) The second factor is the likely effect of the arrangements, or the arrangements as modified, on the ability of the persons who will be or are the holders of regional Channel 3 licences, or of any of them, to maintain the quality and range of –
  - (a) regional programmes included in regional Channel 3 services; and
  - (b) the other programmes included in such services which contribute to the regional character of the services.
- (5) In this paragraph “regional programme”, in relation to a regional Channel 3 service, means a programme (including a news programme) which is of particular interest –
  - (a) to persons living within the area for which the service is provided;
  - (b) to persons living within a part of that area; or
  - (c) to particular communities living within that area.

*Duty to refuse approval in certain cases*

**8**

- (1) This paragraph applies to a decision by OFCOM –
  - (a) to approve arrangements or modifications;
  - (b) to impose arrangements or to modify imposed arrangements; or
  - (c) to propose modifications following a review under section 293.
- (2) OFCOM must not make that decision if it appears to them that the arrangements, or the arrangements as proposed to be modified, would be likely to be prejudicial to the ability of holders of regional Channel 3 licences, or of any of them, to comply with –
  - (a) their public service remits;
  - (b) conditions imposed on them under section 286;
  - (c) conditions imposed on them under section 287; or
  - (d) conditions imposed on them under section 352.

*Appeals against decisions relating to competition test*

**9**

- (1) A person holding a regional Channel 3 licence may appeal to the [Royal Court of Jersey] against the following decisions by OFCOM –
  - (a) a decision on how to dispose of an application for the approval of arrangements or modifications;

- (b) a decision to impose arrangements or to modify imposed arrangements; or
  - (c) a decision to propose modifications following a review under section 293.
- (2) An appeal can be made only by sending the [Royal Court of Jersey] a notice of appeal within the period specified, in relation to the decision appealed against, in [Royal Court of Jersey] rules.
- (3) The notice of appeal must set out the grounds of appeal.
- (4) The only grounds on which an appeal may be brought are –
  - (a) that OFCOM have wrongly decided that a competition test is or is not satisfied in relation to arrangements or modifications submitted to them for approval;
  - (b) that a competition test is not satisfied in the case of arrangements proposed by OFCOM;
  - (c) that provisions contained in arrangements proposed by OFCOM for satisfying a competition test are not required for that purpose;
  - (d) that the requirement to satisfy a competition test should be discharged in a different manner from that in which it would be satisfied in accordance with arrangements proposed by OFCOM.
- (5) In sub-paragraph (4) “arrangements proposed by OFCOM” means –
  - (a) arrangements or modified arrangements as they will have effect after giving effect to changes proposed by OFCOM in giving a conditional approval;
  - (b) arrangements imposed by them;
  - (c) imposed arrangements as modified by them;
  - (d) arrangements as modified by proposals made by OFCOM following a review under section 293.
- (6) The holder of a regional Channel 3 licence is not required by the conditions of his licence to take steps for giving effect to a decision of OFCOM at any time when an appeal under this Schedule against that decision is pending.

*Decisions on an appeal*

**10**

- (1) Appeals to the [Royal Court of Jersey] under paragraph 9 are to be disposed of in accordance with this paragraph.
- (2) The [Royal Court of Jersey] shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.
- (3) The [Royal Court of Jersey] shall decide what (if any) is the appropriate decision for OFCOM to have made in relation to the matters to which those grounds relate.
- (4) The [Royal Court of Jersey] shall then either –

- (a) confirm OFCOM's decision; or
- (b) remit the matter to OFCOM with such directions (if any) as the [Royal Court of Jersey] considers appropriate for giving effect to its decision.
- (5) The [Royal Court of Jersey] must not direct OFCOM to take any action which they would not otherwise have had power to take in relation to the matter under appeal.
- (6) It shall be the duty of OFCOM to comply with every direction given to them under sub-paragraph (4).
- (7) \* \* \* \* \*

*Appeals against decisions of the Tribunal*

**11**

- (1) A decision of the [Royal Court of Jersey] on an appeal under paragraph 9 may itself be appealed.
- (2) An appeal under this [to the Jersey Court of Appeal].
- (3) An appeal under this paragraph may be brought by a party to the proceedings before the [Royal Court of Jersey].
- (4) An appeal under this paragraph requires the [leave of the Royal Court of Jersey or the Jersey Court of Appeal].
- (5) In this paragraph references to a decision of the Tribunal include references to a direction given by it under paragraph 10(4).

*Information for OFCOM*

**12**

- (1) OFCOM may by notice require a person –
  - (a) to produce to them such documents specified or described in the notice, or
  - (b) to furnish them with such other information so specified or described,
 as they consider necessary in order to determine for the purposes of section 293 or this Schedule whether the competition tests are satisfied.
- (2) A requirement imposed by a notice under this paragraph has to be complied with by producing the document, or by furnishing the required information, at the time and place specified in the notice.
- (3) If the requirement is one for the furnishing of information otherwise than by the production of a document, the information must be furnished in the manner specified in the notice.
- (4) The only documents that a person is required to produce by a notice under this paragraph are those that are in his custody or under his control –



- (a) at the time of the notice; or
- (b) at a time between that time and the time when the notice must be complied with.

*Enforcement of information provisions*

**13**

- (1) The [Royal Court of Jersey] may, on an application by OFCOM, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a requirement contained in a notice under paragraph 12.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which OFCOM consider has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the [Royal Court of Jersey] shall hear –
  - (a) any witness who may be produced against or on behalf of the defaulter; and
  - (b) any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the [Royal Court of Jersey] is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or failed, without reasonable excuse, to comply with the requirement contained in the notice under paragraph 12.
- (5) The [Royal Court of Jersey] may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the power of the [Royal Court of Jersey] to punish the defaulter includes power to punish a director or officer of the body corporate.
- (7) Where the defaulter is a partnership constituted under the law of Scotland, the power of the [Royal Court of Jersey] to punish the defaulter includes power to punish a member of the partnership.
- (8) A person is guilty of an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 12.
- (9) A person is guilty of an offence if –
  - (a) he supplies information to OFCOM in purported compliance with a notice given to him under paragraph 12;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (10) A person is guilty of an offence if –

- (a) he supplies information to another person knowing that the information is to be used for complying with a notice under paragraph 12;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (11) A person guilty of an offence under this paragraph shall be [liable to a fine or to imprisonment for two years, or to both].
- (12) \* \* \* \* \*

*Confidentiality and defamation*

**14**

- (1) When publishing a report prepared under paragraph 4 or 5, OFCOM must have regard to the need to exclude from the publication, so far as practicable, the matters which are confidential in accordance with sub-paragraphs (2) and (3).
- (2) A matter is confidential under this sub-paragraph if –
  - (a) it relates specifically to the affairs of a particular body; and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this sub-paragraph if –
  - (a) it relates to the private affairs of an individual; and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.
- (4) For the purposes of the law of defamation absolute privilege attaches to every report prepared under paragraph 4 or 5.

*Interpretation of Schedule*

**15**

In this Schedule –

“competition test” is to be construed in accordance with paragraph 6;

\* \* \* \* \*

**SCHEDULE 12**

## Section 338

**CORRESPONDING OBLIGATIONS OF THE BBC AND WELSH AUTHORITY****PART 1**

## THE BBC

*Quotas for independent productions***1**

- (1) It shall be the duty of the BBC to secure that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In this paragraph –
  - (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this paragraph;
  - (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this paragraph; and
  - (c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph.
- (4) The Secretary of State may also by order provide for the BBC to have the duty set out in sub-paragraph (5), either instead of or as well as the one set out in sub-paragraph (1).
- (5) That duty is a duty to secure that, in each year, not less than the percentage specified in the order of the programming budget for that year for the television broadcasting services provided by the BBC is applied in the acquisition of independent productions.
- (6) The power to make an order under sub-paragraph (4) includes power to provide that the BBC are again to be subject to a duty to which they have

- previously ceased to be subject by virtue of such an order, in addition to or instead of the duty to which they are subject (apart from the exercise of that power) by virtue of this paragraph.
- (7) The Secretary of State is not to make an order for the BBC to be or to cease to be subject to the duty mentioned in sub-paragraph (1) or (5) unless –
- (a) OFCOM have made a recommendation to him that the BBC should be subject to that duty, or should cease to be subject to it; and
  - (b) the order gives effect to that recommendation.
- (8) Where television broadcasting services are designated by or under the BBC Charter and Agreement –
- (a) as services that must be treated separately for the purposes of the duty imposed by sub-paragraph (1) or a duty imposed under sub-paragraph (4), or
  - (b) as services that must be included in a group of services that must be taken together for the purposes of such a duty,
- that duty is to have effect in accordance with sub-paragraph (9).
- (9) A duty having effect in accordance with this sub-paragraph is to have effect as if (instead of applying to all the television broadcasting services provided by the BBC, taken together) it applied separately –
- (a) in relation to each service that is required to be treated separately; and
  - (b) in relation to each group of services that are required to be taken together.
- (10) The BBC must comply with directions given to them by OFCOM for the purpose of –
- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of sub-paragraph (1) or (4); and
  - (b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.
- (11) For the purposes of this paragraph –
- (a) the amount of the programming budget for a year, and
  - (b) the means of determining the amount of that budget that is applied for any purpose,
- are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.
- (12) Before making an order under this paragraph the Secretary of State must consult OFCOM and the BBC.
- (13) \* \* \* \* \*
- (14) In this paragraph –

“acquisition”, in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast; and

“programming budget” means the budget for the production and acquisition of qualifying programmes.

*Duty to publicise complaints procedures etc.*

## 2

- (1) It shall be the duty of the BBC to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise).
- (2) Those matters are –
  - (a) OFCOM’s functions under Part 5 of the 1996 Act in relation to services provided by the BBC; and
  - (b) any procedures established by OFCOM or the BBC for the handling and resolution of complaints about the observance by the BBC of standards set under section 319.

## PART 2

\* \* \* \* \*

**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<sup>14</sup> (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) \* \* \* \* \*

*Licences for Channel 3 services and for Channels 4 and 5*

**3**

- (1) For subsection (2) of section 41<sup>15</sup> (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) \* \* \* \* \*

*Restricted services licences*

**4**

- (1) In subsection (2) of section 42B<sup>16</sup> (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."
- (4) \* \* \* \* \*

*Additional television services licences*

**5**

- (1) For subsection (2) of section 55<sup>17</sup> (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) \* \* \* \* \*

*Revocation of national sound broadcasting licence*

**6**

- (1) In subsection (3) of section 101<sup>18</sup> (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.
  - (3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above.”
- (3) \* \* \* \* \*

*Licences for analogue sound services*

**7**

- (1) For subsection (2) of section 110<sup>19</sup> (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) \* \* \* \*

*Additional radio services licences*

**8**

- (1) For subsection (2) of section 120<sup>20</sup> (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 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) \* \* \* \*

*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) \* \* \* \*

**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.
  - (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) \* \* \* \*

*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) \* \* \* \* \*

*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) \* \* \* \* \*

*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 –

“(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) \* \* \* \*

*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) \* \* \* \*

*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) \* \* \* \*

*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 –

- (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) \* \* \* \* \*

#### *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).”
- (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) \* \* \* \* \*

*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) \* \* \* \* \*

*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).

(3) \* \* \* \* \*

**SCHEDULE 14**

## Section 350

**MEDIA OWNERSHIP RULES****PART 1**

## CHANNEL 3 SERVICES

*Ban on newspaper proprietors holding Channel 3 licences***1**

- (1) A person is not to hold a licence to provide a Channel 3 service if –
  - (a) he runs a national newspaper which for the time being has a national market share of 20 per cent. or more; or
  - (b) he runs national newspapers which for the time being together have a national market share of 20 per cent. or more.
- (2) A person is not to hold a licence to provide a regional Channel 3 service if –
  - (a) he runs a local newspaper which for the time being has a local market share of 20 per cent. or more in the coverage area of the service; or
  - (b) he runs local newspapers which for the time being together have a local market share of 20 per cent. or more in that coverage area.
- (3) For the purposes of this paragraph, where there is a licence to provide a Channel 3 service, each of the following shall be treated as holding that licence –
  - (a) the actual licence holder; and
  - (b) every person connected with the actual licence holder.

*Restrictions on participation***2**

- (1) A person who is –
  - (a) the proprietor of a national newspaper which for the time being has a national market share of 20 per cent. or more, or
  - (b) the proprietor of national newspapers which for the time being together have a national market share of 20 per cent. or more,

is not to be a participant with more than a 20 per cent. interest in a body corporate which is the holder of a licence to provide a Channel 3 service.

- (2) A person who is the holder of a licence to provide a Channel 3 service is not to be a participant with more than a 20 per cent. interest in a body corporate which is a relevant national newspaper proprietor.
- (3) A body corporate is not to be a participant with more than a 20 per cent. interest in a body corporate which holds a licence to provide a Channel 3 service if the first body corporate is one in which a relevant national newspaper proprietor is a participant with more than a 20 per cent. interest.
- (4) A restriction imposed by this paragraph on participation in a body corporate which is the holder of a Channel 3 licence applies equally to participation in a body corporate which controls the holder of such a licence.
- (5) Any restriction on participation imposed by this paragraph –
  - (a) on the proprietor of a newspaper, or
  - (b) on the holder of a licence,is to apply as if he and every person connected with him were one person.
- (6) In this paragraph “a relevant national newspaper proprietor” means a person who runs –
  - (a) a national newspaper which for the time being has a national market share of 20 per cent. or more; or
  - (b) national newspapers which for the time being together have a national market share of 20 per cent. or more.

*National and local newspapers and their respective national and local market shares*

**3**

- (1) In this Part of this Schedule references to a national or local newspaper are references to a national or local newspaper circulating wholly or mainly in the United Kingdom [or the Bailiwick of Jersey] or in [the Bailiwick of Jersey].
- (2) Where a newspaper is published in different regional editions on the same day, OFCOM have the power to determine whether those regional editions should be treated for the purposes of this Part of this Schedule as constituting –
  - (a) one national newspaper;
  - (b) two or more local newspapers; or
  - (c) one national newspaper and one or more local newspapers.
- (3) In the case of a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule, OFCOM have the power to determine, if they consider it appropriate to do so in the light of –

- (a) its circulation and influence in the United Kingdom, or
  - (b) its circulation or influence in a part of the United Kingdom,
- that the newspaper is to be treated as a national or as a local newspaper for such of those purposes as they may determine.
- (4) For the purposes of this Part of this Schedule, the national market share of a national newspaper at any time is the percentage of the total number of copies of all national newspapers sold in the United Kingdom in the relevant six months which is represented by the total number of copies of that newspaper sold in the United Kingdom in that six months.
  - (5) For the purposes of this Part of this Schedule, the local market share of a local newspaper in any area at any time is the percentage of the total number of copies of all local newspapers sold in that area in the relevant six months which is represented by the total number of copies of that newspaper sold in that area in that six months.
  - (6) In sub-paragraphs (4) and (5) “the relevant six months” means the six months ending with the last whole calendar month to end before the time in question.
  - (7) For the purposes of sub-paragraphs (4) and (5), the number of copies of a newspaper sold in the United Kingdom, or in a particular area, during any period may be taken to be such number as is estimated by OFCOM –
    - (a) in such manner, or
    - (b) by reference to such statistics prepared by any other person, as they think fit.
  - (8) In relation to a newspaper which is distributed free of charge (rather than sold), references in this paragraph to the number of copies sold include references to the number of copies distributed.

*Construction of references to running a newspaper*

**4**

For the purposes of this Part of this Schedule a person runs a national or local newspaper if –

- (a) he is the proprietor of the newspaper; or
- (b) he controls a body which is the proprietor of the newspaper.

*Coverage area for a Channel 3 service*

**5**

For the purposes of this Part of this Schedule the coverage area for a Channel 3 service is the area that is determined by OFCOM to be the area of the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this paragraph.

*Power to amend Part 1 of Schedule***[6**

The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order vary or repeal any of the restrictions imposed by this Part of this Schedule.]

**PART 2****RADIO MULTIPLEX SERVICES***Restriction on holding of national radio multiplex licences***7**

A person is not to hold more than one national radio multiplex licence at the same time.

*Restriction on holding of local radio multiplex licences***8**

- (1) A person is not to hold any two local radio multiplex licences at the same time where the coverage area of one of the licensed services overlaps with the coverage area of the other in a way that means that the potential audience for one of them is or includes at least half the potential audience of the other.
- (2) For the purposes of this paragraph the coverage area for a local radio multiplex service is the area determined by OFCOM to be the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this sub-paragraph.
- (3) Where a person is in contravention of this paragraph in respect of the holding by him of local radio multiplex licences, that contravention is to be disregarded in relation to any time if –
  - (a) he held those licences immediately before the commencement of this paragraph;
  - (b) his holding of those licences immediately before the commencement of this paragraph was not in contravention of paragraph 11(4) of Part 3 of Schedule 2 to the 1990 Act; and
  - (c) there has not been a relevant change of circumstances between the commencement of this paragraph and that time.
- (4) There is a relevant change of circumstances in the case of the person in contravention if another person becomes the holder of the two pre-commencement licences in relation to which the contravention arises.

- (5) In sub-paragraph (4) “pre-commencement licence”, in relation to a person and a time, means a local radio multiplex licence held by him immediately before the commencement of this paragraph and still held by him at that time.

*Connected persons rules etc.*

## 9

For the purposes of this Part of this Schedule, where there is a licence to provide a radio multiplex service, each of the following shall be treated as holding that licence –

- (a) the actual licence holder; and
- (b) every person connected with the actual licence holder.

*Power to amend Part 2 of Schedule*

## [10

The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order vary or repeal any of the restrictions imposed under this Part of this Schedule.]

## PART 3

### LOCAL SOUND PROGRAMME SERVICES

*Restriction on holding of local sound broadcasting licences*

## 11

- (1) The [Economic Development Committee of the States of Jersey] may by order impose –
  - (a) requirements prohibiting the holding at the same time by the same person, in the circumstances described in the order, of more than the number of local sound broadcasting licences that is determined in the manner set out in the order;
  - (b) requirements prohibiting a person from holding even one local sound broadcasting licence in the circumstances described in the order.
- (2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from holding a local sound broadcasting licence, and the factors that may be used for determining the number of such licences that he may hold, include, in particular –

- (a) whether and to what extent the coverage areas of different services provided by that person under different local sound broadcasting licences would overlap;
  - (b) the sizes of the potential audiences for those services and the times when those services would be made available;
  - (c) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for services provided under local sound broadcasting licences held by other persons;
  - (d) in a case in which members of potential audiences for services so provided by that person would also be members of the potential audiences for services so provided by other persons –
    - (i) the number of those other persons;
    - (ii) the coverage areas of their services;
    - (iii) the sizes of the potential audiences for their services; and
    - (iv) the times when their services are or will be made available;
  - (e) whether that person runs one or more national newspapers, and their national market share;
  - (f) whether and to what extent the whole or a part of the coverage area for a service for which that person would hold a local sound broadcasting licence is or includes an area in which one or more local newspapers run by him is circulating, and the newspapers' local market share;
  - (g) whether and to what extent the whole or a part the coverage area for which that person would hold a local sound broadcasting licence is or is included in the coverage area of a regional Channel 3 service for which he also holds a licence.
- (3) For the purposes of this paragraph the coverage area for a service provided under a local sound broadcasting licence or a Channel 3 licence is the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.

*Restriction applying to local digital sound programme services*

**12**

- (1) The [Economic Development Committee of the States of Jersey] may by order impose requirements, on persons holding local digital sound programme licences, prohibiting the provision by the same person, in the circumstances described in the order, of more than the number of local digital sound programme services that is determined in the manner set out in the order.
- (2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from providing a local digital sound programme

service, and the factors that may be used for determining the number of such services that he may provide, include, in particular –

- (a) whether and to what extent the coverage areas of different local digital sound programme services provided by that person would overlap;
  - (b) the capacity used by those services on the relevant multiplexes;
  - (c) the sizes of the potential audiences for those services and the times when those services would be made available;
  - (d) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for local digital sound programme services provided by other persons;
  - (e) in a case in which members of the potential audiences for the services provided by that person would also be members of the potential audiences for local digital sound programme services provided by other persons –
    - (i) the number of those other persons;
    - (ii) the coverage areas of their services;
    - (iii) the capacity used by their services on the relevant multiplexes;
    - (iv) the sizes of the potential audiences for their services; and
    - (v) the times when their services are or will be made available.
- (3) For the purposes of this paragraph the coverage area for a service provided under a local digital sound programme licence is the area in the United Kingdom within which the relevant multiplex is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.
- (4) In this paragraph “the relevant multiplex”, in relation to a service provided under a local digital sound programme licence, means the local radio multiplex service in which the service provided under that licence is or is to be included.
- (5) For the purposes of this paragraph a person who holds a licence to provide local digital sound programme services provides such a service if, and only if –
- (a) the service is one provided by him and is included in a local radio multiplex service for which he holds a local radio multiplex licence; or
  - (b) under a contract between that person and a person who holds a licence to provide a local radio multiplex service, the person holding the licence to provide the radio multiplex service is required to include that local digital sound programme service in that multiplex service.



*Powers supplemental to powers under paragraphs 11 and 12***13**

- (1) An order under paragraph 11 or 12 may make provision for treating –
  - (a) persons who are connected with a person who holds a licence,
  - (b) persons who are associates of a person who holds a licence or of a person who is connected with a person who holds a licence, and
  - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body which holds a licence or is treated as doing so by virtue of paragraph (a) or (b),as if each of them were also a holder of the licence for the purposes of a requirement imposed under that paragraph.
- (2) An order under paragraph 12 may make provision for treating –
  - (a) persons who are connected with a person who provides a local digital sound programme service,
  - (b) persons who are associates of a person who provides such a service or of a person who is connected with a person who provides such a service, and
  - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body who provides such a service or is treated as doing so by virtue of paragraph (a) or (b),as if each of them were also a person providing the service for the purposes of a requirement imposed under that paragraph.
- (3) An order under paragraph 11 or 12 may also make provision for treating –
  - (a) persons who are connected with each other,
  - (b) persons who are associates of each other, and
  - (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body,as if they and such other persons who are connected with, associates of or participators in any of them as may be described in the order were the same person for the purposes of a requirement imposed under that paragraph.
- (4) An order under paragraph 11 may make provision –
  - (a) as to the circumstances in which a newspaper is to be treated as a national newspaper or a local newspaper for the purposes of a requirement imposed under that paragraph;
  - (b) as to the person or persons who are to be treated for any such purposes as running a newspaper;
  - (c) as to the determination for any such purposes of the area within which a local newspaper is circulating; and

- (d) as to what is to constitute the national market share or local market share of any newspaper or of a number of newspapers taken together;
- and provision made by virtue of this paragraph may apply, with or without modifications, any of the provisions of paragraph 3 or 4 of this Schedule.
- (5) Power to make provision with respect to any matter by any order under paragraph 11 or 12 includes power –
    - (a) to make provision with respect to that matter by reference to the making or giving by OFCOM, in accordance with the order, of any determination, approval or consent; and
    - (b) to confer such other discretions on OFCOM as the Secretary of State thinks fit.
  - (6) Sub-paragraph (5) of paragraph 12 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

*Transitional provision for orders under paragraphs 11 and 12*

**14**

- (1) This paragraph applies where –
  - (a) immediately after the coming into force of an order under paragraph 11 or 12, a person (“the person in contravention”) is in contravention, in any respect, of a requirement imposed under that paragraph; and
  - (b) immediately before the coming into force of the order, that person –
    - (i) held one or more relevant licences; but
    - (ii) was not, in that respect, in contravention of a requirement imposed under that paragraph.
- (2) This paragraph does not apply in the case of the first order to be made under paragraph 11 or 12 if the person in contravention was, immediately before the coming into force of the order, in contravention, in relation to one or more of the relevant licences, of a requirement imposed under Part 3 or 4 of Schedule 2 to the 1990 Act.
- (3) In sub-paragraphs (1) and (2) the reference to a relevant licence is –
  - (a) in relation to the coming into force of an order under paragraph 11, a local sound broadcasting licence; and
  - (b) in relation to the coming into force of an order under paragraph 12, a local digital sound programme licence.
- (4) The contravention mentioned in sub-paragraph (1)(a), to the extent that it arises by reason of the coming into force of the order, is to be disregarded (in the case of the person in contravention) in relation to any time which falls –
  - (a) after the coming into force of the order; and

- (b) before there is a relevant change of circumstances.
- (5) Where the contravention is one arising under paragraph 11 in the case of a person who held one or more local sound broadcasting licences immediately before the coming into force of the order, there is a relevant change of circumstances if –
- (a) another person becomes the holder of any of those licences, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
  - (b) the person in contravention becomes the holder of another local sound broadcasting licence.
- (6) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (5)(b) unless the licence of which the person in contravention becomes the holder is one the holding of which, with the holding of licences already held by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 11.
- (7) Where the contravention is one arising under paragraph 12 in the case of a person who, under a local digital sound programme licence, was providing one or more local digital sound programme services immediately before the coming into force of the order, there is a relevant change of circumstances if –
- (a) another person becomes the holder of that licence, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
  - (b) the person in contravention becomes the provider of another local digital sound programme service provided under that licence.
- (8) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (7)(b) unless the service of which the person in contravention becomes the provider is one the provision of which, with the services already provided by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 12.
- (9) For the purposes of this paragraph, in its application in relation to a contravention of a requirement imposed under paragraph 11 or 12 –
- (a) references to holding a licence or providing a local digital sound programme service are to be construed in accordance with the provision having effect for the purposes of that requirement; and
  - (b) the persons who are taken to be holding a local digital sound programme licence immediately before the coming into force of the order include every person who at that time would, in accordance with that provision, be treated as providing local digital sound programme services that were being provided at that time under that licence.

**PART 4****RELIGIOUS BODIES ETC.***Approval required for religious bodies etc. to hold licences***15**

- (1) A person mentioned in paragraph 2(1) of Part 2 of Schedule 2 to the 1990 Act (religious bodies etc.) is not to hold a Broadcasting Act licence not mentioned in paragraph 2(1A) of that Part unless –
  - (a) OFCOM have made a determination in his case as respects a description of licences applicable to that licence; and
  - (b) that determination remains in force.
- (2) OFCOM are to make a determination under this paragraph in a person's case and as respects a particular description of licence if, and only if, they are satisfied that it is appropriate for that person to hold a licence of that description.
- (3) OFCOM are not to make a determination under this paragraph except on an application made to them for the purpose.
- (4) OFCOM must publish guidance for persons making applications to them under this paragraph as to the principles that they will apply when determining for the purposes of sub-paragraph (2) what is appropriate.
- (5) OFCOM must have regard to guidance for the time being in force under sub-paragraph (4) when making determinations under this paragraph.
- (6) OFCOM may revise any guidance under sub-paragraph (4) by publishing their revisions of it.
- (7) The publication of guidance under sub-paragraph (4), or of any revisions of it, is to be in whatever manner OFCOM consider appropriate.

*Power to amend Part 4 of Schedule***[16**

The Economic Development Committee of the States of Jersey may, as respects the Bailiwick of Jersey, by Order repeal or otherwise modify the restriction imposed by this Part of this Schedule.]

**PART 5****SUPPLEMENTAL PROVISIONS OF SCHEDULE***Procedure for orders***17**

- (1) Before making an order under any provision of this Schedule (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.
- (2) \* \* \* \* \*

*Interpretation of Schedule***18**

- (1) Part 1 of Schedule 2 to the 1990 Act applies for construing this Schedule as it applies for construing Part 2 of that Schedule.
- (2) References in this paragraph to an area overlapping another include references to its being the same as, or lying wholly inside, the other area.

## SCHEDULE 15

### Section 360

#### AMENDMENTS OF BROADCASTING ACTS

##### PART 1

##### AMENDMENTS OF THE 1990 ACT

###### *Licences under Part 1*

### 1

- (1) Section 3 of the 1990 Act<sup>21</sup> (licensing under Part 1) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “Chapter II, III, IV or V of this Part” there shall be substituted “Chapter 2 or 5 of this Part or section 235 of the Communications Act 2003”.
- (4) For subsection (8) (saving for telecommunications licences) there shall be substituted –
  - “(8) The holding by a person of a licence under this Part shall not relieve him of –
    - (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
    - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

###### *General licence conditions*

### 2

- (1) Section 4 of the 1990 Act<sup>22</sup> (general licence conditions) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), in each of paragraphs (a) and (c), after “this Act” there shall be inserted “, the Broadcasting Act 1996 or the Communications Act 2003”.

- (4) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.
- (5) In subsection (5) (provision of false information to be breach of condition) –
  - (a) for “imposed under this Part” there shall be substituted “contained in the licence”; and
  - (b) after “and 42” there shall be inserted “or (as the case may be) sections 237 and 238 of the Communications Act 2003 (enforcement of television licensable content service licences)”.

*Restrictions on licence holding*

**3**

- (1) Section 5 of the 1990 Act<sup>23</sup> (restrictions on licence holding) shall be amended as follows.
- (2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted –
  - “(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting –
    - (i) shareholdings in the body; or
    - (ii) the directors of the body;
  - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining –
    - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6) –
  - (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
  - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003,”.
- (5) In subsection (6A) –
  - (a) paragraph (a) shall cease to have effect; and

- (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.
- (6) Subsection (6B) shall cease to have effect.
- (7) In subsection (7), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003”.

*Repeal of previous regulatory regime*

**4**

Sections 6 to 12 of the 1990 Act<sup>24</sup> (which contain the mechanism for regulation in relation to licences under Part 1 of that Act) shall cease to have effect.

*Prohibition on providing television services without a licence*

**5**

- (1) Section 13 of the 1990 Act<sup>25</sup> (prohibition on providing television services without a licence) shall be amended as follows.
- (2) In subsection (1) (offence of providing such service without a licence), for “service falling within section 2(1)(a), (aa), (b), (c), (cc) or (d)” there shall be substituted “relevant regulated television service”.
- (3) After that subsection there shall be inserted –
  - “(1A) In subsection (1) “relevant regulated television service” means a service falling, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM, other than a television multiplex service.”
- (4) In subsection (2) (exemption orders made after consulting the ITC), for “the Commission” there shall be substituted “OFCOM”.

*Television broadcasting on Channel 3*

**6**

In section 14 of the 1990 Act<sup>26</sup> (establishment of Channel 3), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Applications for Channel 3 licences*

**7**

- (1) Section 15 of the 1990 Act<sup>27</sup> (applications for Channel 3 licences) shall be amended as follows.



- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to –
  - (a) the public service remit for that service,
  - (b) programming quotas,
  - (c) news and current affairs programmes, and
  - (d) programme production and regional programming.”
- (4) In subsection (3) –
  - (a) in paragraph (b), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to –
    - (i) the public service remit for that service,
    - (ii) programming quotas,
    - (iii) news and current affairs programmes, and
    - (iv) programme production and regional programming”;
  - (b) paragraphs (c) to (e) shall be omitted.
- (5) After subsection (3) there shall be inserted –
  - “(3A) For the purposes of subsection (1)(d)(ii) –
    - (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.”
- (6) In subsection (4), for “paragraphs (b) to (e)” there shall be substituted “paragraphs (b)”.

*Procedure on consideration of applications for Channel 3 licences*

**8**

- (1) Section 16 of the 1990 Act<sup>28</sup> (consideration of applications for Channel 3 licences) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “specified in subsection (2) or (3) below (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to –
  - (i) the public service remit for that service,
  - (ii) programming quotas,

- (iii) news and current affairs programmes, and
  - (iv) programme production and regional programming”.
- (4) Subsections (2) and (3) of that section shall cease to have effect.
- (5) In subsection (4) of that section –
  - (a) for “specified in subsection (2) or (3) (as the case may be),” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to –
    - (a) the public service remit for that service,
    - (b) programming quotas,
    - (c) news and current affairs programmes, and
    - (d) programme production and regional programming,”;
  - (b) the words from “and in applying” onwards shall be omitted.
- (6) Subsections (5) to (8) shall cease to have effect.

*Television broadcasting on Channel 3*

**9**

- (1) Section 17 of the 1990 Act<sup>29</sup> (award of licences to person submitting highest bid) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (12)(b), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to –
  - (i) the public service remit for that service,
  - (ii) programming quotas,
  - (iii) news and current affairs programmes, and
  - (iv) programme production and regional programming”.

*Financial conditions of licence and failures to begin a service*

**10**

In sections 17A to 19 of the 1990 Act<sup>30</sup> (financial conditions in Channel 3 licences and failures to begin a service), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Changes of control in period after award of licence***11**

- (1) Section 21 of the 1990 Act<sup>31</sup> (changes of control in period immediately after award of licence) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2), in the definition of “associated programme provider”, for the words from “appears” to “inclusion” there shall be substituted “is or is likely to be involved, to a substantial extent, in the provision of the programmes included”.

*Temporary provision of Channel 3 service for an additional area***12**

In section 22 of the 1990 Act<sup>32</sup> (temporary provision of regional Channel 3 Service for additional area), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Appointment of members of C4 Corporation***13**

In section 23 of the 1990 Act<sup>33</sup> (appointment of C4C members), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Channel 4 licence***14**

In section 24(3) of the 1990 Act<sup>34</sup> (Channel 4 licence), for “the Commission” there shall be substituted “OFCOM”.

*Channel 5***15**

In section 28 of the 1990 Act<sup>35</sup> (Channel 5), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Application to Channel 5 of Channel 3 provisions***16**

- (1) In section 29 of the 1990 Act<sup>36</sup> (application to Channel 5 of Channel 3 provisions) –

- (a) subsection (2)(b) and the word “and” immediately preceding it, and
  - (b) subsection (3),
- shall cease to have effect.
- (2) In subsection (2)(a) of that section, for “the Commission” there shall be substituted “OFCOM”.

*Announcement of programme Schedules*

**17**

In section 37(1) of the 1990 Act<sup>37</sup> (conditions requiring announcement of programme Schedules), for “the Commission” there shall be substituted “OFCOM”.

*Enforcement of conditions of Channel 3, Channel 4 and Channel 5 licences*

**18**

- (1) In sections 40 to 42 of the 1990 Act<sup>38</sup> (enforcement of licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In sections 41(1) and 42(1)(a) of that Act<sup>39</sup> (which contain provisions relating to the enforcement of directions under Part 1 of that Act), after “this Part”, in each place, there shall be inserted “, Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003”.

*Restricted services*

**19**

In section 42B(1) of the 1990 Act<sup>40</sup> (licensing of restricted services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Additional television services*

**20**

- (1) Section 48 of the 1990 Act<sup>41</sup> (additional services) shall be further amended as follows.
- (2) In subsection (1) –
  - (a) for “telecommunication” there shall be substituted “electronic”;
  - and
  - (b) for paragraphs (a) and (b) there shall be substituted “on a relevant frequency”.
- (3) In subsection (2), for paragraphs (a) and (b) there shall be substituted “any part of the signals which –

- (a) is not required for the purposes of the television broadcasting service for the purposes of which the frequency has been made available; and
  - (b) is determined by OFCOM to be available for the provision of additional services;”.
- (4) After that subsection there shall be inserted –
  - “(2A) For the purposes of this Part, if they consider it appropriate to do so, OFCOM may, while an additional services licence is in force, from time to time modify the determination made under subsection (2)(b) for the purposes of that licence in any manner that does not reduce the amount of spare capacity made available for the licensed services; and when so modified any such licence shall have effect accordingly.”
- (5) In subsection (3) –
  - (a) for “The Commission” there shall be substituted “OFCOM”; and
  - (b) for “(2)(a)” there shall be substituted “(2)(b)”; and
  - (c) for paragraphs (a) to (c) there shall be substituted –
    - “(a) to the obligations contained in any code under section 303 of the Communications Act 2003 by virtue of subsection (5) of that section; and
    - (aa) to any need of the person providing the television broadcasting service in question to be able to use part of the signals carrying it for providing services (in addition to those provided for satisfying those obligations) which –
      - (i) are ancillary to programmes included in the service and directly related to their contents; or
      - (ii) relate to the promotion or listing of such programmes.”
- (6) In subsection (4), for paragraphs (a) and (b) there shall be substituted –
  - “(a) to provide services for the satisfaction in his case of obligations mentioned in subsection (3)(a); and
  - (b) to provide in relation to his television broadcasting service any such services as are mentioned in subsection (3)(aa).”
- (7) For subsection (6) there shall be substituted –
  - “(6) In this section –
    - ‘electronic signals’ means signals within the meaning of section 32 of the Communications Act 2003;
    - ‘relevant frequency’ means a frequency made available by OFCOM for the purposes of a television broadcasting service.”
- (8) \* \* \* \*

*Licensing of additional television services***21**

- (1) Section 49 of the 1990 Act<sup>42</sup> (licensing of additional television services) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for the words from “of the following” to “48(1)(b)” there shall be substituted “relevant frequency”.
- (4) For subsections (2) and (3) there shall be substituted –  
“(1A) An additional services licence is not required for an additional service that is comprised in the public teletext service (within the meaning of Part 3 of the Communications Act 2003).”
- (5) In subsection (10), at the end there shall be inserted “and ‘relevant frequency’ has the same meaning as in section 48.”

*Applications for additional services licences***22**

- (1) Section 50 of the 1990 Act<sup>43</sup> (applications for additional services licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(b)(ii), the words “(subject to the approval of the Secretary of State)” shall be omitted.
- (4) Subsection (7) shall cease to have effect.

*Procedure on application etc. for additional television services licences***23**

- (1) Section 51 of the 1990 Act<sup>44</sup> (consideration of applications for licences for additional television services) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted –  
“(a) that the technical plan submitted under section 50(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and”.
- (4) Subsections (2) and (7) shall cease to have effect.

*Additional payments in respect of additional television services licences***24**

In section 52 of the 1990 Act<sup>45</sup> (additional payments in respect of additional television services licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Duration of additional television services licences***25**

- (1) Section 53 of the 1990 Act<sup>46</sup> (duration and renewal of additional television services licences) shall be amended as follows.
- (2) In subsection (1), for the words before paragraph (a) there shall be substituted –
  - “(1) A licence to provide additional services on a frequency which is a relevant frequency for the purposes of section 48 or (in the case of a licence granted before the television transfer date) was assigned under section 65- “.
- (3) In subsection (2), after “not later than” there shall be inserted “the day falling three months before”.
- (4) In subsections (4) to (11), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (5) In subsection (8), for the words from “payable” onwards there shall be substituted “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 50(3).”
- (6) After that subsection there shall be inserted –
  - “(8A) For the purposes of subsection (7)(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.”
- (7) After subsection (11) there shall be inserted –
  - “(12) A determination for the purposes of subsection (11) –
    - (a) must be made at least one year before the date determined; and
    - (b) must be notified by OFCOM to the person who holds the licence in question.
- (13) In this section ‘the television transfer date’ has the same meaning as in the Communications Act 2003.”

*Additional television services not to interfere with other transmissions***26**

- (1) Section 54 of the 1990 Act<sup>47</sup> (additional television services not to interfere with other transmissions) shall be amended as follows.
- (2) In subsection (1), for “the Commission” there shall be substituted “OFCOM”.
- (3) Subsection (2) shall cease to have effect.

*Enforcement of additional television services licences***27**

- (1) Section 55 of the 1990 Act<sup>48</sup> (further provision in relation to additional television services licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4) at the end there shall be inserted “and, in the case of a licence renewed under section 53 as if the reference in section 42(4) to the end of the period for which the licence is to continue in force were a reference to the end of the period for which it has been renewed.”

*The Welsh Authority*

\*                      \*                      \*                      \*                      \*                      \*

*Distribution of licensed public service channels***29**

- (1) Section 66 of the 1990 Act<sup>49</sup> (requirements relating to transmission and distribution of services) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsections (1) and (2), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.
- (4) After subsection (2) there shall be inserted –
 

“(2A) In subsections (1) and (2) ‘available for reception by members of the public’ shall be construed in accordance with section 361 of the Communications Act 2003”.



*Enforcement of licences held by BBC companies***30**

In section 66A of the 1990 Act<sup>50</sup> (enforcement of licences held by BBC companies), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Interpretation of Part 1***31**

- (1) Section 71 of the 1990 Act<sup>51</sup> (interpretation) shall be amended as follows.
- (2) \* \* \* \*
- (3) For the definitions of “television broadcasting service” and “television programme service” there shall be substituted –  
“ ‘television broadcasting service’, ‘television licensable content service’ and ‘television programme service’ each has the same meaning as in Part 3 of the Communications Act 2003;”.

*Licensing functions of OFCOM***32**

- (1) Section 85 of the 1990 Act<sup>52</sup> (licensing of independent radio services) shall be amended as follows.
- (2) In subsections (1) and (2), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “such licences to provide independent radio services as they may determine” there shall be substituted “licences to provide relevant independent radio services”.
- (4) [Subsection (3)] (duty to secure the meeting of a variety of tastes and interests and to ensure fair and effective competition) shall cease to have effect.
- (5) After subsection [(6)] there shall be inserted –  
“(8) In this section ‘relevant independent radio services’ means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003 –
  - (a) sound broadcasting services;
  - (b) radio licensable content services;
  - (c) additional radio services.”

*Licences under Part 3 of the 1990 Act***33**

- (1) Section 86 of the 1990 Act<sup>53</sup> (licences under Part 3) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) For subsection (9) of that section there shall be substituted –  
“**(9)** The holding of a licence by a person shall not relieve him of –
  - (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
  - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

*General licence conditions***34**

- (1) Section 87 of the 1990 Act<sup>54</sup> (general licence conditions) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), in each of paragraphs (a) and (d), after “this Act” there shall be inserted “, the Broadcasting Act 1996 or the Communications Act 2003”.
- (4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word “or” immediately preceding it shall be omitted.
- (5) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.

*Restrictions on holding licences***35**

- (1) Section 88 of the 1990 Act<sup>55</sup> (restrictions on the holding of licences) shall be amended as follows.
- (2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted –  
“(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have

- occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting –
- (i) shareholdings in the body; or
  - (ii) the directors of the body;
- (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining –
- (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
  - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6) –
- (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
  - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.
- (5) In subsection (6A) –
- (a) paragraph (a) shall cease to have effect; and
  - (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.
- (6) Subsection (6B) shall cease to have effect.
- (7) In subsection (7), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003.”.

### *Disqualification of persons convicted of transmission offences*

## 36

- (1) Section 89 of the 1990 Act<sup>56</sup> (offences giving rise to disqualification) shall be amended as follows.
- (2) In subsection (1), for paragraph (a) there shall be substituted –
  - “(a) an offence under section 1(1) of the Wireless Telegraphy Act 1949 (‘the 1949 Act’) consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967);

- (aa) an offence under section 1A of the 1949 Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 1 would constitute an offence falling within paragraph (a);
  - (ab) an offence under section 1B or 1C of the 1949 Act (unlawful broadcasting offences);”.
- (3) In subsection (3), for the words from “concerned” onwards there shall be substituted “concerned in –
  - (a) the provision of the licensed service or the making of programmes included in it; or
  - (b) the operation of a station for wireless telegraphy used for broadcasting the service.”
- (4) This paragraph does not impose a disqualification in respect of any offence committed before the commencement of this paragraph.

*Offence of providing regulated radio services*

**37**

- (1) Section 97 of the 1990 Act<sup>57</sup> (prohibition on providing services without a licence) shall be amended as follows.
- (2) In subsection (1), for the words from “independent” to “84(1)(d), (e) or (f)” there shall be substituted “relevant regulated radio service”.
- (3) After that subsection there shall be inserted –
  - “(1A) In subsection (1) ‘relevant regulated radio service’ means a service falling to be regulated by OFCOM under section 245 of the Communications Act 2003, other than a radio multiplex service.”
- (4) In subsection (2) (exemption orders made after consulting the Radio Authority), for “the Authority” there shall be substituted “OFCOM”.

*Applications for national licences*

**38**

- (1) Section 98 of the 1990 Act<sup>58</sup> (applications for national licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (3)(a) (proposals to accompany application) –
  - (a) the word “both”, and
  - (b) sub-paragraph (ii) and the word “and” immediately preceding it, shall be omitted.
- (4) After subsection (3) there shall be inserted –

“(3A) For the purposes of subsection (1)(d)(ii) –

- (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.”
- (5) In subsection (4) (provision of further information), after “paragraphs (a),” there shall be inserted “(aa),”.
- (6) In subsection (6)(b) (publication of details of successful applicant), after “subsection (3)(a)” there shall be inserted “and (aa)”.

*Consideration of applications for a national licence*

**39**

- (1) Section 99 of the 1990 Act<sup>59</sup> (consideration of applications for national licence) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In paragraph (a) of subsection (1) (proposals to accompany application) –
- (a) the word “both”, and
  - (b) sub-paragraph (ii) and the word “and” immediately preceding it, shall be omitted.
- (4) In paragraph (b) of that subsection, after “maintain that service” there shall be inserted “and any proposed simulcast radio service corresponding to that service”.

*Award of national licences*

**40**

In section 100 of the 1990 Act<sup>60</sup> (award of national licences to person submitting highest cash bid), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Failure to begin providing licensed service*

**41**

- (1) Section 101 of the 1990 Act<sup>61</sup> (failure to begin providing licensed service) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1) –
- (a) in paragraph (a) for “the service in question” there shall be substituted “the licensed national service or that he does not intend

to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A”; and

- (b) in paragraph (b), for “that service” there shall be substituted “the licensed national service or any such simulcast radio service”.
- (4) In subsection (2), for “the service in question” there shall be substituted “the licensed national service or the simulcast radio service”.

*Additional payments in respect of national licences*

**42**

In section 102 of the 1990 Act<sup>62</sup> (additional payments in respect of national licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Restrictions affecting change in control of holder of national licence*

**43**

- (1) Section 103 of the 1990 Act<sup>63</sup> (restrictions on change of control of national licence) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (interpretation) –
  - (a) in the definition of “associated programme provider”, for the words from “appears” to “inclusion” there shall be substituted “is or is likely to be involved, to a substantial extent, in the provision of the programmes included”; and
  - (b) in the words after the definition of “the relevant period”, for the words from “as if” onwards there shall be substituted “as it has effect for the purposes of that Schedule.”

*Renewal of national licences*

**44**

- (1) Section 103A of the 1990 Act<sup>64</sup> (renewal of national licences) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “eight” there shall be substituted “twelve”.
- (4) In subsection (2), after “not later than” there shall be inserted “the day falling three months before”.
- (5) In subsection (3), paragraph (a) and in paragraph (b) the words “in any other case” shall cease to have effect.

- (6) In subsection (4), for paragraph (b) there shall be substituted –
- “(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and”.
- (7) For subsection (7) there shall be substituted –
- “(7) The amount determined under subsection (6)(b) 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 98.
- (7A) For the purposes of subsection (6)(c) –
- (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.”
- (8) After subsection (10) there shall be inserted –
- “(10A) In the case of a pre-transfer national licence (including one for a period extended under section 253 of the Communications Act 2003) –
- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.”
- (9) After subsection (11) there shall be inserted –
- “(12) A determination for the purposes of subsection (11) –
- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.”

*Applications for local licences*

**45**

- (1) Section 104 of the 1990 Act<sup>65</sup> (application for local licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

- (3) In subsection (6), for the words from the beginning to “shall be made” there shall be substituted “An application for a licence to provide a restricted service shall be made”.

*Renewal of local licences*

**46**

- (1) Section 104A of the 1990 Act<sup>66</sup> (renewal of local licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for “eight” there shall be substituted “twelve”.
- (4) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.
- (5) After subsection (12) there shall be inserted –
- “(12A) In the case of a pre-transfer local licence (including one for a period extended under section 253 of the Communications Act 2003) –
- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.”
- (6) In subsection (13)(d), for “paragraph 3A of Part I of Schedule 2” there shall be substituted “paragraph 8(2) of Schedule 14 to the Communications Act 2003”.
- (7) After subsection (13) there shall be inserted –
- “(14) A determination for the purposes of subsection (13)(c) –
- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.”

*Special procedure for applications for local licences*

**47**

- (1) Section 104B of the 1990 Act<sup>67</sup> (special procedure for applications for local licences) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) After subsection (1) there shall be inserted –



“(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.”

*Special requirements relating to grant of local licences*

**48**

- (1) Section 105 of the 1990 Act<sup>68</sup> (special requirements relating to grant of local licences) shall be amended as follows.
- (2) For “the Authority” there shall be substituted “OFCOM”.
- (3) For paragraph (d) (duty to have regard to the extent to which proposed service supported by persons living in the area) there shall be substituted –
  - “(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.”

*Requirements as to character and coverage of services*

**49**

In subsections (1) to (4) and (6) of section 106 of the 1990 Act<sup>69</sup> (requirements as to character and coverage of services), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Enforcement of licences*

**50**

In sections 109 to 111A of the 1990 Act<sup>70</sup> (enforcement of licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Power to suspend licences to provide radio licensable content services from a satellite*

**51**

- (1) Section 111B of the 1990 Act<sup>71</sup> (power to suspend licence to provide satellite service) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1) –
  - (a) in paragraph (a), for “satellite service” there shall be substituted “radio licensable content service”;

- (b) in paragraph (b), for the words from “included in the licence” to the end of the paragraph there shall be substituted “which in compliance with section 263 of the Communications Act 2003 is included in the licence for the purpose of securing the objective mentioned in section 319(2)(b) of that Act, and”.

*Additional radio services*

**52**

- (1) Section 114 of the 1990 Act<sup>72</sup> (additional radio services) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for “telecommunication” there shall be substituted “electronic”; and
  - (b) for paragraphs (a) and (b) there shall be substituted “on a relevant frequency”.
- (3) In subsection (2), for paragraphs (a) and (b) there shall be substituted “any part of the signals which –
  - (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and
  - (b) is determined by OFCOM to be available for the provision of additional services;”.
- (4) After that subsection there shall be inserted –
  - “(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.
  - (2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services.”
- (5) In subsection (3), for the words from the beginning to “subsection (2)(a)” there shall be substituted “OFCOM shall, when determining under subsection (2)”.
- (6) For subsection (6) there shall be substituted –
  - “(6) In this section ‘electronic signal’ means a signal within the meaning of section 32 of the Communications Act 2003.
  - (7) In this section and section 115 ‘relevant frequency’ means a frequency made available by OFCOM for the purposes of a sound broadcasting service.”

- (7) This paragraph does not affect the validity of a licence granted or last renewed before the radio transfer date, or the services licensed by any such licence.

*Licensing of additional radio services*

**53**

- (1) Section 115 of the 1990 Act<sup>73</sup> (licensing of additional radio services) shall be amended as follows.
- (2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for the words from “of the following” to “114(1)(b)” there shall be substituted “relevant frequency”.
- (4) In subsection (4), at the end there shall be inserted “and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence”.
- (5) In subsection (8), for “local, restricted or satellite service” there shall be substituted “local or restricted service or to provide a radio licensable content service”.

*Applications for additional radio services licences*

**54**

- (1) Section 116 of the 1990 Act<sup>74</sup> (applications for additional radio services licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(b)(iii), the words “(subject to the approval of the Secretary of State)” shall be omitted.

*Procedure for awarding additional radio services licences*

**55**

- (1) Section 117 of the 1990 Act<sup>75</sup> (procedure for awarding additional radio services licences) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted –
  - “(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and”.

- (4) Subsections (2) and (7) shall cease to have effect.

*Additional payments in respect of additional radio services licences*

**56**

In section 118 of the 1990 Act<sup>76</sup> (additional payments in respect of additional radio services licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Additional radio services not to interfere with other transmissions*

**57**

- (1) Section 119 of the 1990 Act<sup>77</sup> (additional radio services not to interfere with other transmissions) shall be amended as follows.
- (2) In subsection (1), for “the Authority” there shall be substituted “OFCOM”.
- (3) Subsection (2) shall cease to have effect.

*Enforcement of additional radio services licences*

**58**

In section 120 of the 1990 Act<sup>78</sup> (enforcement of additional radio services licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Interpretation*

**59**

In subsection (1) of section 126 of the 1990 Act<sup>79</sup> (interpretation of Part 3) –

- (a) for the definition of “independent radio service” there shall be substituted –

“ ‘independent radio service’ means a service falling to be regulated under section 245 of the Communications Act 2003;”;
- (b) for the definitions of “local service”, “national service”, “restricted service” and “satellite service” there shall be substituted –

“ ‘local service’, ‘national service’ and ‘restricted service’ each has the same meaning as in section 245 of the Communications Act 2003;

‘pre-transfer local licence’ and ‘pre-transfer national licence’ each has the same meaning as in section 253 of that Act;

‘radio licensable content service’ has the same meaning as in Part 3 of that Act;

‘radio transfer date’ has the same meaning as in that Act;”;

- (c) in the definition of “sound broadcasting service” for the words from “(as defined” to the end there shall be substituted “(within the meaning of Part 3 of the Communications Act 2003);”.

*Duty to provide advance information about programmes*

**60**

In column 1 of the Table in section 176(7) of the 1990 Act<sup>80</sup> (persons who are the providers of services for the purposes of the obligations to give advance information about programmes) –

- (a) for “regulation by the Independent Television Commission” there shall be substituted “regulation by OFCOM”;
- (b) \* \* \* \* \*
- (c) for “section 84(2)(a)(i)” there shall be substituted “section 126(1)”;
- (d) for “the Radio Authority”, in both places, there shall be substituted “OFCOM”.

*Proscription of foreign satellite services*

**61**

- (1) Section 177 of the 1990 Act<sup>81</sup> (proscription of foreign satellite stations) shall be amended as follows.
- (2) In subsection (2), for “the Independent Television Commission or the Radio Authority consider that the quality of any relevant” there shall be substituted “OFCOM consider that the quality of any”.
- (3) In subsection (3), for the words from the beginning to “Authority” there shall be substituted “OFCOM”.
- (4) In subsection (6), the definition of “relevant foreign satellite service” shall be omitted.

*Financing of Gaelic Broadcasting*

\* \* \* \* \*

*Gaelic Broadcasting in Scotland*

\* \* \* \* \*

*Maintenance of the national television archive*

**64**

- (1) In section 185 of the 1990 Act<sup>82</sup> (maintenance of the national television archive) –

- (a) for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
  - (b) in subsection (5), the definition of “the Commission” shall be omitted.
- (2) This paragraph so far as it relates to subsection (1) of that section has effect in relation only to financial years beginning after the television transfer date.

*Modification of networking arrangements*

**65**

- (1) Section 193 of the 1990 Act<sup>83</sup> (modification of networking arrangements in consequence of competition legislation) shall be amended as follows.
- (2) In subsection (1), for the words from “the Office of Fair Trading” to “relevant authority’”) there shall be substituted “the relevant authority”.
- (3) After subsection (2) there shall be inserted –
  - “(2A) In subsection (1), ‘relevant authority’ means –
    - (a) in relation to a relevant order falling within subsection (2)(a), the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State;
    - (b) in relation to a relevant order falling within subsection (2)(b), the Office of Fair Trading, the Competition Commission, the Secretary of State or (as the case may be) OFCOM.”
- (4) In subsection (4), for “section 39(1) above” there shall be substituted “section 290(4) of the Communications Act 2003”.

*Search warrants*

**66**

- (1) Section 196 of the 1990 Act<sup>84</sup> (grant of search warrant to person authorised by the Independent Television Commission or the Radio Authority) shall be amended as follows.
- (2) In subsection (1), for “the relevant authority” there shall be substituted “OFCOM”.
- [(3) In subsection (2) (definition of “relevant authority”), omit all the words after “police force.”]

*Notices***67**

In section 199(5) of the 1990 Act<sup>85</sup> (publication of notices), for paragraphs (a) and (b) there shall be substituted “by OFCOM under section 21, 41, 42, 55, 103, 109, 110, 111 or 120”.

*Interpretation***68**

- (1) Section 202 of the 1990 Act<sup>86</sup> (general interpretation) shall be amended as follows.
- (2) In subsection (1), after the definition of “modifications” there shall be inserted –  
“ ‘OFCOM’ means the Office of Communications;”.
- (3) After subsection (6) there shall be inserted –  
“(6A) Subsections (2) and (3) of section 362 of the Communications Act 2003 (persons by whom services provided) are to apply for the purposes of this Act as they apply for the purposes of Part 3 of that Act.”

*Disqualified persons***69**

- (1) Schedule 2 to the 1990 Act<sup>87</sup> (restrictions on the holding of licences) shall be amended as follows.
- (2) In paragraph 1(1) of Part 1, after the definition of “associate” there shall be inserted –  
“ ‘Broadcasting Act licence’ means a licence under Part 1 or 3 of this Act or Part 1 or 2 of the Broadcasting Act 1996;”.
- (3) In paragraph 1(6) of Part 1 (meaning of “more than a 20 per cent. interest”), for “20 per cent.”, wherever occurring, there shall be substituted “5 per cent.”.
- (4) In Part 2 (disqualified persons), for “a licence granted by the Commission or the Authority”, wherever occurring, there shall be substituted “a Broadcasting Act licence”.
- (5) In paragraph 1(1)(i) of Part 2 (bodies controlled by persons falling within paragraphs (a) to (g)), for “(a)” there shall be substituted “(c)”.
- (6) In paragraph 3(1) of Part 2, for “by the Authority” there shall be substituted “under Part 3 of this Act or Part 2 of the Broadcasting Act 1996”.
- (7) In paragraph 4(1) of Part 2, for “that body” there shall be substituted “OFCOM”.

- (8) In paragraph 4(2) of Part 2 –
- (a) in paragraph (a), for “by the Commission, means a body” there shall be substituted “under Part 1 of this Act or Part 1 of the Broadcasting Act 1996, means a person”; and
  - (b) in paragraph (b), for “by the Authority, means a body” there shall be substituted “under Part 3 of this Act or Part 2 of the Broadcasting Act 1996, means a person”.
- (9) In paragraph 5A of Part 2 –
- (a) in sub-paragraph (1)(a), the words “granted by the Commission”,
  - (b) sub-paragraph (1)(b) and the word “and” immediately preceding it,
  - (c) in sub-paragraph (2), the words “granted by the Authority”,
- shall be omitted.

#### *C4C*

### 70

- (1) Schedule 3 to the 1990 Act<sup>88</sup> (provision about constitution and management of C4C) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In paragraph 2(1) (persons disqualified from membership of the Corporation), for paragraphs (b) to (d) there shall be substituted “or
  - (b) a member or employee of OFCOM.”

#### *The Welsh Authority*

\*                      \*                      \*                      \*                      \*                      \*

#### *Computation of qualifying revenue*

### 72

- (1) Schedule 7 to the 1990 Act<sup>89</sup> (computation of “qualifying revenue”) shall be amended as follows.
- (2) In Part 1, for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In Part 2, for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

#### *The Gaelic Television Committee*

\*                      \*                      \*                      \*                      \*                      \*



**PART 2****AMENDMENTS OF THE 1996 ACT***Multiplex services and digital programme services***74**

- (1) Section 1 of the 1996 Act (interpretation) shall be amended as follows.
- (2) For subsection (1) there shall be substituted –
  - “(1) In this Part ‘multiplex service’ means (except where the context otherwise requires) a television multiplex service.”
- (3) In subsection (4), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.
- (4) [After subsection (4) there shall be inserted] –
  - “(4A) In subsection (4), ‘available for reception by members of the public’ means available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003) in the United Kingdom or another EEA State [or the Bailiwick of Jersey], or in an area of the United Kingdom or of such a State [or the Bailiwick of Jersey].”
- (5) For subsection (7) of that section there shall be substituted –
  - “(7) In this section ‘broadcast’ means broadcast otherwise than from a satellite.”

*Meaning of qualifying service***75**

In section 2 of the 1996 Act (meaning of “qualifying service” etc.), for subsections (2) to (6) there shall be substituted –

- “(2) In this Part ‘qualifying service’ means any of the following, so far as they are provided with a view to their being broadcast in digital form –
  - (a) a television broadcasting service included in Channel 3;
  - (b) Channel 4;
  - (c) Channel 5;
  - (d) \* \* \* \* \*
  - (e) \* \* \* \* \*
  - (f) the digital public teletext service.”

*Licences under Part 1***76**

- (1) Section 3 of the 1996 Act (licences under Part 1 of that Act) shall be amended as follows.
- (2) In subsection (1), for “the Independent Television Commission (in this Part referred to as the ‘the Commission’)” there shall be substituted “OFCOM”.
- (3) In subsections (3) to (7), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (4) For subsection (8) there shall be substituted –
  - “(8) The holding by a person of a licence under this Part shall not relieve him of –
    - (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
    - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

*Licence conditions***77**

- (1) Section 4 of the 1996 Act (general licence conditions) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1), in each of paragraphs (a) and (c), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or the Communications Act 2003”.
- (4) In subsection (3) (fixing fees), the words from “and the amount” onwards shall be omitted.

*Restrictions on digital licence holding***78**

- (1) Section 5 of the 1996 Act (restrictions on holding licences) shall be amended as follows.
- (2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted –

- “(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting –
      - (i) shareholdings in the body; or
      - (ii) the directors of the body;
    - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining –
      - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
      - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6) –
  - (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”.
  - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2 to the 1990 Act” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.
- (5) In subsection (7) –
  - (a) paragraph (a) shall cease to have effect; and
  - (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.
- (6) In subsection (8), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,”.

#### *Multiplex licences*

## 79

- (1) Section 7 of the 1996 Act (multiplex licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4) –
  - (a) after paragraph (c) there shall be inserted –
    - “(ca) the applicant’s proposals as to the number (if any) of digital sound programmes services which are to be broadcast, as to

the characteristics of each of those services and as to the areas in which they would be provided;”

- (b) in paragraph (d) for “those services” there shall be substituted “the services mentioned in paragraphs (c) and (ca)”.

*Award of multiplex licences*

**80**

- (1) Section 8 of the 1996 Act (award of multiplex licences) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2)(f), after “digital programme service” there shall be inserted “, digital sound programme service”.

*Power to require two or more multiplex licences to be granted to one person*

**81**

In section 9 of the 1996 Act (grant of two or more multiplex licences to one person), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Award of multiplex licences subject to conditions*

**82**

- (1) Section 10 of the 1996 Act (award of multiplex licences subject to conditions) shall be amended as follows.
- (2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(a), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or Part 3 of the Communications Act 2003”.

*Failure to provide licensed service and revocation*

**83**

In section 11 of the 1996 Act (failure to provide licensed service and revocation), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Conditions attached to multiplex licences***84**

In section 12 of the 1996 Act (conditions attached to multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Additional payments in respect of multiplex licences***85**

In section 13 of the 1996 Act (additional payments in respect of multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Multiplex revenue***86**

- (1) Section 14 of the 1996 Act (multiplex revenue) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for “section 13(1)” there shall be substituted “this Part”;
  - (b) for “the holder of a multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to any television multiplex service or any general multiplex service”;
  - (c) in paragraph (a), for “the multiplex service to which the licence relates” there shall be substituted “the relevant multiplex”;
  - (d) in paragraph (b) for “of any qualifying service by means of the multiplex service” there shall be substituted “by means of the multiplex service of any service which is a qualifying service or which (without being a qualifying service) is provided by the BBC”;
  - (e) in paragraphs (c) and (d), for “the holder of the multiplex licence” and “the multiplex service”, in each place where they occur there shall be substituted, respectively, “the multiplex provider” and “the relevant multiplex”.
- (3) In subsections (2) to (8) –
  - (a) for the words “the holder of the multiplex licence” and “the licence holder”, wherever occurring, there shall be substituted, in each case, “the multiplex provider”; and
  - (b) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (4) In subsection (9) –
  - (a) for “a multiplex licence”, in each place, there shall be substituted “a television multiplex service or a general multiplex service”;

- (b) for “the multiplex service to which the licence relates”, in each place, there shall be substituted “that multiplex service”;
- (c) after the definition of “additional services provider” there shall be inserted –

“ ‘multiplex provider’ –

- (a) in relation to a television multiplex service for which a person holds a licence under this Part, means the licence holder; and
- (b) in relation to a television multiplex service which is not licensed under this Part or a general multiplex service, means the person who provides that service;”
- (d) after the definition of “programme provider” there shall be inserted –

“ ‘the relevant multiplex’ –

- (a) in relation to a multiplex provider falling within paragraph (a) of the definition of that expression, means the television multiplex service to which his licence relates; and
- (b) in relation to any other multiplex provider, means the television multiplex service or general multiplex service which is provided by him;

and this section and section 15 shall have effect as if references in this section to digital programme services included references to digital sound programme services and references to digital additional services included references to digital additional services within the meaning of Part 2.”

*Attribution of multiplex revenue to multiplex providers*

**87**

- (1) Section 15 of the 1996 Act (attribution of multiplex revenue to licence holder) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for “the holder of a multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to any television multiplex service”;
  - (b) for “of multiplex services in that period,” there shall be substituted “in that period of television multiplex services,”;
  - (c) for “the holder of the multiplex licence” there shall be substituted, “the multiplex provider”.
- (3) In subsection (2) –
  - (a) for “a multiplex service” there shall be substituted “a television multiplex service or a general multiplex service”;

- (b) for “the holder of the multiplex licence”, wherever occurring, there shall be substituted “the multiplex provider”.
- (4) In subsection (3) –
  - (a) for “the Commission” there shall be substituted “OFCOM”; and
  - (b) for “the holder of the multiplex licence” there shall be substituted “the multiplex provider”.
- (5) In subsection (4) –
  - (a) after ‘additional services provider’ there shall be inserted “, ‘multiplex provider’”; and
  - (b) for “a multiplex licence” there shall be substituted “a television multiplex service or a general multiplex service”.

*Duration of multiplex licences*

**88**

- (1) Section 16 of the 1996 Act (duration and renewal of multiplex licences) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.
- (4) After subsection (12), there shall be inserted –
  - “(12A) A determination for the purposes of subsection (12) –
    - (a) must be made at least one year before the date determined; and
    - (b) must be notified by OFCOM to the person who holds the licence in question.”

*Enforcement of multiplex licences*

**89**

In section 17 of the 1996 Act (enforcement of multiplex licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Licensing of digital programme services*

**90**

- (1) Section 18 of the 1996 Act (licensing of digital programme services) shall be amended as follows.
- (2) In subsections (1) to (4), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

- (3) Subsections (5) and (6) (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

*Conditions of licences for digital programme services*

**91**

- (1) Section 19 of the 1996 Act (conditions of licences for digital programme services) shall be amended as follows.
- (2) In subsection (3) –
- (a) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”;
  - (b) in paragraphs (a) and (c), for “the holder of a multiplex licence” there shall be substituted, in each case, “the provider of a television multiplex service or general multiplex service”;
  - (c) in paragraph (a), for “by means of a multiplex service” there shall be substituted “by means of that provider’s service”; and
  - (d) in paragraph (a)(i), for “the identity of the multiplex service” there shall be substituted “the identity of the service by means of which it will be broadcast”.
- (3) Subsections (2) and (4) to (10) of that section shall cease to have effect.

*Duration and enforcement of multiplex licenses*

**92**

- (1) Section 23 of the 1996 Act (enforcement of digital programme licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4), for the words from “multiplex service” onwards there shall be substituted “television multiplex service or general multiplex service, means the last accounting period of the multiplex provider”.
- (4) In subsection (5), for “multiplex service, the first accounting period of the holder of the multiplex licence” there shall be substituted “television multiplex service or general multiplex service, the first accounting period of the multiplex provider”.
- (5) After that subsection there shall be inserted –
- “(5A) In subsections (4) and (5) ‘multiplex provider’ has the same meaning as in section 14.”
- (6) In subsection (8) for “apology” there shall be substituted “statement of findings”.



*Digital additional services***93**

- (1) Section 24 of the 1996 Act (digital additional services) shall be amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) 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;
  - (b) is so provided with a view either –
    - (i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or
    - (ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom [and the Bailiwick of Jersey], or in an area of such a State;
  - and
  - (c) is not a Channel 3 service, Channel 4, Channel 5, \* \* \* the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service.”
- (3) In subsection (2) (meaning of ancillary service) –
  - (a) for “an independent analogue broadcaster” there shall be substituted “a relevant public service broadcaster”; and
  - (b) for paragraphs (a) and (b) there shall be substituted –
    - “(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;
    - (b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or
    - (c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.”
- (4) In subsection (3)(a), after “digital programme services” there shall be inserted “, digital sound programme services”.
- (5) After subsection (3) there shall be inserted –
  - “(3A) In this section –  
‘assistance for disabled people’ has the same meaning as in Part 3 of the Communications Act 2003;

‘available for reception by members of the public’ shall be construed in accordance with section 361 of that Act;

\* \* \* \*

‘relevant public service broadcaster’ means any of the following –

- (a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;
- (b) the Channel 4 Corporation;
- (c) a person licensed under Part 1 of the 1990 Act to provide Channel 5;
- (d) the BBC;
- (e) \* \* \* \*
- (f) the public teletext provider.”

*Licensing of digital additional services*

**94**

- (1) Section 25 of the 1996 Act (licensing of digital additional services) shall be amended as follows.
- (2) In subsections (1) to (4), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) After subsection (4) there shall be inserted –  
 “(4A) A digital additional services licence is not required for a service that is or is comprised in a qualifying service.”
- (4) Subsections (5) and (6) (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

*Conditions of digital additional services licence*

**95**

- (1) Section 26 of the 1996 Act (conditions of licences for digital additional services) shall be amended as follows.
- (2) In subsection (2) –
  - (a) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”;
  - (b) in paragraphs (a) and (c), for “the holder of a multiplex licence” there shall be substituted, in each case, “the provider of a television multiplex service or general multiplex service”;
  - (c) in paragraph (a), for “by means of a multiplex service” there shall be substituted “by means of that provider’s service”; and

- (d) in paragraph (a)(i), for “the identity of the multiplex service” there shall be substituted “the identity of the service by means of which it will be broadcast”.

*Enforcement of digital additional television services licences*

**96**

- (1) Section 27 of the 1996 Act (enforcement of digital additional television services licences) shall be amended as follows.
- (2) For “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4), for the words from “multiplex service” onwards there shall be substituted “television multiplex service or general multiplex service, means the last accounting period of the multiplex provider”.
- (4) In subsection (5), for “multiplex service, the first accounting period of the holder of the multiplex licence” there shall be substituted “television multiplex service or general multiplex service, the first accounting period of the multiplex provider”.
- (5) After that subsection there shall be inserted –  
 “(5A) In subsections (4) and (5) ‘multiplex provider’ has the same meaning as in section 14.”

*Digital broadcasting of Gaelic programmes*

\* \* \* \* \*

*Review of digital television broadcasting*

**98**

- (1) Section 33 of the 1996 Act (review of digital television broadcasting) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(a)(ii), for the words “services specified in section 2(3), S4C Digital, the qualifying teletext service” there shall be substituted “following services, namely, Channel 3 services, Channel 4, Channel 5,  
\* \* \* the digital public teletext service”.

*Enforcement of licences held by BBC companies*

**99**

In section 35 of the 1996 Act (enforcement of licences held by BBC companies), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

*Interpretation of Part 1***100**

In section 39(1) (interpretation of Part 1) –

- (a) after the definition of “digital programme service” there shall be inserted –
  - “ ‘digital public teletext service’ has the same meaning as in Part 3 of the Communications Act 2003;
  - ‘digital sound programme service’ has the same meaning as in Part 2 of this Act;
  - ‘general multiplex service’ has the same meaning as in that Part;”.
- (b) for the definition of “public teletext provider” there shall be substituted –
  - “ ‘public teletext provider’ means the person for the time being licensed under Part 1 of the 1990 Act to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);”
- (c) \* \* \* \* \*
- (d) 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.”

*Radio multiplex services***101**

- (1) Section 40 of the 1996 Act (radio multiplex services) shall be amended as follows.
- (2) For subsections (1) to (3) there shall be substituted –
  - “(1) In this Part ‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003.”
- (3) In subsection (4) (local and national multiplex services), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)” shall be omitted.
- (4) In subsection (5), for “for general reception” there shall be substituted “so as to be available for reception by members of the public”.
- (5) For subsection (8) of that section there shall be substituted –
  - “(8) In this section –
    - ‘available for reception by members of the public’ shall be construed in accordance with section 361 of the Communications Act 2003;
    - ‘broadcast’ means broadcast otherwise than from a satellite.”

*Licences under Part 2 of the 1996 Act***102**

- (1) Section 42 of the 1996 Act (licences under Part 2) shall be amended as follows.
- (2) In subsection (1), for “the Radio Authority (in this Part referred to as ‘the Authority’)” there shall be substituted “OFCOM”.
- (3) In subsections (2), (5) and (6), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (4) For subsection (3) (variation of licences) there shall be substituted –
  - “(3) OFCOM may vary a licence by a notice served on the licence holder.
  - (3A) OFCOM shall not vary –
    - (a) the period for which a licence having effect for a specified period is to continue in force, or
    - (b) increase the total amount of digital capacity specified in a national radio multiplex licence for the purposes of section 48(1A),unless the licence holder consents.
  - (3B) OFCOM shall not make any other variation of a licence unless the licence holder has been given a reasonable opportunity of making representations to OFCOM about the variation.”
- (5) In subsection (4) (exceptions from power to vary licences), for “Paragraph (a) of subsection (3)” there shall be substituted “Paragraph (a) of subsection (3A)”.
- (6) For subsection (7) there shall be substituted –
  - “(7) The holding of a licence by a person shall not relieve him –
    - (a) of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
    - (b) of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services).”

*General licence conditions***103**

- (1) Section 43 of the 1996 Act (general licence conditions) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

- (3) In subsection (1) (conditions may include conditions to give effect to duties imposed by or under 1990 Act or 1996 Act) –
  - (a) in paragraph (a), for “the 1990 Act or this Act” there shall be substituted “this Act, the 1990 Act or the Communications Act 2003”; and
  - (b) in paragraph (d), after “this Act” there shall be inserted “, the 1990 Act or the Communications Act 2003”.
- (4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word “or” immediately preceding it shall be omitted.
- (5) In subsection (3) (fixing of fees), the words from “and the amount” onwards shall be omitted.

*Restrictions on holding licences*

**104**

- (1) Section 44 of the 1996 Act (restrictions on the holding of licences) shall be amended as follows.
- (2) For “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted –
  - “(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting –
    - (i) shareholdings in the body; or
    - (ii) the directors of the body;
  - (db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining –
    - (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
    - (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;”.
- (4) In subsection (6) –
  - (a) in paragraph (a), for “complained of” there shall be substituted “constituting their grounds for revoking the licence”; and
  - (b) in paragraph (b)(i), for “Parts III and IV of Schedule 2 to the 1990 Act” there shall be substituted “the requirements imposed by or under Schedule 14 to the Communications Act 2003”.

- (5) In subsection (7) –
  - (a) paragraph (a) shall cease to have effect; and
  - (b) in paragraph (b), for “Part IV of that Schedule” there shall be substituted “Part 1 of Schedule 14 to the Communications Act 2003”.
- (6) In subsection (8), for the words from “a failure” to the end of paragraph (c) there shall be substituted “a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,”.

*National radio multiplex licences*

**105**

- (1) Section 46 of the 1996 Act (national radio multiplex licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(d), for “a direction” there shall be substituted “a condition”.

*Award of national radio multiplex licences*

**106**

In section 47 of the 1996 Act (award of national radio multiplex licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Reservation of capacity for independent national broadcasters*

**107**

- (1) Section 48 of the 1996 Act (reservation of digital capacity for independent broadcasters) shall be amended as follows.
- (2) For subsections (1) to (3) there shall be substituted –
  - “(1A) OFCOM must ensure that the conditions included in national radio multiplex licences (taken together) secure that an amount of digital capacity on the multiplex frequencies is reserved for every independent national broadcaster for the broadcasting of a simulcast radio service provided by that broadcaster.
  - (1B) Where the conditions of a licence for a national radio multiplex service reserve capacity on the frequency made available for that service for the broadcasting of a simulcast radio service provided by an independent national broadcaster, those conditions must also include the condition specified in subsection (1C).

- (1C) That condition is the condition that OFCOM consider appropriate for securing that, in consideration of the making by the independent national broadcaster of the payments which –
  - (a) are agreed from time to time between him and the licence holder, or
  - (b) in default of agreement, are determined under this section, the licence holder uses, for the broadcasting of a simulcast radio service provided by that broadcaster, such of the reserved digital capacity as may be requested, from time to time, by that broadcaster.
- (1D) Where conditions are included under this section in a national radio multiplex licence reserving capacity for an independent national broadcaster, OFCOM may include conditions relating to the broadcasting of the simulcast radio service in the licence for the national service provided by that broadcaster.”
- (3) In subsections (4) to (6), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (4) In subsection (4), for “subsection (3)(a)” there shall be substituted “subsection (1C)”.
- (5) After subsection (6) there shall be inserted –
  - “(7) In this section ‘the multiplex frequencies’ means the frequencies made available for the purposes of licensed national radio multiplex services.”

*Reservation of digital capacity for BBC*

**108**

- (1) Section 49 of the 1996 Act (reservation of digital capacity for BBC) shall be amended as follows.
- (2) In subsections (1) to (3) and (6), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4) (determination of capacity to be reserved), for the words from “If the BBC” to “the Secretary of State, who may” there shall be substituted “If the BBC do not give their consent to the proposals within such period as OFCOM may specify in their notice under subsection (3), OFCOM shall”.
- (4) In subsection (5), for [the] words from “the Secretary of State” onwards there shall be substituted “OFCOM shall give the BBC an opportunity of making representations to them about their proposals.”
- (5) In subsection (6), after “and the BBC” there shall be inserted “or (in default of agreement) determined under this section”.
- (6) After that subsection there shall be inserted –
  - “(7) Where the holder of the licence and the BBC fail to agree –



- (a) the payments to be made under a condition included in the licence in accordance with subsection (6), or
  - (b) the other terms that are to apply in relation to the use of digital capacity in accordance with such a condition,either of them may refer the matter to OFCOM for determination.
- (8) Before making a determination under subsection (7), OFCOM must give the licence holder and the BBC an opportunity of making representations to them about the matter.
- (9) In making any determination under subsection (7), OFCOM shall have regard to –
  - (a) the expenses incurred, or likely to be incurred, by the licence holder in providing the local radio multiplex service in question, and
  - (b) the terms on which persons providing local radio multiplex services contract with persons providing local digital additional services for the broadcasting of those services.”

*Local radio multiplex licences*

**109**

- (1) Section 50 of the 1996 Act (local radio multiplex licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (1)(b), for “the Secretary of State has” there shall be substituted “OFCOM have”.
- (4) In subsection (2)(d), for “direction under section 49” substitute “determination under section 49(4)”.

*Award of local multiplex licences*

**110**

- (1) Section 51 of the 1996 Act (award of local multiplex licences) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (2), for paragraph (f) there shall be substituted –
  - “(f) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service; and”.

*Power to require two or more local radio multiplex licences to be granted to one person*

**111**

In section 52 of the 1996 Act (power to require two or more local radio multiplex licences to be granted to one person), for “The Authority” and “the Authority” there shall be substituted “OFCOM”.

*Failure to begin to provide licensed service*

**112**

In section 53 of the 1996 Act (failure to provide licensed service), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Conditions which may be attached to radio multiplex licences*

**113**

In section 54 of the 1996 Act (conditions which may be attached to a radio multiplex licence), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Additional payments to be made in respect of national radio multiplex licences*

**114**

In section 55 of the 1996 Act (additional payments to be made in respect of national radio multiplex licences) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Multiplex revenue*

**115**

- (1) Section 56 of the 1996 Act (multiplex revenue) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for “section 55(1)” there shall be substituted “this Part”;
  - (b) for “the holder of a national radio multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to a national radio multiplex service”;
  - (c) in paragraph (a)(i), “to which the licence relates” shall be omitted;
  - (d) in paragraphs (c) and (d), for “the holder of the radio multiplex licence” there shall be substituted “the multiplex provider”.
- (3) In subsections (2) to (8) –

- (a) for “the holder of the radio multiplex licence”, “the licence holder” and “the holder of the multiplex licence”, wherever occurring, there shall be substituted, in each case, “the multiplex provider”; and
  - (b) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (4) In subsection (9) –
  - (a) for “a national radio multiplex licence”, in each place, there shall be substituted “a national radio multiplex service”;
  - (b) for “the radio multiplex service to which the licence relates”, in each place, there shall be substituted “that radio multiplex service”;
  - (c) after the definition of “additional services provider” there shall be inserted –

“ ‘multiplex provider’ –

    - (a) in relation to a national radio multiplex service for which a person holds a licence under this Part, means the licence holder; and
    - (b) in relation to a national radio multiplex service which is not licensed under this Part, means the person who provides that service.”

*Attribution of radio multiplex revenue*

**116**

- (1) Section 57 of the 1996 Act (attribution of radio multiplex revenue) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for “the holder of a national radio multiplex licence” there shall be substituted “the person who is the multiplex provider in relation to a national radio multiplex service”; and
  - (b) for “the holder of the national radio multiplex licence” there shall be substituted “the multiplex provider”.
- (3) In subsection (2), for “the holder of the radio multiplex licence”, wherever occurring, there shall be substituted “the multiplex provider”.
- (4) In subsection (3) –
  - (a) for “the Authority” there shall be substituted “OFCOM”; and
  - (b) for “the holder of the national radio multiplex licence” there shall be substituted “the multiplex provider”.
- (5) In subsection (4) –
  - (a) after “ ‘additional services provider’ ” there shall be inserted “ ‘, multiplex provider’ ”; and

- (b) for “a national radio multiplex licence” there shall be substituted “a national radio multiplex service”.

*Duration and renewal of radio multiplex licences*

**117**

- (1) Section 58 of the 1996 Act (duration and renewal of radio multiplex licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (3), after “not later than” there shall be inserted “the day falling three months before”.
- (4) Subsection (5) (consent of the Secretary of State for exercise of certain powers in connection with renewal) shall cease to have effect.
- (5) After subsection (12) there shall be inserted –  
“(12A) A determination for the purposes of subsection (12) –
  - (a) must be made at least one year before the date determined; and
  - (b) must be notified by OFCOM to the person who holds the licence in question.”

*Enforcement of radio multiplex licences*

**118**

In section 59 of the 1996 Act (enforcement of radio multiplex licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Digital sound programme licensing*

**119**

- (1) Section 60 of the 1996 Act (digital sound programme licensing) shall be amended as follows.
- (2) For “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) After subsection (6), there shall be inserted –  
“(6A) Section 89 of the 1990 Act (disqualification from being licence holder or concerned with the provision of a programme service if convicted of a transmitting offence) shall apply in relation to a licence under this section as it applies to a licence under Part 3 of that Act, but with the omission of paragraph (b) of subsection (3) of that section and of the word ‘or’ immediately before that paragraph.”

- (4) Sub-paragraph (3) does not impose a disqualification in respect of any offence committed before the commencement of that sub-paragraph.

*Conditions of digital sound programme licences*

**120**

- (1) Section 61 of the 1996 Act (conditions of licences for digital sound programme services) shall be amended as follows.
- (2) In subsection (2) –
- (a) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”;
  - (b) in paragraphs (a) and (c), for “the holder of a radio multiplex licence”, there shall be substituted, in each case, “the provider of a radio multiplex service, of a television multiplex service or of a general multiplex service”;
  - (c) in paragraph (a) for “by means of a radio multiplex service” there shall be substituted “by means of the multiplex service”; and
  - (d) in paragraph (a)(i) for “radio multiplex service” there shall be substituted “multiplex service”.

*Enforcement of digital sound programme licences*

**121**

- (1) Section 62 of the 1996 Act (enforcement of digital sound programme licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4), for the words from “national radio multiplex service” onwards there shall be substituted “relevant multiplex service, means the last accounting period of the multiplex provider”.
- (4) In subsection (5) –
- (a) for “national radio multiplex service” there shall be substituted “relevant multiplex service”;
  - (b) for “holder of the national radio multiplex licence” there shall be substituted “multiplex provider”; and
  - (c) for “the radio multiplex service” and “that radio multiplex service” there shall be substituted “that relevant multiplex service”.
- (5) After subsection (5A) (inserted by Schedule 13) there shall be inserted –
- “(5B) For the purposes of this section, a service is a relevant multiplex service if it is –
  - (a) a national radio multiplex service;
    - (b) a television multiplex service; or

- (c) a general multiplex service.
- (5C) In this section, “multiplex provider” –
  - (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
  - (b) in relation to a television multiplex service or a general multiplex service, means the multiplex provider within the meaning of section 14.”
- (6) In subsection (10) for “apology” there shall be substituted “statement of findings”.

*Digital additional sound services*

**122**

In section 64 of the 1996 Act (licensing of digital additional sound services), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Conditions of digital additional sound service*

**123**

- (1) Section 65 of the 1996 Act (conditions of licences for digital additional sound services) shall be amended as follows.
- (2) In subsection (2) –
  - (a) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”;
  - (b) in paragraphs (a) and (c), for “the holder of a radio multiplex licence”, there shall be substituted, in each case, “the provider of a radio multiplex service or of a general multiplex service”;
  - (c) in paragraph (a) for “by means of a radio multiplex service” there shall be substituted “by means of the multiplex service”; and
  - (d) in paragraph (a)(i) for “radio multiplex service” there shall be substituted “multiplex service”.

*Enforcement of digital additional sound services licences*

**124**

- (1) Section 66 of the 1996 Act (enforcement of digital additional services licences) shall be amended as follows.
- (2) For “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4), for “national radio multiplex service” there shall be substituted “relevant multiplex service”.

- (4) In subsection (5), for the words from “national radio multiplex service” onwards there shall be substituted “relevant multiplex service, means the last accounting period of the multiplex provider”.
- (5) In subsection (6) –
  - (a) for “national radio multiplex service” there shall be substituted “relevant multiplex service”;
  - (b) for “holder of the national radio multiplex licence” there shall be substituted “multiplex provider”; and
  - (c) for “the radio multiplex service” and “that radio multiplex service” there shall be substituted “that relevant multiplex service”.
- (6) After subsection (6A) (inserted by Schedule 13) there shall be inserted –
  - “(6B) For the purposes of this section, a service is a relevant multiplex service if it is –
    - (a) a national radio multiplex service; or
    - (b) a general multiplex service.
  - (6C) In this section, “multiplex provider” –
    - (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
    - (b) in relation to a general multiplex service, means the multiplex provider within the meaning of section 14.”
- (7) In subsection (10) for “apology” there shall be substituted “statement of findings”.

*Review of digital radio broadcasting*

**125**

In section 67 of the 1996 Act (review of digital radio broadcasting), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

*Interpretation*

**126**

In section 72(1) of the 1996 Act (interpretation), for the definition of “radio multiplex service” there shall be substituted –

“ ‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003;  
 ‘the radio transfer date’ has the same meaning as in the Communications Act 2003;”.

*Listed events***127**

- (1) Section 98 of the 1996 Act (categories of service for the purposes of Part 4 of that Act) shall be amended as follows.
- (2) \* \* \* \*
- (3) In subsection (5), for “The Commission” there shall be substituted “OFCOM”.
- (4) In subsection (6), for “transmission for general reception of television programmes by satellite” there shall be substituted “broadcasting of television programmes from a satellite so as to be available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003)”.

**128**

In sections 101, 101B, 102 and 103 of the 1996 Act (restrictions on, and penalties for, televising listed and designated events), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

**129**

- (1) Section 104 of the 1996 Act (code of guidance) shall be amended as follows.
- (2) For “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In subsection (4)(d), the words “by the Commission” and “by them” shall be omitted.

**130**

In section 104A of the 1996 Act (provision of information about listed and designated events), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

**131**

In section 105(1) of the 1996 Act (interpretation of Part 4 etc.), the definition of “the Commission” shall be omitted.



*Broadcasting standards***132**

- (1) Part 5 of the 1996 Act (the Broadcasting Standards Commission) shall be amended as follows.
- (2) For “the BSC” and “The BSC”, wherever occurring in any of sections 107, 110, 111, 114, 115, 118 to 121 there shall be substituted “OFCOM”.

**133**

\* \* \* \* \*

**134**

In section 115 of the 1996 Act (consideration of fairness complaints) –

- (a) in subsection (2)(d), for “to (c)” there shall be substituted “or (b)”;
- (b) in subsection (8), for “they shall send a statement of” there shall be substituted “OFCOM shall send a copy of”.

**135**

In section 117 of the 1996 Act (duty of broadcasting body to retain recordings of programmes), for “sections 115 and 116” there shall be substituted “section 115”.

**136**

- (1) For subsections (1) and (2) of section 119 of the 1996 Act there shall be substituted –

“(1) Where OFCOM have considered and adjudicated upon a fairness complaint, they may direct the relevant person to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions.”

- (2) In that section –

- (a) in subsection (4), for “subsection (2)” there shall be substituted “subsection (1)”;
- (b) in subsection (5), for “(3)(a), (b) or (c)” there shall be substituted “(3)(a) or (b)”;
- (c) in subsection (6), for “broadcasting or regulatory body” there shall be substituted “relevant person” and for “them” there shall be substituted “him”;
- (d) in subsection (8), the words “or standards complaint” and in paragraph (c) the words “, a regulatory body” shall be omitted;

- (e) in subsection (10), for paragraphs (a) and (b) there shall be substituted “a relevant person”; and
- (f) subsection (12) shall cease to have effect.
- (3) After subsection (11) of that section there shall be inserted –
  - “(11A) In this section “relevant person” means –
    - (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
    - (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.”

**137**

In section 130(1) of the 1996 Act (interpretation of Part 5), for paragraphs (b) and (c) of the definition of “licensed service” there shall be substituted –

- “(aa) the public teletext service,
- (b) any relevant independent radio service (within the meaning of section 85 of the 1990 Act),
- (c) any additional service (within the meaning of Part 1 of the 1990 Act) which is licensed under that Part.”.

*Disqualification on grounds related to political objects*

**138**

- (1) Section 143 of the 1996 Act (disqualification on grounds related to political objects) shall be amended as follows.
- (2) In each of subsections (1) and (2) –
  - (a) for “the Independent Television Commission” and “the Commission” there shall be substituted “OFCOM”; and
  - (b) for “section 5(1) of the 1990 Act, or as the case may be section 5(1) of this Act” there shall be substituted “section 5(1) or 88(1) of the 1990 Act or section 5(1) or 44(1) of this Act”.
- (3) In subsection (1), for “Part I or II of the 1990 Act or Part I of this Act” there shall be substituted “Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,”.
- (4) In subsection (2), for “Parts I or II of the 1990 Act or Part I of this Act” there shall be substituted “Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,”.
- (5) Subsections (3) and (4) shall cease to have effect.
- (6) In subsection (5), for “to (4)” there shall be substituted “and (2)”.
- (7) In subsection (6), for paragraphs (a) and (b) there shall be substituted “the duties imposed on OFCOM by sections 5(1) and 88(1) of the 1990 Act and sections 5(1) and 44(1) of this Act.”

*Offence of providing false information***139**

- (1) Section 144 of the 1996 Act (offence of providing false information) shall be amended as follows.
- (2) In subsection (1), for “to the relevant authority a statement”, in each place, there shall be substituted “a statement to OFCOM”.
- (3) In subsection (2), for “the relevant authority” there shall be substituted “OFCOM”.
- (4) Subsection (5) shall cease to have effect.

*Disqualification for supplying false information***140**

- (1) Section 145 of the 1996 Act (disqualification for offence of supplying false information) shall be amended as follows.
- (2) In subsection (5), for “the relevant authority” there shall be substituted “OFCOM”.
- (3) In subsection (7) –
  - (a) for “5(1)(a) and 88(1)(a)” there shall be substituted “5(1)(a) and (2)(db), 32(12) and 88(1)(a) and (2)(db)”; and
  - (b) for “5(1)(a) and 44(1)(a)” there shall be substituted “5(1)(a) and (2)(db) and 44(1)(a) and (2)(db)”.
- (4) In subsection (8) of that section, for the definition of “licence” there shall be substituted –

“ ‘licence’ means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of this Act;”.

*Interpretation***141**

In section 147(1) of the 1996 Act (general interpretation), after the definition of “the BBC” there shall be inserted –

“ ‘OFCOM’ means the Office of Communications;”.

*Computation of qualifying revenue***142**

- (1) Schedule 1 to the 1996 Act (computation of “multiplex revenue” etc.) shall be amended as follows.
- (2) In Part 1, for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (3) In Part 2, for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

## SCHEDULE 16

\* \* \* \* \*

## SCHEDULE 17

### Section 406

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Interpretation*

#### **1**

- (1) In any Act or instrument amended by this Schedule –

“communications service” means any of the following services –

- (a) an electronic communications service;
- (b) the provision of directory information by means of an electronic communications network for the purpose of facilitating the use of an electronic communications service provided by means of that network;
- (c) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to an electronic communications network;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act;

“electronic communications code network” means –

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106;

“electronic communications network” and “electronic communications service” each has the same meaning as in this Act;

“former PTO” means a person –

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by this Act of section 7 of the Telecommunications Act 1984 (c. 12) comes into force, was

designated as a public telecommunication system under section 9 of that Act; and

- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied;

“operator”, in relation to an electronic communications code network, means –

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of this Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part 2 of this Act.

- (2) In this paragraph –

- (a) “conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;
- (b) “electronic communications code”, “electronic communications code network”, “electronic communications code operator”, “public electronic communications network” and “public electronic communications service” each has the meaning given in subparagraph (1).

*Official Secrets Act 1911*

\* \* \* \* \*

*Law of Property Act 1925*

\* \* \* \* \*

*Public Health Act 1925*

\* \* \* \* \*

*London Overground Wires, etc Act 1933*

\* \* \* \* \*

*Wireless Telegraphy Act 1949***6**

- (1) Section 1 of the Wireless Telegraphy Act 1949<sup>90</sup> (c. 54) (licensing wireless telegraphy) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for paragraphs (a) and (b) there shall be substituted “by OFCOM;”;
  - and
  - (b) in the proviso, for the words from “Provided” to “by regulations” there shall be substituted “Provided that OFCOM may by regulations”.
- (3) After subsection (1) there shall be inserted –

“(1AA) Subsection (1) shall not apply to the use of a television receiver (within the meaning of Part 4 of the Communications Act 2003) for receiving a television programme or to the installation of a television receiver for use solely for that purpose.”
- (4) In subsection (2), for paragraphs (a) and (b) there shall be substituted “as OFCOM think fit”.
- (5) In subsection (3), for the words from “revoked by” to “BBC” there shall be substituted “revoked by OFCOM”.
- (6) In subsection (4), for the words from “notice in writing of” to “served”, in the first place where it occurs, there shall be substituted “notice in writing from OFCOM served by them”.
- (7) In subsection (5), for the words from “surrendered” to “so to do” there shall be substituted “surrendered to OFCOM if required by them to do so”.

**7**

In section 1C of that Act<sup>91</sup> (prohibition on Acts facilitating unauthorised broadcasting), for subsection (4) there shall be substituted –

- “(4) The cases in which a person is to be taken for the purposes of this section as advertising by means of a broadcast include any case in which he causes or allows it to be stated, suggested or implied that entertainment included in the broadcast –
- (a) has been supplied by him; or
  - (b) is provided wholly or partly at his expense.”

**[8**

After section 1C of that Act<sup>92</sup> there shall be inserted –



**1D Procedures for the grant of licences**

- (1) An application for the grant of a wireless telegraphy licence shall be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) Where the person applying for a licence fails to provide any information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with the terms, provisions and limitations in the licence, OFCOM may refuse to grant the licence.
- (3) No statutory instrument made by OFCOM under this section shall have effect in the Bailiwick of Jersey until it has been registered in the Royal Court and where any such instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.”]

**9**

- (1) Section 3 of that Act<sup>93</sup> (regulations as to wireless telegraphy) shall be amended as follows.
- (2) In subsection (1), for the words before paragraph (a) there shall be substituted “OFCOM may make regulations- “.
- (3) After subsection (2) there shall be inserted –
  - “(2A) The approval of the Secretary of State is required for the making by OFCOM of any regulations under this section.
  - (2B) A statutory instrument containing regulations made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**10**

No appeal shall be brought to the tribunal established under section 9 of that Act<sup>94</sup> (appeals tribunal in relation to decisions about interference) in respect of any decision made after the coming into force of section 192 of this Act.

**11**

- (1) Section 10 of that Act<sup>95</sup> (regulations as to radiation of electro-magnetic energy etc.) shall be amended as follows.
- (2) In subsection (1), for the words before paragraph (a) there shall be substituted “OFCOM may make regulations for either or both of the following purposes –”.
- (3) In subsection (2), for the words from the beginning to “fit” there shall be substituted “The requirements prescribed under subsection (1) shall be such as OFCOM think fit”.
- (4) After subsection (4) there shall be inserted –

“(4A) The approval of the Secretary of State is required for the making by OFCOM of any regulations under this section.

(4B) A statutory instrument containing regulations made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## 12

- (1) Section 11 of that Act<sup>96</sup> (enforcement of regulations as to apparatus) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for the words before paragraph (a) there shall be substituted “If OFCOM are of the opinion- “;
  - (b) for “he considers” there shall be substituted “they consider”;
  - (c) for “he may” there shall be substituted “OFCOM may”;
  - (d) for the words from “or, if” to “fit” there shall be substituted “or, if OFCOM think fit”;
  - (e) in paragraph (ii) of the proviso, for the words from the beginning to “satisfied” there shall be substituted “if OFCOM are satisfied”.
- (3) In subsection (2), for the words from “notice in writing by” to “served”, in the first place where it occurs, there shall be substituted “notice in writing from OFCOM served by them”.
- (4) In subsection (7), for the words from “notice” to “section” there shall be substituted “notice from OFCOM under this section”.

## 13

- (1) Section 12 of that Act<sup>97</sup> (enforcement of regulations as to sales etc.) shall be amended as follows.
- (2) In subsection (1) –
  - (a) for the words from the beginning to “opinion” there shall be substituted “If OFCOM are of the opinion”; and
  - (b) for “he” there shall be substituted “OFCOM”.
- (3) In subsection (5), for the words from “by” onwards there shall be substituted “by OFCOM, be guilty of an offence.”

## 14

- (1) Section 14 of that Act<sup>98</sup> (penalties and legal proceedings) shall be amended as follows.
- (2) In subsection (1), for paragraph (a) substitute –

“(a) any offence under section 5(1)(a) of this Act; or”.
- (3) In subsection (1A) –

- (a) in paragraph (c), for “of the Secretary of State” there shall be substituted “from OFCOM”; and
- (b) paragraph (e) shall cease to have effect.
- (4) In subsection (3) –
  - (a) paragraph (b) shall cease to have effect; and
  - (b) for “the Secretary of State” there shall be substituted “OFCOM”.
- (5) In subsections (3A), (3B), (3D) and (3E), for “the Secretary of State” there shall be substituted “OFCOM”.
- (6) In subsection (3B), for “he thinks” there shall be substituted “they think”.
- (7) In subsection (3D), for “him” there shall be substituted “them”.
- (8) In subsection (7) (enforcement by civil proceedings) –
  - (a) after the words “the Crown”, in the first place where they occur, there shall be inserted “or by OFCOM,”; \* \* \*
  - (b) \* \* \* \* \*

## 15

- (1) Section 15 of that Act<sup>99</sup> (powers of entry) shall be amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) and the words “, with or without any constables,” there shall be substituted “[any police officer] or any person or persons authorised for the purpose by OFCOM or the Secretary of State”.
- (3) After that subsection there shall be inserted –
 

“(1A) Where a person authorised by OFCOM or the Secretary of State is authorised by a warrant under subsection (1) to enter any premises, [shall execute the warrant accompanied by one or more police officers].”
- (4) In subsection (2) –
  - (a) in paragraph (b), for the words from “enable” to “decide” there shall be substituted “enable OFCOM to decide”;
  - (b) in paragraph (c), for the words from “behalf” to “producing” there shall be substituted “behalf by OFCOM and producing”;
  - (c) in the words after paragraph (c), for the words from “behalf” to “with” there shall be substituted “behalf by OFCOM, with”;
  - (d) in paragraph (i) of the proviso, for the words from “that”, in the first place where it occurs, to “satisfied” there shall be substituted “that OFCOM are satisfied”.
- (5) In subsection (2A) for “the BBC” there shall be substituted “OFCOM”.

**16**

- (1) Section 16 of that Act<sup>100</sup> (regulations and orders) shall be amended as follows.
- (2) After subsection (1) there shall be inserted –  
 [“(1A) No statutory instrument made by OFCOM under this Act shall have effect in the Bailiwick of Jersey unless it has been registered in the Royal Court and where any such instrument is so registered, it shall have effect on the day following the day of such registration or on the day of coming into force specified in the instrument, whichever is the later.”]
- (3) In subsection (2), for the words from the beginning to “him” there shall be substituted “Any power conferred on the Secretary of State”.

**17**

In section 19 of that Act<sup>101</sup> (interpretation), after subsection (2) there shall be inserted –

“(2AA) In this Act ‘OFCOM’ means the Office of Communications.”

**18**

In Schedule 1 to that Act<sup>102</sup> (procedures in relation to wireless personnel), for paragraph 3 there shall be substituted –

“3 The Secretary of State is to pay –

- (a) the expenses incurred by an advisory committee under this Schedule, to the extent determined by him; and
- (b) such sums as he may determine in respect of the expenses of the members of the committee.”

*Coast Protection Act 1949*

\*                      \*                      \*                      \*                      \*                      \*

*National Parks and Access to the Countryside Act 1949*

\*                      \*                      \*                      \*                      \*                      \*

*London County Council (General Powers) Act 1949*

\*                      \*                      \*                      \*                      \*                      \*

*Local Government (Miscellaneous Provisions) Act 1953*

\*                      \*                      \*                      \*                      \*                      \*

*Army Act 1955*

\*                      \*                      \*                      \*                      \*                      \*

*Air Force Act 1955*

\* \* \* \* \*

*Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955*

\* \* \* \* \*

*Naval Discipline Act 1957*

\* \* \* \* \*

*Opencast Coal Act 1958*

\* \* \* \* \*

*Pipe-lines Act 1962*

\* \* \* \* \*

*London County Council (General Powers) Act 1963*

\* \* \* \* \*

*Harbours Act 1964*

\* \* \* \* \*

*New Towns Act (Northern Ireland) 1965*

\* \* \* \* \*

*Marine, &c., Broadcasting (Offences) Act 1967***32**

\* \* \* \* \*

**33**

- (1) Section 5 [of the Marine etc. Broadcasting (Offences) Act 1967]<sup>103</sup> of that Act shall be further amended as follows.
- (2) In subsection (3) (offences of doing things with intent that an unlawful broadcast may be made) –
  - (a) in paragraph (a), for “with intent that a broadcast of it may” there shall be substituted “knowing, or having reasonable cause to believe, that a broadcast of it is to”;
  - (b) in paragraph (b), for “with intent that a broadcast of the work may” there shall be substituted “knowing, or having reasonable cause to believe, that a broadcast of the work is to”;
  - (c) in paragraph (c), for “with intent that the work may” there shall be substituted “knowing, or having reasonable cause to believe, that the work is to”.

- (3) For subsection (4) (presumption as to advertising) there shall be substituted –

“(4) The cases in which a person is to be taken for the purposes of this section as advertising by means of a broadcast include any case in which he causes or allows it to be stated, suggested or implied that entertainment included in the broadcast –

- (a) has been supplied by him; or
- (b) is provided wholly or partly at his expense.”

### 34

In section 6(5) of that Act<sup>104</sup> (restrictions on prosecutions), after the words “otherwise than”, wherever occurring, there shall be inserted “by OFCOM or”.

### 35

- (1) Section 7A of that Act<sup>105</sup> (powers of enforcement in relation to marine offences) shall be amended as follows.
- (2) In subsection (1), after “the Secretary of State” there shall be inserted “or OFCOM”.
- (3) In subsections (2) and (4), for “the Secretary of State has issued a written authorisation” there shall be substituted “a written authorisation has been issued by the Secretary of State or OFCOM”.
- (4) In subsection (3)(a), for “the Secretary of State has issued an authorisation” there shall be substituted “an authorisation has been issued by the Secretary of State or OFCOM”.
- (5) In subsection (7), after “powers” there shall be inserted “except so far as exercisable by virtue of an authorisation issued by OFCOM”.

### 36

In section 9(1) of that Act<sup>106</sup> (interpretation), after the definition of “the high seas” there shall be inserted –

“ ‘OFCOM’ means the Office of Communications;”.

#### *Wireless Telegraphy Act 1967*

\* \* \* \* \*

#### *Countryside Act 1968*

\* \* \* \* \*

#### *Greater London Council (General Powers) Act 1969*

\* \* \* \* \*

*Harbours Act (Northern Ireland) 1970*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Thames Barrier and Flood Prevention Act 1972*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Fair Trading Act 1973*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Drainage (Northern Ireland) Order 1973*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Water and Sewerage Services (Northern Ireland) Order 1973*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Consumer Credit Act 1974*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*House of Commons Disqualification Act 1975*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Northern Ireland Assembly Disqualification Act 1975*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Welsh Development Agency Act 1975*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Building Regulations (Northern Ireland) Order 1979*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Local Government, Planning and Land Act 1980*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Highways Act 1980*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*New Towns Act 1981*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Acquisition of Land Act 1981*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Housing (Northern Ireland) Order 1981*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Civil Aviation Act 1982*

\* \* \* \* \*

*Representation of the People Act 1983*

\* \* \* \* \*

*Telecommunications Act 1984***63**

\* \* \* \* \*

**[64**

In sections 79 and 83 of the Telecommunications Act 1984 (wireless telegraphy provisions), for the words “The Secretary of State” wherever occurring there shall be substituted “OFCOM”.]

**[65**

After section 79(6)(a) of that Act (seizure of apparatus) insert the following paragraph –

“(b) any proceedings for forfeiture under Schedule 7 to the Communications Act 2003.”]

**66**

- (1) Section 83 of that Act (disposal of seized apparatus and property) shall be further amended as follows.
- [ (2) In subsection (1)(b), after “property” insert “or proceedings for forfeiture under Schedule 7 to the Communications Act 2003.”
- (2A) In subsection (2)(b), after “offences)” insert “or proceedings for forfeiture under the said Schedule 7.”]
- (3) In subsection (3), for “him” there shall be substituted “them”.
- (4) In subsection (4), for “he thinks” there shall be substituted “they think”.

**67**

\* \* \* \* \*

**68**

\* \* \* \* \*



**69**

- (1) Section 91 of that Act (construction of references to the conclusion of proceedings) shall be amended as follows.
- (2) In subsection (1), for “under the 1949 Act or for the forfeiture of any apparatus \* \* \*” there shall be substituted “to which section 79 above applies or for the forfeiture of any apparatus under Schedule 7 to the Communications Act 2003”.

**70**

\* \* \* \* \*

**71**

\* \* \* \* \*

**72**

\* \* \* \* \*

**73**

\* \* \* \* \*

**74**

\* \* \* \* \*

**75**

\* \* \* \* \*

*Cinemas Act 1985*

\* \* \* \* \*

*Surrogacy Arrangements Act 1985*

\* \* \* \* \*

*Bankruptcy (Scotland) Act 1985*

\* \* \* \* \*

*Housing Act 1985*

\* \* \* \* \*

*Airports Act 1986*

\* \* \* \* \*

*Gas Act 1986*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Insolvency Act 1986*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Company Directors Disqualification Act 1986*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Channel Tunnel Act 1987*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Consumer Protection (Northern Ireland) Order 1987*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Income and Corporation Taxes Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Norfolk and Suffolk Broads Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Malicious Communications Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Copyright, Designs and Patents Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Housing Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Road Traffic Act 1988*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Water Act 1989*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Road Traffic (Driver Licensing and Information Systems) Act 1989*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Electricity Act 1989*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Local Government and Housing Act 1989*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Insolvency (Northern Ireland) Order 1989*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Town and Country Planning Act 1990*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Planning (Listed Buildings and Conservation Areas) Act 1990*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*London Local Authorities (No. 2) Act 1990*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*New Roads and Street Works Act 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Coal Mining Subsidence Act 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Water Industry Act 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Water Resources Act 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Land Drainage Act 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Planning (Northern Ireland) Order 1991*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Charities Act 1992*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Carriage of Goods by Sea Act 1992*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Electricity (Northern Ireland) Order 1992*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Leasehold Reform, Housing and Urban Development Act 1993*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Cardiff Bay Barrage Act 1993*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Railways Act 1993*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Roads (Northern Ireland) Order 1993*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Value Added Tax Act 1994*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Criminal Justice and Public Order Act 1994*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Airports (Northern Ireland) Order 1994*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Merchant Shipping Act 1995*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Criminal Procedure (Scotland) Act 1995*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*British Waterways Act 1995*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Street Works (Northern Ireland) Order 1995*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Housing Act 1996*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Housing Grants, Construction and Regeneration Act 1996*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Channel Tunnel Rail Link Act 1996*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Gas (Northern Ireland) Order 1996*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Construction Contracts (Northern Ireland) Order 1997*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Waste and Contaminated Land (Northern Ireland) Order 1997*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Wireless Telegraphy Act 1998***145**

Subject to any other amendment made by any other provision of this Act, in sections 1 to 4 of the Wireless Telegraphy Act 1998<sup>107</sup> (c. 6), for the words “the Secretary of State”, “Secretary of State” and “The Secretary of State”, wherever occurring, there shall be substituted “OFCOM”.

**146**

In section 1 of that Act<sup>108</sup> (charges for wireless telegraphy licences) –

- (a) in subsection (2)(b), for “the issue or renewal of the licence” there shall be substituted “the issue of the licence or the making of the grant”;
- (b) in subsection (3)(c), for the words “the Secretary of State thinks”, there shall be substituted “OFCOM think”;
- (c) in subsection (4), for the words “he thinks”, there shall be substituted “they think”; and
- (d) in subsection (5), at the end there shall be inserted “or any grant of recognised spectrum access made in accordance with regulations under section 3A”.

**147**

For section 2 of that Act<sup>109</sup> there shall be substituted –

**“2 Matters to be taken into account**

- (1) This section applies where OFCOM exercise any of their powers under section 1 to prescribe sums payable in respect of any description of wireless telegraphy licence or of grant of recognised spectrum access, other than a power to prescribe sums payable where –
  - (a) a wireless telegraphy licence is varied or revoked at the request or with the consent of the licence holder; or
  - (b) a grant of recognised spectrum access is varied or revoked at the request or with the consent of the holder of the grant.
- (2) OFCOM may, if they think fit in the light (in particular) of the matters to which they are required to have regard under section 154 of the Communications Act 2003, prescribe sums which would be greater than those that would be necessary for the purposes of recovering costs incurred by them in connection with functions under the enactments relating to the management of the radio spectrum.
- (3) In this section –

‘the enactments relating to the management of the radio spectrum’ has the same meaning as in the Communications Act 2003;

‘prescribe’ means prescribe by regulations or determine in accordance with regulations.”

#### 148

- (1) Section 4 of that Act<sup>110</sup> (restriction on revocation or variation of licences) shall be amended as follows.
- (2) In subsection (1), for the words “him” and “his” there shall be substituted, respectively, “them” and “their”.
- (3) In subsection (5), for the word “him” there shall be substituted “them”.

#### 149

- (1) After section 4 of that Act<sup>111</sup> there shall be inserted –

##### **“4A Recovery of sums payable to OFCOM**

Where any sum is required to be paid to OFCOM –

- (a) under any provision of this Act,
- (b) in pursuance of any provision of regulations under this Act, or
- (c) by virtue of any terms or conditions contained by virtue of this Act in a wireless telegraphy licence, or in a grant of recognised spectrum access,

that sum shall be so paid to them as soon as it becomes due in accordance with that provision, or those terms or conditions, and if not paid is to be recoverable by them accordingly.”

- (2) This paragraph does not apply to a sum that first became payable before the coming into force of this paragraph.

#### 150

For section 6 of that Act<sup>112</sup> there shall be substituted –

##### **“6 Regulations**

- (1) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to every power of OFCOM to make regulations under a provision of this Act.
- (2) \* \* \* \* \*
- (3) \* \* \* \* \*

**151**

- (1) Section 8 of that Act<sup>113</sup> (interpretation) shall be amended as follows.
- (2) After “In this Act –” there shall be inserted –
 

“ ‘grant of recognised spectrum access’ means a grant of recognised spectrum access made under section 159 of the Communications Act 2003;

‘OFCOM’ means the Office of Communications;”.
- (3) After the definition of “wireless telegraphy licence” there shall be inserted –
 

“and references in this Act to the issue of a wireless telegraphy licence or the making of a grant of recognised spectrum access include references to the issue of such a licence, or the making of a grant of such access, by way of renewal of a previous licence or grant.”

*Finance Act 1998*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Competition Act 1998*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Regional Development Agencies Act 1998*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Finance Act 1999*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Greater London Authority Act 1999*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Electronic Communications Act 2000*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Television Licences (Disclosure of Information) Act 2000*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Finance Act 2000M*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Regulation of Investigatory Powers Act 2000*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Postal Services Act 2000*

*	*	*	*	*	*	*
---	---	---	---	---	---	---

*Utilities Act 2000*

\* \* \* \* \*

*Freedom of Information Act 2000*

\* \* \* \* \*

*Countryside and Rights of Way Act 2000*

\* \* \* \* \*

*Transport Act 2000*

\* \* \* \* \*

*Political Parties, Elections and Referendums Act 2000*

\* \* \* \* \*

*Vehicles (Crime) Act 2001*

\* \* \* \* \*

*Criminal Justice and Police Act 2001*

\* \* \* \* \*

*Electronic Communications Act (Northern Ireland) 2001*

\* \* \* \* \*

*Office of Communications Act 2002***171**

\* \* \* \* \*

**172**

- (1) The Schedule to that Act shall be amended as follows.
- (2) The following shall cease to have effect –
  - (a) \* \* \* \*
  - (b) \* \* \* \*
  - (c) paragraph 17(8) and (9); and
  - (d) paragraph 20.
- (3) \* \* \* \*
- (4) After paragraph 14(3) (executive committees of OFCOM to include member or employee of OFCOM) there shall be inserted –
 

“(3A) Sub-paragraph (3) has effect in the case of a committee of OFCOM which –



- (a) is not the Content Board, but
- (b) has functions that are confined to functions falling within section 13(2) of the Communications Act 2003 (functions within the Content Board's remit),
- as if the reference in that sub-paragraph to a member of OFCOM included a reference to a member of the Content Board who is not a member of OFCOM."

*Tobacco Advertising and Promotion Act 2002*

\* \* \* \* \*

*Enterprise Act 2002*

\* \* \* \* \*

*Income Tax (Earnings and Pensions) Act 2003*

\* \* \* \* \*

## SCHEDULE 18

### Section 406

#### TRANSITIONAL PROVISIONS

##### *General*

### 1

- (1) This paragraph applies where, at any time before the coming into force of a transfer made by virtue of section 2 –
  - (a) any subordinate legislation has been made in the carrying out of the transferred functions by the person from whom the transfer is made; or
  - (b) any other thing has been done by or in relation to that person for the purposes of or in connection with the carrying out of those functions.
- (2) The subordinate legislation or other thing –
  - (a) is to have effect, on and after the coming into force of the transfer, and so far as necessary for its purposes, as if it had been made or done by or in relation to OFCOM; and
  - (b) in the case of subordinate legislation to which section 403 applies when it is made by OFCOM, shall so have effect as if made in accordance with the requirements of that section.
- (3) Where any subordinate legislation, direction, authorisation or notice has effect in accordance with this paragraph –
  - (a) so much of it as authorises or requires anything to be done by or in relation to the person from whom the transfer is made is to have effect in relation to times after the coming into force of the transfer as if it authorised or required that thing to be done by or in relation to OFCOM; and
  - (b) other references in the subordinate legislation, direction, authorisation or notice to the person from whom the transfer is made are to have effect, in relation to such times, as references to OFCOM.

##### *Steps taken in anticipation of passing or coming into force of Act*

### 2

- (1) This paragraph applies where the Secretary of State or OFCOM is or are required –
  - (a) by a provision of this Act, or

- (b) by virtue of an amendment made by this Act,  
to take steps before exercising a power or performing a duty.
- (2) The requirement is capable of being satisfied by the taking of the steps in anticipation of effect being given to the provision by virtue of which the power or duty is –
  - (a) conferred or imposed on the Secretary of State or OFCOM; or
  - (b) transferred to OFCOM.
- (3) For the purposes of sub-paragraph (2) it is immaterial –
  - (a) that the provision by virtue of which the power or duty is conferred, imposed or transferred had not been enacted, or had not come into force, when the steps were taken; and
  - (b) in the case of steps taken before the enactment of that provision, that the provision the effect of which was anticipated was modified before being enacted.
- (4) \* \* \* \*
- (5) Where a requirement is satisfied by virtue of this paragraph by steps taken in anticipation of effect being given to a provision –
  - (a) representations made to or other things done in relation to OFCOM, or the Director or the Secretary of State, in consequence of the taking of those steps, and
  - (b) any requirements framed by reference to the time at which those steps were taken,

are to have effect as if the provision in question had come into force before those steps were taken.

*Savings for agreements referring to the termination of a 1984 Act licence*

\* \* \* \*

*Saving for agreements with special provision for 1984 Act licence holders*

\* \* \* \*

*General saving for agreements conditional on certain Broadcasting Act licences*

**5**

- (1) This paragraph has effect where an agreement in force immediately before the coming into force of a provision of this Act removing a requirement for a relevant Broadcasting Act licence provides –
  - (a) for the agreement to cease to have effect, or
  - (b) for it to be capable of being terminated,

if a party to the agreement ceases to hold a relevant Broadcasting Act licence of a particular description, or so ceases in a manner described in the agreement.

- (2) In this paragraph “relevant Broadcasting Act licence” means –
- (a) a licence under Part 1 of the 1990 Act<sup>114</sup> to provide a satellite television service or a licensable programme service;
  - (b) a licence under that Part to provide the service mentioned in section 49(2) of that Act;<sup>115</sup>
  - (c) a licence under Part 2 of that Act<sup>116</sup> to provide a local delivery service; or
  - (d) a licence under Part 3 of that Act<sup>117</sup> to provide a formerly regulated radio service (within the meaning of section 251 of this Act).
- (3) The agreement is not to cease to have effect, or to be capable of being terminated, by reason only of the coming into force of the provisions of this Act under which the requirement for the licence is removed.
- (4) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a satellite television service or a licensable programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence granted or having effect as if granted as a licence to provide a television licensable content service.
- (5) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide the service mentioned in section 49(2) of the 1990 Act,<sup>118</sup> a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide the public teletext service.
- (6) In relation to times after the commencement of the provision of this Act removing the requirement for a licence to provide a licensable sound programme service, a reference to such a licence in the provision of the agreement in question is to have effect as a reference to a licence to provide a radio licensable content service.
- (7) References in this paragraph to a provision having effect if a person ceases to hold a licence include references –
- (a) to a provision having effect if a licence of his expires without being renewed; and
  - (b) to a provision having effect if his licence is revoked.
- (8) Expressions used in this paragraph and in Part 3 of this Act have the same meanings in this paragraph as in that Part.

*Orders under Part 2 of the Deregulation and Contracting Out Act 1994*

\* \* \* \* \*

*Pre-commencement proposals relating to universal service matters*

\* \* \* \* \*

*Local loop notifications*

\* \* \* \* \*

*Conditions relating to premium rate services and conditions corresponding to SMP or access-related conditions*

\* \* \* \* \*

*Pre-commencement proposals relating to market power determinations*

\* \* \* \* \*

*Savings for licence conditions relating to accounting*

\* \* \* \* \*

*Charges under Telecommunications Act licences*

\* \* \* \* \*

*Enforcement of breaches of licence conditions*

\* \* \* \* \*

*Saving for agreements having effect by reference to licensing regime*

\* \* \* \* \*

*Fees for approvals for the purposes of licence conditions*

\* \* \* \* \*

*Allocated telephone numbers*

\* \* \* \* \*

*Electronic communications code*

\* \* \* \* \*

*Saving for guarantees of liabilities of telecommunications code operators*

\* \* \* \* \*

*Compulsory purchase*

\* \* \* \* \*

*Notices under section 1D of the Wireless Telegraphy Act 1949*

\* \* \* \* \*

*Notices under regulations under section 3 of the Wireless Telegraphy Act 1998*

**21**

- (1) This paragraph applies to procedures set out in a notice issued by the Secretary of State under regulations under section 3 of the Wireless Telegraphy Act 1998<sup>119</sup> (c. 6) and in force immediately before the commencement of section 167 of this Act.

- (2) In relation to times after the commencement of section 167 of this Act, the procedures are to have effect as if prescribed by OFCOM by regulations under section 3 of that Act.<sup>120</sup>
- (3) So much of any notice having effect in accordance with this paragraph as authorises or requires anything to be done by or in relation to the Secretary of State is to have effect in relation to times after the commencement of section 167 of this Act as if it authorised or required that thing to be done by or in relation to OFCOM.

*Disputes about interconnection*

\* \* \* \* \*

*Appeals against wireless telegraphy and telecommunications decisions*

## 23

- (1) This paragraph applies where –
  - (a) a decision was made before the commencement of section 192;
  - (b) the decision has effect after the commencement of a provision of this Act as a decision made by OFCOM, or is a decision not to do something which (if done) would so have had effect; and
  - (c) the decision is one against which an appeal was or could have been brought under –
    - (i) section 1F of the Wireless Telegraphy Act 1949<sup>121</sup> (c. 54);  
\* \* \*
    - (ii) \* \* \* \* \*
- (2) If no such appeal has been brought before the commencement of section 192 of this Act, that section applies to the decision as it applies to decisions by OFCOM under Part 2 of this Act (or that Act of 1949), but as if that section had been in force when the decision was made.
- (3) If an appeal under section 1F of that Act of 1949<sup>122</sup> or section 46B of the 1984 Act –
  - (a) has been brought against the decision, but
  - (b) has not been concluded before the commencement of section 192 of this Act,

the court in which it was brought may stay or sist the appeal as from the commencement of that section of this Act.
- (4) If the court stays or sists the appeal under sub-paragraph (3), the appellant is to have a new right of appeal under section 192 against the decision as if (subject to sub-paragraph (7)) it were a decision to which that section applies that had been made immediately after the commencement of that section.
- (5) [Royal Court] rules (within the meaning of Chapter 3 of Part 2 of this Act) may, in relation to an appeal stayed or sisted under sub-paragraph (3), make transitional provision –

- (a) for requiring steps taken and things done for the purposes of that appeal to be taken into account, to the extent set out in the rules, in the case of an appeal brought by virtue of sub-paragraph (4); and
  - (b) for enabling the [Royal Court] in an appeal under sub-paragraph (4) to give directions to OFCOM as to the carrying out of functions of theirs that are the same as or correspond to those in the course of carrying out which the maker of the appealed decision made that decision.
- (6) If, in a case falling within sub-paragraph (3), the court does not stay or sist the appeal –
- (a) it must determine the appeal in the manner in which the [Royal Court] is required under section 195 of this Act to determine an appeal under section 192; but
  - (b) its powers on determining the appeal include a power to give directions to OFCOM as to the carrying out of any functions of theirs that correspond to those in the course of which the appealed decision was made.
- (7) On an appeal brought or continued under this paragraph against a decision, the court or the [Royal Court], in determining what was the appropriate action for the maker of the decision to take, must determine that question according to the law in force at the time when the decision was made.

*Section 94 of the Telecommunications Act 1984*

\* \* \* \* \*

*Competition Commission: specialist panel members*

\* \* \* \* \*

*Transitory amendments to telecommunications terms in Broadcasting Act 1990*

## 26

- (1) This paragraph has effect, in the case of each of the provisions of the 1990 Act to which it applies, in relation to times between –
  - (a) the commencement of Chapter 1 of Part 2 of this Act; and
  - (b) the commencement of so much of this Act (apart from this paragraph) as amends or repeals that provision.
- (2) The provisions of the 1990 Act set out in sub-paragraph (3) shall have effect (subject to sub-paragraph (4)) as if –
  - (a) for every reference to a telecommunication system there were substituted a reference to an electronic communications network; and
  - (b) for references to running such a system there were substituted references to providing it.
- (3) Those provisions of the 1990 Act are –

- (a) section 46<sup>123</sup> (licensable programme services);
  - (b) section 51(1)(a)<sup>124</sup> (procedures for consideration of applications for additional services licences);
  - (c) section 72<sup>125</sup> (local delivery services);
  - (d) section 75<sup>126</sup> (procedures for consideration of applications for local delivery licences);
  - (e) section 112<sup>127</sup> (licensable sound programme services);
  - (f) section 117(1)(a)<sup>128</sup> (procedures for consideration of applications for additional services licences);
  - (g) section 181<sup>129</sup> (apparatus deemed to be apparatus for wireless telegraphy).
- (4) Sections 46(2) (licensable programme services), 112(2) (licensable sound programme services) and 201(2) (programme services) of the 1990 Act<sup>130</sup> shall each have effect as if for paragraph (b) there were substituted –
- “(b) a service which satisfies the conditions in section 233(5) of the Communications Act 2003;”.
- (5) In sections 48 and 114 of the 1990 Act<sup>131</sup> (additional services), references to electronic signals shall have effect as references to signals within the meaning of section 32 of this Act.
- (6) Section 75(2) of the 1990 Act<sup>132</sup> (consultation with relevant licensing authorities) shall have effect as if in paragraph (b) for the words “would be required to be licensed” there were substituted “is a system which (but for repeals made by the Communications Act 2003) would have been required to be licensed”.
- (7) In section 181 of the 1990 Act<sup>133</sup> (apparatus deemed to be apparatus for wireless telegraphy), “connected” –
- (a) shall continue to be construed in accordance (notwithstanding its repeal) with section 4 of the 1984 Act; but
  - (b) shall be so construed as if, in that section of the 1984 Act, a reference to an electronic communications network were substituted for every reference to a telecommunication system.
- (8) \* \* \* \* \*

*Activities of the Welsh Authority*

\* \* \* \* \*

*Gaelic Broadcasting*

\* \* \* \* \*



*Pre-transfer Broadcasting Act licences***30**

- (1) Subject to any express provision made by this Act in relation to a particular description of Broadcasting Act licence, neither –
  - (a) the transfer from a pre-commencement regulator to OFCOM of the function of granting or awarding such licences or of any other power exercisable in relation to such licences, nor
  - (b) any other modification by or by virtue of this Act of the power to grant or award such licences or of a provision having effect in relation to such licences,shall affect the continuing validity of a licence by or under which the provision of a service is authorised immediately before the coming into force of the transfer or modification.
- (2) Accordingly, such a licence shall continue to have effect, after the coming into force of the transfer or modification –
  - (a) on the same terms and conditions and for the same period as it would have done if this Act had not been passed; but
  - (b) as if, in relation to times after the coming into force of any relevant transfer of functions to OFCOM, every reference in the licence to a pre-commencement regulator were a reference to OFCOM.
- (3) Sub-paragraph (2) is subject to the following provisions of this Act –
  - (a) those under which a licence is to have effect as if the period for which it is granted were the period determined under this Act; and
  - (b) those under which the conditions of a licence fall to be varied for the purpose of imposing a condition required by this Act.
- (4) Anything done at any time before the relevant transfer date under or for the purposes of enforcing any provision of a Broadcasting Act licence is to have effect in relation to times on or after that date –
  - (a) to the extent that it was done by or in relation to the ITC or Radio Authority, and
  - (b) so far as necessary for preserving its effect or for facilitating the taking of further action by OFCOM,as a thing done by or in relation to OFCOM.
- (5) In sub-paragraph (4) “relevant transfer date” –
  - (a) in relation to licences under Part 1 of the 1990 Act<sup>134</sup> or Part 1 of the 1996 Act, means the television transfer date; and
  - (b) in relation to licences under Part 3 of the 1990 Act<sup>135</sup> or Part 2 of the 1996 Act, means the radio transfer date.

*Channels 3 and 5***31**

A determination made by the ITC under or for the purposes of section 14 or 28 of the 1990 Act<sup>136</sup> (Channels 3 and 5) is to have effect on and after the television transfer date as a determination under that section by OFCOM.

*Saving pending replacement of licences for Channels 3 and 5 and the public teletext service*

**32**

- (1) The regulatory regime for a Channel 3 service, and that for Channel 5 and the existing teletext service, shall not include the self-regulation conditions in any case in which the service or (as the case may be) Channel 5 is provided under a licence granted before the television transfer date.
- (2) In sub-paragraph (1) “the self-regulation conditions” means the conditions which (apart from that sub-paragraph) are included by virtue of sections 265 to 269 of this Act in the regulatory regime for Channel 3 services, for Channel 5 and for the public teletext service.
- (3) In relation to a licence granted before the television transfer date for a Channel 3 service, Channel 5 or the existing teletext service, section 263 shall have effect as if the reference in subsection (3)(a) of that section to a corresponding or additional service to be provided in analogue form were a reference to a corresponding or additional service to be provided in digital form.
- (4) In this paragraph “the existing teletext service” means the existing service within the meaning of section 221 of this Act.

*Digital additional licences*

**33**

- (1) This paragraph applies where immediately before the coming into force of section 242 of this Act a person holds a digital additional services licence under Part 1 of the 1996 Act in respect of a digital sound programme service and with a view to the inclusion of the broadcasting of that service by means of a television multiplex service licensed under Part 1 of the 1996 Act.
- (2) The licence is to have effect on and after the coming into force of section 242 of this Act as if it were a national digital sound programme licence or (as the case may be) were comprised in any national digital sound programme licence already held by the licence holder for the service in question.
- (3) Where a licence has effect in accordance with this paragraph, it shall not (to the extent that it so has effect) authorise the broadcasting of the digital

sound programme service in question by means of a radio multiplex service.

(4) In this paragraph –

“digital additional services licence” has the same meaning as in Part 1 of the 1996 Act; and

“national digital sound programme licence” has the same meaning as in Part 2 of that Act.

*Programme quotas*

**34**

Any order which –

- (a) was made under section 16(5)(a) of the 1990 Act (definitions of “qualifying programmes” and “independent productions”), and
- (b) is in force immediately before the commencement of sections 277 and 309 of this Act and paragraphs 1 and 7 of Schedule 12 to this Act,

is to have effect in relation to times after the commencement of those sections and those paragraphs as an order made in exercise of the corresponding powers conferred by those sections and those paragraphs.

*Continuity in relation to appointed news provider*

**35**

Where a body holds an appointment for the purposes of section 31(2) of the 1990 Act<sup>137</sup> immediately before the date of the commencement of section 280 of this Act –

- (a) that appointment shall have effect in relation to times on and after that date as an appointment for the purposes of arrangements entered into in accordance with conditions imposed under section 280 of this Act;
- (b) the arrangements under which that appointment was made shall have effect in relation to such times as arrangements so entered into; and
- (c) so much of the appointment or arrangements, or of any agreement to which the body is a party, as makes provision by reference to the body’s ceasing to be nominated under section 32 of the 1990 Act<sup>138</sup> shall have effect in relation to such times as if references to ceasing to be so nominated were references to becoming a body falling within section 281(2) of this Act.

*Networking arrangements*

**36**

- (1) Where arrangements approved for the purposes of section 39 of the 1990 Act<sup>139</sup> (networking arrangements) are in force immediately before the commencement of section 291 of this Act, those arrangements are to have

effect for the purposes of this Act, and of any conditions imposed under that section of this Act, as approved networking arrangements.

- (2) For the purposes of proceedings in relation to a report under Schedule 4 to the 1990 Act<sup>140</sup> at any time after the commencement of Schedule 11 to this Act, that report is to have effect as if it were a report under that Schedule to this Act.

*Determination of qualifying revenue*

**37**

- (1) A statement of the ITC that is for the time being in force immediately before the television transfer date for the purposes of –
- (a) Schedule 7 to the 1990 Act<sup>141</sup> (statement of principles for determining qualifying revenue), or
  - (b) Schedule 1 to the 1996 Act (corresponding statement for the purposes of that Act,
- is to have effect on and after that date as a statement by OFCOM.
- (2) On and after the television transfer date a determination by the ITC under paragraph 2 of Part 1 of either of those Schedules is to have effect as a determination under that paragraph by OFCOM, and sub-paragraph (2) of that paragraph is to have effect accordingly.

*Rules for political broadcasts*

\* \* \* \* \*

*Functions under section 88 of the 1990 Act*

**39**

A requirement imposed or notice given before the radio transfer date by the Radio Authority under section 88 of the 1990 Act<sup>142</sup> (restriction on holding of licences) is to have effect on and after that date as if it were imposed or given by OFCOM.

*Notices under section 94 of the 1990 Act*

**40**

A notice given by the Secretary of State or any other Minister of the Crown under section 94 of the 1990 Act<sup>143</sup> (government control over licensed services) is to have effect on and after the radio transfer date as a notice given to OFCOM under section 336 of this Act.

*Programme standards: television***41**

- (1) This paragraph applies as respects times on or after the television transfer date and before the first coming into force, in the case of the holder of a licence under Part 1 of the 1990 Act<sup>144</sup> or Part 1 of the 1996 Act, of conditions imposed under section 325 of this Act.
- (2) Sections 6 to 12 of the 1990 Act<sup>145</sup> (general provisions about the content of licensed services) are to have effect in the case of that licence holder as if references in those sections to the ITC were references to OFCOM.
- (3) A code drawn up by the ITC under section 6, 7 or 9 of the 1990 Act<sup>146</sup> is to have effect as if it had been drawn up by OFCOM.

*Programme standards: radio***42**

- (1) This paragraph applies as respects times on or after the radio transfer date and before the first coming into force, in the case of the holder of a licence under Part 3 of the 1990 Act<sup>147</sup> or Part 2 of the 1996 Act, of conditions imposed under section 325 of this Act.
- (2) Sections 90 to 96 of the 1990 Act<sup>148</sup> (general provisions about the content of licensed services) are to have effect as if references in those sections to the Radio Authority were references to OFCOM.
- (3) A code drawn up by the Radio Authority under section 90, 91 or 93 of the 1990 Act<sup>149</sup> is to have effect as if it had been drawn up by OFCOM.

*Standards code***43**

- (1) In relation to any time after the commencement of section 319 of this Act, a code in force immediately before its commencement as a code drawn up under section 6, 7, 9, 90, 91 or 93 of the 1990 Act<sup>150</sup> or section 108 of the 1996 Act is to have effect (subject to subparagraphs (2) and (3)) as if it were a code issued by OFCOM for the purpose of setting standards under section 319 of this Act.
- (2) A code under the 1990 Act shall have effect by virtue of subparagraph (1) in relation only to the following –
  - (a) in the case of the codes under sections 6, 7 and 9, services the provision of which is authorised by licences under Part 1 of the 1990 Act<sup>151</sup> and S4C; and
  - (b) in the case of the codes under sections 90, 91 and 93, services the provision of which is authorised by licences under Part 3 of that Act.<sup>152</sup>

- (3) In the case of the code under section 108 of the 1996 Act, the code shall have effect by virtue of sub-paragraph (1) –
- (a) in relation only to services provided by the BBC \* \* \*; and
  - (b) to the extent only that it contains provision that applies to those services \* \* \*.

*Local and national radio licences*

**44**

- (1) Section 103 of the 1990 Act<sup>153</sup> (restriction on changes of control affecting holders of national licences) is to apply in relation to a pre-transfer national licence as it applies in relation to a national licence within the meaning of Part 3 of the 1990 Act.<sup>154</sup>
- (2) Anything done by or in relation to the Radio Authority under any of sections 98 to 102 or 103A of the 1990 Act,<sup>155</sup> so far as it has been done –
- (a) before the radio transfer date, and
  - (b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer national licence,
- is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in connection with or for the purposes of the grant or renewal of national licence (within the meaning of Part 3 of that Act<sup>156</sup>).
- (3) Anything done by or in relation to the Radio Authority under any of sections 104 to 105 of the 1990 Act,<sup>157</sup> so far as it has been done –
- (a) before the radio transfer date, and
  - (b) for the purposes of, or in connection with, the grant or renewal of a pre-transfer local licence,
- is to have effect for the purposes of, and in connection with, the grant or renewal of a licence at times on or after that date as if done by or in relation to OFCOM in connection with, or for the purposes of, the grant or renewal of local licence (within the meaning of Part 3 of that Act<sup>158</sup>).
- (4) In this paragraph “pre-transfer local licence” and “pre-transfer national licence” each has the same meaning as in section 253 of this Act.

*Section 111B of the 1990 Act*

\* \* \* \* \*

*Section 185 of the 1990 Act*

**46**

- (1) A determination or nomination made for the purposes of section 185 of the 1990 Act<sup>159</sup> (the national television archive) by the ITC is to have effect on and after the television transfer date as a determination or nomination made by OFCOM.

- (2) Sub-paragraph (1) applies in the case of a determination so far only as it relates to a financial year beginning on or after the television transfer date.

*Section 28 of the 1996 Act*

**47**

- (1) The repeal by this Act of section 28 of the 1996 Act does not affect any power to vary a licence under Part 1 of the 1990 Act<sup>160</sup> which is –
- (a) conferred on the ITC by an order under that section; and
  - (b) transferred to OFCOM by this Act.
- (2) Nor does it affect so much of any order under that section in force immediately before the repeal as –
- (a) modifies section 16 of the 1996 Act in its application in relation to the renewal of a licence first granted before the television transfer date; or
  - (b) imposes a prohibition on the use of digital capacity reserved before that date;
- but so much of any such prohibition as requires the consent of the ITC for the use of any digital capacity shall have effect after the television transfer date as if the consent required were OFCOM's consent.
- (3) Sub-paragraph (1) only saves the power so far as it is exercisable in relation to a licence granted before the television transfer date.

*Section 48 of the 1996 Act*

**48**

Subsections (4) to (6) of section 48 of the 1996 Act (reservations of capacity for national radio multiplex licences to independent national broadcasters) are to apply in relation to conditions included in pursuance of that section in licences granted before the radio transfer date as they apply in relation to conditions included in licences by virtue of the amendments of that section made by this Act.

*Applications for extension of pre-transfer licences*

**49**

- (1) Section 253(4)(a) does not prevent the determination by OFCOM of a day falling less than one year after the making of the determination where –
- (a) OFCOM consider that the day by which they would need to publish a notice is a day which is not more than 15 months after the commencement date; and

- (b) the determination of that day is made as soon as practicable after the commencement date.
- (2) Where the day determined by OFCOM for the purposes of paragraph (b) of section 253(3) is a day in the period of three months beginning with the day after the determination, that paragraph shall have effect as if for the words “three months before” there were substituted “on”.
- (3) In this paragraph, the “commencement date” is the date on which section 253 comes into force.

*Applications for renewal of licences under 1990 Act and 1996 Act*

**50**

- (1) A provision set out in sub-paragraph (2) does not prevent the determination by OFCOM of a date falling less than one year after the making of the determination where –
  - (a) OFCOM consider that the relevant date for the purposes of the section in question is a date which is not more than 15 months after the commencement date; and
  - (b) the determination of the relevant date is made as soon as practicable after the commencement date.
- (2) Those provisions are –
  - (a) section 53(12) of the 1990 Act;<sup>161</sup>
  - (b) section 103A(12) of the 1990 Act;<sup>162</sup>
  - (c) section 104A(14) of the 1990 Act;<sup>163</sup>
  - (d) section 16(12A) of the 1996 Act;
  - (e) section 58(12A) of the 1996 Act.
- (3) An application which is made before the commencement date in accordance with a provision set out in sub-paragraph (5) shall be treated after that date as if it had been made in accordance with that provision as amended by this Act.
- (4) Where, in a case where a provision set out in sub-paragraph (5) applies, the relevant date for the purposes of the section in question is a date in the period of three months beginning with –
  - (a) the commencement date, or
  - (b) the day after the day on which the relevant date is determined,that provision shall have effect as if the words “the day falling three months before” were omitted.
- (5) Those provisions are –
  - (a) section 53(2) of the 1990 Act;<sup>164</sup>
  - (b) section 103A(2) of the 1990 Act;<sup>165</sup>
  - (c) section 104A(3) of the 1990 Act;<sup>166</sup>



- (d) section 16(3) of the 1996 Act;
  - (e) section 58(3) of the 1996 Act.
- (6) In this paragraph, the “commencement date”, in relation to any provision set out in sub-paragraph (2) or (5) is the date on which the provision of Schedule 15 inserting or amending that provision comes into force.

*Listed events rules*

**51**

- (1) Subject to sub-paragraph (2), Part 4 of the 1996 Act (sporting and other events of national interest) is to have effect in relation to times on or after the television transfer date as if anything done before that date by or in relation to the ITC had been done by or in relation to OFCOM.
- (2) The code drawn up by the ITC under section 104 of the 1996 Act (code of guidance as to the operation of Part 4) and in force immediately before the commencement of section 301 of this Act is to continue to have effect (notwithstanding the substitutions made by that section of this Act) –
  - (a) until the code drawn up by OFCOM under that section comes into force; but
  - (b) in relation to times on or after the transfer date and before the coming into force of OFCOM’s code, as if references in section 104(2) of that Act and in the code to the ITC were references to OFCOM.
- (3) If a provision of sections 300 to 302 of this Act comes into force before the television transfer date, a reference to OFCOM in an amendment made by that provision is to be construed in relation to times before that date as a reference to the ITC.
- (4) On the date on which section 300 of this Act comes into force, the Secretary of State shall revise the list maintained for the purposes of Part 4 of the 1996 Act in order to allocate each event which is a listed event on that date either to Group A or to Group B.
- (5) Where –
  - (a) the events listed in the list in force immediately before the Secretary of State revises it under sub-paragraph (4) are treated, for any of the purposes of the code in force under section 104 of the 1996 Act at that time, as divided into two categories, and
  - (b) the Secretary of State’s revision under that sub-paragraph makes the same division,section 97(2) of the 1996 Act shall not apply in relation to that revision of that list.
- (6) In this paragraph “the transfer date” is the date on which paragraph 13 of Schedule 1 comes into force.

*Complaints to the Broadcasting Standards Commission***52**

- (1) On and after the transfer to OFCOM under this Act of the functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act, that Part is to have effect in relation to a fairness complaint made to, but not disposed of by, the Commission before the transfer as if –
  - (a) anything done, or treated as done, by or in relation to the Commission for the purposes of, or in connection with, that complaint had been done by or in relation OFCOM; and
  - (b) those functions had been functions of OFCOM at the time when it was done.
- (2) Where immediately before the commencement of section 327 of this Act a licence to provide a licensed service (within the meaning of Part 5 of the 1996 Act) contains a condition included in that licence by virtue of section 119(7) of that Act (conditions requiring compliance with BSC directions), that condition is to have effect on and after the coming into force of section 327 of this Act as a condition requiring the licence holder to comply with directions given to him by OFCOM.
- (3) In this paragraph “fairness complaint” has the same meaning as in Part 5 of the 1996 Act.

*Codes of practice drawn up by the Broadcasting Standards Commission***53**

The code of practice drawn up by the Broadcasting Standards Commission under section 107 of the 1996 Act (code in respect of unjust and unfair treatment and infringements of privacy) is to have effect on and after the transfer under this Act to OFCOM of the Commission’s functions under Part 5 of that Act as if it were the code required to be drawn up under that section by OFCOM.

*Media ownership provisions***54**

- (1) Part 4 of Schedule 14 to this Act is to have effect –
  - (a) in relation to times before the television transfer date as if references to OFCOM were, in relation to licences under Part 1 of the 1990 Act<sup>167</sup> or Part 1 of the 1996 Act, references to the ITC; and
  - (b) in relation to times before the radio transfer date as if references to OFCOM were, in relation to licences under Part 3 of the 1990 Act<sup>168</sup> or Part 2 of the 1996 Act, references to the Radio Authority.
- (2) A determination by the ITC or the Radio Authority under paragraph 2(2) of Part 2 of Schedule 2 to the 1990 Act<sup>169</sup> which is in force immediately

before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as a determination under paragraph 15 of that Schedule to this Act.

- (3) Any guidance issued by the ITC and the Radio Authority under paragraph 2(3) of Part 2 of Schedule 2<sup>170</sup> to the 1990 Act and in force immediately before the commencement of Part 4 of Schedule 14 to this Act is to have effect on and after its commencement as guidance published under paragraph 15(4) of that Schedule to this Act.
- (4) Anything done under paragraph 15 of Schedule 14 by the ITC or the Radio Authority which is in force immediately before the relevant transfer date is to have effect on and after that date as if done under that paragraph by OFCOM.
- (5) The following powers under enactments in force before the relevant transfer date shall be exercisable by OFCOM at all times on or after that date in relation to a pre-commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act<sup>171</sup> –
  - (a) all the powers and duties of the ITC under section 5 of the 1990 Act and section 5 of the 1996 Act;
  - (b) all the powers and duties of the Radio Authority under section 88 of the 1990 Act<sup>172</sup> and section 44 of the 1996 Act; and
  - (c) all the other powers and duties of the ITC or the Radio Authority in relation to contraventions of conditions imposed under section 5 or 88 of the 1990 Act<sup>173</sup> or section 5 or 44 of the 1996 Act.
- (6) For the purpose of determining whether anything occurring after the relevant transfer date is a pre-commencement contravention of a requirement imposed by or under Parts 3 to 5 of Schedule 2 to the 1990 Act,<sup>174</sup> references in those Parts of that Schedule to the ITC or to the Radio Authority are to be construed as including references to OFCOM.
- (7) In this paragraph –
 

“pre-commencement contravention” means a contravention of a requirement which occurred before the coming into force of the repeal by this Act of the provision by or under which the requirement was imposed; and

“the relevant transfer date” –

  - (a) in relation to the ITC, means the television transfer date; and
  - (b) in relation to the Radio Authority, means the radio transfer date.

#### *TV licences*

## 55

A television licence granted under the Wireless Telegraphy Act 1949 (c. 54) before the coming into force of section 363 of this Act is to have effect after the commencement of that section as a licence for the purposes of that section.

*Functions under the Enterprise Act 2002*

\* \* \* \* \*

*Functions under the Competition Act 1998*

\* \* \* \* \*

*Newspaper mergers*

\* \* \* \* \*

*Orders in Council under section 6 of the Continental Shelf Act 1964*

\* \* \* \* \*

*Interpretation of Schedule*

\* \* \* \* \*

**SCHEDULE 19**

## Section 406

**REPEALS**

## (1) Enactments

<i>Short title and chapter</i>	<i>Extent of repeal</i>
* * * * *	* * * * *
Wireless Telegraphy Act 1949 (c. 54)	<p>In section 1<sup>175</sup> –</p> <p>(a) * * * *</p> <p>(b) in subsection (4), the words “other than a television licence” and the words from “; and a television licence” onwards;</p> <p>(c) subsections (6) and (7).</p> <p>Section 1D(1), (2), (7) and (8).</p> <p>* * * *</p> <p>Section 2.<sup>176</sup></p> <p>In section 3(1),<sup>177</sup> the words after paragraph (d) from “and different” to “classes of case:”.</p> <p>Section 9.<sup>178</sup></p> <p>In section 10(2),<sup>179</sup> the words after paragraph (b).</p> <p>In section 11(1)<sup>180</sup> –</p> <p>(a) paragraph (i) of the proviso;</p> <p>(b) in paragraph (ii) of the proviso the words “, and paragraph (i) of this proviso shall not apply”.</p> <p>Section 14(1A)(e), (2) and (3)(b).<sup>181</sup></p> <p>Section 15(4)(c)<sup>182</sup> and the word “or”</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	immediately preceding it.
	Section 19(2A) and (9). <sup>183</sup>
	Schedule 2. <sup>184</sup>
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)	Section 6(2) and (7). <sup>185</sup>
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
Telecommunications Act 1984 (c. 12)	* * * *
	In section 91 –
	(a) in subsection (2), the words “or section 80(9)(b) above” and the words “for an offence or (as the case may be) for the forfeiture of any apparatus under that section”;
	(b) in subsection (4), the words “and in section 80(9)(b) above”.
	Section 92(4).
	* * * *

<i>Short title and chapter</i>					<i>Extent of repeal</i>				
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
Broadcasting Act 1990 (c. 42)					Sections 1 and 2. <sup>186</sup>				
					In section 4(3), <sup>187</sup> the words from “and the amount” onwards.				
					In section 5 <sup>188</sup> –				
					(a) subsection (6A)(a);				
					(b) subsection (6B).				
					Sections 6 to 12. <sup>189</sup>				
					In section 15(3), <sup>190</sup> paragraphs (c) to (e).				
					In section 16 <sup>191</sup> –				
					(a) subsections (2) and (3);				

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	(b) in subsection (4), the words from “; and in applying” onwards;
	(c) subsections (5) to (8).
	Section 20. <sup>192</sup>
	Section 21A. <sup>193</sup>
	In section 24, <sup>194</sup> subsections (4) to (6).
	Sections 25 to 27. <sup>195</sup>
	In section 29 <sup>196</sup> –
	(a) in subsection (2), paragraph (b) and the word “and” immediately preceding it;
	(b) subsection (3).
	Sections 30 to 36. <sup>197</sup>
	Sections 38 and 39. <sup>198</sup>
	In section 42A, <sup>199</sup> paragraph (b) and the word “and” immediately preceding it.
	Chapters 3 * * * of Part 1. <sup>200</sup>
	Section 48(5). <sup>201</sup>
	In section 50 <sup>202</sup> –
	(a) in subsection (1)(b)(ii), the words “(subject to the approval of the Secretary of State)”; (b) subsection (7).
	Section 51(2) and (7). <sup>203</sup>
	In section 53(4), <sup>204</sup> the words “before the relevant date”.
	Section 54(2) <sup>205</sup>
	* * * * *
	* * * * *



<i>Short title and chapter</i>	<i>Extent of repeal</i>
	Section 59. <sup>206</sup>
	* * * *
	* * * *
	* * * *
	Section 65. <sup>207</sup>
	In section 66A(2), <sup>208</sup> paragraphs (c) and (d).
	Sections 68 to 70. <sup>209</sup>
	In section 71(1) <sup>210</sup> –
	(a) in the definition of “Channel 3”, the words “by the Commission”;
	(b) the definitions of “the Commission”, “licensable programme service” and “satellite television service”.
	Part 2. <sup>211</sup>
	Sections 83 and 84. <sup>212</sup>
	In section 85, <sup>213</sup> subsections (3) and (4).
	In section 87 <sup>214</sup> –
	(a) in subsection (2)(b), sub-paragraph (ii) and the word “or” immediately preceding it;
	(b) in subsection (3), the words from “and the amount” onwards.
	In section 88 <sup>215</sup> –
	(a) subsection (6A)(a); and
	(b) subsection (6B).
	Section 89(2). <sup>216</sup>
	Sections 90 to 96. <sup>217</sup>
	In section 98(3)(a), <sup>218</sup> the word “both” and sub-paragraph (ii) and the word

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>“and” immediately preceding it.</p> <p>In section 99(1)(a),<sup>219</sup> the word “both” and sub-paragraph (ii) and the word “and” immediately preceding it.</p> <p>In section 103A<sup>220</sup> –</p> <p>(a) in subsection (3), the words “before the relevant date”, paragraph (a) and, in paragraph (b), the words “in any other case”;</p> <p>(b) in subsection (8), the words from “(whether because” to “any other reason”;</p> <p>(c) subsection (10);</p> <p>(d) in subsection (11), the definition of “simulcast radio service”.</p> <p>In section 104A(5),<sup>221</sup> at the end of paragraph (a), the word “and”.</p> <p>In section 104B<sup>222</sup> –</p> <p>(a) subsection (1)(b);</p> <p>(b) subsections (6) and (7).</p> <p>In section 106(1),<sup>223</sup> the words from “, except” onwards.</p> <p>Sections 106A to 108.<sup>224</sup></p> <p>Section 110(7).<sup>225</sup></p> <p>Sections 112 and 113.<sup>226</sup></p> <p>Section 114(5).<sup>227</sup></p> <p>In section 116(1)(b)(iii),<sup>228</sup> the words “(subject to the approval of the Secretary of State)”.</p> <p>Section 117(2) and (7).<sup>229</sup></p> <p>Section 119(2).<sup>230</sup></p> <p>Section 122 to 125.<sup>231</sup></p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	In section 126(1), <sup>232</sup> the definitions of “assigned frequency”, “the Authority” and “licensable sound programme service”.
	* * * *
	In section 177(6), <sup>233</sup> the definition of “relevant foreign satellite service”.
	Section 180(2) and (3). <sup>234</sup>
	Section 181. <sup>235</sup>
	* * * *
	In section 185(5), <sup>236</sup> the definition of “the Commission”.
	Section 186. <sup>237</sup>
	* * * *
	* * * *
	* * * *
	In section 196 <sup>238</sup> –
	(a) in subsection (1)(a), the words “, 82”;
	(b) subsection (2).
	Section 197. <sup>239</sup>
	Section 199(1) to (4) and (6). <sup>240</sup>
	In section 201(1), <sup>241</sup> the words “under this Act”.
	In section 202 <sup>242</sup> –
	(a) in subsection (1), the definition of “telecommunication system”;
	(b) in subsection (2)(b), the words “1” and “8”;
	(c) in subsection (5)(a), the words “for general reception, or”.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	Schedule 1. <sup>243</sup>
	In Part 1 of Schedule 2 <sup>244</sup> –
	(a) in paragraph 1(1), the definitions of “coverage area”, of “digital programme service”, of “local delivery licence” and “local delivery service”, of “local digital sound programme service” and “national digital sound programme service”, of “local radio multiplex service” and “national radio multiplex service” and of “television multiplex service”;
	(b) paragraph 1(8);
	(c) paragraph 3A;
	(d) paragraph 3B;
	(e) paragraph 4.
	In Part 2 of Schedule 2 <sup>245</sup> –
	(a) paragraph 1(1)(a) and (b);
	(b) in paragraph 1(1)(j)(i), the words “(a), (b) or”;
	(c) paragraph 1(2) and (3);
	(d) in paragraph 5A(1)(a), the words “granted by the Commission”;
	(e) paragraph 5A(1)(b) and the word “and” immediately preceding it;
	(f) in paragraph 5A(2), the words “granted by the Authority”;
	(g) paragraph 5A(3).
	Parts 3 to 5 of Schedule 2. <sup>246</sup>
	Schedule 4. <sup>247</sup>
	Schedule 5. <sup>248</sup>
	* * * *

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	Schedule 8. <sup>249</sup>
	* * * *
	In Schedule 18 <sup>250</sup> –
	(a) in Part 1, paragraphs 1(4) to (6), 2(1) and (3) and 4;
	(b) * * * *
	* * * *
	* * * *
	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
Broadcasting Act 1996 (c. 55)	Section * * * (3).

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	Section 2(1), (6) and (7).
	In section 4(3), the words from “and the amount” onwards.
	Section 5(7)(a).
	Section 6.
	In section 11(5), the words from “not exceeding” onwards.
	Section 12(7).
	In section 16(6), the words “before the relevant date”.
	Section 18(5) and (6).
	Section 19(2) and (4) to (10).
	Sections 20 [and] 22.
	Section 25(5) and (6).
	Section 28.
	* * * *
	Sections 30 and 31.
	In section 33(3)(c), the words “or II”.
	Section 34.
	Section 38.
	In section 39(1), the definitions of “the Commission” and “qualifying teletext service”.
	In section 40(4), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)”.
	In section 43 –
	(a) in subsection (2)(b), sub-paragraph (ii) and the word “or” immediately preceding it;

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	(b) in subsection (3), the words from “and the amount” onwards.
	Section 44(7)(a).
	Section 45.
	In section 46(1), paragraph (e).
	Section 47(4).
	Section 54(7).
	In section 56(1)(a)(i), the words “to which the licence relates”.
	In section 58 –
	(a) subsection (5);
	(b) in subsection (6), the words “before the relevant date”.
	In section 60, subsections (7) to (10).
	In section 61, subsections (3) and (4).
	Section 68.
	Section 71.
	In section 72(1), the definition of “the Authority”.
	Sections 74 to 76.
	Sections 78 and 79.
	Section 80(2).
	Sections 82 to 84.
	Section 86(3).
	Sections 87 to [89].
	* * * *
	Section 93.
	* * * *

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>In section 97(3)(b), the words “by the Commission” and “by them”.</p> <p>In section 104(4)(d), the words “by the Commission” and “by them”.</p> <p>In section 105(1), the definitions of “the Commission” and “live”.</p> <p>Section 106.</p> <p>In section 107 –</p> <p>(a) subsection (2);</p> <p>(b) in subsection (4)(a), the words “or regulatory”.</p> <p>Sections 108 and 109.</p> <p>In section 110 –</p> <p>(a) subsection (2);</p> <p>(b) in subsection (3), the words from “; and in exercising” onwards;</p> <p>(c) in subsection (4), the definition of “a standards complaint” and the word “and” immediately preceding it.</p> <p>Sections 112 and 113.</p> <p>In section 114 –</p> <p>(a) in subsection (1), the words “or a standards complaint”;</p> <p>(b) in subsection (2), the words “or a standards complaint” and in paragraph (b) the words “, in the case of a fairness complaint,”.</p> <p>In section 115 –</p> <p>(a) in subsection (2), paragraph (c);</p> <p>(b) in subsection (3), paragraph (b) and the word “and” immediately preceding it.</p>



<i>Short title and chapter</i>	<i>Extent of repeal</i>
	<p>Section 116.</p> <p>In section 118, the words “or a standards complaint”.</p> <p>In section 119 –</p> <p>(a) in subsection (3), paragraph (c);</p> <p>(b) in subsection (8), the words “or standards complaint” and in paragraph (c) the words “, a regulatory body”;</p> <p>(c) in subsection (9), the words “or standards complaint” and “, 113(1)”;</p> <p>(d) subsection (12).</p> <p>In section 120(1), the words “or a standards complaint”.</p> <p>Sections 122 to [126 and 128 to 129].</p> <p>In section 130 –</p> <p>(a) in subsection (1), in the definition of “licensed service”, the words from “, subject to” to “125(6),”;</p> <p>(b) the definitions in that subsection of “the appropriate regulatory body”, “the BSC”, “financial year”, “local delivery service”, “regulatory body”, “sexual conduct” and “standards complaint”;</p> <p>(c) in subsection (2), paragraph (b) and the word “and” immediately preceding it.</p> <p>Section 142.</p> <p>Section 143(3) and (4).</p> <p>Section 144(5).</p> <p>In section 145(8), the definition of “the relevant authority”.</p> <p>In Schedule 2, paragraphs 1(2)(d) to (f),</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
	4, 5, 6(3), 10 and 11.
	Schedule 3.
	Schedule 4.
	In Schedule 8, paragraph 4.
	In Schedule 10, paragraphs 1, 3[, 5,] 6, * * * 11 to 14, * * * [19].
* * * *	* * * *
* * * *	* * * *
* * * *	* * * *
Wireless Telegraphy Act 1998 (c. 6)	In section 1(1), <sup>251</sup> the words “other than a television licence as defined in section 1(7) of that Act”.
	In section 1(3) –
	(a) paragraph (a);
	(b) in paragraph (b) the words from “or provide” to “the Secretary of State”;
	(c) paragraph (d) and the word “and” immediately preceding it.
	In section 3 <sup>252</sup> –
	(a) in subsection (1), the words “or determined by him under” and paragraph (a) and the word “and” immediately after it;
	(b) subsection (2);
	(c) in subsection (3), paragraph (h) and the word “and” immediately preceding it.
	Section 5. <sup>253</sup>
	Schedule 1. <sup>254</sup>
* * * *	* * * *

<i>Short title and chapter</i>					<i>Extent of repeal</i>				
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
Office of Communications Act 2002 (c. 11)					Section 2.  Sections 4 to 6.  In the Schedule, paragraphs 1(4), 8(5), 17(8) and (9) and 20.				
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*

*Note*

- 1 These repeals, so far as they relate to appeals to the tribunal established under section 9 of the Wireless Telegraphy Act 1949 (c. 54), have effect in relation only to appeals against decisions made after the coming into force of section 192.
- 2 The repeal of section 63 of the Telecommunications Act 1984 (c. 12) does not affect the power of the Secretary of State or the Treasury to acquire or subscribe for securities of the successor company or of any subsidiary of the successor company other than pursuant to an enactment.

<i>Short title and chapter</i>	<i>Extent of repeal</i>
3	The repeals of sections 80 and 81 of the Telecommunications Act 1984 do not apply in relation to apparatus seized before the coming into force of the repeal.
4	The repeal of paragraph 20 of Schedule 5 to the Telecommunications Act 1984 shall be disregarded for the purposes of Schedule 18 to this Act.
5	The repeals of sections 27A to 27L and in section 50 of the Telecommunications Act 1984 and the repeal of sections 1 to 10 of the Competition and Service Utilities Act 1992 do not have effect in relation to any dispute or other matter referred to the Director General of Telecommunications before the coming into force of the repeals.
6	The repeals of sections 26 and 27 of the 1990 Act have effect subject to section 201(2) of this Act.

(2) Instruments

---

\* \* \* \* \*

- 
- <sup>1</sup> Volume 2004, page 37.
- <sup>2</sup> Volume 1998, page 363.
- <sup>3</sup> Volume 2002, pages 1 and 403.
- <sup>4</sup> Volume 1992-1993, page 437.
- <sup>5</sup> Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- <sup>6</sup> Tome VIII, page 381.
- <sup>7</sup> Volume 1992-1993, page 435 and Volume 1998, page 715.
- <sup>8</sup> Deletions and words in square brackets indicate adaptations and modifications made by *The Communications (Jersey) Order 2003*.
- <sup>9</sup> Volume 2002, pages 1 and 403.
- <sup>10</sup> Volume 1992-1993, page 437.
- <sup>11</sup> Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.
- <sup>12</sup> Tome VIII, page 381.
- <sup>13</sup> Volume 1992-1993, page 435 and Volume 1998, page 715.
- <sup>14</sup> Volume 1990-1991, page 609.
- <sup>15</sup> Volume 1990-1991, page 640.
- <sup>16</sup> Volume 1990-1991, page 644.
- <sup>17</sup> Volume 1990-1991, page 664.
- <sup>18</sup> Volume 1990-1991, page 704.
- <sup>19</sup> Volume 1990-1991, page 718.
- <sup>20</sup> Volume 1990-1991, page 732.
- <sup>21</sup> Volume 1990-1991, page 590.
- <sup>22</sup> Volume 1990-1991, page 592.
- <sup>23</sup> Volume 1990-1991, page 594.
- <sup>24</sup> Volume 1990-1991, pages 597 to 607.
- <sup>25</sup> Volume 1990-1991, page 608.
- <sup>26</sup> Volume 1990-1991, page 609.
- <sup>27</sup> Volume 1990-1991, page 609.
- <sup>28</sup> Volume 1990-1991, page 609.
- <sup>29</sup> Volume 1990-1991, page 609.
- <sup>30</sup> Volume 1990-1991, page 609.
- <sup>31</sup> Volume 1990-1991, page 609.
- <sup>32</sup> Volume 1990-1991, page 609.
- <sup>33</sup> Volume 1990-1991, page 609.
- <sup>34</sup> Volume 1990-1991, page 611.
- <sup>35</sup> Volume 1990-1991, page 618.
- <sup>36</sup> Volume 1990-1991, page 619.
- <sup>37</sup> Volume 1990-1991, page 633.
- <sup>38</sup> Volume 1990-1991, pages 639 to 642.
- <sup>39</sup> Volume 1990-1991, pages 640 and 642.
- <sup>40</sup> Volume 1990-1991, page 644.
- <sup>41</sup> Volume 1990-1991, page 648.
- <sup>42</sup> Volume 1990-1991, page 651.
- <sup>43</sup> Volume 1990-1991, page 653.
- <sup>44</sup> Volume 1990-1991, page 655.
- <sup>45</sup> Volume 1990-1991, page 658.
- <sup>46</sup> Volume 1990-1991, page 659.
- <sup>47</sup> Volume 1990-1991, page 663.
- <sup>48</sup> Volume 1990-1991, page 664.
- <sup>49</sup> Volume 1990-1991, page 666.

- 
- <sup>50</sup> *Volume 1990-1991, page 666.*
- <sup>51</sup> *Volume 1990-1991, page 670.*
- <sup>52</sup> *Volume 1990-1991, page 676.*
- <sup>53</sup> *Volume 1990-1991, page 678.*
- <sup>54</sup> *Volume 1990-1991, page 680.*
- <sup>55</sup> *Volume 1990-1991, page 682.*
- <sup>56</sup> *Volume 1990-1991, page 685.*
- <sup>57</sup> *Volume 1990-1991, page 696.*
- <sup>58</sup> *Volume 1990-1991, page 696.*
- <sup>59</sup> *Volume 1990-1991, page 700.*
- <sup>60</sup> *Volume 1990-1991, page 701.*
- <sup>61</sup> *Volume 1990-1991, page 704.*
- <sup>62</sup> *Volume 1990-1991, page 705.*
- <sup>63</sup> *Volume 1990-1991, page 708.*
- <sup>64</sup> *Volume 1990-1991, page 710.*
- <sup>65</sup> *Volume 1990-1991, page 710.*
- <sup>66</sup> *Volume 1990-1991, page 712.*
- <sup>67</sup> *Volume 1990-1991, page 712.*
- <sup>68</sup> *Volume 1990-1991, page 713.*
- <sup>69</sup> *Volume 1990-1991, page 713.*
- <sup>70</sup> *Volume 1990-1991, pages 716 to 721.*
- <sup>71</sup> *Volume 1990-1991, page 721.*
- <sup>72</sup> *Volume 1990-1991, page 722.*
- <sup>73</sup> *Volume 1990-1991, page 723.*
- <sup>74</sup> *Volume 1990-1991, page 725.*
- <sup>75</sup> *Volume 1990-1991, page 728.*
- <sup>76</sup> *Volume 1990-1991, page 730.*
- <sup>77</sup> *Volume 1990-1991, page 732.*
- <sup>78</sup> *Volume 1990-1991, page 732.*
- <sup>79</sup> *Volume 1990-1991, page 737.*
- <sup>80</sup> *Volume 1990-1991, page 773.*
- <sup>81</sup> *Volume 1990-1991, page 773.*
- <sup>82</sup> *Volume 1990-1991, page 779.*
- <sup>83</sup> *Volume 1990-1991, page 783.*
- <sup>84</sup> *Volume 1990-1991, page 784.*
- <sup>85</sup> *Volume 1990-1991, page 788.*
- <sup>86</sup> *Volume 1990-1991, page 790.*
- <sup>87</sup> *Volume 1990-1991, page 792.*
- <sup>88</sup> *Volume 1990-1991, page 804.*
- <sup>89</sup> *Volume 1990-1991, page 826.*
- <sup>90</sup> *Tome VIII, page 172, Volume 1990-1991, page 389 and Volume 1996-1997, page 587.*
- <sup>91</sup> *Tome VIII, page 173.*
- <sup>92</sup> *Tome VIII, page 173.*
- <sup>93</sup> *Tome VIII, page 174.*
- <sup>94</sup> *Tome VIII, page 180.*
- <sup>95</sup> *Tome VIII, page 182.*
- <sup>96</sup> *Tome VIII, page 183.*
- <sup>97</sup> *Tome VIII, page 186.*
- <sup>98</sup> *Tome VIII, page 187.*
- <sup>99</sup> *Tome VIII, page 189.*

- 
- <sup>100</sup> *Tome VIII, page 192.*
- <sup>101</sup> *Tome VIII, page 192.*
- <sup>102</sup> *Tome VIII, page 195.*
- <sup>103</sup> *Volume 1966-1967, page 741 and Volume 1990-1991, page 837.*
- <sup>104</sup> *Volume 1966-1967, page 743.*
- <sup>105</sup> *Volume 1966-1967, page 745 and Volume 1990-1991, page 838.*
- <sup>106</sup> *Volume 1966-1967, page 746.*
- <sup>107</sup> *Volume 1998, pages 367 to 373.*
- <sup>108</sup> *Volume 1998, page 368.*
- <sup>109</sup> *Volume 1998, page 369.*
- <sup>110</sup> *Volume 1998, page 373.*
- <sup>111</sup> *Volume 1998, page 374.*
- <sup>112</sup> *Volume 1998, page 374.*
- <sup>113</sup> *Volume 1998, page 376.*
- <sup>114</sup> *Volume 1990-1991, page 588.*
- <sup>115</sup> *Volume 1990-1991, page 651.*
- <sup>116</sup> *Volume 1990-1991, page 672.*
- <sup>117</sup> *Volume 1990-1991, page 673.*
- <sup>118</sup> *Volume 1990-1991, page 651.*
- <sup>119</sup> *Volume 1998, page 370.*
- <sup>120</sup> *Volume 1998, page 370.*
- <sup>121</sup> *Tome VIII, page 173.*
- <sup>122</sup> *Tome VIII, page 173.*
- <sup>123</sup> *Volume 1990-1991, page 648.*
- <sup>124</sup> *Volume 1990-1991, page 656.*
- <sup>125</sup> *Volume 1990-1991, page 672.*
- <sup>126</sup> *Volume 1990-1991, page 672.*
- <sup>127</sup> *Volume 1990-1991, page 721.*
- <sup>128</sup> *Volume 1990-1991, page 728.*
- <sup>129</sup> *Volume 1990-1991, page 776.*
- <sup>130</sup> *Volume 1990-1991, pages 648, 721 and 790.*
- <sup>131</sup> *Volume 1990-1991, pages 648 and 722.*
- <sup>132</sup> *Volume 1990-1991, page 672.*
- <sup>133</sup> *Volume 1990-1991, page 776.*
- <sup>134</sup> *Volume 1990-1991, page 588.*
- <sup>135</sup> *Volume 1990-1991, page 673.*
- <sup>136</sup> *Volume 1990-1991, pages 609 and 618.*
- <sup>137</sup> *Volume 1990-1991, page 623.*
- <sup>138</sup> *Volume 1990-1991, page 623.*
- <sup>139</sup> *Volume 1990-1991, page 634.*
- <sup>140</sup> *Volume 1990-1991, page 821.*
- <sup>141</sup> *Volume 1990-1991, page 826.*
- <sup>142</sup> *Volume 1990-1991, page 682.*
- <sup>143</sup> *Volume 1990-1991, page 693.*
- <sup>144</sup> *Volume 1990-1991, page 588.*
- <sup>145</sup> *Volume 1990-1991, pages 597 to 607.*
- <sup>146</sup> *Volume 1990-1991, page, pages 597, 600 and 602.*
- <sup>147</sup> *Volume 1990-1991, page 673.*
- <sup>148</sup> *Volume 1990-1991, pages 686 to 695.*
- <sup>149</sup> *Volume 1990-1991, pages 686, 688 and 691.*
- <sup>150</sup> *Volume 1990-1991, pages 597, 600, 602, 686, 688 and 691.*

- 
- <sup>151</sup> *Volume 1990-1991, page 588.*
- <sup>152</sup> *Volume 1990-1991, page 673.*
- <sup>153</sup> *Volume 1990-1991, page 708.*
- <sup>154</sup> *Volume 1990-1991, page 673.*
- <sup>155</sup> *Volume 1990-1991, pages 696 to 705 and 710.*
- <sup>156</sup> *Volume 1990-1991, page 673.*
- <sup>157</sup> *Volume 1990-1991, pages 710 to 713.*
- <sup>158</sup> *Volume 1990-1991, page 673.*
- <sup>159</sup> *Volume 1990-1991, page 779.*
- <sup>160</sup> *Volume 1990-1991, page 588.*
- <sup>161</sup> *Volume 1990-1991, page 663.*
- <sup>162</sup> *Volume 1990-1991, page 710.*
- <sup>163</sup> *Volume 1990-1991, page 712.*
- <sup>164</sup> *Volume 1990-1991, page 660.*
- <sup>165</sup> *Volume 1990-1991, page 710.*
- <sup>166</sup> *Volume 1990-1991, page 712.*
- <sup>167</sup> *Volume 1990-1991, page 588.*
- <sup>168</sup> *Volume 1990-1991, page 673.*
- <sup>169</sup> *Volume 1990-1991, page 800.*
- <sup>170</sup> *Volume 1990-1991, page 801.*
- <sup>171</sup> *Volume 1990-1991, page 801 to 803.*
- <sup>172</sup> *Volume 1990-1991, page 682.*
- <sup>173</sup> *Volume 1990-1991, pages 594 and 682.*
- <sup>174</sup> *Volume 1990-1991, pages 804 to 819.*
- <sup>175</sup> *Tome VIII, page 172.*
- <sup>176</sup> *Tome VIII, page 173.*
- <sup>177</sup> *Tome VIII, page 175.*
- <sup>178</sup> *Tome VIII, page 180.*
- <sup>179</sup> *Tome VIII, page 182.*
- <sup>180</sup> *Tome VIII, page 183.*
- <sup>181</sup> *Tome VIII, page 188 and Volume 1990-1991, page 769.*
- <sup>182</sup> *Tome VIII, page 191.*
- <sup>183</sup> *Tome VIII, page 193 and Volume 1990-1991, page 392.*
- <sup>184</sup> *Tome VIII, page 196.*
- <sup>185</sup> *Volume 1966-1967, page 743.*
- <sup>186</sup> *Volume 1990-1991, page 588.*
- <sup>187</sup> *Volume 1990-1991, page 593.*
- <sup>188</sup> *Volume 1990-1991, page 594.*
- <sup>189</sup> *Volume 1990-1991, pages 597 to 607.*
- <sup>190</sup> *Volume 1990-1991, page 609.*
- <sup>191</sup> *Volume 1990-1991, page 609.*
- <sup>192</sup> *Volume 1990-1991, page 609.*
- <sup>193</sup> *Volume 1990-1991, page 609.*
- <sup>194</sup> *Volume 1990-1991, page 610.*
- <sup>195</sup> *Volume 1990-1991, pages 611 to 616.*
- <sup>196</sup> *Volume 1990-1991, page 618.*
- <sup>197</sup> *Volume 1990-1991, pages 619 to 633.*
- <sup>198</sup> *Volume 1990-1991, page 634.*
- <sup>199</sup> *Volume 1990-1991, page 644.*
- <sup>200</sup> *Volume 1990-1991, page 644.*
- <sup>201</sup> *Volume 1990-1991, page 650.*



- 
- <sup>202</sup> *Volume 1990-1991, page 653.*
- <sup>203</sup> *Volume 1990-1991, pages 656 and 657.*
- <sup>204</sup> *Volume 1990-1991, page 660.*
- <sup>205</sup> *Volume 1990-1991, page 663.*
- <sup>206</sup> *Volume 1990-1991, page 665.*
- <sup>207</sup> *Volume 1990-1991, page 665.*
- <sup>208</sup> *Volume 1990-1991, page 666.*
- <sup>209</sup> *Volume 1990-1991, pages 666 to 669.*
- <sup>210</sup> *Volume 1990-1991, page 670.*
- <sup>211</sup> *Volume 1990-1991, page 672.*
- <sup>212</sup> *Volume 1990-1991, page 673.*
- <sup>213</sup> *Volume 1990-1991, page 677.*
- <sup>214</sup> *Volume 1990-1991, page 680.*
- <sup>215</sup> *Volume 1990-1991, page 684.*
- <sup>216</sup> *Volume 1990-1991, page 685.*
- <sup>217</sup> *Volume 1990-1991, page 686 to 695.*
- <sup>218</sup> *Volume 1990-1991, page 698.*
- <sup>219</sup> *Volume 1990-1991, page 700.*
- <sup>220</sup> *Volume 1990-1991, page 710.*
- <sup>221</sup> *Volume 1990-1991, page 712.*
- <sup>222</sup> *Volume 1990-1991, page 712.*
- <sup>223</sup> *Volume 1990-1991, page 714.*
- <sup>224</sup> *Volume 1990-1991, page 715.*
- <sup>225</sup> *Volume 1990-1991, page 719.*
- <sup>226</sup> *Volume 1990-1991, page 721.*
- <sup>227</sup> *Volume 1990-1991, page 723.*
- <sup>228</sup> *Volume 1990-1991, page 726.*
- <sup>229</sup> *Volume 1990-1991, pages 728 and 730.*
- <sup>230</sup> *Volume 1990-1991, page 732.*
- <sup>231</sup> *Volume 1990-1991, pages 733 to 737.*
- <sup>232</sup> *Volume 1990-1991, page 737.*
- <sup>233</sup> *Volume 1990-1991, page 773.*
- <sup>234</sup> *Volume 1990-1991, page 776.*
- <sup>235</sup> *Volume 1990-1991, page 776.*
- <sup>236</sup> *Volume 1990-1991, page 780.*
- <sup>237</sup> *Volume 1990-1991, page 780.*
- <sup>238</sup> *Volume 1990-1991, page 784.*
- <sup>239</sup> *Volume 1990-1991, page 785.*
- <sup>240</sup> *Volume 1990-1991, pages 787 to 789.*
- <sup>241</sup> *Volume 1990-1991, page 789.*
- <sup>242</sup> *Volume 1990-1991, page 790.*
- <sup>243</sup> *Volume 1990-1991, page 791.*
- <sup>244</sup> *Volume 1990-1991, page 793.*
- <sup>245</sup> *Volume 1990-1991, page 797.*
- <sup>246</sup> *Volume 1990-1991, pages 804 to 819.*
- <sup>247</sup> *Volume 1990-1991, page 821.*
- <sup>248</sup> *Volume 1990-1991, page 821.*
- <sup>249</sup> *Volume 1990-1991, page 829.*
- <sup>250</sup> *Volume 1990-1991, page 844.*
- <sup>251</sup> *Volume 1998, page 367.*
- <sup>252</sup> *Volume 1998, page 370.*

---

<sup>253</sup> *Volume 1998, page 374.*

<sup>254</sup> *Volume 1998, page 377.*