



Jersey

# **BROADCASTING ACT 1990 (JERSEY) ORDER 1991**

**JERSEY**  
REVISED EDITION OF THE LAWS  
06.018

**APPENDIX**



*Jersey Order in Council 1/1991      The Broadcasting Act 1990 (Jersey) Order 1991*

**Jersey Order in Council 1/1991**

**THE BROADCASTING ACT 1990 (JERSEY) ORDER 1991**

*(Registered on the 8th day of March 1991)*

**At the Court at Buckingham Palace**

5th day of February 1991

PRESENT

**The Queen's Most Excellent Majesty in Council**

**HER MAJESTY**, in exercise of the powers conferred upon Her by section 204(6) of the Broadcasting Act 1990, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows –

**1.** This Order may be cited as the Broadcasting Act 1990 (Jersey) Order 1991 and shall come into force on 13th February 1991.

**2.** In this Order –

“the Act” means the Broadcasting Act 1990; and

“Jersey” means the Bailiwick of Jersey.

**3.-(1)** The following provisions of the Act shall extend, with the modifications specified in the Schedule to this Order, to Jersey –

- (a) in Part I (independent television services), sections 14 to 22 and 66;
- (b) in Part IV (transfer of undertakings), sections 127, 129 to 131 and 142;
- (c) in Part X (miscellaneous

and general) sections 202 and 204; and

- (d) Schedules 9 and 11.

(2) From 1st April 1991 the following provisions of the Act shall extend to Jersey –

- (a) section 180, except subsection (4); and
- (b) Part I of Schedule 18.

(3) For the purpose of construing provisions of the Act, as extended by this Order, as part of the law of Jersey, any reference to an enactment which extends to Jersey shall, unless a contrary intention appears, be construed as a reference to that enactment as it has effect in Jersey.

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**G.I. DE DENEY**

*Clerk of the Privy Council.*

*SCHEDULE***(Article 3)****Modifications with which provisions of the Broadcasting Act 1990 extend to Jersey**

- 1.** In section 14 (establishment of Channel 3) –
  - (a) in subsection (2) after the words “United Kingdom” insert “and the Bailiwick of Jersey”; and
  - (b) omit subsection (7).
- 2.** In section 15 (application for Channel 3 licences), in subsection (1)(b)(i) and (iv) after the words “United Kingdom” insert “and the Bailiwick of Jersey”.
- 3.** In section 16 (procedure) –
  - (a) in subsection (4) after the words “take into account” insert “the views in that behalf of the States of Jersey and”;
  - (b) omit subsection (5) (a) and (7); and
  - (c) for subsection (6) substitute –
 

“(6) Subsection (2)(h) above has effect as if any order under section 16(5) or (6) of the Broadcasting Act 1990 for the time being in force in the United Kingdom had extended to the Bailiwick of Jersey.”.
- 4.** In section 20 (duration and renewal of Channel 3 licences), in subsection (6)(a) after the word “Commission” insert “for the benefit of the States of Jersey”.
- 5.** In section 66 (transmission requirements) –
  - (a) in subsections (1) and (2) for the words “as the Secretary of State may be order specify” substitute “as may be specified in any order under section 66(1), (2) or (3) of the Broadcasting Act 1990 for the time being in force in the United Kingdom”;
  - (b) omit subsection (3);
  - (c) in subsection (6)(b) for the words “England, Scotland and Northern Ireland” substitute “England, Scotland, Northern Ireland and the Bailiwick of Jersey”; and
  - (d) omit subsections (7) and (8).
- 7.** In section 129 (transitional arrangements) omit subsections (1)(b) and (c), (2)(b), (7)(iii) and (9).
- 8.** In section 130 (variation of programme contracts) –
  - (a) in subsection (1) omit the words “Subject to subsection (2) and (4)”;

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- (b) omit subsections (2) and (4);
- (c) in subsections (5) and (9) omit the words “or (3)”; and
- (d) in subsection (8) for the words “section 129(8) and (9) apply” substitute “section 129(8) applies”.

**9.** In section 131 (supplementary provisions) omit the words “to (4)” wherever occurring.

**10.** In section 202 (general interpretation), in subsection (5)(a) and (b) for the words “United Kingdom” substitute “Bailiwick of Jersey”.

**11.** In section 204 (short title, etc.) omit subsections (2) to (6).

**12.** In Schedule 9 (division of assets of IBA) omit paragraphs 4(4), 5(5)(b) and 9 to 11.

**13.** In Schedule 11 (transitional relating to IBA’s broadcasting services) –

- (a) in Part I omit the definition of “S4C”;
- (b) In Part II –
  - (i) in paragraph 1(2) after the words “United Kingdom” insert “and the Bailiwick of Jersey”,
  - (ii) omit paragraphs 1(2) to (9), 2, 3(2) to (5) and 4 to 11,
  - (iii) in paragraph 3(1) for the words “England, Scotland and Northern Ireland” substitute “England, Scotland, Northern Ireland and the Bailiwick of Jersey”,
  - (iv) in paragraph 12(1)(a) for the words “in accordance with this Part of this Schedule” substitute “in the United Kingdom in accordance with Part II of Schedule 11 to the Broadcasting Act 1990”, and
  - (v) omit paragraph 12(3) and (4); and
- (c) omit Parts III, IV and V.

**BROADCASTING ACT 1990****CHAPTER 42***ARRANGEMENT OF SECTIONS**PART I*

## INDEPENDENT TELEVISION SERVICE

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## REGULATION BY COMMISSION OF TELEVISION COMMISSION

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## TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

**Channel 3**

- 14. Establishment of Channel 3.
- 15. Applications for Channel 3 licences.
- 16. Procedure to be followed by Commission in connexion with consideration of applications for licences.
- 17. Award of licence to person submitting highest cash bid.
- 18. Failure to begin providing licensed service and financial penalties on revocation of licence.
- 19. Additional payments to be made in respect of Channel 3 licences.
- 20. Duration and renewal of Channel 3 licences.
- 21. Restriction on changes in control over Channel 3 licence holder.

## Section

- 22. Temporary provision of regional Channel 3 service for additional area.

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## CHAPTER V

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66.    Requirements relating to transmission and distribution of services.

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67.–71.    \* \* \* \* \*

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72.–82.    \* \* \* \* \*

*PART III*

INDEPENDENT RADIO SERVICES

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**Transitional arrangements**

129.    Transitional arrangements relating to IBA's broadcasting services.

130.    Variation of programme contracts to take account of new transmission arrangements.

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*PART VIII***PROVISIONS RELATING TO WIRELESS TELEGRAPHY**

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*PART IX***COPYRIGHT AND RELATED MATTERS**

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203.    \* \* \* \* \*

204.    Short title, commencement and extent.

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Schedule 2    \* \* \* \* \*

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|             |                                                                  |
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**ELIZABETH II****1982 CHAPTER 42**

**AN ACT** to make new provision with respect to the provision and regulation of independent television and sound programme services and of other services provided on television or radio frequencies, to make provision with respect to the provision and regulation of local delivery services, to amend in other respects the law relating to broadcasting and the provision of television and sound programme services and to make provision with respect to the supply and use of information about programmes; to make provision with respect to the transfer of the property, rights and liabilities of the Independent Broadcasting Authority and the Cable Authority and the dissolution of those bodies; to make new provision relating to the Broadcasting Complaints Commission; to provide for the establishment and functions of a Broadcasting Standards Council; to amend the Wireless Telegraphy Acts 1949 to 1967 and the Marine, &c., Broadcasting (Offences) Act 1967; to revoke a class licence granted under the Telecommunications Act 1984 to run broadcast relay systems; and for connected purposes.

[1st November 1990]

**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>2</sup> –

*PART I***INDEPENDENT TELEVISION SERVICES****CHAPTER I**

\* \* \* \* \*

**CHAPTER II****TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5****Establishment of Channel 3**

**14.-(1)** The Commission shall do all that they can to secure the provision, in accordance with this Chapter, of a nationwide system of television broadcasting services to be known as Channel 3.

(2) Subject to subsection (5), Channel 3 shall be structured on a regional basis, with each of the services comprised within it ("Channel 3 services") being provided for such area in

<sup>2</sup> Deletions and words in square brackets indicate adaptations and modifications made by the Broadcasting Act 1990 (Jersey) Order 1991.

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the United Kingdom [and the Bailiwick of Jersey] as the Commission may determine in the case of that service.

(3) If it appears to the Commission that it would be appropriate for a particular Channel 3 service to do so, they may determine that the service shall include the provision of different programmes –

- (a) for such different parts of the area for which it is provided, or
- (b) for such different communities living within that area, as they may determine.

(4) If the Commission so determine in the case of a particular Channel 3 service, that service shall be provided for a particular area only between such times of the day or on such days of the week (or both) as the Commission may determine.

(5) If the Commission so determine, a Channel 3 service may be provided for two or more areas for which regional Channel 3 services are provided, but any such service may only be so provided between particular times of the day.

(6) In this Part –

“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under subsection (2); and

“national Channel 3 service” means a Channel 3 service provided as mentioned in subsection (5).

(7) \* \* \* \* \*

(8) In this section and section 15 “programme” does not include an advertisement.

### **Applications for Channel 3 licences**

**15.-(1)** Where the Commission propose to grant a licence to provide a Channel 3 service they shall publish, in such manner as they consider appropriate, a notice –

- (a) stating that they propose to grant such a licence;
- (b) specifying –
  - (i) if the service is to be a regional Channel 3 service, the area in the United Kingdom [and the Bailiwick of Jersey] for which the service is to be provided;
  - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), the different parts of that area, or (as the case may be) the different communities living within it, for which such programmes are to be provided;
  - (iii) if the service is to be provided as mentioned in section 14(4), the times of the day or the days of the week (or both) between or on which it is to be provided; and
  - (iv) if the service is to be a national Channel 3 service, the areas in the United Kingdom for which it is to be provided and the times of the day between which it is to be provided;

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- (c) inviting applications for the licence and specifying the closing date for such applications; and
- (d) specifying –
  - (i) the fee payable on any application made in pursuance of the notice, and
  - (ii) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 19(1)(c) if he were granted the licence.

(2) The Commission shall, when publishing a notice under subsection (1), publish with the notice general guidance to applicants for the licence in question which contains examples of the kinds of programme whose inclusion in the service proposed by any such applicant under subsection (3)(b) would be likely to result in a finding by the Commission that the service would comply with the requirements specified in section 16(2) or (3) (as the case may be).

(3) Any application made in pursuance of a notice under this section must be in writing and accompanied by –

- (a) the fee specified in the notice under subsection (1)(d)(i);
- (b) the applicant's proposals for providing a service that would comply with the requirements specified in section 16(2), or (3) (as the case may be);
- (c) the applicant's proposals for promoting the understanding and enjoyment by –
  - (i) persons who are deaf or hard of hearing, and
  - (ii) persons who are blind or partially-sighted,
 of the programmes to be included in his proposed service;
- (d) the applicant's proposals for training or retraining persons employed or to be employed by him in order to help fit them for employment in, or in connexion with, the making of programmes to be included in his proposed service, together with his proposals for encouraging the training or retraining of persons employed or to be employed by persons, providing programmes for inclusion in that service;
- (e) if the application is for a licence to provide a regional Channel 3 service, the applicant's proposals as to the use, in connexion with his proposed service –
  - (i) of offices and studios situated within the area for which that service would be provided, and
  - (ii) of the services of persons employed (whether by him or by any other person) within that area;
- (f) the applicant's cash bid in respect of the licence;
- (g) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force; and

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- (h) such other information as the Commission may reasonably require for the purpose of considering the application.

(4) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under any of paragraphs (b) to (e), (g) and (h) of subsection (3).

(5) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.

(6) The Commission shall, as soon as reasonably practicable after the date specified in a notice under this section as the closing date for applications, publish in such manner as they consider appropriate –

- (a) the following matters, namely –
  - (i) the name of every person who has made an application to them in pursuance of the notice,
  - (ii) the proposals submitted by him under subsection (3)(b), and
  - (iii) such other information connected with his application as the Commission consider appropriate; and
- (b) a notice –
  - (i) inviting representations to be made to them with respect to any matters published by them in accordance with paragraph (a)(ii) and (iii) above; and
  - (ii) specifying the manner in which, and the time by which, any such representations are to be so made.

(7) In this Part “cash bid”, in relation to a licence, means an offer to pay to the Commission a specified amount of money in respect of the first complete calendar year falling within the period for which the licence is in force (being an amount which, as increased by the appropriate percentage, is also to be payable in respect of subsequent years falling wholly or partly within that period).

**Procedure to be followed by Commission in connexion with consideration of applications for licences**

**16.-(1)** Where a person has made an application for a Channel 3 licence in accordance with section 15, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 17 unless it appears to them –

- (a) that his proposed service would comply with the requirements specified in subsection (2) or (3) below (as the case may be), and
- (b) that he would be able to maintain that service throughout the period for which the licence would be in force.

and any reference to an applicant in section 17 (except in section 17(12)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) and (b) above are satisfied.

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(2) Where the service to be provided under the licence is a regional Channel 3 service, the requirements referred to in subsection (1)(a) are –

- (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that such news programmes are broadcast at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (b) that a sufficient amount of time is given in the programmes included in the service to programmes (other than news and current affairs programmes) which are of high quality;
- (c) that a sufficient amount of time is given in the programmes so included –
  - (i) to a suitable range of regional programmes, that is to say, programmes (including news programmes) which are of particular interest to persons living within the area for which the service is provided, and
  - (ii) if the service is to include the provision of such programmes as are mentioned in section 14(3), to a suitable range of programmes for each of the different parts of that area or (as the case may be) for each of the different communities living within it, being in each case a range of programmes (including news programmes) which are of particular interest to persons living within the relevant part of that area or (as the case may be) the relevant community;

and that any news programmes so included in accordance with sub-paragraph (i) or (ii) are of high quality;

- (d) that a suitable proportion of the regional programmes included in the service in accordance with paragraph (c) are made within the area for which it is to be provided;
- (e) that a sufficient amount of time is given in the programmes included in the service to religious programmes and programmes intended for children;
- (f) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
- (g) that a proper proportion of the matter included in those programmes is of European origin; and
- (h) that in each year not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of independent productions.

(3) Where the service to be provided under the licence is a national Channel 3 service, the requirements referred to in subsection (1)(a) are such (if any) of the requirements specified in subsection (2) as the Commission may determine to be appropriate having regard to the nature of that service.

(4) In deciding whether an applicant's proposed service would comply with the requirements specified in subsection (2) or (3) (as the case may be), the Commission shall take into account [the views in that behalf of the States of Jersey and] any representations made to

them in pursuance of section 15(6)(b) with respect to that service; and in applying subsection (2)(g) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

(5) In subsection (2)(h) –

(a) \* \* \* \* \*

(b) 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.

[(6) Subsection (2)(h) above has effect as if any order under section 16(5) or (6) of the Broadcasting Act 1990 for the time being in force in the United Kingdom had extended to the Bailiwick of Jersey.]

(7) \* \* \* \* \*

(8) In this section “programme” does not include an advertisement.

#### **Award of licence to persons submitting highest cash bid**

**17.-(1)** Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.

(2) Where two or more applicants for a particular licence have submitted cash bids specifying an identical amount which is higher than the amount of any other cash bid submitted in respect of the licence, then (unless they propose to exercise their power under subsection (3) in relation to the licence), the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.

(3) The Commission may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant.

(4) Without prejudice to the generality of subsection (3), the Commission may regard the following circumstances as exceptional circumstances which make it appropriate to award the licence to an applicant who has not submitted the highest bid, namely where it appears to the Commission –

(a) that the quality of the service proposed by such an applicant is exceptionally high; and

(b) that the quality of that proposed service is substantially higher than the quality of the service proposed –

(i) by the applicant who has submitted the highest bid, or

(ii) in a case falling within subsection (2), by each of the applicants who have submitted equal highest bids;



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and where it appears to the Commission, in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of subsection (3), those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.

(5) If it appears to the Commission, in the case of the applicant to whom (apart from this subsection) they would award the licence in accordance with the preceding provisions of this section, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be awarded to him –

- (a) they shall refer his application to the Secretary of State, together with –
  - (i) a copy of all documents submitted to them by the applicant, and
  - (ii) a summary of their deliberations on the application; and
- (b) they shall not award the licence to him unless the Secretary of State has given his approval.

(6) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.

(7) In subsections (5) and (6) “relevant source of funds”, in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse, for the purpose of –

- (a) paying any amounts payable by him by virtue of section 19(1), or
- (b) otherwise financing the provision of his proposed service.

(8) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude the Commission from awarding a licence to the applicant to whom (apart from any such requirement) they would have awarded it in accordance with the preceding provisions of this section, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases, and any such rules may provide for the awarding of licences by reference to orders of preference notified to the Commission by applicants at the time of making their applications.

(9) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.

(10) Where the Commission are, by virtue of subsection (5), precluded from awarding the licence to an applicant, the preceding provisions of this section shall (subject to subsection (14)) have effect as if that person had not made an application for the licence.

(11) Where the Commission have awarded a Channel 3 licence to any person in accordance with this section, they shall, as soon as reasonably practicable after awarding the licence –

- (a) publish the matters specified in subsection (12) in such manner as they consider appropriate; and

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(b) grant the licence to that person.

(12) The matters referred to in subsection 1(1)(a) are –

- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
- (b) the name of every other applicant in whose case it appeared to the Commission that his proposed service would comply with the requirements specified in section 16(2) or (3) (as the case may be);
- (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant who has not submitted the highest cash bid, the Commission's reasons for the licence having been so awarded; and
- (d) such other information as the Commission consider appropriate.

(13) In a case where the licence has been awarded to any person by virtue of the operation of this section, in accordance with any provision of this Part, on the revocation of an earlier grant of the licence, subsection (12) shall have effect as if –

- (a) paragraph (b) were omitted; and
- (b) the matters specified in that subsection included an indication of the circumstances in which the licence has been awarded to that person.

(14) Subsections (1) to (9) shall not have effect as mentioned in subsection (10) if the Commission decide that it would be desirable to publish a fresh notice under section 15(1) in respect of the grant of the licence; and similarly, where any of the following provisions of this Part provides, in connexion with the revocation of a licence, for this section to have effect as if the former holder of the licence had not made an application for it, this section shall not so have effect if the Commission decide that it would be desirable to publish a further notice under this Part in respect of the grant of a further licence to provide the service in question.

**Failure to begin providing licensed service and financial penalties on revocation of licence**

**18.-(1)** If any time after a Channel 3 licence has been granted to any person but before the licence has come into force –

- (a) that person indicates to the Commission that he does not intend to provide the service in question, or
- (b) the Commission for any other reason have reasonable grounds for believing that that person will not provide that service once the licence has come into force,

then, subject to subsection (2) –

- (i) the Commission shall serve on him a notice revoking the licence as from the time the notice is served on him, and
- (ii) section 17 shall (subject to section 17(14)) have effect as if he had not made an application for the licence.

(2) Subsection (1) shall not apply in the case of any person by virtue of paragraph (b) of that subsection unless the Commission have served on him a notice stating their grounds for believing that he will not provide the service in question once his licence has come into

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force, and they shall not serve such a notice on him unless they have given him a reasonable opportunity of making representations to them about the matters complained of.

(3) Where the Commission revoke a Channel 3 licence under this section or under any other provision of this Part, they shall serve on the licence holder a notice requiring him to pay to them, within a specified period, a financial penalty of the prescribed amount.

(4) In subsection (3) “the prescribed amount” means –

(a) where –

(i) the licence is revoked under this section, or

(ii) the first complete accounting period of the licence holder falling within the period for which the licence is in force has not yet ended,

seven per cent of the amount which the Commission estimate would have been the qualifying revenue for that accounting period (as determined in accordance with section 19(2) to (6)); and

(b) in any other case, seven per cent of the qualifying revenue for the last complete accounting period of the licence holder so falling (as so determined).

(5) Any financial penalty payable by any body by virtue of subsection (3) shall, in addition to being recoverable from that body as provided by section 68(5), be recoverable by the Commission as a debt due to them from any person who controls that body.

**Additional payments to be made in respect of Channel 3 licences**

**19.-(1)** A Channel 3 licence shall include conditions requiring the licence holder to pay to the Commission (in addition to any fees required to be so paid by virtue of section 4(1)(b)) –

(a) in respect of the first complete calendar year falling within the period for which the licence is in force, the amount specified in his cash bid;

(b) in respect of each subsequent year falling wholly or partly within that period, the amount so specified as increased by the appropriate percentage; and

(c) in respect of each accounting period of his falling within the period referred to in paragraph (a), an amount representing such percentage of the qualifying revenue for that accounting period as was specified in relation to the licence under section 15(1)(d)(ii).

(2) For the purposes of subsection (1)(c) the qualifying revenue for any accounting period of the licence holder shall (subject to subsection (6)) consist of all payments received or to be received by him or by any connected person –

(a) in consideration of the inclusion in the licensed service in that period of advertisements or other programmes, or

(b) in respect of charges made in that period for the reception of programmes included in that service.

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

(3) If, in connexion with the inclusion of any advertisements or other programmes whose inclusion is paid for by payments falling within subsection (2)(a), any payments are made to the licence holder or any connected person to meet any payments payable by the licence holder by virtue of subsection (1)(c), those payments shall be regarded as made in consideration of the inclusion of the programmes in question.

(4) In the case of an advertisement included under arrangements made between –

- (a) the licence holder or any connected person, and
- (b) a person acting as an advertising agent,

the amount of any receipt by the licence holder or any connected person that represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within subsection (5), be the amount of the payment by the advertiser after the deduction of the commission.

(5) If the amount deducted by way of commission as mentioned in subsection (4) exceeds 15 per cent of the payment by the advertiser, the amount of the receipt in question shall be taken to be the amount of the payment less 15 per cent.

(6) If, in any accounting period of the licence holder, the licence holder or any connected person derives, in relation to any programme to be included in the licensed service, any financial benefit (whether direct or indirect) from payments made by any person, by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connexion with that programme, the qualifying revenue for that accounting period shall be taken for the purposes of subsection (1)(c) to include the amount of the financial benefit so derived by the licence holder or the connected person, as the case may be.

(7) A Channel 3 licence may include conditions –

- (a) enabling the Commission to estimate before the beginning of an accounting period the amount due for that period by virtue of subsection (1)(c); and
- (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.

(8) Such a licence may in particular include conditions –

- (a) authorising the Commission to revise any estimate on one or more occasions, and to adjust the instalment payable by the licence holder to take account of the revised estimate;
- (b) providing for the adjustment of any overpayment or underpayment.

(9) Where –

- (a) the first complete accounting period of the licence holder falling within the period referred to in subsection (1)(a) (“the licence period”) does not begin at the same time as that period, or
- (b) the last complete accounting period of his falling within the licence period does not end at the same time as that period,

any reference in subsection (1)(c) to an accounting period of his shall include a reference to such part of the accounting period preceding that first complete accounting period, or (as the

case may be) following that last complete accounting period, as falls within the licence period; and other references to accounting periods in this Part shall be construed accordingly.

(10) In this Part “the appropriate percentage”, in relation to any year (“the relevant year”), means the percentage which corresponds to the percentage increase between –

- (a) the retail prices index, for the month of November in the year preceding the first complete calendar year falling within the period for which the licence in question is in force; and
- (b) the retail prices index for the month of November in the year preceding the relevant year,

and for this purpose “the retail prices index” means the general index of prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.

### **Duration and renewal of Channel 3 licences**

**20.-(1)** A Channel 3 licence shall (subject to the provisions of this Part) continue in force for a period of 10 years, and may (subject to the following provisions of this section) be renewed on one or more occasions for a period of 10 years beginning with the date of renewal.

(2) An application for the renewal of a Channel 3 licence under subsection (1) may be made by the licence holder not earlier than four years before the date on which it would otherwise cease to be in force and not later than the relevant date.

(3) Where any such application is made before the relevant date, the Commission may postpone the consideration of it by them for as long as they think appropriate having regard to subsection (8).

(4) Where an application for the renewal of a Channel 3 licence has been duly made to the Commission, they may only (subject to subsection (5)) refuse the application if –

- (a) they are not satisfied that the applicant would, if his licence were renewed, provide a service which complied –
  - (i) with the conditions included in the licence in pursuance of subsection (1) of section 33 (whether as originally imposed or as varied under subsection (3) of that section), and
  - (ii) with the requirements specified in section 16(2) or (3) (as the case may be); or
- (b) they propose to grant a fresh Channel 3 licence for the provision of a service which would differ from that provided by the applicant under his licence as respects either –
  - (i) the area for which it would be provided, or
  - (ii) the times of the day or days of the week between or on which it would be provided,
 or both.

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

(5) Section 17(5) to (7) shall apply in relation to an applicant for the renewal of a Channel 3 licence as those provisions apply in relation to such an applicant as is mentioned in section 17(5), but as if any reference to the awarding of such a licence to the applicant were a reference to the renewal of the applicant's licence under this section.

(6) On the grant of any such application the Commission –

- (a) shall determine an amount which is to be payable to the Commission [for the benefit of the States of Jersey] by the applicant in respect of the first complete calendar year falling within the period for which the licence is to be renewed; and
- (b) may specify a different percentage from that specified under section 15(1)(d)(ii) as the percentage of qualifying revenue for each accounting period of his that will be payable by the applicant in pursuance of section 19(1)(c) during the period for which the licence is to be renewed.

(7) The amount determined by the Commission under subsection (6)(a) in connexion with the renewal of a licence shall be such amount as would, in their opinion, be payable to them by virtue of section 19(1)(a) if they were granting a fresh licence to provide the Channel 3 service in question.

(8) Where the Commission have granted a person's application under this section they shall formally renew his licence not later than the relevant date, or, if that is not reasonably practicable, as soon after that date as is reasonably practicable; and they shall not so renew his licence unless they have notified him of –

- (a) the amount determined by them under subsection (6)(a), and
- (b) any percentage specified by them under subsection (6)(b),

and he has, within such period as is specified in that notification, notified them that he consents to the licence being renewed on those terms.

(9) Where a Channel 3 licence has been renewed under this section –

- (a) any conditions included in it in pursuance of section 19 shall have effect during the period for which the licence has been renewed –
  - (i) as if the amount determined by the Commission under subsection (6)(a) above were an amount specified in a cash bid submitted by the licence holder, and
  - (ii) subject to any determination made under subsection (6)(b) above;
- (b) (subject to paragraph (a)) that section shall have effect in relation to the period for which the licence has been renewed as it has effect in relation to the period for which a Channel 3 licence is originally in force; and
- (c) the reference in section 42(4) to the end of the period for which a Channel 3 licence is to continue in force shall, in relation to the licence, be construed as a reference to the end of the period for which it has been renewed.

(10) In this section “the relevant date”, in relation to a Channel 3 licence, means the date which the Commission determine to be that by which they would need to publish a notice under section 15(1) if they were to grant, as from the date on which that licence would expire if

not renewed, a fresh licence to provide the Channel 3 service formerly provided under that licence.

**Restriction on changes in control over Channel 3 licence holder**

**21.-(1)** Where –

- (a) any change in the persons having control over –
  - (i) a body to which a Channel 3 licence has been awarded or transferred in accordance with this Part of this Act, or
  - (ii) an associated programme provider,
 takes place within the relevant period, and
- (b) that change takes place without having been previously approved for the purposes of this section by the Commission,

then (subject to subsection (4)) the Commission may, if the licence has not yet been granted, refuse to grant it to the body referred to in paragraph (a)(i) above or, if it has already been granted, serve on that body a notice revoking it.

(2) In subsection (1) –

“associated programme provider”, in relation to such a body as is mentioned in paragraph (a)(i) of that subsection, means any body which is connected with that body and appears to the Commission to be, or to be likely to be, involved to any extent in the provision of programmes for inclusion in the licensed service; and

“the relevant period”, in relation to a Channel 3 licence, means the period beginning with the date of the award of the licence and ending on the first anniversary of the date of its coming into force;

and paragraph 3 in Part I of Schedule 2 to this Act shall have effect for the purposes of this subsection as if a body to which a Channel 3 licence has been awarded but not yet granted were the holder of such a licence.

(3) The Commission shall refuse to approve for the purposes of this section such a change as is mentioned in subsection (1)(a) –

- (a) if it appears to them that the change would be prejudicial to the provision under the licence, by the body referred to in subsection (1)(a)(i), of a service which accords with the proposals submitted under section 15(3)(b) by that body (or, as the case may be, by the person to whom the licence was originally awarded), or
- (b) it appears to them that the change would be prejudicial to the provision of Channel 3 as such a nationwide system of services as is mentioned in section 14(1);

and the Commission may refuse so to approve any such change if, in any circumstances not falling within paragraph (a) or (b) above, they consider it appropriate to do so.

(4) The Commission shall not under subsection (1) refuse to grant a licence to, or serve a notice on, any body unless they have given it a reasonable opportunity of making representations to them about the matters complained of.

(5) Where under subsection (1) the Commission refuse to grant a licence to any body, section 17 shall (subject to section 17(14)) have effect as if that body had not made an application for the licence; and, where under that subsection they serve on any body a notice revoking its licence, subsections (6) and (7) of section 42 shall apply in relation to that notice as they apply in relation to a notice served under subsection (3) of that section.

**Temporary provision of regional Channel 3 service for additional area**

**22.-(1)** Where it appears to the Commission –

- (a) that (whether as a result of the revocation of an existing regional Channel 3 licence or for any other reason) there will be, in the case of a particular area determined under section 14(2), a temporary lack of any regional Channel 3 service licensed to be provided for that area, but
- (b) that it would be reasonably practicable for the holder of a licence to provide a regional Channel 3 service for any other such area to provide his licensed service for the area referred to in paragraph (a) as well,

the Commission may invite the holder of that licence temporarily to provide his licensed service for that additional area.

(2) If the holder of that licence agrees so to provide his licensed service, the Commission shall authorise the provision of that service for the additional area in question, during such period as they may determine, by means of a variation of the licence to that effect.

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*Jersey Order in Council 1/1991      The Broadcasting Act 1990 (Jersey) Order 1991*

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**65.**     \* \* \* \* \*

**Requirements relating to transmission and distribution of services**

**66.**-(1) During such period [as may be specified in any order under section 66(1), (2) or (3) of the Broadcasting Act 1990 for the time being in force in the United Kingdom] all Channel 3 services shall be broadcast for general reception by a single person under arrangements made with him by the persons licensed to provide those services; and every Channel 3 licence shall include such conditions as appear to the Commission to be appropriate –

- (a) for securing that result and
- (b) for securing that the costs incurred in respect of the broadcasting of those services (taken as a whole) during that period in accordance with those arrangements are shared by those persons in such manner as may be approved by the Secretary of State.

(2) Any Channel 3 licence shall include such conditions as appear to the Commission to be appropriate for securing that the costs incurred in respect of the distribution of Channel 3 services (taken as a whole) during such period [as may be specified in any order under section 66(1), (2) or (3) of the Broadcasting Act 1990 for the time being in force in the United Kingdom] are shared by the persons licensed to provide those services in such manner as may be approved by the Secretary of State.

In this subsection “distribution”, in relation to Channel 3 services, means the conveyance of those services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast for general reception.

(3)     \* \* \* \* \*

(4) Any Channel 3 licence or licence to provide Channel 4 or 5 shall include such conditions as appear to the Commission to be appropriate for requiring the signals carrying the licensed service to attain high standards in terms of technical quality and reliability throughout so much of the relevant area as is for the time being reasonably practicable.

(5) Before imposing any conditions in pursuance of subsection (4) the Commission shall consult the Secretary of State as to how much of the relevant area is to be specified in the conditions as the area throughout which the required standards are to be attained.

(6) In subsections (4) and (5) “the relevant area” –

- (a) in relation to a Channel 3 or Channel 5 licence, means the area for which the licensed service is to be provided; and
- (b) in relation to the licence to provide Channel 4, means [England, Scotland, Northern Ireland and the Bailiwick of Jersey].

(7)     \* \* \* \* \*

(8)     \* \* \* \* \*

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## *PART II*

### LOCAL DELIVERY SERVICES

**72.**      \* \* \* \* \*

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## *PART III*

### INDEPENDENT RADIO SERVICES

**83.**      \* \* \* \* \*

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*Jersey Order in Council 1/1991      The Broadcasting Act 1990 (Jersey) Order 1991*

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#### *PART IV*

### TRANSFER OF UNDERTAKINGS OF IBA AND CABLE AUTHORITY

#### **Division of assets of IBA and their dissolution**

127.-(1) On such day as the Secretary of State may by order appoint as the transfer date there shall come into force a scheme made under Schedule 9 to this Act and providing for the division of the property, rights and liabilities of the IBA between –

- (a) the Commission,
- (b) the Radio Authority, and
- (c) a company nominated for the purposes of this subsection by the Secretary of State.

(2) The Secretary of State may, by order made before the transfer date, nominate for the purposes of subsection (1) any company formed and registered under the Companies Act 1985; but on that date the company must be a company limited by shares which is wholly owned by the Crown.

(3) Subject to subsection (4), the IBA shall continue in existence after the transfer date until such time as they [cease to exist in the United Kingdom].

(4) On the transfer date the chairman and members of the IBA shall cease to hold office; and as from that date the IBA –

- (a) shall consist only of a chairman appointed by the Secretary of State and, if the Secretary of State thinks fit, such one or more other persons as the Secretary of State may appoint as members of the IBA; and
- (b) shall have only the functions which fall to be carried out by the IBA under or by virtue of Schedule 9.

(5) If requested to do so by the chairman appointed under subsection (4)(a), the Commission shall furnish the IBA with any assistance required by them for the purpose of carrying out any of those functions.

(6) The Secretary of State shall not make an order under subsection (3) unless he is satisfied, after consultation with the IBA and with each of the bodies referred to in subsection (1)(a) to (c), that nothing further remains to be done by the IBA under or by virtue of Schedule 9.

**128.**       \* \* \* \* \*

#### **Transitional arrangements relating to IBA's broadcasting services**

**129.**-(1) Schedule 11 to this Act shall have effect –

(a) with respect to the provision by the Commission and the Welsh Authority, during the period beginning with the transfer date and ending with 31st December 1992, of television broadcasting services which have been provided by the IBA under the Broadcasting Act 1981<sup>3</sup> down to the transfer date;

(b) \* \* \* \* \*

(c) \* \* \* \* \*

(2) The programmes provided by a programme contractor under his contract for inclusion in any broadcasting service provided by the Commission or the Radio Authority in accordance with Part II or IV of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission or the Radio Authority (as the case may be) but shall be transmitted –

(a) by the nominated company in pursuance of a contract made between that company and the programme contractor in accordance with section 130 or

(b) \* \* \* \* \*

(3) The programmes broadcast on Channel 4 and S4C respectively during the interim period in accordance with Part II of Schedule 11 shall not be transmitted by, or under arrangements made by, the Commission but shall be transmitted by the nominated company –

(a) in the case of the programmes broadcast on Channel 4, in pursuance of such a contract made between that company and the Channel 4 company as is mentioned in subsection (4), and

(b) in the case of the programmes broadcast on S4C, in pursuance of such a contract made between the nominated company and the Welsh Authority as is mentioned in subsection (6).

(4) The contract referred to in subsection (3)(a) is a contract which makes provision for and in connexion with the transmission by the nominated company during the interim period of the programmes to be broadcast on Channel 4 during that period, and in particular makes provision –

(a) for specified standards relating to technical quality, coverage and reliability to be attained in connexion with the transmission of those programmes by that company; and

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<sup>3</sup> Volume 1988–1989, page 36.

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

- (b) for the transmission of those programmes to be suspended, if the Commission so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify.

(5) The circumstances referred to in subsection (4)(b) are circumstances where the Commission consider it necessary to require the transmission of the programmes in question to be suspended in order for them to comply, or secure compliance, with the provisions of the Broadcasting Act 1981<sup>4</sup> (as it has effect in accordance with Part II of Schedule 11 to this Act) or with any restriction or requirement imposed thereunder.

(6) The contract referred to in subsection (3)(b) is a contract which makes provision for and in connexion with the transmission by the nominated company during the interim period of the programmes to be broadcast on S4C during that period, and in particular makes provision for specified standards relating to technical quality, coverage and reliability to be attained in connexion with the transmission of those programmes by that company.

- (7) In the following provisions, namely –

- (a) Parts II and IV of Schedule 11 to this Act, and
- (b) any provision of the Broadcasting Act 1981<sup>4</sup> which is to be construed as referring to the Commission or to the Radio Authority by virtue of either of those Parts of that Schedule.

any reference (however expressed) to the broadcasting of programmes, or to programmes broadcast, by the Commission or the Radio Authority shall, in consequence of subsections (2) and (3) above, be read as a reference to the broadcasting of programmes, or to programmes broadcast, by that body whether the transmission of the programmes is undertaken (according to the circumstances of the case) –

- (i) by, or under arrangements made by, that body, or
- (ii) by the nominated company in pursuance of any such contract as is referred to in either of those subsections, or
- (iii) \* \* \* \* \*

and those Parts of that Schedule contain other modifications of provisions of that Act which are consequential on those subsections.

(8) This section and section 130 shall have effect in relation to any teletext service provided by the Commission in accordance with Part II of Schedule 11 as if –

- (a) any reference to a programme or television programme were a reference to a teletext transmission; and
- (b) any reference to a programme contractor were a reference to a teletext contractor.

- (9) \* \* \* \* \*

- (10) In this section –

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<sup>4</sup> Volume 1988–1989, page 36.

“the Channel 4 company” means the body corporate referred to in section 12(2) of the Broadcasting Act 1981,<sup>5</sup> and “on Channel 4” means in the additional broadcasting service referred to in section 10(1) of that Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales;

“the interim period” means the period specified in subsection (1)(a) above;

“on S4C” has the same meaning as in Part 1 of this Act.

(11) The reference in subsection (4) or (6) to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date.

### **Variation of programme contracts to take account of new transmission arrangements**

**130.-(1)** \* \* \* \* \* It shall be the duty of the IBA to make before the transfer date such variations of each contract between them and a programme contractor (“the programme contract”) as appear to them to be appropriate –

- (a) for requiring the programme contractor to enter into a contract with the nominated company which makes provision for and in connexion with the transmission by that company during the interim period of the programmes which the programme contractor has the right and the duty to provide under the programme contract, and in particular makes provision –
  - (i) for specified standards relating to technical quality, coverage and reliability to be attained in connexion with the transmission of those programmes by that company,
  - (ii) for the transmission of those programmes to be suspended, if the relevant authority so direct in circumstances falling within subsection (5), for such period, or in the case of such programme or programmes, as they may specify, and
  - (iii) where the programme contractor is a TV programme contractor, for the consideration payable in respect of the transmission of those programmes to be payable in accordance with subsection (6); and
- (b) for securing that the right and the duty of the programme contractor under the programme contract to provide those programmes is accordingly (so long as any such contract with the nominated company remains in force) a right and a duty to provide them for transmission by that company.

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

(3) \* \* \* \* \*

(4) \* \* \* \* \*

(5) The circumstances referred to in paragraph (a)(ii) of subsection (1) \* \* \* are circumstances where the relevant authority or (as the case may be) the Commission consider it necessary to require the transmission of the programmes in question to be suspended –

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<sup>5</sup> Volume 1988–1989, page 61.



*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

- (a) in order for them to comply, or secure compliance, with the provisions of the Broadcasting Act 1981<sup>6</sup> (as it has effect in accordance with Schedule 11 to this Act) or with any restriction or requirement imposed thereunder, or
- (b) in view of any matter which they consider constitutes or would constitute a breach of the programme contractor's contract.

(6) The IBA shall make before the transfer date such variations of each contract between them and a TV programme contractor as appear to them to be appropriate for requiring the programme contractor to enter into an agreement with all of the other TV programme contractors which –

- (a) relates to the payment by those contractors to the nominated company of the consideration payable by them in respect of the transmission by that company of the programmes provided by them; and
- (b) provides for the amounts payable by each of the contractors to be such proportion of the total consideration so payable as corresponds to the proportion of the relevant amount which he was liable to pay by virtue of section 32(1)(a) of the Broadcasting Act 1981 (rental payments) in respect of the period beginning with 1st April 1990 and ending with the transfer date;

and in paragraph (b) “the relevant amount” means the aggregate amount of all payments falling to be made by TV programme contractors by virtue of section 32(1)(a) of that Act in respect of that period (excluding any payments falling to be so made in consequence of section 13(2) of that Act (advertisements on Channel 4)).

(7) The IBA shall, in the case of each such contract as is mentioned in subsection (6), also make before the transfer date such variations of the contract as appear to them to be appropriate in consequence of section 129(3).

(8) In this section –

“the interim period” means the period specified in section 129(1)(a);

“the relevant authority –

- (a) in relation to any such contract as is mentioned in subsection (1)(a) which relates to the transmission of television programmes, means the Commission, and
- (b) in relation to any such contract which relates to the transmission of local sound broadcasts, means the Radio Authority;

and [section 129(80) applies] for the purposes of this section.

(9) Any reference in subsection (1) \* \* \* to specified standards is a reference to such standards as the IBA shall specify for the purposes of that subsection before the transfer date; and different standards may be so specified for the purposes of subsection (1) in relation to programme contractors of different descriptions.

**Supplementary provisions relating to variation of programme contracts**

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<sup>6</sup> Volume 1988–1989, page 36.

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

**131.**-(1) Where the IBA make any variation of a programme contract in pursuance of section 130(1) \* \* \* or (6), they may make such variations of that contract of a supplemental, incidental, consequential or transitional nature as they consider appropriate.

(2) The relevant authority may on or after the transfer date make any variation of a programme contract which could have been made before that date by the IBA –

- (a) in pursuance of section 130(1) \* \* \*, or
- (b) in pursuance of subsection (1) above in connexion with any variation made in pursuance of section 130(1) \* \* \*;

and any such variation may be made with retrospective effect as from that date.

(3) Before making any variation of a programme contract in pursuance of any provision of section 130, this section or Schedule 11, the IBA or (as the case may be) the relevant authority shall consult the programme contractor concerned.

(4) Any such variation shall be made by means of a notice served on that programme contractor.

(5) In this section –

“programme contract” means a contract between the IBA and a programme contractor;

“programme contractor” includes a teletext contractor;

“the relevant authority” –

- (a) in relation to a programme contract for the provision of television programmes or teletext transmissions, means the Commission; and
- (b) in relation to a programme contract for the provision of local sound broadcasts, means the Radio Authority.

**132.**    \* \* \* \* \*

**133.**    \* \* \* \* \*

**134.**    \* \* \* \* \*

**135.**    \* \* \* \* \*

**136.**    \* \* \* \* \*

**137.**    \* \* \* \* \*

**138.**    \* \* \* \* \*

**139.**    \* \* \* \* \*

**140.**    \* \* \* \* \*

#### **Interpretation of Part IV**

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

**141.**-(1) In this Part –

“the Commission” means the Independent Television Commission;

“debentures” includes debenture stock;

“the IBA” means the Independent Broadcasting Authority;

“the nominated company” means the company nominated for the purposes of section 127(1);

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“subsidiary” has the meaning given by section 736 of the Companies Act 1985;

“the transfer date” means the day appointed under section 127(1).

(2) Other expressions used in this Part which are also used in the Broadcasting Act 1981<sup>7</sup> have the same meaning as in that Act.

(3) The nominated company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of, the Secretary of State.

## *PART V*

### THE BROADCASTING COMPLAINTS COMMISSION

**142.**    \* \* \* \* \*

**143.**    \* \* \* \* \*

**144.**    \* \* \* \* \*

**145.**    \* \* \* \* \*

**146.**    \* \* \* \* \*

**147.**    \* \* \* \* \*

**148.**    \* \* \* \* \*

**149.**    \* \* \* \* \*

**150.**    \* \* \* \* \*

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<sup>7</sup> Volume 1988–1989, page 35.

*PART VI*

## THE BROADCASTING STANDARDS COUNCIL

- 151. \* \* \* \* \*
- 152. \* \* \* \* \*
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- 154. \* \* \* \* \*
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- 156. \* \* \* \* \*
- 157. \* \* \* \* \*
- 158. \* \* \* \* \*
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- 160. \* \* \* \* \*
- 161. \* \* \* \* \*

*PART VII*PROHIBITION ON INCLUSION OF OBSCENE AND OTHER MATERIAL IN  
PROGRAMME SERVICES

- 162. \* \* \* \* \*
- 163. \* \* \* \* \*
- 164. \* \* \* \* \*
- 165. \* \* \* \* \*
- 166. \* \* \* \* \*
- 167. \* \* \* \* \*

*PART VIII*

## PROVISIONS RELATING TO WIRELESS TELEGRAPHY

- 168. \* \* \* \* \*
- 169. \* \* \* \* \*
- 170. \* \* \* \* \*

**171.**      \* \* \* \* \*

**172.**      \* \* \* \* \*

**173.**      \* \* \* \* \*

**174.**      \* \* \* \* \*

#### *PART IX*

#### **COPYRIGHT AND RELATED MATTERS**

**175.**      \* \* \* \* \*

**176.**      \* \* \* \* \*

#### *PART X*

#### **MISCELLANEOUS AND GENERAL**

**177.**      \* \* \* \* \*

**178.**      \* \* \* \* \*

**179.**      \* \* \* \* \*

#### **Transfer to BBC of functions connected with television licences**

**180.-(1)** The Wireless Telegraphy Act 1949<sup>8</sup> (“the 1949 Act”) shall have effect subject to the amendments specified in Part I of Schedule 18 to this Act (by virtue of which functions of the Secretary of State as respects the issue and renewal of television licences are transferred to the BBC).

(2) Section 3(3) of the Post Office Act 1969 (refunds in respect of wireless telegraphy licences) shall not apply to sums which, by virtue of subsection (1) above, are paid to the BBC under section 2(1) of the 1949 Act (fees and charges for licences); but refunds of sums so paid may be made by the BBC, out of sums received by them under section 2(1) of the 1949 Act, in such cases or classes of cases as they may determine.

(3) Except so far as required for the making of refunds under subsection (2) above, sums received by the BBC under section 2(1) of the 1949 Act shall be paid into the Consolidated Fund.

(4) Part I of the Wireless Telegraphy Act 1967<sup>9</sup> (obtaining of information as to sale and hire of television sets) shall have effect subject to the amendments specified in Part II of Schedule 18 to this Act (by virtue of which all of the functions of the Secretary of State under that Part of that Act, apart from his power to make regulations under section 2(7) or 6(1), are transferred to the BBC).

**181.**      \* \* \* \* \*

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<sup>8</sup> Tome VIII, page 172.

<sup>9</sup> Volume 1968–1969, page 29.

- 182.      \* \* \* \* \*
- 183.      \* \* \* \* \*
- 184.      \* \* \* \* \*
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- 198.      \* \* \* \* \*
- 199.      \* \* \* \* \*
- 200.      \* \* \* \* \*
- 201.      \* \* \* \* \*

### **General interpretation**

**202.-(1)** In this Act (unless the context otherwise requires) –

“advertising agent” shall be construed in accordance with subsection (7);

“the BBC” means the British Broadcasting Corporation;

“body”, without more, means a body of persons whether incorporated or not, and includes a partnership;

“broadcast” means broadcast by wireless telegraphy;

“connected”, in relation to any licence, shall be construed in accordance with paragraph 3 in Part I of Schedule 2;

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

“control”, in relation to a body, has the meaning given by paragraph 1(1) in that Part of that Schedule;

“dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;

“financial year” shall be construed in accordance with subsection (2);

“frequency” includes frequency band;

“modifications” includes additions, alterations and omissions;

“pension scheme” means a scheme for the payment of pensions, allowances or gratuities;

“programme” includes an advertisement and, in relation to any service, includes any item included in that service;

“telecommunication system” has the same meaning as in the Telecommunications Act 1984;

“the Welsh Authority” means the authority renamed Sianel Pedwar Cymru by section 56(1);

“wireless telegraphy” and “station for wireless telegraphy” have the same meaning as in the Wireless Telegraphy Act 1949.<sup>10</sup>

(2) In any provision of –

(a) section 148 or 160, or

(b) Schedule 1,2,3,6,8,13,14 or 19,

“financial year” means a financial year of the body with which that provision is concerned; and in any other provision of this Act “financial year” means the 12 months ending with 31st March.

(3) In this Act –

(a) references to pensions, allowances or gratuities include references to like benefits to be given on death or retirement; and

(b) any reference to the payment of pensions, allowances or gratuities to or in respect of any persons includes a reference to the making of payments towards provision for the payment of pensions, allowances or gratuities to or in respect of those persons.

(4) Any reference in this Act (however expressed) to a licence under this Act being in force is a reference to its being in force so as to authorise the provision under the licence of the licensed service; and any such reference shall accordingly not be construed as prejudicing the operation of any provisions of such a licence which are intended to have effect otherwise than at a time when the licensed service is authorised to be so provided.

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<sup>10</sup> Tome VIII, page 172.

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

(5) It is hereby declared that, for the purposes of determining for the purpose of any provision of this Act whether a service is –

- (a) for general reception, or capable of being received, within the [Bailiwick of Jersey] or elsewhere, or
- (b) for reception at any place or places, or in any area, in the [Bailiwick of Jersey],

the fact that the service has been encrypted to any extent shall be disregarded.

(6) Any reference in this Act, in relation to a service consisting of programmes transmitted by satellite –

- (a) to a person by whom the programmes are transmitted, or
- (b) to a place from which the programmes are transmitted,

is a reference to a person by whom, or a place from which, the programmes are transmitted to the satellite by means of which the service is provided.

(7) For the purposes of this Act –

- (a) a person shall not be regarded as carrying on business as an advertising agent, or as acting as such an agent, unless he carries on a business involving the selection and purchase of advertising time or space for persons wishing to advertise;
- (b) a person who carries on such a business shall be regarded as carrying on business as an advertising agent irrespective of whether in law he is the agent of those for whom he acts;
- (c) a person who is the proprietor of a newspaper shall not be regarded as carrying on business as an advertising agent by reason only that he makes arrangements on behalf of advertisers whereby advertisements appearing in the newspaper are also to appear in one or more other newspapers;
- (d) a company or other body corporate shall not be regarded as carrying on business as an advertising agent by reason only that its objects or powers include or authorise that activity.

**203.**     \* \* \* \* \*

### **Short title, commencement and extent**

**204.**-(1) This Act may be cited as the Broadcasting Act 1990.

- (2) \* \* \* \* \*
- (3) \* \* \* \* \*
- (4) \* \* \* \* \*
- (5) \* \* \* \* \*
- (6) \* \* \* \* \*



*Jersey Order in Council 1/1991      The Broadcasting Act 1990 (Jersey) Order 1991*

*SCHEDULES*

*SCHEDULE 1*

**THE INDEPENDENT TELEVISION COMMISSION: SUPPLEMENTARY PROVISIONS**

\* \* \* \* \*

*SCHEDULE 2*

**RESTRICTIONS ON THE HOLDING OF LICENCES**

\* \* \* \* \*

*SCHEDULE 3*

**THE CHANNEL FOUR TELEVISION CORPORATION: SUPPLEMENTARY PROVISIONS**

\* \* \* \* \*

*SCHEDULE 4*

**REFERENCES WITH RESPECT TO NETWORKING ARRANGEMENTS**

\* \* \* \* \*

*SCHEDULE 5*

**SPECIAL PROVISIONS RELATING TO PUBLIC TELETXT SERVICE**

\* \* \* \* \*

*SCHEDULE 6*

**THE WELSH AUTHORITY: SUPPLEMENTARY PROVISIONS**

\* \* \* \* \*

*SCHEDULE 7*

**QUALIFYING REVENUE: SUPPLEMENTARY PROVISIONS**

\* \* \* \* \*

*SCHEDULE 8*

**THE RADIO AUTHORITY: SUPPLEMENTARY PROVISIONS**

\* \* \* \* \*

**SCHEDULE 9****SCHEME PROVIDING FOR DIVISION OF ASSETS OF IBA****Preliminary**

1. In this Schedule –

“relevant transferee” shall be construed in accordance with paragraph 2(1) below; and

“transfer scheme” means a scheme under this Schedule made either by the IBA under paragraph 2(1) below or by the Secretary of State under paragraph 2(4) below.

**Making and modification of transfer scheme**

2.-(1) The IBA shall make a scheme under this Schedule for the division of all their property, rights and liabilities between –

- (a) the Commission,
- (b) the Radio Authority, and
- (c) the nominated company;

and references in this Schedule to the relevant transferees are references to the bodies specified in paragraphs (a) to (c) above.

(2) Where such a scheme is made by the IBA, it shall not be capable of coming into force in accordance with section 127(1) of this Act unless it is approved by the Secretary of State.

(3) Where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.

(4) If –

- (a) the IBA have not, before such time as the Secretary of State may notify to them as the latest time for the submission of such a scheme, submitted such a scheme for his approval, or
- (b) the Secretary of State decides not to approve (either with or without modifications) a scheme that has been submitted to him by the IBA,

the Secretary of State may himself make a scheme for the division of the IBA’s property, rights and liabilities between the relevant transferees.

(5) If, at any time after the Secretary of State has either –

- (a) approved (either with or without modifications) a scheme under this Schedule made by the IBA, or
- (b) himself made such a scheme,

but before the scheme has come into force in accordance with section 127(1) of this Act, the Secretary of State considers it appropriate to do so, he may determine that the scheme shall, on

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

its so coming into force, come into force with such modification as may be specified in his determination; and, in any such case, the scheme shall accordingly, on its coming into force, come into force with those modifications.

- (6) If at any time after a transfer scheme has come into force –
  - (a) the Secretary of State considers it appropriate to make an order under this sub-paragraph, and
  - (b) every relevant transferee who would be affected by the order either –
    - (i) (in a case where any such transferee is the nominated company and that company has ceased to be wholly owned by the Crown) has consented to the making of the order, or
    - (ii) (in any other case) has been consulted by the Secretary of State,

the Secretary of State may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.

(7) Any power to modify a transfer scheme which is conferred on the Secretary of State by this paragraph may be so exercised as to make any such provision as could have been made by the scheme, and an order under sub-paragraph (6) above may provide for any of its provisions to have effect as from the coming into force of the scheme to which it relates.

(8) In determining whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State shall have regard to the need to ensure that the division of property, rights and liabilities between the relevant transferees which is effected under this Schedule allocates property, rights and liabilities to those transferees in such a manner as appears to him to be appropriate –

- (a) in the case of the Commission and the Radio Authority, in the light of the functions conferred on those bodies by this Act; and
- (b) in the case of the nominated company, with a view to the carrying on by that company of a business consisting of –
  - (i) the provision of broadcasting transmission services and services related to such services, and
  - (ii) the carrying out of research and development work relating to broadcasting.

(9) It shall be the duty of the IBA and each of the relevant transferees to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connexion with, the exercise of any power conferred on him by this paragraph.

(10) Nothing in this paragraph shall require a scheme under this Schedule to make provision –

- (a) with respect to any equipment or other asset which the IBA have agreed to dispose of in pursuance of section 132(1) or 133(6) of this Act, or
- (b) with respect to any liabilities of the IBA which –

- (i) have not yet become enforceable against the IBA, and
- (ii) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which is or are transferred in accordance with any such scheme to one or more of the relevant transferees, or
- (c) with respect to any such rights or liabilities as are mentioned in sub-paragraph (11).

(11) Those rights and liabilities are rights and liabilities acquired by the IBA in connexion with the sharing by the IBA and the BBC of the use of facilities (of whatever description) in connexion with the transmission of television programmes or local sound broadcasts.

### **Content of transfer scheme**

3.-(1) A transfer scheme may –

- (a) define the property, rights and liabilities to be allocated to a particular relevant transferee –
  - (i) by specifying or describing the property, rights and liabilities in question,
  - (ii) by referring to all the property, rights and liabilities comprised in a specified part of the IBA's undertaking, or
  - (iii) partly in the one way and partly in the other;
- (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of two or more relevant transferees;
- (c) impose on any relevant transferee an obligation to enter into such written agreements with, or execute such instruments in favour of, such other relevant transferee as may be specified in the scheme;
- (d) create for any of the relevant transferees an interest in or right over property transferred in accordance with the scheme to any other of those transferees;
- (e) in connexion with any provision made by virtue of paragraph (d), make incidental provision as to the interests, rights and liabilities of other persons with respect to the property in question.

(2) Without prejudice to the generality of sub-paragraph (1)(a), a transfer scheme may, in connexion with any transfer to be made in accordance with the scheme, exclude from the transfer any rights and liabilities falling within paragraph 2(11) above and described in the scheme.

(3) A transfer scheme may also allocate to any of the relevant transferees such property, rights and liabilities to which the IBA may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme.

(4) The property, rights and liabilities of the IBA that are capable of being transferred in accordance with a transfer scheme include –

*Jersey Order in Council 1/1991    The Broadcasting Act 1990 (Jersey) Order 1991*

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the IBA;
- (b) property situated anywhere in the United Kingdom or elsewhere; and
- (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(5) It is hereby declared for the avoidance of doubt that the rights and liabilities capable of being so transferred include rights and liabilities of the IBA under any agreement or arrangement for the payment of pensions, allowances or gratuities.

(6) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) shall be enforceable by civil proceedings brought by the other relevant transferee in question for an injunction or interdict or for any other appropriate relief.

#### **Effect of transfer scheme**

4.-(1) Where a transfer scheme comes into force on the transfer date, this sub-paragraph shall have effect on that date so as to transfer to each of the relevant transferees, in accordance with the scheme's provisions and without further assurance, such of the property, rights and liabilities of the IBA as are allocated to that transferee by the scheme.

(2) A transaction of any description which is effected in pursuance of any provision included in a transfer scheme in accordance with this Schedule shall be binding on all persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the IBA or any relevant transferee.

(3) Where apart from this sub-paragraph any person would have power, in consequence of anything done or likely to be done by or under this Act, to terminate or modify an interest or right which is vested in the IBA at the passing of this Act, then –

- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that power shall not be exercisable in relation to the interest or right at any time before its transfer in accordance with the scheme; and
- (b) without prejudice to any other provision of this Schedule, that power shall be exercisable in relation to the interest or right after its transfer only insofar as the scheme provides for it to be transferred subject to the power.

(4) \* \* \* \* \*

#### **Third parties affected by transfer scheme**

5.-(1) This paragraph applies where –

- (a) in consequence of any transfer made in accordance with a transfer scheme, any right or liability of a person (other than the IBA or any relevant transferee) which was enforceable against or by the IBA becomes enforceable against or by one or more relevant transferees; and
- (b) apart from this Schedule that person's consent or concurrence would have been required for that right or liability to become so enforceable;

and in this paragraph references to a third party are references to any such person.

(2) Subject to sub-paragraph (3), the IBA shall take reasonable steps to identify any third party and to notify him of the effect of the transfer in question on any right or liability of his falling within sub-paragraph (1), and of the effect of sub-paragraph (4).

(3) A transfer scheme may provide that the duties imposed on the IBA by sub-paragraph (2) in relation to a transfer shall be imposed instead on such one of the relevant transferees as may be specified in the scheme.

(4) Where –

- (a) any right or liability of a third party has become enforceable against or by more than one relevant transferee, and
- (b) the value of any property or interest of the third party is diminished thereby,

such compensation as is just shall be paid to the third party by one or more of the relevant transferees.

(5) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (4), or as to the person or by whom it shall be paid, shall be referred to and determined by –

- (a) an arbitrator appointed by the Lord Chancellor; or
- (b) \* \* \* \* \*

#### **Supplemental provisions of scheme**

6.-(1) A transfer scheme may contain supplemental, consequential and transitional provisions for the purposes of, or in connexion with, the division effected or any other provision made by the scheme.

(2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide –

- (a) that for purposes connected with any transfer made in accordance with the scheme a relevant transferee to whom anything is transferred in accordance with the scheme is to be treated as the same person in law as the IBA;
- (b) that, so far as may be necessary for the purposes of or in connexion with any such transfer, agreements made, transactions effected and other things done by or in relation to the IBA are to be treated as made, effected or done by or in relation to the relevant transferee to whom the transfer is made;
- (c) that, so far as may be necessary for the purposes of or in connexion with any such transfer, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the IBA are to have effect with such modifications as are specified in the scheme;
- (d) that proceedings commenced by or against the IBA are to be continued by or against such some of the relevant transferees as the scheme may provide in relation to any circumstances specified or described in it;
- (e) that the effect of any transfer made in accordance with the scheme in relation to contracts of employment with the IBA is not to be to terminate any such contracts but is to be that periods of employment with the IBA are to count for

all purposes as periods of employment with the relevant transferee to whom the transfer is made;

- (f) that disputes as to the effect of the scheme between any of the relevant transferees are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations, and certificates given jointly by all or any two of the relevant transferees as to the effect of the scheme as between the transferees concerned, are to be conclusive for all purposes.

#### **Vesting of IBA's property after coming into force of scheme**

7.-(1) A transfer scheme may provide for the imposition of duties –

- (a) on the IBA, and
- (b) on all or any of the relevant transferees,

to take all such steps as may be requisite to secure that the vesting in any of those transferees, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.

(2) The provisions of a transfer scheme may require the IBA to comply with any directions of any of the relevant transferees in performing any duty imposed on the IBA by virtue of a provision included in the scheme by virtue of sub-paragraph (1).

(3) A transfer scheme may provide that, until the vesting of any foreign property, right or liability of the IBA in a relevant transfer is effective under the relevant foreign law, it shall be the duty of the IBA to hold that property or right for the benefit of, or to discharge that liability on behalf of, that transferee.

(4) Nothing in any provision included in a transfer scheme by virtue of this paragraph shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in a relevant transferee, by virtue of the scheme, of any foreign property, right or liability.

(5) The IBA shall have all such powers as may be requisite for the performance of any duty imposed on them by any provision included in a transfer scheme by virtue of this paragraph; but such a scheme may require a relevant transferee to act on behalf of the IBA (so far as possible) for the purposes of, or in connexion with, the performance of any such duty in relation to any property, right or liability vested in the transferee by virtue of the scheme.

(6) A transfer scheme may provide that any foreign property, rights or liabilities that are acquired or incurred by the IBA after the scheme comes into force are immediately to become property, rights or liabilities of such one of the relevant transferees as is specified in the scheme; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the IBA when the scheme comes into force.

(7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

*Jersey Order in Council 1/1991      The Broadcasting Act 1990 (Jersey) Order 1991*

(8) Any expenses incurred by the IBA in consequence of any provision included in a transfer scheme by virtue of this paragraph shall be met by the relevant transferees in such proportions as may be determined by or under the scheme.

**Certificate of Secretary of State as to vesting of property etc.**

8.-(1) Subject to sub-paragraph (2), a certificate issued by the Secretary of State to the effect that any property, right or liability of the IBA vested at a particular time by virtue of this Schedule in one or more of the relevant transferees shall be conclusive evidence of the matters stated in the certificate.

(2) Nothing in any such certificate shall prejudice the operation of a certificate issued by virtue of a provision included in a transfer scheme by virtue of paragraph 6(2)(g) above.

**Power of Secretary of State to control division of IBA's pension fund**

9.        \* \* \* \* \*

**Discharge by IBA of contingent etc. liabilities**

10.       \* \* \* \* \*

**Final accounts and annual report of IBA**

11.       \* \* \* \* \*

*SCHEDULE 10*

**SUPPLEMENTARY PROVISIONS RELATING TO DISSOLUTION OF CABLE AUTHORITY**

\* \* \* \* \*



*SCHEDULE 11***TRANSITIONAL PROVISIONS RELATING TO IBA'S BROADCASTING SERVICES***PART I***GENERAL**

In this Schedule –

“the 1981 Act” means the Broadcasting Act 1981;<sup>11</sup>

“the Authority” means the Radio Authority;

“Channel 4” means the additional broadcasting service referred to in section 10(1) of the 1981 Act, but excluding so much of that service as consisted, immediately before the transfer date, in the broadcasting of programmes for reception wholly or mainly in Wales, and “on Channel 4” means in the said service;

“the interim period” means the period referred to in paragraph 1(1) in Part II of this Schedule;

“local licence” and “local service” have the same meaning as in Part III of this Act;

\* \* \* \* \*

*PART II***TELEVISION BROADCASTING SERVICES TO BE PROVIDED BY COMMISSION****IBA's television broadcasting services to be provided by Commission during interim period**

1.-(1) During the period beginning with the transfer date and ending with 31st December 1992 (referred to in this Schedule as “the interim period”) the following television broadcasting services, namely –

- (a) ITV,
- (b) Channel 4,
- (c) any teletext service provided by the IBA down to the transfer date, and
- (d) any DBS services so provided,

shall be provided by the Commission in accordance with this Part of this Schedule.

(2) The services provided by the Commission as mentioned in sub-paragraph (1) shall be of high quality both as to the transmission and as to the matter transmitted and (subject

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<sup>11</sup> Volume 1988–1989, page 36.

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to paragraph 3(1) below) shall be provided by the Commission for so much of the United Kingdom [and the Bailiwick of Jersey] as may from time to time be reasonably practicable.

(3) \* \* \* \* \*

(4) \* \* \* \* \*

(5) \* \* \* \* \*

(6) \* \* \* \* \*

(7) \* \* \* \* \*

(8) \* \* \* \* \*

(9) \* \* \* \* \*

**General provisions about programme contracts and programme contractors**

2.-(1) Sections 2(3) and 14(2) of the 1981 Act shall have effect in relation to the Commission and the programmes and teletext transmissions broadcast by them in the services provided by them as mentioned in paragraph 1(1) above as they had effect immediately before the transfer date in relation to the IBA and the programmes and teletext transmissions broadcast by them in the services mentioned in paragraph 1(1); and where a contract between the IBA and a programme contractor or a teletext contractor is effective immediately before that date –

- (a) the contract shall continue to have effect on and after that date (subject to and in accordance with this Part of this Schedule) as a contract between the Commission and that contractor and any other party to it, and
- (b) any reference in the contract to the IBA shall accordingly be construed, in relation to any time falling on or after that date, as a reference to the Commission.

(2) During the interim period the following provisions of the 1981 Act, namely –

- (a) sections 19(1) to (2B) and 20(2) to (9),
- (b) sections 21 to 25,
- (c) sections 32 to 35, and
- (d) Schedule 4,

shall have effect in relation to any contract to which sub-paragraph (1) applies, or (as the case may be) in relation to the programme contractor or teletext contractor under any such contract, subject to the modifications specified in sub-paragraph (3) and subject also to paragraphs 4 and 5 below.

(3) The modifications of the provisions specified in sub-paragraph (2) are as follows –

- (a) any reference in those provisions to the IBA shall (subject to paragraphs (b) and (c) below) be construed as a reference to the Commission;

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- (b) sections 21 and 23 shall have effect as if any reference to the IBA's obligation to transmit the programmes supplied by a programme contractor were a reference to the right and the duty of the programme contractor under his contract to provide programmes for broadcasting in one of the services provided by the Commission as mentioned in paragraph 1(1) above;
  - (c) section 22 shall have effect as if any reference to the programmes, or television programmes, supplied to the IBA were a reference to the programmes, or television programmes, supplied for broadcasting in one of those services; and
  - (d) section 32(1)(a) shall have effect as if –
    - (i) for “the branch” there were substituted “the part”; and
    - (ii) for “section 36(2) in relation to that branch” there were substituted “paragraph 12(1) of Schedule 1 to the Broadcasting Act 1990 in relation to that part”.
- (4) The Commission shall do all that they can to secure that during the interim period no person who is, or is an associate of, a TV programme contractor –
- (a) holds any local licence, or
  - (b) controls any body which holds any such licence, or
  - (c) is a participant with more than a 20 per cent interest in a body corporate which holds any such licence.

in a case where the area or locality for which the licensed service is to be provided is to a significant extent the same as the area for which television programmes are to be provided under the TV programme contractor's contract; and this sub-paragraph shall be construed in accordance with Part I of Schedule 2 to this act.

(5) The Commission may make such variations of a contract to which sub-paragraph (1) applies as appear to them to be appropriate in consequence of any of the provisions of this Part of this Schedule.

#### **Provisions relating to Channel 4**

3.-(1) Channel 4 shall be provided by the Commission during the interim period for so much of [England, Scotland and the Bailiwick of Jersey] as may from time to time be reasonably practicable.

(2) The programmes (other than advertisements) broadcast by the Commission on Channel 4 shall (without prejudice to section 12(2) of the 1981 Act, as applied by this paragraph) be provided by the Commission.

(3) In consequence of sub-paragraph (2), sections 3(2) and 6 of the 1981 Act (as applied by paragraph 1 above) do not apply in the case of Channel 4.

(4) Subject to the modifications specified in sub-paragraph (5), sections 11 to 13 of the 1981 Act shall have effect in connexion with the provision of Channel 4 by the Commission during the interim period as they had effect immediately before the transfer date in connexion with the provision of that service by the IBA.

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(5) The modifications of the provisions specified in sub-paragraph (4) are as follows

- (a) any reference in those provisions to the IBA shall (subject to paragraph (c) below) be construed as a reference to the Commission;
- (b) section 12(1) shall have as if for the reference to paragraph 4(1) of Schedule 1 to the 1981 Act there were substituted a reference to paragraph 1(3) of Schedule 1 to this Act;
- (c) section 12(2) shall have effect as if for the reference to a subsidiary of the IBA formed by them for the purpose there were substituted a reference to a subsidiary of the Commission (being the body corporate formed by the IBA in pursuance of that provision); and
- (d) in section 13, subsection (4) shall (in consequence of paragraph 1(6) above) have effect with the omission of paragraph (c).

**Provisions relating to teletext services**

4.-(1) For the purposes of –

- (a) this Part of this Schedule, and
- (b) the provisions of the 1981 Act which have effect in accordance with this Part of this Schedule,

teletext transmissions shall not be treated as programmes; but this is subject to sub-paragraph (2) and to any of those provisions of the 1981 Act which expressly requires such transmissions to be so treated for the purposes of any particular provision.

(2) In paragraphs 1(8) and 2(3)(b) above and 10 below and in the provisions specified in Part I of Schedule 3 to the 1981 Act (as they have effect in accordance with this Part of this Schedule) –

- (a) references to programmes or to television programmes shall be read as including references to teletext transmissions; and
- (b) references to programme contractors shall be read including references to teletext contractors.

(3) In section 3(2) of the 1981 Act, in its application to teletext transmissions or teletext contractors by virtue of sub-paragraph (2), the reference to section 2(3) of that Act shall be read as a reference to section 14(2) of that Act (as it has effect by virtue of paragraph 2(1) above).

(4) The following provisions of the 1981 Act, namely –

- (a) section 20(2)(b) and (3), and
- (b) section 22,

shall not have effect by virtue of paragraph 2(2) above in relation of teletext contractors or their contracts.

**Provisions relating to DBS services**

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5.-(1) The following provisions of the 1981 Act, namely –

- (a) in section 2(2), paragraph (c) and in paragraph (b) the words “and a proper balance and wide range in their subject matter”,
- (b) in section 4(1), paragraph (d) and so much of paragraph (b) as relates to the giving of a sufficient amount of time in the programmes to news and news features,
- (c) section 20(2)(b) and (3),
- (d) section 22, and
- (e) section 24,

shall not have effect by virtue of paragraph 1(3) or 2(2) above in connexion with the provision of DBS services by the Commission or (as the case may be) in relation to DBS contractors or their contracts.

(2) Every contract between the Commission and a DBS programme contractor shall contain all such provisions as the Commission think necessary or expedient to ensure that the financial and other arrangements for the provision of the satellite transponder are made by the contractor.

(3) For the purpose of enabling a DBS programme or teletext contractor to make charges for the reception of programmes provided by him or transmissions containing material so provided, the commission may, notwithstanding anything in the 1981 Act as it has effect in accordance with this Part of this Schedule, broadcast the programmes or transmissions in such a form (whether scrambled, encoded or otherwise) as will prevent persons from receiving them unless they obtain from the contractor the means of doing so.

(4) Where under the power conferred by sub-paragraph (3) the Commission broadcast programmes or transmissions in such a form as is mentioned in that sub-paragraph, nothing in the 1981 Act (as it so has effect) shall be taken as requiring the Commission to permit advertisements to be included in the programmes or transmissions.

(5) Where any service falling within section 46(1) of this Act is provided during the interim period on any of the spare capacity within the frequencies on which any DBS services are provided by the Commission in accordance with this Part of this Schedule, that service is licensable under section 47 of this Act as a licensable programme service, and not otherwise.

#### **General provisions relating to S4C**

6.-(1) Subject to the provisions of this paragraph and paragraph 7 below, S4C shall be provided during the interim period by the Welsh Authority in accordance with Chapter VI of Part I of this Act.

(2) During that period –

- (a) any reference in section 57(3) or 58(2) or (4) of this Act to Channel Four shall be construed as a reference to the Channel Four service provided by the Commission in accordance with paragraph 1 above; and
- (b) the reference in section 58(2) to the Channel Four Television Corporation shall be construed as a reference to the Commission.

(3) So much of section 4(1)(d) of the 1981 Act (as applied by paragraph 1 above) as relates to cases where another language as well as English is in common use among persons served by the station or stations in question, shall, in the case of programmes broadcast by the Commission on ITV for reception wholly or mainly in Wales, apply only languages other than Welsh.

#### **Broadcasting of advertisements on S4C**

7.-(1) During the interim period the programmes broadcast by the Welsh Authority on S4C for reception in the area of any TV programme contractor may, so long as the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation thereto, include advertisements provided for insertion therein by that contractor in consideration of payments to him.

(2) Any such TV programme contractor shall have the right to provide advertisements for inclusion in the programmes broadcast on S4C for reception in his area so long as –

- (a) he makes the required payments to the Commission, and
- (b) the provisions of the 1981 Act (as applied by this Part of this Schedule) are complied with in relation to such advertisements.

(3) In sub-paragraph (2) “the required payments” means such payments as are required to be paid by the programme contractors by virtue of any provision of his contract included in pursuance of section 13(2) of the 1981 Act.

(4) For any period in which programmes are to be broadcast on S4C for reception in the area of a TV programme contractor it shall be the duty of the Welsh Authority to make suitable arrangements –

- (a) for the contractor to receive advance information about the programmes other than advertisements which are to be so broadcast in that period and about the periods which will be available for the broadcasting of advertisements; and
- (b) for the inclusion, in the programmes so broadcast in that period, of advertisements provided for the purpose by the contractor in the exercise of his right to do so under sub-paragraph (2).

(5) No period allocated by the Welsh Authority to the broadcasting of advertisements on S4C shall be located –

- (a) in any break in any programme supplied to them by the BBC; or
- (b) without the consent of the BBC, at the beginning or end of any such programme.

(6) Orders for the inclusion by a TV programme contractor of advertisements among those provided by him for insertion in the programmes broadcast on S4C may be received either through advertising or other agents or direct from the advertiser.

(7) During the interim period –

- (a) section 8(5) of the 1981 Act shall apply in relation to the programmes broadcast by the Welsh Authority on S4C as that provision applies, in accordance with this Part of this Schedule, in relation to the programmes broadcast by the Commission on ITV;

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- (b) the Commission shall do all that they can to secure that the provisions of –
  - (i) Schedule 2 to the 1981 Act (as it applies in accordance with this Part of this Schedule), and
  - (ii) the code under section 9 of that Act,
 are complied with in relation to the advertisements broadcast by the Welsh Authority on S4C and in relation to the sponsorship of programmes so broadcast;
- (c) section 9(2) and (3) of that Act shall apply accordingly in relation to advertisements and other programmes so broadcast, and
- (d) (except in the case of any programme to which the Welsh Authority determine that this paragraph is not to apply) S4C shall not contain any programme which is sponsored by any person whose business consists, wholly or mainly –
  - (i) in the manufacture or supply of a product, or
  - (ii) in the provision of a service,
 the advertising of which on ITV is prohibited by virtue of any provision of that Act or of the code under section 9 of that Act.

(8) So long as any directions given under section 9(4) of the 1981 Act (whether by the IBA or by the Commission) remain in force, the Welsh Authority shall, in broadcasting advertisements on S4C, give effect to the provisions of the directions as if they were provisions regulating the times when advertisements are to be allowed to be broadcast on S4C.

(9) Section 60(1) to (4) and (6) of this Act shall not have effect in relation to the Welsh Authority during the interim period.

#### **Financing of S4C during the interim period**

8.-(1) For each financial year, or part of a financial year, falling within the interim period the Commission shall (unless any payment has already been made in respect of it under section 39(1) of the 1981 Act) pay to the Welsh Authority –

- (a) such sum or sums as may be agreed between them to be appropriate for enabling the Welsh Authority to meet their reasonable outgoings, or
- (b) in default of such agreement, such sum or sums as the Secretary of State may determine to be appropriate for that purpose.

(2) For the purposes of section 32(1)(a) of the 1981 Act (as applied by paragraph 2 above) all sums paid by the Commission to the Welsh Authority in pursuance of sub-paragraph (1) above shall be treated as expenditure properly incurred in respect of the part of the Commission's undertaking which consists of the provision of television broadcasting services.

(3) In deciding from time to time whether to make any, and if so what, use of his power under subsection (8) of section 32 of the 1981 Act (as so applied) to amend by order under subsections (4) and (5) of that section the Secretary of State may have regard to any increase in the aggregate amount of the payments to be made under the head described in subsection (1)(a) of that section which is attributable to the provisions of sub-paragraph (1).

(4) The provisions applied to the Welsh Authority by section 52(2) of the 1981 Act shall continue to apply to them on and after the transfer date in relation to any financial year ending before that date; and paragraphs 12 and 13 of Schedule 6 to this Act shall accordingly apply in relation to any subsequent financial year.

#### **Delivery of programmes by means of local delivery services**

9. Part II of this Act shall have effect as if section 72(2) of this Act included a reference to any television broadcasting service provided by the Commission in accordance with this Part of this Schedule.

#### **Provisions relating to Broadcasting Complaints Commission**

10.-(1) Part V of this Act shall have effect as if –

- (a) section 143(2) of this Act included a reference to any television programme broadcast by the Commission during the interim period;
- (b) (subject to sub-paragraph (2)) the Commission were –
  - (i) in relation to the provision by them of television broadcasting services in accordance with this Part of this Schedule, and
  - (ii) in relation to the broadcasting of advertisements on S4C during the interim period,

a broadcasting body within the meaning of that Part of this Act; and

- (c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.

(2) Sub-paragraph (1)(b) shall not have effect for the purposes of section 145(5) of this Act; and the Commission shall make such variations of any contract to which paragraph 2(1) above applies as appear to them to be appropriate –

- (a) for requiring the programme contractor under that contract –
  - (i) in the case of every programme provided by him which is broadcast by the Commission during the interim period, to retain a recording of that programme for the period of 90 days beginning with the broadcast,
  - (ii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4), 155(3) or 167(1) of this Act, to produce any such recording to them, and
  - (iii) if requested to do so by the Commission for the purpose of enabling them to comply with any requirement imposed on them in pursuance of section 145(4) or 144(3) of this Act, to produce to them; and
- (b) for ensuring compliance by the programme contractor with any request to which section 145(7) of this Act applies which may be made to him by the BCC.

(3) For the financial year which includes the commencement of section 149 of this Act, and each subsequent financial year falling wholly or partly within the interim period, the Secretary of State shall notify to the Commission the sum which he considers to be the



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appropriate contribution by that body, in respect of the programme contractors under contracts to which paragraph 2(1) above applies, towards the expenses of the BCC; and the Commission shall pay to the Secretary of State any sum notified to them under this sub-paragraph.

(4) Paragraph 2(1)(g)(i) of Schedule 13 to this Act shall have effect during the interim period as if the reference to the BBC or the Welsh Authority included a reference to the Commission.

(5) In this paragraph “the BCC” means the Broadcasting Complaints Commission.

**Provisions relating to Broadcasting Standards Council**

11. Part VI of this Act shall have effect during the interim period as if –

(a) section 152(2) of this Act included a reference to any television programme broadcast by the Commission during that period;

(b) the Commission were –

(i) in relation to the provisions by them of television broadcasting services in accordance with this Part of this Schedule, and

(ii) in relation to the broadcasting of advertisements of S4C during the interim period,

a broadcasting body within the meaning of that Part of this Act; and

(c) the Welsh Authority accordingly were not a broadcasting body within the meaning of that Part of this Act in relation to any such broadcasting of advertisements on S4C.

**Supplementary provisions**

12.-(1) Any code, notice, direction, approval or other thing drawn up, given or done by or in relation to the IBA –

(a) in pursuance of a provision of the 1981 Act which has effect during the interim period [in the United Kingdom in accordance with Part II of Schedule 11 to the Broadcasting Act 1990]; and

(b) in connexion with any of the IBA’s television broadcasting services,

shall, if in force or effective immediately before the transfer date, have effect as from that date for the relevant purposes as if drawn up, given or done by or in relation to the Commission.

(2) Anything which immediately before that date was in the process of being done by or in relation to the IBA may, if it was being so done as mentioned in paragraphs (a) and (b) of sub-paragraph (1), be continued on or after that date by or in relation to the Commission.

(3) \* \* \* \* \*

(4) \* \* \* \* \*

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*PART III*

REPLACEMENT OF DBS CONTRACTS BY LICENCES UNDER PART I

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*PART IV*

SOUND BROADCASTING SERVICES TO BE PROVIDED BY RADIO AUTHORITY

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*PART V*

REPLACEMENT OF PROGRAMME CONTRACTS BY LOCAL LICENCES

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*SCHEDULE 12*

TRANSITIONAL PROVISIONS RELATING TO EXISTING CABLE

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*SCHEDULE 13*

THE BROADCASTING COMPLAINTS COMMISSION: SUPPLEMENTARY PROVISIONS

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*SCHEDULE 14*

THE BROADCASTING STANDARDS COUNCIL: SUPPLEMENTARY PROVISIONS

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*SCHEDULE 15*

APPLICATION OF 1959 ACT TO TELEVISION AND SOUND PROGRAMMES

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*SCHEDULE 16*

AMENDMENTS OF THE MARINE, &C., BROADCASTING (OFFENCES) ACT 1967

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*SCHEDULE 17*

INFORMATION ABOUT PROGRAMMES: COPYRIGHT

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*SCHEDULE 18***TRANSFER OF FUNCTIONS CONNECTED WITH TELEVISION LICENCES***PART I***AMENDMENTS OF WIRELESS TELEGRAPHY ACT 1949<sup>12</sup>**

1.-(1) Section 1 (licensing of wireless telegraphy) shall be amended as follows.

(2) In subsection (1), for the words from “granted” to “any person” substitute “granted under this section –

- (a) by the Secretary of State (unless it is a television licence), or
- (b) if it is a television licence, by the BBC;

and any person”.

(3) In subsection (2), for the words from “limitation as” (where first occurring) to “including” substitute “limitations –

- (a) as the Secretary of State may think fit; or
- (b) in the case of a television licence, as the Secretary of State may direct or (subject to any such direction) the BBC may think fit,

including”.

(4) In subsection (3), before “, continue in force” insert “or (if it is a television licence) by the BBC”.

(5) In subsection (4) –

- (a) after “wireless telegraphy licence” insert “other than a television licence”; and
- (b) at the end add “; and a television licence may be revoked, or the terms, provisions or limitations thereof varied, by the BBC (either of their own motion or to give effect to any direction of the Secretary of State under subsection (2)(b) of this section) –

- (a) by a notice in writing served on the holder of the licence; or
- (b) by a general notice published as mentioned above.”

(6) At the end of the section add the following subsection –

“(7) In this Act –

“television licence” means a wireless telegraphy licence authorising the installation and use of a television receiver; and

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<sup>12</sup> Tome VIII, page 172.

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“television receiver” means television receiving apparatus of any class or description specified in regulations made by the Secretary of State under section 2 of this Act.”

2.-(1) Section 2 (fees and charges for wireless telegraphy licences) shall be amended as follows.

(2) In subsection (1), for the words from “paid to” to “by the person” substitute “paid –

- (a) to the Secretary of State; or
- (b) in the case of a television licence, to the BBC,

by the person”.

(3) For the first paragraph of subsection (2) substitute –

“Notwithstanding anything in subsection (1) of this section, where –

- (a) an application for the issue or renewal of a television licence is made to the BBC by a person ordinarily resident in the United Kingdom, and
- (b) the BBC are satisfied, by means of a certificate issued by the local authority and produced to them by the applicant, that the applicant is a blind person not resident in a public or charitable institution or in a school,

the BBC shall, to such extent as the Secretary of State may determine, dispense with the payment of any sum which would otherwise be payable on the issue or renewal of the licence.”

3. In section 15(1) (entry and search of premises etc.), for the words from “authorising” down to (but not including) “and named” substitute “authorising –

- (a) any person or persons authorised in that behalf by the Secretary of State; or
- (b) where the offence relates to the installation or use of a television receiver, any person or persons authorised in that behalf by the BBC or the Secretary of State.”.

4. In Section 19 (interpretation), insert the following subsection after subsection (2) –

“(2A) In this Act –

“the BBC” means the British Broadcasting Corporation; and

“television licence” and “television receiver” have the meaning given by section 1(7) of this Act.”

## *PART II*

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*SCHEDULE 19*

**THE GAELIC TELEVISION COMMITTEE: SUPPLEMENTARY PROVISIONS**

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*SCHEDULE 20*

**MINOR AND CONSEQUENTIAL AMENDMENTS**

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*SCHEDULE 21*

**REPEALS**

\* \* \* \* \*

*SCHEDULE 22*

**TRANSITIONAL PROVISIONS AND SAVINGS**

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