

prohibitions and restrictions with respect to communications that are contained in leases) are transferred to OFCOM.

Functions in relation to the licensing etc. of television services

- 4 The following functions of the Independent Television Commission are transferred to OFCOM— 5
- (a) the function of granting or awarding licences under Part 1 of the 1990 Act (independent television services) and Part 1 of the 1996 Act (digital television broadcasting);
 - (b) that Commission’s functions under those Parts in relation to, and to applications for, licences under either of those Parts; 10
 - (c) the function of securing the provision of a nationwide system of television services known as Channel 3;
 - (d) the function of securing the provision of the television broadcasting service known as Channel 5.

Functions in relation to the Channel Four Corporation 15

- 5 The functions of the Independent Television Commission under section 23 of the 1990 Act and under Schedule 3 to that Act (appointment of members of the Channel Four Television Corporation and related administrative functions) are transferred to OFCOM.

Functions in relation to the licensing of radio services 20

- 6 The following functions of the Radio Authority are transferred to OFCOM—
- (a) the function of granting or awarding licences under Part 3 of the 1990 Act (independent radio services) and Part 2 of the 1996 Act (digital sound broadcasting); and
 - (b) that Authority’s functions under those Parts in relation to licences granted or awarded under those Parts. 25

Functions in relation to the proscription of foreign satellite services

- 7 The functions of the Independent Television Commission and of the Radio Authority under section 177 of the 1990 Act (proscription of foreign satellite services) are transferred to OFCOM. 30

Functions in relation to Gaelic broadcasting

- 8 The functions of the Independent Television Commission under section 183 of the 1990 Act and the functions of that Commission and of the Radio Authority under Schedule 19 to that Act (Gaelic broadcasting) are transferred to OFCOM. 35

Functions in relation to the national television archive

- 9 The functions of the Independent Television Commission under section 185 of the 1990 Act (maintenance of the national television archive) are transferred to OFCOM.

Warrants to enter and search premises to enforce broadcasting licences provisions

- 10 The functions of the Independent Television Commission and of the Radio Authority under section 196(1) of the 1990 Act (entry and search for the purposes of enforcing licensing provisions of the 1990 and 1996 Acts) are transferred to OFCOM. 5

Variation of existing Channel 3 and Channel 5 licences

- 11 Any power to vary licences which is conferred on the Independent Television Commission by an order under section 28 of the 1996 Act is transferred to OFCOM.

Reports for the purposes of the review of digital television broadcasting 10

- 12 The functions of the Independent Television Commission under section 33 of the 1996 Act (reports to the Secretary of State for the purposes of his review of digital broadcasting) are transferred to OFCOM.

Functions in relation to reservation of digital capacity to the BBC

- 13 The function of the Secretary of State under section 49(4) of the 1996 Act (reserving digital capacity on a local radio multiplex service for the BBC) is transferred to OFCOM. 15

Functions in relation to listed events

- 14 The functions of the Independent Television Commission under sections 98(5), 101B, 102 and 103 of the 1996 Act (functions in connection with listed events) are transferred to OFCOM. 20

Functions relating to fairness and privacy in broadcasting

- 15 The following functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act are transferred to OFCOM— 25
- (a) the Commission's function of drawing up and from time to time revising a code of practice under section 107 of that Act (codes of practice relation to fairness and privacy); and
 - (b) their functions in relation to fairness complaints under that Part.

Functions in relation to standards for transmission systems

- 16 The function of the Secretary of State under section 142 of the 1996 Act (standards for transmission systems) is transferred to OFCOM. 30

SCHEDULE 2

Section 20

TRANSFER SCHEMES

Contents of transfer scheme

- 1 (1) A transfer scheme— 35

- (a) shall set out the property, rights and liabilities to be transferred by the scheme (whether by specifying them or describing them in particular or by identifying them generally by reference to, or to a specific part of, an undertaking from which they are to be transferred, or both); and 5
- (b) may make incidental, supplemental, consequential and transitional provision in connection with the transfer of that property and of those rights and liabilities.
- (2) The property, rights and liabilities that are to be capable of being transferred by a transfer scheme include – 10
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the person from whom they are transferred;
- (b) property acquired and rights and liabilities arising, or arising in respect of matters occurring, after the making of the scheme and before it comes into force; 15
- (c) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and
- (d) rights and liabilities under any enactment. 20
- (3) The provision that may be made under sub-paragraph (1)(b) includes provision for the creation in favour of a pre-commencement regulator, the Secretary of State or OFCOM of rights or liabilities over or in respect of property transferred to OFCOM or property retained by a pre-commencement regulator or the Secretary of State. 25
- (4) The transfers to which effect may be given by a transfer scheme, and the rights that may be created by means of such a scheme, include transfers that are to take effect, and rights that are to arise, in accordance with the scheme as if there were –
- (a) no such requirement to obtain any person’s consent or concurrence, 30
- (b) no such liability in respect of any contravention of any other requirement, and
- (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act (whether under any enactment or agreement or otherwise), by reason of any provision having effect in relation to the terms on which a pre-commencement regulator or the Secretary of State is entitled or subject to any property, right or liability. 35

Effect of transfer scheme

- 2 (1) Property transferred by a transfer scheme shall, on the coming into force of the scheme, vest in OFCOM without further assurance. 40
- (2) Where any transfer scheme comes into force, any agreement made, transaction effected or other thing done by or in relation to the person from whom any transfers for which the scheme provides are made shall have effect, so far as necessary for the purposes of those transfers, as if – 45
- (a) it had been made, effected or done by or in relation to OFCOM; and
- (b) OFCOM were the same person in law as the person from whom the transfer is made.

- (3) Accordingly, references in any agreement, document, process or instrument of any description to the person from whom anything is transferred by means of a transfer scheme shall have effect, so far as necessary for the purpose of giving effect to the transfer from the coming into force of the scheme, as references to OFCOM. 5
- (4) Where any agreement, document, process or instrument of any description has effect, in relation to anything transferred by means of a transfer scheme, as referring (whether expressly or by implication) to a member or to an officer of a pre-commencement regulator or to an officer of the Secretary of State, that agreement, document, process or instrument shall have effect so far as necessary for the purposes of the transfers effected by the scheme and in consequence of them, as referring instead – 10
- (a) to the person nominated for the purposes of the transfer by OFCOM; and
 - (b) in default of a nomination, to the member or employee of OFCOM who most closely corresponds to the member or officer originally referred to. 15
- (5) Nothing in sub-paragraph (3) or (4) shall apply in relation to any reference in any enactment or subordinate legislation.
- Retrospective modification of a transfer scheme* 20
- 3 (1) If at any time after the coming into force of a transfer scheme it appears to the Secretary of State, after consulting OFCOM, that it is appropriate to do so, he may by order provide for the scheme to be deemed to have come into force with such modifications (including modifications retrospective to the time of the coming into force of the scheme) as may be provided for in the order. 25
- (2) The power under this paragraph to provide by order for the modification of a transfer scheme shall be exercisable for the purpose only of making provision that could have been made by the scheme.
- Compensation* 30
- 4 (1) Where, in consequence of any provisions included in a transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party shall be entitled to such compensation as may be just in respect of – 35
- (a) any diminution attributable to that modification in the value of any of his interests or rights, or
 - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which – 40
- (a) an interest of the third party in any property is transformed into, or replaced by –
 - (i) an interest in only part of that property; or
 - (ii) separate interests in different parts of that property;
 - (b) a right of the third party against any of the pre-commencement regulators or against the Secretary of State is transformed into, or replaced by, two or more rights which do not include a right which, 45

- on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against that regulator or, as the case may be, against the Secretary of State; or
- (c) a liability of the third party to any of the pre-commencement regulators or to the Secretary of State is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the person by whom it was enforceable before being so transformed. 5
- (3) Where—
- (a) a third party would, apart from any provisions of a transfer scheme have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and 10
- (b) the provisions of that scheme have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and 15
- (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides, 20
- the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.
- (4) A liability to pay compensation under this paragraph shall fall on the persons not being themselves third parties who, as the case may be— 25
- (a) have interests in the whole or any part of the property affected by the modification in question,
- (b) are subject to the rights of the person to be compensated which are affected by the modification in question, 30
- (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),
- and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment. 35
- (5) Where any liability falls by virtue of sub-paragraph (4) on any of the pre-commencement regulators or the Secretary of State, that sub-paragraph shall have effect subject to so much of any transfer scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to OFCOM. 40
- (6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall be referred to and determined— 45
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or 50

- (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (7) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—
 - (a) a pre-commencement regulator; and
 - (b) the Secretary of State.

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Interpretation of Schedule

- 5 In this Schedule “transfer scheme” means a scheme made by a pre-commencement regulator or by the Secretary of State under section 20.

SCHEDULE 3

Section 82

10

AMENDMENTS OF SCHEDULE 2 TO THE TELECOMMUNICATIONS ACT 1984

Introductory

- 1 Schedule 2 to the Telecommunications Act 1984 (c. 12) (the telecommunications code) shall be amended as follows.

Meaning of electronic communications apparatus

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- 2 (1) In sub-paragraph (1) of paragraph 1 (interpretation of the code), after the definition of “the court” there shall be inserted—

“‘electronic communications apparatus’ means—

- (a) any apparatus (within the meaning of the Communications Act 2002) which is designed or adapted for use in connection with the provision of any electronic communications network;
- (b) any apparatus not falling within paragraph (a) which is designed or adapted for use in connection with the running of an electronic communications network;
- (c) any line;
- (d) any structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended;

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and references to the installation of any electronic communications apparatus are to be construed accordingly;

‘electronic communications network’ has the same meaning as in the Communications Act 2002, and references to the provision of such a network shall be construed in accordance with the provisions of that Act;”.

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- (2) In that sub-paragraph, for the definition of “line” there shall be substituted—

“‘line’ means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any

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electronic communications network or electronic communications service;”.

Meaning of operator and operator’s system

- 3 (1) In sub-paragraph (1) of paragraph 1 for the definitions of “the operator” and the operator’s system” there shall be substituted – 5
- “the operator’ means –
- (a) where the code is applied in any person’s case by a direction under section 82 of the Communications Act 2002, that person, and
- (b) where it applies by virtue of section 82(3)(b), the Secretary of State or, as the case may be, the Northern Ireland department in question; 10
- ‘the operator’s network’ means –
- (a) in relation to an operator falling within paragraph (a) of the definition of ‘operator’, so much of any electronic communications network provided by that operator as is not excluded from the application of the code under section 82(4) of the Communications Act 2002 (c. 00); and 15
- (b) in relation to an operator falling within paragraph (b) of that definition, the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide;” 20
- (2) In that sub-paragraph, in the definition of “the statutory purposes” for “establishing and running the operator’s system” there shall be substituted “the provision of the operator’s network”. 25

General amendments

- 4 In paragraphs 2 to 28 –
- (a) for the words “telecommunications apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”; 30
- (b) for the words “telecommunication services”, wherever occurring, there shall be substituted “electronic communications services”;
- (c) for the words “telecommunication system”, wherever occurring otherwise than immediately preceded by the indefinite article, there shall be substituted “electronic communications network”; 35
- (d) for the words “a telecommunication system”, wherever occurring, there shall be substituted “an electronic communications network”; and
- (e) for the word “system”, wherever occurring otherwise than in the expression “telecommunication system” there shall be substituted “network”. 40

Power to fly lines

- 5 In paragraph 10 (power to fly lines), after sub-paragraph (2) there shall be inserted – 45

“(3) In this paragraph ‘business’ includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).”

Undertaker’s works

6 In paragraph 23(10) (interpretation of provisions relating to undertakers’ works), in paragraph (b) of the definition of “relevant undertaker”, for the words “by a licence under section 7 of this Act” there shall be substituted “by a direction under section 82 of the Communications Act 2002”. 5

Notices under the code

7 In sub-paragraphs (1) and (6) of paragraph 24 (notices in a form approved by the Director), for “the Director”, in each place where it occurs, there shall be substituted “OFCOM”; and in sub-paragraph (6), for “him” there shall be substituted “them”. 10

Application of code to the Crown

8 In paragraph 26(4) (Crown application provision not to apply where the telecommunication system is being provided or is to be provided by the Secretary of State or a Northern Ireland department), for “has effect by virtue of section 10(1)(b) of this Act” there shall be substituted “applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 82(3)(b)”. 15
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Effect of agreements concerning sharing of apparatus

9 After paragraph 28, there shall be inserted –

“Effect of agreements concerning sharing of apparatus

29 (1) Where –

(a) this Schedule expressly or impliedly imposes any limitation on the use to which any electronic communications apparatus installed by a person in whose case OFCOM have given a direction under section 82 of the Communications Act 2002 may be put, and 25

(b) that person is a party to a relevant agreement, 30
that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement.

(2) Anything which is so done shall be disregarded in determining, for the purposes of this Schedule as it applies in relation to that person, the purposes for which the apparatus is used. 35

(3) Sub-paragraph (1) shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement imposed on him (whether by a statutory provision or otherwise) to obtain any consent or permission in connection with the installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement. 40

- (4) In this paragraph—
- “relevant agreement”, in relation to any electronic communications apparatus, means an agreement in writing—
- (a) to which the parties are two or more persons to whom this Schedule has been applied by a direction given by OFCOM under section 82 of the Communications Act 2002; and
 - (b) which relates to the sharing by those persons of the use of that apparatus;
- “statutory provision” means any provision of an enactment or of an instrument having effect under an enactment.”

SCHEDULE 4

Section 115

PROCEDURE FOR GRANTS ETC. OF RECOGNISED SPECTRUM ACCESS

- General procedure for applications* 15
- 1 (1) An application for a grant of recognised spectrum access shall be determined in accordance with procedures prescribed in regulations made by OFCOM.
- (2) Section 255 shall apply to regulations made under this paragraph.
- (3) The procedures must include provision for— 20
- (a) time limits for dealing with applications for the grant of recognised spectrum access;
 - (b) requirements which must be met before a grant is made;
 - (c) the restrictions and conditions to which a grant may be made subject.
- Information to be provided in connection with applications* 25
- 2 Where a person applying for a grant of recognised spectrum access fails to provide any information which OFCOM reasonably require in order to satisfy themselves that the applicant is able to comply with any restrictions or conditions to which the grant may be made subject, OFCOM may refuse the application on that ground alone. 30
- Notice of proposed refusal of application*
- 3 Where OFCOM propose to refuse an application for recognised spectrum access, they shall give notice to the applicant—
- (a) stating the reasons for their proposal; and
 - (b) specifying a period of not less than one month after the date of the notice, within which representations may be made about the proposal. 35

Duration of grant

- 4 A grant of recognised spectrum access continues in force, unless previously revoked by OFCOM, for such period as may be specified in the notification by which the grant is made.

Revocation or modification

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- 5 OFCOM may revoke or modify a grant of recognised spectrum access, or the restrictions or conditions subject to which such a grant is made, by a notification to the person to whom the grant was made.

Notice of proposed revocation or modification

- 6 (1) Where OFCOM propose to revoke or modify a grant of recognised spectrum access or a restriction or condition to which such a grant is subject, they shall give notification to the person who has the recognised spectrum access –
- (a) stating the reasons for their proposal; and
- (b) specifying the period during which the person notified has an opportunity to do the things specified in subsection (2). 15
- (2) Those things are –
- (a) making representations about the proposal; and
- (b) if the proposal is the result of a contravention of a restriction or condition of the grant, complying with it.
- (3) Subject to sub-paragraphs (4) to (6), the period for doing those things that is specified in a notification under sub-paragraph (1) must be the period of one month beginning with the day after the day on which the notification was given. 20
- (4) OFCOM may, if they think fit, allow a longer period for the doing of the things mentioned in sub-paragraph (2) either –
- (a) by specifying a longer period in the notification; or
- (b) by subsequently, on one or more occasions, extending the specified period. 25
- (5) The person notified shall have a shorter period for the doing of those things if a shorter period is agreed between OFCOM and the person notified. 30
- (6) The person notified shall also have a shorter period if –
- (a) OFCOM have reasonable grounds for believing that the case is a case of serious and repeated contravention or an urgent case;
- (b) they have determined that, in the circumstances, a shorter period would be appropriate; and
- (c) the shorter period has been specified in the notification. 35
- (7) A case is an urgent case if the failure to revoke or modify the grant will result in, or create an immediate risk of –
- (a) a serious threat to the safety of the public, to public health or to national security; or
- (b) serious economic or operational problems for persons, other than the person in contravention, who –
- (i) use stations or apparatus for wireless telegraphy; or 40

- (ii) are communications providers or make associated facilities available.
- (8) For the purposes of this section a contravention of a restriction or condition of a grant of recognised spectrum access is a repeated contravention, in relation to any proposal to vary or revoke the grant, if it falls within sub-paragraph (9). 5
- (9) A contravention falls within this sub-paragraph if –
- (a) a previous notification under sub-paragraph (1) has been given in respect of the same contravention or in respect of any other contravention of a restriction or condition of the same grant; and 10
- (b) the subsequent notification under that sub-paragraph is given no more than twelve months after the making by OFCOM of a determination for the purposes of sub-paragraph (10) that the contravention to which the earlier notification related did occur.
- (10) Where OFCOM have given a notification under subsection (1) OFCOM shall, within the period of one month beginning with the end of the period for the making of representations about the proposal contained in that notification – 15
- (a) decide whether or not to revoke or modify the licence in accordance with their proposal, or in accordance with that proposal but with modifications; and 20
- (b) give the person holding the licence a notification of their decision.
- (11) The notice under sub-paragraph (10) –
- (a) must be given no more than one week after the making of the decision to which it relates; and 25
- (b) must, in accordance with that decision, either revoke or modify the grant or withdraw the proposal for revocation or modification.
- (12) Nothing in this paragraph shall apply to –
- (a) any revocation or modification to be made at the request or with the consent of the person with the benefit of the grant; or 30
- (b) any revocation or modification that appears to OFCOM to be necessary or expedient for the purpose of securing compliance with an international obligation of the United Kingdom.
- (13) The reference in sub-paragraph (9) to a contravention of a restriction or condition of a grant includes a reference to a contravention of a restriction or condition contained in any previous grant of which the grant in question is a direct or indirect renewal. 35

Restriction on powers of revocation and modification

- 7 (1) The conditions that OFCOM may include in a grant of recognised spectrum access include conditions restricting the exercise by them of their power to revoke or modify that grant. 40
- (2) Those conditions include, in particular, conditions providing that the grant may not be revoked or modified except with the consent of the holder of the grant or in such other circumstances, and on such grounds, as may be specified in the conditions. 45
- (3) The circumstances or grounds may relate to matters relevant for the purposes of any enactment (whether relating to wireless telegraphy or not);

and may, in particular, be made dependent on the exercise of a statutory discretion under any enactment.

- (4) Nothing in any condition included in any grant of recognised spectrum access shall restrict the power of OFCOM to revoke or modify a grant of recognised spectrum access if it appears to OFCOM to be necessary or appropriate to do so—
- (a) in the interests of national security;
 - (b) in the interests of the safety of the public or public health; or
 - (c) for the purpose of securing compliance with any international obligation of the United Kingdom.

SCHEDULE 5

Section 135

FIXED PENALTIES FOR WIRELESS TELEGRAPHY OFFENCES

Offences to which this Schedule applies

- 1 (1) This Schedule applies to an offence under the Wireless Telegraphy Act 1949 (c. 54) which—
- (a) is a summary offence; and
 - (b) is committed after the coming into force of section 135.
- (2) Such an offence is referred to in this Schedule as a “relevant offence”.

Fixed penalties and fixed penalty notices

- 2 (1) The fixed penalty for a relevant offence is such amount as may be prescribed in relation to that offence by regulations made by the Secretary of State.
- (2) The amount prescribed by regulations under sub-paragraph (1) shall not be more than 25 per cent. of the maximum fine on summary conviction for the offence in question.
- (3) In this Schedule “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Schedule.

Issuing of fixed penalty notice

- 3 (1) If OFCOM have reason to believe that a relevant offence has been committed in England and Wales or in Northern Ireland, they may send a fixed penalty notice to the alleged offender.
- (2) If a procurator fiscal receives a report that a relevant offence has been committed, he may send a fixed penalty notice to the alleged offender.
- (3) If an authorised person has, on any occasion, reason to believe that a person he finds—
- (a) is committing a relevant offence, or
 - (b) has on that occasion committed a relevant offence,
- he may hand to that person a fixed penalty notice.

- (4) In this paragraph “authorised person” means a person authorised by OFCOM, for the purposes of sub-paragraph (3), to issue fixed penalty notices.

Content of fixed penalty notice

- 4 (1) A fixed penalty notice must – 5
- (a) state the alleged offence
 - (b) give such particulars of the circumstances alleged to constitute that offence as are necessary for giving reasonable information about it;
 - (c) state the fixed penalty for that offence;
 - (d) specify the relevant officer to whom the fixed penalty may be paid and the address at which it may be paid; 10
 - (e) state that proceedings against the alleged offender cannot be commenced in respect of the offence until the end of the suspended enforcement period;
 - (f) inform the person to whom it is issued of his right to ask to be tried for the alleged offence; and 15
 - (g) explain how that right may be exercised and the effect of exercising it.
- (2) The suspended enforcement period for the purposes of this Schedule is
- (a) the period of twenty-eight days following the date on which the fixed penalty notice was issued; or 20
 - (b) such longer period as may be specified in the notice.

Notification to person to whom payment is to be made

- 5 The person who issues a fixed penalty notice shall send a copy of it to the relevant officer specified in it. 25

Effect of penalty notice

- 6 (1) This paragraph applies if a fixed penalty notice is issued to a person (“the alleged offender”).
- (2) Proceedings for the offence to which the notice relates cannot be brought against the alleged offender until the person who issued the notice has been notified by the relevant officer specified in the notice that payment of the fixed penalty has not been made within the suspended enforcement period. 30
- (3) If the alleged offender asks to be tried for the alleged offence –
- (a) sub-paragraph (2) does not apply; and
 - (b) proceedings may be brought against him. 35
- (4) Such a request must be made by a notice given by the alleged offender –
- (a) in the manner specified in the fixed penalty notice; and
 - (b) before the end of the suspended enforcement period.
- (5) A request which is made in accordance with sub-paragraph (3) is referred to in this Schedule as a “request to be tried”. 40

Payment of penalty

- 7 (1) If a person to whom a penalty notice is issued decides to pay the penalty, he must pay it to the relevant officer specified in the notice.
- (2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise). 5
- (3) Sub-paragraph (4) applies if a person—
(a) claims to have made payment by that method, and
(b) shows that his letter was posted.
- (4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post. 10
- (5) Sub-paragraph (2) is not to be read as preventing the payment of a penalty by other means.
- (6) A letter is properly addressed for the purposes of sub-paragraph (2) if it is addressed in accordance with the requirements specified in the penalty notice. 15

Effect of payment

- 8 If the fixed penalty specified in a fixed penalty notice is paid within the period specified in that notice, no proceeding for the offence to which that notice relates may be brought against the person to whom it was issued. 20

Service of statement and proof of service

- 9 (1) This paragraph applies to proceedings for a relevant offence.
- (2) A certificate by OFCOM—
(a) that a copy of a statement by a person authorised by OFCOM was included in, or given with, a fixed penalty notice, 25
(b) that the notice was a notice with respect to the alleged offence, and
(c) that that notice was issued to the accused on a date specified in the certificate;
is evidence that a copy of the statement was served on the accused by delivery to him on that date. 30
- (3) The statement is to be treated as properly served for the purposes of—
(a) section 9 of the Criminal Justice Act 1967 (c. 80) (proof by written statement), and
(b) section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.)) (which contains corresponding provision for Northern Ireland), 35
even though the manner of service is not authorised by subsection (8) of either of those sections.
- (4) Sub-paragraphs (5) and (6) apply to any proceedings in which service of a statement is proved by certificate under this paragraph. 40
- (5) For the purposes of—
(a) section 9(2)(c) of the Act of 1967 (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it), and

- (b) section 1(2)(c) of the Act of 1968 (which contains corresponding provision for Northern Ireland),
service of the statement is to be taken to have been effected by or on behalf of the prosecutor.
- (6) If the accused had made a request to be tried, section 9(2)(d) of the Act of 1967 and section 1(2)(d) of the Act of 1968 (time for objection) shall apply with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days from the date on which the request to be tried was made. 5
- (7) This paragraph does not extend to Scotland. 10

Certificate about payment

- 10 In any proceedings a certificate –
- (a) that payment of a fixed penalty was, or was not, received by the relevant officer specified in the fixed penalty notice by a date specified in the certificate, or 15
- (b) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate, shall, if the certificate purports to be signed by that officer, be evidence (and in Scotland sufficient evidence) of the facts stated.

Regulations 20

- 11 The Secretary of State may by regulations make provision as to any matter incidental to the operation of this Schedule, and in particular –
- (a) for prescribing any information or further information to be provided in a notice, notification, certificate or receipt;
- (b) for prescribing the duties of relevant officers and the information to be supplied to and by them. 25

Interpretation

- 12 (1) In this Schedule “relevant officer” means –
- (a) in relation to England and Wales, the justices’ chief executive;
- (b) in relation to Scotland, the clerk of court; and 30
- (c) in relation to Northern Ireland, the clerk of petty sessions.
- (2) At any time before the coming into force of section 90 of the Access to Justice Act 1999 (c. 22), references in this paragraph to a justices’ chief executive are to be construed as references to a justices’ clerk.

SCHEDULE 6

Section 137

35

FORFEITURE OF RESTRICTED APPARATUS

Application of Schedule

- 1 (1) This Schedule applies to restricted apparatus seized, after the coming into force of this Schedule –

- (a) in pursuance of a warrant granted under section 15(1) of the Wireless Telegraphy Act 1949 (c. 54); or
 - (b) in the exercise of the power conferred by section 79(3) of the Telecommunications Act 1984 (c. 12).
- (2) Apparatus is restricted apparatus for the purposes of this Schedule if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by an order under section 7 of the Wireless Telegraphy Act 1967 (c. 72). 5

Notice of seizure

- 2 OFCOM shall give notice of – 10
- (a) the seizure of the restricted apparatus, and
 - (b) the grounds for the seizure,
- to any person who, to their knowledge, was the owner, or one of the owners, of the apparatus at the time of the seizure.
- 3 (1) Notice under paragraph 2 must be given in writing. 15
- (2) Such a notice is to be taken to have been duly given to a person –
- (a) if it is delivered to him personally; or
 - (b) if it is addressed to him and left or forwarded by post to him at the address which is the appropriate address for him; or
 - (c) if an appropriate address for him in the United Kingdom does not exist or is unknown, by the publication of notice of the seizure in the London, Edinburgh or Belfast Gazette. 20
- (3) The appropriate address for a person is –
- (a) his usual or last known residence in the United Kingdom;
 - (b) his usual or last known place of business in the United Kingdom; or 25
 - (c) in the case of a body corporate, its registered or principal office.

Notice of claim

- 4 A person claiming that the restricted apparatus is not liable to forfeiture must give written notice of his claim to OFCOM.
- 5 (1) A notice of claim must be given – 30
- (a) within one month of the date of the notice of seizure; or
 - (b) if no such notice has been served on the person giving the notice, within one month of the date of the seizure.
- (2) Such a notice must specify
- (a) the name and address of the claimant; and 35
 - (b) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant.
- (3) Service of process upon a solicitor so specified is to be taken to be proper service upon the claimant. 40

Condemnation

- 6 The restricted apparatus is to be taken to have been duly condemned as forfeited if –
- (a) by the end of the period for the giving of a notice of claim in respect of the apparatus, no such notice has been given to OFCOM; or 5
 - (b) a notice of claim is given which does not comply with the requirements of paragraph 5.
- 7 Where notice of claim in respect of the restricted apparatus is duly given in accordance with paragraphs 4 and 5 –
- (a) OFCOM shall take proceedings for the condemnation of that apparatus by the court; and 10
 - (b) if the court finds that the apparatus was liable to forfeiture at the time of seizure, it shall condemn the apparatus as forfeited.
- 8 Where the restricted apparatus is condemned or deemed to have been condemned as forfeited, the forfeiture is to have effect as from the date of the seizure. 15

Proceedings for condemnation by court

- 9 Proceedings for condemnation are civil proceedings and may be instituted –
- (a) in England or Wales, either in the High Court or in a magistrates' court; 20
 - (b) in Scotland, either in the Court of Session or in the sheriff court;
 - (c) in Northern Ireland, either in the High Court or in a court of summary jurisdiction.
- 10 Proceedings for the condemnation of restricted apparatus instituted in a magistrates' court in England or Wales, in the sheriff court in Scotland or in a court of summary jurisdiction in Northern Ireland may be so instituted –
- (a) in any such court having jurisdiction in a place where an offence under section 7 of the Wireless Telegraphy Act 1967 (c. 72) involving that apparatus was committed; 30
 - (b) in any such court having jurisdiction in proceedings for such an offence;
 - (c) in any such court having jurisdiction in the place where the claimant resides or, if the claimant has specified a solicitor under paragraph 5, in the place where that solicitor has his office; or 35
 - (d) in any such court having jurisdiction in the place where that apparatus was seized or to which it was first brought after being seized.
- 11 (1) In proceedings for condemnation that are instituted in England and Wales or Northern Ireland, the claimant or his solicitor must make his oath that the seized apparatus was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure. 40
- (2) In proceedings for condemnation instituted in the High Court, the claimant must give such security for the costs of the proceedings as may be determined by the Court. 45

- (3) If a requirement of this paragraph is not complied with, the court shall give judgment for OFCOM.
- 12 (1) In the case of proceedings for condemnation instituted in a magistrates' court in England or Wales, either party may appeal against the decision of that court to the Crown Court. 5
- (2) In the case of proceedings for condemnation instituted in a court of summary jurisdiction in Northern Ireland, either party may appeal against the decision of that court to the county court.
- (3) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court, 10
- 13 Where an appeal, has been made (whether by case stated or otherwise) against the decision of the court in proceedings for the condemnation of restricted apparatus, that apparatus is to be left with OFCOM pending the final determination of the matter.
- Provisions as to proof* 15
- 14 In proceedings arising out of the seizure of restricted apparatus, the fact, form and manner of the seizure is to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- 15 In any proceedings, the condemnation by a court of restricted apparatus as forfeited may be proved by the production of either – 20
- (a) the order or certificate of condemnation; or
- (b) a certified copy of the order purporting to be signed by an officer of the court by which the order or certificate was made or granted.
- Special provisions as to certain claimants*
- 16 (1) This paragraph applies for the purposes of a claim to the restricted apparatus, and of proceedings for its condemnation. 25
- (2) Where, at the time of the seizure, the apparatus is –
- (a) the property of a body corporate,
- (b) the property of two or more partners, or
- (c) the property of more than five persons, 30
- the oath required by paragraph 11 to be taken by the claimant, and any other thing required by this Schedule or by rules of court to be done by the owner of the property, may be done by a person falling within sub-paragraph (3) or by a person authorised to act on his behalf.
- (3) The persons falling within this sub-paragraph are – 35
- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- (b) where the owners are in partnership, any one or more of the owners;
- (c) where there are more than five owners and they are not in partnership, any two or more of the owner acting on behalf of 40
- themselves and any their co-owners who are not acting on their own behalf.

SCHEDULE 7

Section 140

DECISIONS NOT SUBJECT TO APPEAL

Prosecutions and civil proceedings

- | | | |
|---|---|---|
| 1 | A decision to institute, bring or carry on any criminal or civil proceedings. | |
| 2 | Any decision (other than one under section 93) to take any preliminary steps for the purpose of enabling any such proceedings to be instituted. | 5 |

This Act

- | | | |
|----|---|----|
| 3 | A decision relating to the making or revision of a statement under section 29. | |
| 4 | A decision relating to the making or revision of a statement under section 104. | 10 |
| 5 | A decision relating to the publication of the United Kingdom Plan for Frequency Authorisation. | |
| 6 | A decision in exercise of the functions conferred on OFCOM by section 110 as to – | |
| | (a) the services, records and advice to be provided, maintained or given by them; | 15 |
| | (b) the research or development work to be carried out or the arrangements made for carrying it out; or | |
| | (c) the making or terms of any grant. | |
| 7 | A decision under section 113. | 20 |
| 8 | A decision under section 114. | |
| 9 | A decision to make regulations under section 115. | |
| 10 | A decision to make regulations under section 118. | |
| 11 | A decision to make an order under section 120. | |
| 12 | A decision to make regulations under section 124. | 25 |
| 13 | A decision to make regulations under section 126 and any decision under any such regulations. | |
| 14 | A decision to make regulations under paragraph 1 of Schedule 4. | |
| 15 | A decision under any provision of Schedule 5. | |
| 16 | A decision under any provision of Schedule 6. | 30 |

Wireless Telegraphy Act 1949

- | | | |
|----|---|----|
| 17 | A decision to make regulations under the proviso to section 1(1) of the Wireless Telegraphy Act 1949 (c. 54). | |
| 18 | A decision to make regulations under section 3 of that Act. | |
| 19 | A decision to make regulations under section 10 of that Act. | 35 |

- 20 A decision for the purposes of section 15 of that Act.

Wireless Telegraphy Act 1998

- 21 A decision to make regulations under section 1 of the Wireless Telegraphy Act 1998 (c. 6).
- 22 A decision to make regulations under section 1D(3) of that Act. 5
- 23 A decision to make regulations under section 3 of that Act.
- 24 A decision to make regulations under section 3A of that Act.
- 25 A decision relating to the recovery of a sum payable to OFCOM under section 4A of that Act.

SCHEDULE 8

Section 225

10

CORRESPONDING OBLIGATIONS OF THE BBC AND WELSH AUTHORITY

PART 1

THE BBC

Quotas for independent productions

- 1 (1) It shall be the duty of the BBC to secure that, in each year, 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC is allocated to the broadcasting of a range and diversity of independent productions. 15
- (2) In sub-paragraph (1) – 20
- (a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as a description of programmes that he considers should be qualifying programmes for the purposes of that sub-paragraph; 25
- (b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as a description of the programmes that he considers should be independent productions for the purposes of that sub-paragraph; and 30
- (c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph. 35
- (4) Before making an order under this paragraph the Secretary of State must consult OFCOM and the BBC.

- (5) No order is to be made containing provision the making of which is authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Duty to publicise complaints procedures etc.

- 2 (1) It shall be the duty of the BBC to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise). 5
- (2) Those matters are –
- (a) OFCOM’s functions under Part 5 of the 1996 Act in relation to services provided by the BBC; and 10
- (b) any procedures established by OFCOM or the BBC for the handling and resolution of complaints about the observance by the BBC of standards set under section 212.

PART 2 15

THE WELSH AUTHORITY

Public service remit of the Welsh Authority

- 3 (1) It shall be the duty of the Welsh Authority to secure that the public service remit for S4C and for S4C Digital is fulfilled in relation to that service.
- (2) The public service remit for S4C is the provision of a broad range of high quality and diverse programming in a service in which – 20
- (a) a substantial proportion of the programmes consists of programmes in Welsh;
- (b) the programmes broadcast for viewing between 6:30 PM and 10:00 PM on every day of the week consist mainly of programmes in Welsh; and 25
- (c) the programmes that are not in Welsh are normally programmes which are being, have been or are to be broadcast on Channel 4.
- (3) The public service remit for S4C Digital is the provision of a broad range of high quality and diverse programming in a service in which a substantial proportion of the programmes consists of programmes in Welsh. 30
- (4) The Secretary of State may by order modify sub-paragraphs (2) and (3).
- (5) Before making an order under sub-paragraph (4), the Secretary of State must consult –
- (a) the Welsh Authority; and 35
- (b) where the recommendations relate to programmes that are not in Welsh, the C4 Corporation.
- (6) An order under sub-paragraph (4) must not contain any provision inconsistent with the carrying out by the Welsh Authority of their function under section 145 in accordance with subsection (3) of that section. 40
- (7) No order is to be made containing provision the making of which is authorised by sub-paragraph (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Statements of programme policy

- 4 (1) It shall be the duty of the Welsh Authority –
- (a) as soon as practicable after the coming into force of this paragraph, and subsequently at annual intervals, to prepare a statement of programme policy; and 5
 - (b) to monitor their own performance in the carrying out of the proposals contained in a statement made under this paragraph.
- (2) Every statement of programme policy prepared under this paragraph must set out the Welsh Authority’s proposals for securing that, during the following year – 10
- (a) the public service remit for S4C and for S4C Digital will be fulfilled; and
 - (b) the Welsh Authority’s duties under the provisions of this Schedule will be performed.
- (3) Every such statement must contain a report on the performance of that Authority in the carrying out during the period since the previous statement of the proposals contained in that previous statement. 15
- (4) When preparing such a statement, the Welsh Authority must consider –
- (a) any guidance given to them by OFCOM; and
 - (b) any reports previously published by OFCOM under section 181. 20
- (5) Every such statement must be published by the Welsh Authority as soon as practicable after its preparation is complete.
- (6) In preparing guidance about the preparation of such a statement, OFCOM shall have regard, in particular, to the matters which, in the light of the requirements specified in section 181(3) and (5), they consider should be included in statements of programme policy. 25
- (7) It shall be the duty of OFCOM –
- (a) from time to time to review the guidance for the time being in force for the purposes of this paragraph; and
 - (b) to make such revisions of that guidance as they think fit. 30
- (8) OFCOM may direct that any statement of policy which –
- (a) was made by the Welsh Authority before the coming into force of this paragraph, and
 - (b) is specified in the direction,
- is to be treated for the purposes of this Act as if it were a statement made in relation to such period as may be so specified in pursuance of this paragraph. 35
- (9) A direction under sub-paragraph (8) cannot contain provision the effect of which is to postpone the time at which the Welsh Authority would otherwise be required to make its first statement of programme policy. 40

Programming quotas for independent productions

- 5 (1) It shall be the duty of the Welsh Authority, in relation to S4C and S4C Digital (taken together) to secure that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the services is allocated to the broadcasting of a range and diversity of independent productions. 45

-
- (2) In sub-paragraph (1) –
- (a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as a description of programmes that he considers should be qualifying programmes for the purposes of that sub-paragraph; 5
 - (b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as a description of the programmes that he considers should be independent productions for the purposes of that sub-paragraph; and 10
 - (c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph. 15
- (4) Before making an order under this paragraph the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (5) No order is to be made containing provision the making of which is authorised by this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House. 20
- (6) In this paragraph “programme” does not include an advertisement.

Programme quotas for original productions

- 6 (1) It shall be the duty of the Welsh Authority, in relation to S4C and S4C Digital (taken together) to secure that original productions constitute, to such extent and in each such period as may be fixed under sub-paragraph (3), a proportion of the total number of programmes included in the services. 25
- (2) In sub-paragraph (1) the reference to original productions is a reference to programmes which were commissioned or produced with a view to their first showing in the United Kingdom being on S4C or S4C Digital. 30
- (3) The periods and proportions for the purposes of sub-paragraph (1) shall be fixed –
- (a) by agreement between the Welsh Authority and OFCOM; or
 - (b) in default of agreement, by a direction given by OFCOM to that Authority fixing the periods and proportions according to whatever OFCOM consider appropriate for ensuring that the service is consistently of a high quality. 35
- (4) The agreement or direction may provide that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to constitute original productions. 40
- (5) It may also provide that, in determining –
- (a) what is and what is not an original production, and
 - (b) whether a programme is of a description of programmes excluded by virtue of provision included in a condition by virtue of sub-paragraph (4), 45

regard is to be had to any code of guidance prepared and published, and from to time revised, by OFCOM.

- (6) In this paragraph “programme” does not include an advertisement.

News and current affairs programmes

- 7 (1) It shall be the duty of the Welsh Authority, in relation to S4C and S4C Digital, to secure – 5
- (a) that the programmes included in each service include news programmes and current affairs programmes;
 - (b) that the news programmes and current affairs programmes included in each service are of high quality and deal with both national and international matters; 10
 - (c) that those news programmes and current affairs programmes are broadcast for viewing at times that include peak viewing times; and
 - (d) that those news programmes are broadcast for viewing at intervals throughout the period for which the service is provided. 15
- (2) In this paragraph “peak viewing time”, in relation to any service, means a time that is a peak viewing time for that service.

Programme standards

- 8 It shall be the duty of the Welsh Authority in relation to S4C and S4C Digital to observe the standards set under section 212. 20
- 9 It shall be the duty of the Welsh Authority to comply with a direction given to them by OFCOM with respect to the establishment of procedures for the handling and resolution of complaints about the observance by that Authority of standards set under section 212.
- 10 (1) It shall be the duty of the Welsh Authority to comply with directions given to them by OFCOM with respect to any of the matters mentioned in subparagraph (2). 25
- (2) Those matters are –
- (a) the exclusion from any service provided by that Authority of a particular advertisement, or its exclusion in particular circumstances; 30
 - (b) the descriptions of advertisements and methods of advertising to be excluded from the services so provided (whether generally or in particular circumstances); and
 - (c) the forms or methods of sponsorship to be excluded from those services (whether generally or in particular circumstances). 35
- 11 (1) This paragraph applies if OFCOM are satisfied –
- (a) that the Welsh Authority have failed in any respect to perform any of their duties under paragraphs 8 to 10; and
 - (b) that the failure can be appropriately remedied by the inclusion in either of those services of a correction or apology (or both). 40
- (2) OFCOM may direct the Welsh Authority to include a correction or apology (or both) in S4C or S4C Digital or in both services.

-
- (3) A direction may require the correction or apology to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.
- (4) OFCOM shall not give a direction under this paragraph unless they have given the Welsh Authority a reasonable opportunity of making representations to them about the matters appearing to OFCOM to provide grounds for the giving of the direction. 5
- (5) Where the Welsh Authority include a correction or apology in the licensed service in pursuance of a direction under this paragraph, that Authority may announce that they are doing so in pursuance of such a direction. 10
- (6) If OFCOM are satisfied that the inclusion by the Welsh Authority of any programme in S4C or S4C Digital involved a contravention of standards set under section 212, they may direct that Authority not to include that programme in either of those services on any future occasion.
- Directions with respect to advertising* 15
- 12 (1) The Welsh Authority shall comply with directions given to them by OFCOM with respect to any of the matters mentioned in sub-paragraph (2).
- (2) Those matters are –
- (a) the maximum amount of time to be given to advertisements in any hour or other period; 20
- (b) the minimum interval which must elapse between any two periods given over to advertisements;
- (c) the number of such periods to be allowed in any programme or in any hour or day; and
- (d) the exclusion of advertisements from a specified part of S4C or S4C Digital. 25
- (3) Directions under this section –
- (a) may be either general or specific;
- (b) may be qualified or unqualified; and
- (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances. 30
- (4) In giving a direction under this paragraph, OFCOM shall take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this paragraph. 35
- Duty to publicise complaints procedures etc.*
- 13 (1) It shall be the duty of the Welsh Authority to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise).
- (2) Those matters are – 40
- (a) OFCOM’s functions under Part 5 of the 1996 Act in relation to services provided by the Welsh Authority; and
- (b) any procedures established by OFCOM or that Authority for the handling and resolution of complaints about the observance by that Authority of standards set under section 212. 45

Compliance with international obligations

- 14 (1) OFCOM may give the Welsh Authority such directions as OFCOM consider appropriate for securing that all relevant international obligations are complied with.
- (2) It shall be the duty of that Authority to comply with a direction under this paragraph. 5
- (3) Before giving a direction under this paragraph OFCOM must consult the Welsh Authority.
- (4) In this paragraph “relevant international obligations” means the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this paragraph. 10

Services for the deaf and visually impaired

- 15 It shall be the duty of the Welsh Authority, in relation to the services provided by them, so far as they are provided for broadcasting in digital form, to observe the code for the time being in force under section 203. 15

Equality of opportunity

- 16 (1) It shall be the duty of the Welsh Authority to make such arrangements as they consider appropriate for promoting, in relation to employment with that Authority, equality of opportunity – 20
- (a) between men and women;
- (b) between persons of different racial groups;
- (c) between disabled persons and persons who are not disabled;
- (d) between persons who have had disabilities and persons who are not disabled and have not had any disabilities; and
- (2) It shall be the duty of the Welsh Authority to make arrangements for promoting, in relation to employment with that Authority, the fair treatment of disabled persons. 25
- (3) The Welsh Authority shall also may make such arrangements as they consider appropriate for the training and retraining of persons whom they employ in or in connection with – 30
- (a) the provision of S4C or S4C Digital; or
- (b) the making of programmes to be included in either or both of those services.
- (4) The Welsh Authority – 35
- (a) shall take all such steps as they consider appropriate for making persons affected by any arrangements made in pursuance of sub-paragraphs (1) to (3) aware of the arrangements (including the publication of the arrangements in such manner as they think fit);
- (b) shall review the arrangements from time to time; and
- (c) shall, from time to time (and at least annually), publish, in such manner as they consider appropriate, their observations on the current operation and effectiveness of the arrangements. 40
- (5) Before making any arrangements in pursuance of any of sub-paragraphs (1) to (3) or determining the manner in which they will comply with sub-paragraph (4), the Welsh Authority must consult OFCOM. 45

- (6) In this paragraph—
 “disabled” and “disability” each has the same meaning as in the
 Disability Discrimination Act 1995 (c. 50);
 “racial group” has the same meaning as in the Race Relations Act 1976
 (c. 74) or, in Northern Ireland, the Race Relations (Northern
 Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)). 5
- (7) The Secretary of State may, by order amend sub-paragraph (1) by adding
 any other form of equality of opportunity that he considers appropriate to
 that sub-paragraph.

SCHEDULE 9

Section 230 10

FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS

PART 1

BROADCASTING ACT 1990

Preliminary

- 1 The 1990 Act shall be amended as follows. 15

Penalty on revocation of television services licence

- 2 (1) In subsection (3) of section 18 (penalty on revocation of television services
 licence), for “a financial penalty of the prescribed amount” there shall be
 substituted “a specified financial penalty”.
- (2) For subsection (4) of that section (amount of penalty) there shall be 20
 substituted—
- “(3A) The maximum amount which a person may be required to pay by
 way of a penalty under subsection (3) shall not exceed the maximum
 penalty given by subsections (3B) and (3C).
- (3B) In a case where the licence is revoked under this section or the 25
 penalty is imposed before the end of the first complete accounting
 period of the licence holder to fall within the period for which the
 licence is in force, the maximum penalty is whichever is the greater
 of—
- (a) £500,000; and 30
 (b) 7 per cent. of the amount which OFCOM estimate would
 have been the qualifying revenue for the first complete
 accounting period of the licence holder falling within the
 period for which the licence would have been in force.
- (3C) In any other case, the maximum penalty is whichever is the greater 35
 of—
- (a) £500,000; and
 (b) 7 per cent. of the qualifying revenue for the last complete
 accounting period for which the licence is in force.

- (3D) Section 19(2) to (6) applies for determining qualifying revenue for the purposes of subsections (3B) and (3C) above.”
- (3) This paragraph applies only in a case of a revocation in relation to which—
- (a) the notice required by section 18(2) of the 1990 Act, or
 - (b) the notice revoking the licence,
- is one served after the commencement of this paragraph. 5

Restricted services licences

- 3 (1) In subsection (3) of section 42B (application of section 41 to licensing of restricted services), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsections (3A) and (3B).” 10
- (2) For subsection (4) of that section (penalties for failure to comply with conditions or directions) there shall be substituted—
- “(3A) In a case where a penalty under section 41(1)(a) has not previously been imposed on the holder of the licence during any period for which his licence has been in force (‘the relevant period’), the maximum penalty is whichever is the greater of— 15
- (a) £100,000; and
 - (b) 3 per cent. of the qualifying revenue for his last complete accounting period. 20
- (3B) In any other case, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
 - (b) 5 per cent. of the qualifying revenue for the licence holder’s last complete accounting period. 25
- (3C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed subsections (3A)(b) and (3B)(b) shall be construed as referring to 3 per cent., or (as the case may be) 5 per cent., of the amount which OFCOM estimate to be the qualifying revenue for that accounting period. 30
- (3D) Section 19(2) to (6) applies for determining qualifying revenue for the purposes of subsections (3A) to (3C) above.”
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph. 35

Licences for analogue sound services

- 4 (1) In section 110(3) (maximum penalty for failure by holder of sound service licence to comply with licence conditions or directions), for “£50,000” there shall be substituted “£250,000”. 40
- (2) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph.

PART 2

BROADCASTING ACT 1996

Preliminary

5 The 1996 Act shall be amended as follows.

Penalty on revocation of multiplex licence 5

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

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

“(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) shall not exceed the maximum penalty given by subsections (5B) and (5C). 10

(5B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of— 15

- (a) £500,000; and
- (b) 7 per cent. of the amount which OFCOM estimate would have been the multiplex for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force. 20

(5C) In any other case, the maximum penalty is whichever is the greater of— 25

- (a) £500,000; and
- (b) 7 per cent. of the multiplex revenue for the last complete accounting period for which the licence is in force.

(5D) Section 14 applies for determining multiplex revenue for the purposes of subsections (5B) and (5C) above.”

(3) This paragraph applies only in a case of a revocation in relation to which— 30

- (a) the notice required by section 11(2) of the 1996 Act, or
- (b) the notice revoking the licence,

is one served after the commencement of this paragraph.

Attribution of multiplex revenue

7 (1) In subsection (1) of section 15 (attribution of multiplex revenue for the purposes of section 17(3)), for “17(3)” there shall be substituted “17(2A) to (2C)”. 35

(2) In subsection (2) of that section (attribution for the purposes of sections 23(3) and 27(3)), for “section 23(3) or section 27(3)” there shall be substituted “sections 23(2A) to (4) and 27(2A) to (4)”. 40

(3) This paragraph has effect in relation only to cases in which section 17, 23 or 27 applies as amended by this Schedule.

Multiplex licences

- 8 (1) In subsection (2) of section 17 (penalty for failure by holder of television multiplex licence to comply with conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsections (2A) and (2B).” 5
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) In a case where a penalty under this section has not previously been imposed on the holder of the licence during any period for which his licence has been in force (‘the relevant period’), the maximum penalty is whichever is the greater of— 10
- (a) £100,000; and
- (b) 3 per cent. of the share of multiplex revenue attributable to him for his last complete accounting period.
- (2B) In any other case, the maximum penalty is whichever is the greater of— 15
- (a) £250,000; and
- (b) 5 per cent. of the share of multiplex revenue attributable to the licence holder for his last complete accounting period.
- (2C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed subsections (2A)(b) and (2B)(b) shall be construed as referring to 3, or (as the case may be) 5, per cent. of the amount OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period. 20 25
- (2D) Section 15(1) and (3) applies for determining the share of multiplex revenue attributable to any person for the purposes of subsections (2A) to (2C) above.”
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph. 30

Digital television programme licences

- 9 (1) In subsection (2) of section 23 (penalty for failure by holder of digital television programme licence to comply with conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsections (2A) and (2B).” 35
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted—
- “(2A) In a case where a penalty under this section has not previously been imposed on the holder of the digital programme licence during any period for which his licence has been in force, the maximum penalty is whichever is the greater of— 40
- (a) £100,000; and
- (b) 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in respect of multiplex services in respect of relevant accounting periods. 45

- (2B) In any other case, the maximum penalty is whichever is the greater of—
- (a) £250,000; and
 - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to the licence holder in respect of multiplex services in respect of relevant accounting periods.” 5
- (3) In subsection (4) of that section (relevant accounting period), for “subsection (3)(a)” there shall be substituted “subsections (2A) and (2B)”.
- (4) After that subsection there shall be inserted—
- “(4A) Section 15(2) and (3) applies for determining the share of multiplex revenue attributable to any person for the purposes of subsections (2A) to (3) above.” 10
- (5) In subsection (5) of that section, for “yet ended” there shall be substituted “ended when the penalty is imposed”.
- (6) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph. 15

Digital additional television services licences

- 10 (1) In subsection (2) of section 27 (penalty for failure by holder of digital additional television services licence to comply with conditions or directions), for the words from “whichever is the greater” onwards there shall be substituted “the maximum penalty given by subsections (2A) and (2B).” 20
- (2) For subsection (3) of that section (maximum penalties) there shall be substituted— 25
- “(2A) In a case where a penalty under this section has not previously been imposed on the holder of the digital additional services licence during any period for which his licence has been in force, the maximum penalty is whichever is the greater of— 30
- (a) £100,000; and
 - (b) 3 per cent. of the aggregate amount of the shares of multiplex revenue attributable to him in respect of multiplex services in respect of relevant accounting periods.
- (2B) In any other case, the maximum penalty is whichever is the greater of— 35
- (a) £250,000; and
 - (b) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to the licence holder in respect of multiplex services in respect of relevant accounting periods.
- (3) In subsection (4) of that section (relevant accounting period), for “subsection (3)(a)” there shall be substituted “subsections (2A) and (2B)”.
- (4) After that subsection there shall be inserted—
- “(3A) Section 15(2) and (3) applies for determining the share of multiplex revenue attributable to any person for the purposes of subsections (2A) to (3) above.” 45

- (5) In subsection (5) of that section, for “yet ended” there shall be substituted “ended when the penalty is imposed”.
- (6) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph. 5

Revocation of radio multiplex licences

- 11 (1) In section 53(5) (maximum penalty on revocation of radio multiplex licence), for “£50,000”, in both places, there shall be substituted “£250,000”
- (2) This paragraph applies only in a case of a revocation in relation to which – 10
- (a) the notice required by section 53(2) of the 1996 Act, or
 - (b) the notice revoking the licence,
- is one served after the commencement of this paragraph.

Contraventions of conditions of radio multiplex licences

- 12 (1) In subsection (2) of section 59 (maximum penalty for failure by holder of radio multiplex licence to comply with conditions or directions), for paragraph (a) there shall be substituted – 15
- “(a) £250,000; or”.
- (2) In subsection (4) of that section (maximum penalty to be imposed on holder of local radio multiplex licences for failure to comply with conditions or directions), for “£50,000” there shall be substituted “£250,000”. 20
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph.

Digital sound programme licences

- 13 (1) In subsection (2) of section 62 (maximum penalty for failure by holder of digital sound programme licence to comply with conditions or directions), for paragraph (a) there shall be substituted – 25
- “(a) £250,000; and”.
- (2) In subsection (6) of that section (maximum penalty where licence is a local digital sound programme licence), for “£50,000” there shall be substituted “£250,000”. 30
- (3) This paragraph applies in relation to a failure to comply with a condition or direction only where the failure is one occurring after the commencement of this paragraph.

SCHEDULE 10

Section 237

AMENDMENTS OF BROADCASTING ACTS

PART 1

AMENDMENTS RELATING TO TELEVISION SERVICES

AMENDMENTS OF THE 1990 ACT

5

Licences under Part 1

- 1 (1) In section 3 of the 1990 Act (licensing under Part 1), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1) of that section for “Chapter II, III, IV or V of this Part” there shall be substituted “Chapter 2 or 5 of this Part or section 157 of the Communications Act 2002 (c. 00)”. 10
- (3) For subsection (8) of that section (saving for telecommunications licences) there shall be substituted –
- “(8) The holding by any person of a licence under this Part shall not relieve him of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949 (c. 54) or of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2002 (electronic communications networks and electronic communications services).” 15
- ” 20

General licence conditions

- 2 (1) In section 4 of the 1990 Act (general licence conditions), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (3) of that section (fixing of fees), for the words from “regard as necessary” onwards there shall be substituted “regard as necessary for the purposes of paragraph 8(1) of the Schedule to the Office of Communications Act 2002 (c. 11) (obligation to conduct affairs so as to be able to meet their obligations and carry out their functions).” 25
- (3) In subsection (5) of that section (provision of false information to be breach of condition) – 30
- (a) for “imposed under this Part” there shall be substituted “contained in the licence”; and
- (b) after “and 42” there shall be inserted “or (as the case may be) sections 159 and 160 of the Communications Act 2002 (enforcement of television licensable content service licences)”. 35

Repeal of previous regulatory regime

- 3 Sections 6 to 12 of the 1990 Act (which contain the mechanism for regulation in relation to licences under Part 1 of that Act) shall cease to have effect.

Prohibition on providing television services without a licence

- 4 (1) In subsection (1) of section 13 of the 1990 Act (offence of providing service without a licence), for “service falling within section 2(1)(a), (aa), (b), (c), (cc) or (d)” there shall be substituted “relevant regulated television service”.
- (2) After that subsection there shall be inserted – 5
- “(1A) In subsection (1) ‘relevant regulated television service’ means a service falling, in pursuance of section 147(1) of the Communications Act 2002 (c. 00), to be regulated by OFCOM, other than a television multiplex service.”
- (3) In subsection (2) of that section (exemption orders made after consulting the ITC), for “the Commission” there shall be substituted “OFCOM”. 10

Television broadcasting on Channel 3

- 5 In section 14 of the 1990 Act (establishment of Channel 3), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 15

Applications for Channel 3 licences

- 6 (1) In section 15 of the 1990 Act (applications for Channel 3 licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (2) of that section, for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2002 by conditions relating to – 20
- (a) the public service remit for that service,
(b) programming quotas, 25
(c) news and current affairs programmes, and
(d) regional programming.’
- (3) In subsection (3) of that section –
- (a) in paragraph (b), for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2002 by conditions relating to – 30
- (i) the public service remit for that service,
(ii) programming quotas,
(iii) news and current affairs programmes, and 35
(iv) regional programming;”;
- (b) paragraphs (c) to (e) shall be omitted.
- (4) In subsection (4) of that section, for “paragraphs (b) to (e)” there shall be substituted “paragraph (b)”.

Procedure on consideration of applications for Channel 3 licences 40

- 7 (1) In sub-paragraph (1) of section 16 of the 1990 Act (consideration of applications for Channel 3 licences) –

- (a) for “the Commission”, wherever occurring, there shall be substituted “OFCOM”; and
- (b) for “specified in subsection (2) or (3) below (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2002 (c. 00) by conditions relating to –
- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) regional programming.”.
- (2) Subsections (2) and (3) of that section shall cease to have effect.
- (3) In subsection (4) of that section –
- (a) for “specified in subsection (2) or (3) (as the case may be) the Commission” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2002 by conditions relating to –
- (a) the public service remit for that service,
- (b) programming quotas,
- (c) news and current affairs programmes, and
- (d) regional programming.”;
- (b) the words from “and in applying” onwards shall be omitted.
- (4) Subsections (5) to (8) shall cease to have effect.

Television broadcasting on Channel 3

- 8 (1) In section 17 of the 1990 Act (award of licences to person submitting highest bid), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (12)(b) of that section, for “specified in section 16(2) or (3) (as the case may be)” there shall be substituted “that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2002 by conditions relating to –
- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) regional programming.”.

Financial conditions of licence and failures to begin a service

- 9 In sections 17A to 19 of the 1990 Act (financial conditions in Channel 3 licences and failures to begin a service), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Changes of control in period after award of licence

- 10 In section 21 of the 1990 Act (changes of control in period immediately after award of licence), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

Temporary provision of Channel 3 service for an additional area

- 11 In section 22 of the 1990 Act (temporary provision of regional Channel 3 Service for additional area), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Channel 5 5

- 12 In section 28 of the 1990 Act (Channel 5), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Application to Channel 5 of Channel 3 provisions

- 13 (1) In section 29 of the 1990 Act (application to Channel 5 of Channel 3 provisions) – 10
(a) subsection (2)(b) and the word “and” immediately preceding it, and
(b) subsection (3),
shall cease to have effect.
(2) In subsection (2)(a) of that section, for “the Commission” there shall be substituted “OFCOM”. 15

Announcement of programme Schedules

- 14 In section 37(1) of the 1990 Act (conditions requiring announcement of programme Schedules), for “the Commission” there shall be substituted “OFCOM”.

Enforcement of conditions of licences for licensed public service channels 20

- 15 (1) In sections 40 to 42 and 66A(1) of the 1990 Act (enforcement of licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
(2) In sections 41(1) and 42(1)(a) of that Act (which contain provision relating to the enforcement of directions under Part 1 of that Act), after “this Part”, in each place, there shall be inserted “Part 5 of the Broadcasting Act 1996 (c. 55) or Part 3 of the Communications Act 2002”. 25

Restricted services

- 16 In section 42B of the 1990 Act (licensing of restricted services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 30

The Welsh Authority

- 17 In section 57(1) (function of Welsh Authority to provide S4C) for the words from the beginning to “Wales” there shall be substituted “The Welsh Authority shall continue to provide the television broadcasting service”.

Distribution of licensed public service channels 35

- 18 In section 66 of the 1990 Act (requirements relating to transmission and distribution of services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Receipts of the ITC

- 19 (1) In section 68 of the 1990 Act (payment of certain receipts of ITC into Consolidated Fund), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (2) of that section, for “52(1) or 77(1)” there shall be substituted “or 52(1).” 5
- (3) In subsection (5) of that section for “or Part II”, in the first place where it occurs, there shall be substituted “or Chapter 2 or 4 of Part 3 of the Communications Act 2002 (c. 00)”.

Interpretation of Part 1 10

- 20 In section 71 of the 1990 Act (interpretation of Part 1), for the definitions of “television broadcasting service” and “television programme service” there shall be substituted –
- “television broadcasting licence’, ‘television licensable content service’ and ‘television programme licence’ each has the same meaning as in Part 3 of the Communications Act 2002;”.
- 15

Schedule 7

- 21 In Part 1 of Schedule 7 to the 1990 Act (determination of “qualifying revenue”), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”. 20

AMENDMENTS OF THE 1996 ACT

Multiplex services and digital programme services

- 22 (1) In section 1 of the 1996 Act (interpretation of section), for subsection (1) there shall be substituted –
- “(1) In this Part ‘multiplex service’ means a television multiplex service within the meaning of Part 3 of the Communications Act 2002”. 25
- (2) For subsection (7) of that section there shall be substituted –
- “(7) In this section ‘broadcast’ means broadcast otherwise than from a satellite.”

Meaning of independent analogue broadcaster and qualifying service 30

- 23 In section 2 of the 1996 Act (meaning “independent analogue broadcaster” and “qualifying service”), for subsections (2) to (5) there shall be substituted –
- “(2) In this Part ‘qualifying service’ means (subject to section 152(8) of the Communications Act 2002) any of the following, so far as they are provided with a view to their being broadcast in digital form – 35
- (a) a television broadcasting service included in Channel 3;
- (b) Channel 4;
- (c) Channel 5;

- (d) a television broadcasting service provided by the Welsh Authority;
- (e) the digital public teletext service (within the meaning of Part 3 of the Communications Act 2002 (c. 00)).”

Licences under Part 1 5

- 24 (1) In subsection (1) of section 3 of the 1996 Act (licences under Part 1 of that Act), for “the Independent Television Commission (in this Part referred to as the ‘the Commission’) there shall be substituted “OFCOM”.
- (2) In subsections (3) to (7) of that section, for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 10
- (3) For subsection (8) of that section there shall be substituted –
- “(8) The holding by any person of a licence under this Part shall not relieve him of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949 (c. 54) or of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2002 (electronic communications networks and electronic communications services).” 15

Licence conditions

- 25 (1) In section 4 of the 1996 Act (general licence conditions), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 20
- (2) In subsection (1)(a) and (c) of that section, for “the 1990 Act or this Act”, in each place, there shall be substituted “this Act, the 1990 Act or Part 3 of the Communications Act 2002”.
- (3) In subsection (3) of that section, for the words from “regard as necessary” onwards there shall be substituted “regard as necessary for the purposes of paragraph 8(1) of the Schedule to the Office of Communications Act 2002 (c. 11) (obligation to conduct affairs so as to be able to meet their obligations and carry out their functions).” 25

Multiplex licences 30

- 26 In section 7 of the 1996 Act (multiplex licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

Award of multiplex licences

- 27 (1) In section 8 of the 1996 Act (award of multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 35
- (2) In subsection (2) of that section –
- (a) the word “and” shall be inserted at the end of paragraph (d); and
 - (b) paragraph (f) (duty to have regard to need to ensure fair and effective competition) shall cease to have effect. 40

Power to require two or more multiplex licences to be granted to one person

- 28 In section 9 of the 1996 Act (grant of two or more multiplex licences to one person), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

Award of multiplex licences subject to conditions 5

- 29 (1) In section 10 of the 1996 Act (award of multiplex licences subject to conditions), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1)(a) of that section, for “the 1990 Act or this Act”, in each place, there shall be substituted “this Act, the 1990 Act or Part 3 of the Communications Act 2002 (c. 00)“.
- 10

Failure to provide licensed service and revocation

- 30 In section 11 of the 1996 Act (failure to provide licensed service and revocation), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- 15

Conditions attached to multiplex licences

- 31 (1) In section 12 of the 1996 Act (conditions attached to multiplex licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1) of that section, paragraph (e) (condition to secure no undue discrimination against or in favour of providers of services) shall cease to have effect.
- 20

Additional payments in respect of multiplex licences

- 32 In section 13 of the 1996 Act (additional payments in respect of multiplex licences), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- 25

Multiplex revenue

- 33 In section 14(7) and (8) and 15(3) of the 1996 Act (power to adjust amount of multiplex revenue), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- 30

Duration and enforcement of multiplex licences

- 34 In sections 16 and 17 of the 1996 Act (duration and enforcement of multiplex licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

Licensing of digital programme services 35

- 35 (1) In subsections (1) to (4) of section 18 of the 1996 Act (licensing of digital programme services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

- (2) Subsections (5) and (6) of that section (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

Conditions of licences for digital programme services

- 36 (1) In subsection (3) of section 19 of the 1996 Act (conditions of licences for digital programme services), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”. 5
- (2) Subsections (2) and (4) to (10) of that section shall cease to have effect.

Duration and enforcement of multiplex licences

- 37 In sections 23 of the 1996 Act (enforcement of digital programme licences), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”. 10

Digital additional services

- 38 (1) In subsection (1)(b) of section 24 the 1996 Act (services excluded from the definition of digital additional services) –
- (a) after “not” there shall be inserted “a Channel 3 service, Channel 4, Channel 5,”; and 15
 - (b) for “or a technical service” there shall be inserted “, a technical service or an on-demand service”.
- (2) In subsection (2) of that section (meaning of ancillary service), for “an independent analogue broadcaster” there shall be substituted “a relevant public service broadcaster”. 20
- (3) After subsection (3) of that section there shall be inserted –
- “(3A) In this section –
- ‘on-demand service’ means a service provided with a view to the material included in it being made available to and conveyed to a user of the service only in response to the making by the user by electronic means of an individual request to receive that material; 25
 - ‘relevant public service broadcaster’ means any of the following – 30
- (a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;
 - (b) the Channel 4 Corporation;
 - (c) a person licensed under Part 2 of the 1990 Act to provide Channel 3; 35
 - (d) the Welsh Authority;
 - (e) the public teletext provider.
- (3B) The cases in which material shall be treated for the purposes of subsection (3A) as made available in response to an individual request shall not include any case in which the request is limited to an election to be one of the recipients of material that is or has been offered for reception on the basis – 40
- (a) that it is material selected by the provider of the service for the purpose of being made available simultaneously, or

virtually so, to an audience consisting of users of the service;
 and

- (b) that it will be broadcast or distributed simultaneously, or virtually so, to every member of the audience (if any) that consists of the users of the service who have elected to receive it.”

5

Licensing of digital additional services

39 (1) In subsections (1) to (4) of section 25 of the 1996 Act (licensing of digital additional services), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

10

(2) Subsections (5) and (6) of that section (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

Review of digital television broadcasting

40 (1) In section 33 of the 1996 Act (review of digital television broadcasting), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

15

(2) In subsection (1)(a)(ii) of that section, for the words from “specified in section 2(3)” there shall be substituted “Channel 3 services, Channel 4, Channel 5,”.

Receipts of the ITC

20

41 In section 38 of the 1996 Act (payment of certain receipts of ITC into Consolidated Fund), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”.

Listed events

42 (1) Section 98 of the 1996 Act (categories of service for the purposes of Part 4 of that Act) shall be amended as follows.

25

(2) In subsection (3), for the words from “television” to the end there shall be substituted “licence for the purposes of section 240 of the Communications Act 2002”.

(3) In subsection (5), for “The Commission” there shall be substituted “OFCOM”.

30

43 In section 101(2) of the 1996 Act (restriction on televising of listed event), for “The Commission” there shall be substituted “OFCOM”.

44 (1) Section 101B of the 1996 Act (restriction on televising of event designated by other EEA State) shall be amended as follows.

35

(2) In subsection (1), for “the Commission” there shall be substituted “OFCOM”.

(3) In subsection (2), for “The Commission” there shall be substituted “OFCOM”.

45 In section 102 of the 1996 Act (power of Commission to impose penalties), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

40

- 46 In section 103 of the 1996 Act (report to the Secretary of State), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
- 47 (1) Section 104 of the 1996 Act (code of guidance) shall be amended as follows.
(2) For “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 5
(3) In subsection (4)(d), the words “by the Commission” and “by them” shall be omitted.
- 48 In section 104A of the 1996 Act (provision of information about listed and designated events), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”. 10
- 49 In section 105(1) of the 1996 Act (interpretation of Part 4 etc.), the definition of “the Commission” shall be omitted.

Computation of multiplex revenue

- 50 In Part 1 of Schedule 1 to the 1996 Act (computation of multiplex revenue), for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”. 15

PART 2

AMENDMENTS RELATING TO RADIO SERVICES

AMENDMENTS OF THE 1990 ACT

Licensing functions of OFCOM 20

- 51 (1) In subsections (1) and (2) of section 85 of the 1990 Act (licensing of independent radio services), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
(2) In subsection (1) of that section, after “independent radio services” there shall be inserted “falling within paragraph (a) or (c) of section 168(2) of the Communications Act 2002 (c. 00)”. 25
(3) Subsections (3) and (4) of that section (duty to secure the meeting of a variety of tastes and interests and to ensure fair and effective competition) shall cease to have effect.

Licences under Part 3 of the 1990 Act 30

- 52 (1) In section 86 of the 1990 Act (licences under Part 3), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
(2) For subsection (9) of that section there shall be substituted – 35
“(9) The holding of a licence by any person shall not relieve him of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949 (c. 54) or of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2002 (electronic communications networks and electronic communications services).”

General licence conditions

- 53 (1) In section 87 of the 1990 Act (general licence conditions), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1) of that section –
- (a) in paragraph (a), after “this Act” there shall be inserted “or the Communications Act 2002”; and 5
- (b) in paragraph (d), after “this Act” there shall be inserted “and the Communications Act 2002”; and
- (3) In subsection (2) of that section, sub-paragraph (ii) of paragraph (b) and the word “or” immediately preceding it shall be omitted. 10
- (4) In subsection (3) of that section (fixing of fees), for the words from “regard as necessary” onwards there shall be substituted “regard as necessary for the purposes of paragraph 8(1) of the Schedule to the Office of Communications Act 2002 (c. 11) (obligation to conduct affairs so as to be able to meet their obligations and carry out their functions).” 15

Restrictions on holding licences

- 54 (1) In section 88 of the 1990 Act (restrictions on the holding of licences), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (2) of that section (incidental requirements to provide information) –
- (a) after paragraph (a) there shall be inserted –
- “(aa) require the holder of a licence to provide OFCOM with such information as OFCOM may reasonably require for determining –
- (i) whether the holder of the licence is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
- (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the holder of the licence;” 25
- (b) after paragraph (d) there shall be inserted –
- “(da) impose conditions in a licence requiring the holder of the licence, if a body corporate, to give OFCOM notice of changes, transactions or events affecting –
- (i) shareholdings in the body; or
- (ii) the directors of the body;” 30
- 35
- (3) In subsection (6)(a) of that section, for “complained of” there shall be substituted “constituting their grounds for revoking the licence”. 40

Disqualification of persons convicted of transmission offences

- 55 (1) In subsection (1) of section 89 of the 1990 Act (offences giving rise to disqualification), for paragraph (a) there shall be substituted –
- “(a) an offence under section 1(1) of the Wireless Telegraphy Act 1949 (c. 54) (‘the 1949 Act’) consisting 45

- in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)); 5
- (aa) an offence under section 1A of the 1949 Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 1 would constitute an offence falling within paragraph (a); 10
- (ab) an offence under section 1B or 1C of the 1949 Act (unlawful broadcasting offences);”.
- (2) In subsection (3) of that section for the words from “concerned” onwards there shall be substituted “concerned in –
- (a) the provision of the licensed programme or the making of programmes included in it; or 15
- (b) the operation of a station for wireless telegraphy used for broadcasting the service.”
- (3) This paragraph does not apply in relation to an offence committed before the day on which this paragraph comes into force. 20

Offence of providing regulated radio services

- 56 (1) In subsection (1) of section 97 of the 1990 Act (prohibition on providing services without a licence), for the words from “independent” to “84(1)(d), (e) or (f)” there shall be substituted “relevant regulated radio service”.
- (2) After that subsection there shall be inserted – 25
- “(1A) In subsection (1) ‘relevant regulated radio service’ means a service falling, in pursuance of section 168(1) of the Communications Act 2002 (c. 00), to be regulated by OFCOM, other than a radio multiplex service.”
- (3) In subsection (2) of that section (exemption orders made after consulting the ITC), for “the Commission” there shall be substituted “OFCOM”. 30

Applications for national licences

- 57 (1) In section 98 of the 1990 Act (applications for national licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 35
- (2) In subsection (3)(a) of that section (proposals to accompany application) –
- (a) the word “both”, and
- (b) sub-paragraph (ii) and the word “and” immediately preceding it, shall be omitted.

Consideration of applications for a national licence 40

- 58 (1) In section 99 of the 1990 Act (consideration of applications for national licence), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1)(a) of that section (proposals to accompany application) –

- (a) the word “both”, and
- (b) sub-paragraph (ii) and the word “and” immediately preceding it, shall be omitted.

Further provisions about national licences

- 59 In sections 100 to 102 of the 1990 Act (which make further provision about the award of national licences and amounts payable in connection with such licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 5

Restrictions affecting change in control of holder of national licence

- 60 (1) In section 103 of the 1990 Act (restrictions on change of control of national licence), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 10
- (2) In subsection (2) of that section (interpretation of section), for the words from “as if” onwards there shall be substituted “as it has effect for the purposes of that Schedule.” 15

Renewal of national licences

- 61 (1) In section 103A of the 1990 Act (renewal of national licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 20
- (2) In subsection (1) of that section, for “eight” there shall be substituted “twelve”. 20
- (3) After subsection (10) of that section there shall be inserted –
- “(10A) References in the preceding provisions of this section to a national licence include references to a pre-transfer national licence (including one for a period extended under section 176 of the Communications Act 2002), but – 25
- (a) such a licence shall not be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
 - (b) on the renewal of a pre-transfer national licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date.” 30

Applications for local licences

- 62 (1) In section 104 of the 1990 Act (application for local licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 35
- (2) In subsection (6) of that section, for the words from the beginning to “shall be made” there shall be substituted “An application for a licence to provide a restricted service shall be made”. 40

Renewal of local licences

- 63 (1) In section 104A of the 1990 Act (renewal for local licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1) of that section, for “eight” there shall be substituted “twelve”. 5
- (3) After subsection (12) of that section there shall be inserted –
- “(12A) References in the preceding provisions of this section to a local licence include references to a pre-transfer local licence (including one for a period extended under section 176 of the Communications Act 2002), but – 10
- (a) such a licence shall not be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of a pre-transfer local licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date.” 15

Special procedure for applications for local licences 20

- 64 (1) In section 104B of the 1990 Act (application for local licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1)(a) of that section, after “local licence” there shall be inserted “or a pre-transfer local licence”.
- (3) After subsection (1) of that section there shall be inserted – 25
- “(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date.”
- (4) In subsection (6) of that section, the words from “or by substituting” onwards shall cease to have effect. 30

Applications for local licences

- 65 (1) In section 105 of the 1990 Act (requirements relating to grant of local licences), for “the Authority” there shall be substituted “OFCOM”.
- (2) For paragraph (d) of that section (duty to have regard to the extent to which proposed service supported by persons living in the area) there shall be substituted – 35
- “(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.” 40

Requirements as to character and coverage of licences

- 66 (1) In subsections (1) to (4) and (6) of section 106 of the 1990 Act (requirements as to character and coverage of licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.
 (2) In subsection (4) of that section (power to extend licence to additional area or locality), after “local licence” there shall be inserted “or a pre-transfer local licence”. 5

Variation of local licence following change of control

- 67 (1) In section 106A of the 1990 Act (variation of local licence following change of control), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 10
 (2) In subsection (1) of that section (modification of licences granted before commencement of that section), for “local licence” there shall be substituted “pre-transfer local licence”
 (3) In subsection (3)(a) of that section (power exercisable where a notice of proposal to change control is given), after “section 88(2)(d)” there shall be inserted “or (da)”. 15
 (4) After subsection (8) of that section there shall be inserted –
 “(8A) References in this section to a local licence include references to a pre-transfer local licence.” 20

Enforcement of licences

- 68 In sections 107 and 109 to 111A of the 1990 Act (enforcement of licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Power to suspend licences to provide radio licensable content services from a satellite 25

- 69 (1) In section 111B of the 1990 Act (power to suspend licence to provide satellite service), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
 (2) In subsection (1) of that section –
 (a) in paragraph (a), for “satellite service” there shall be substituted “radio licensable content service broadcast from a satellite”; 30
 (b) in paragraph (b), for the words from “in the licence” to the end of the paragraph there shall be substituted “or deemed to be included in the licence in pursuance of section 180 of the Communications Act 2002 (c. 00) for the purpose of securing the objective mentioned in section 212(2)(b) of that Act, and”. 35

Additional services

- 70 (1) In subsection (1) of section 114 of the 1990 Act (definition of “additional service”) –
 (a) for “telecommunications” there shall be substituted “electronic”; and 40
 (b) for paragraphs (a) and (b) there shall be substituted “on a relevant frequency”.

- (2) In subsection (2), for paragraphs (a) and (b) there shall be substituted “any part of the signals which –
- (a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and
 - (b) is determined by OFCOM to be available for the provision of additional services;”.
- (3) After that subsection there shall be inserted –
- “(2A) For the purposes of this Part, if they consider it appropriate to do so, OFCOM may, while an additional services licence is in force, from time to time modify the determination made under subsection (2)(b) for the purposes of that licence in any manner that does not reduce the amount of spare capacity made available for the licensed services; and when so modified any such licence shall have effect accordingly.”
- (4) In subsection (3), for the words from the beginning to “subsection (2)(a)” there shall be substituted “OFCOM shall, when determining under subsection (2)”.
- (5) For subsection (6) there shall be substituted –
- “(6) In this section ‘electronic signal’ means a signal within the meaning of the Communications Act 2002.
 - (7) In this section and section 115 ‘relevant frequency’ means a frequency made available by OFCOM for the purposes of a sound broadcasting service.”
- (6) This paragraph does not affect the validity of a licence granted or last renewed before the radio transfer date, or the services licensed by any such licence.

Licensing of additional services

- 71 (1) In section 115 of the 1990 Act (licensing of additional services), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1) of that section, for the words from “of the following” to “114(1)(b),” there shall be substituted “relevant frequency”
- (3) In subsection (8) of that section, for “local, restricted or satellite service” there shall be substituted “local or restricted service or to provide a radio licensable content service that is being broadcast from a satellite”.

Applications for additional services licences

- 72 (1) In section 116 of the 1990 Act (applications for additional services licences), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (2)(b)(iii) of that section, the words “(subject to the approval of the Secretary of State)” shall be omitted.

Procedure for awarding additional services licences

- 73 (1) In section 117 of the 1990 Act (procedure for awarding additional services licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted –
- “(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2002), contains proposals that are acceptable to them; and”.

Further provision in relation to additional services licences

- 74 In sections 118 to 120 of the 1990 Act (applications for additional services licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Interpretation

- 75 In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3) –
- (a) for the definition of “independent radio service” there shall be substituted –
- “‘independent radio service’ means a service falling within subsection (1)(a) of section 168 of the Communications Act 2002 (c. 00);”;
- (b) for the definitions of “local service”, “national service”, “restricted service” and “satellite service” there shall be substituted –
- “‘local service’, ‘national service’ and restricted service’ each has the same meaning as it has (by virtue of section 168(4)) in Chapter 3 of Part 3 of the Communications Act 2002;
- ‘pre-transfer local licence’ and ‘pre-transfer national licence’ each has the same meaning as in section 176 of that Act;
- ‘radio licensable content service’ has the same meaning as in that Chapter;
- ‘radio transfer date’ has the same meaning as in the Communications Act 2002;”.

Restrictions on holding licences

- 76 In Schedule 2 to the 1990 Act (restrictions on holding licences)
- (a) in paragraph 4(2)(b) of Part 2, for “the Authority” there shall be substituted “OFCOM”;
- (b) in sub-paragraph (3) of paragraph 1 of Part 3, for the words from the beginning to “are” there shall be substituted “The categories of services falling within this sub-paragraph are”.

Computation of qualifying revenue

- 77 In Part 2 of Schedule 7 to the 1990 Act (computation of qualifying revenue for the purposes of Part 3 of the 1990 Act), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

AMENDMENTS OF THE 1996 ACT

5

Radio multiplex services

- 78 (1) Section 40 of the 1996 Act (radio multiplex services) shall be amended as follows.

- (2) For subsections (1) to (3) there shall be substituted –

“(1) In this Part ‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2002.” 10

- (3) In subsection (4) (local and national multiplex services), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)” shall be omitted.

- (4) For subsection (8) of that section there shall be substituted – 15

“(8) In this section ‘broadcast’ means broadcast otherwise than from a satellite.”

Licences under Part 2 of the 1996 Act

- 79 (1) In subsection (1) of section 42 of the 1996 Act (licences under Part 2), for “the Radio Authority (in this Part referred to as ‘the Authority’)” there shall be substituted “OFCOM”. 20

- (2) In subsections (2) to (6) of that section, for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

- (3) For subsection (7) of that section there shall be substituted –

“(7) The holding of a licence by any person shall not relieve him of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949 (c. 54) or of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2002 (electronic communications networks and electronic communications services).” 25 30

General licence conditions

- 80 (1) In section 43 of the 1996 Act (general licence conditions), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

- (2) In subsection (1)(a) (conditions may include conditions to give effect to duties imposed by or under 1990 Act or 1996 Act), for “or this Act” there shall be substituted “, this Act or the Communications Act 2002”. 35

- (3) In subsection (3) of that section (fixing of fees), for the words from “regard as necessary” onwards there shall be substituted “regard as necessary for the purposes of paragraph 8(1) of the Schedule to the Office of Communications Act 2002 (obligation to conduct affairs so as to be able to meet their obligations and carry out their functions).” 40

Restrictions on holding licences

- 81 (1) In section 44 of the 1996 Act (restrictions on the holding of licences), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (2) of that section (incidental requirements to provide information) –
- (a) after paragraph (a) there shall be inserted –
- “(aa) require the holder of a licence to provide OFCOM with such information as OFCOM may reasonably require for determining –
- (i) whether the holder of the licence is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or
- (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the holder of the licence;”
- (b) after paragraph (d) there shall be inserted –
- “(da) impose conditions in any licence requiring the holder of the licence, if a body corporate, to give OFCOM notice of changes, transactions or events affecting –
- (i) shareholdings in the body; or
- (ii) the directors of the body;”.

National radio multiplex licences

- 82 (1) In section 46 of the 1996 Act (national radio multiplex licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Award of national radio multiplex licences

- 83 (1) In section 47 of the 1996 Act (award of national radio multiplex licences) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In paragraph (d) subsection (2) of that section, at the end there shall be inserted “and”; and paragraph (f) of that subsection (duty to have regard to whether applicant has acted in a manner to ensure fair and effective competition) shall be omitted.

Reservation of capacity for independent national broadcasters

- 84 (1) For subsections (1) to (3) of section 48 of the 1996 Act (reservation of digital capacity for independent broadcasters) there shall be substituted –
- “(1A) Where OFCOM grant a national radio multiplex licence they shall include in the licence such conditions as they think fit for securing that, in relation to each independent national broadcaster specified in the direction, a specified amount of digital capacity on the frequency made available for the purposes of the service is reserved for the broadcasting of a simulcast radio service.

- (1B) Those conditions shall include such conditions as appear to OFCOM to be appropriate for securing that, in consideration of the making by an independent national broadcaster in relation to whom capacity is reserved as are –
- (a) from time to time agreed between him and the licence holder, 5
or
 - (b) in default of agreement determined under this section,
the licence holder uses such digital capacity not exceeding the
amount reserved as may from time to time be requested by that
broadcaster for the broadcasting of services provided by that 10
broadcaster.
- (1C) Where conditions are included under this section in any national radio multiplex licence reserving capacity for any independent national broadcaster, OFCOM shall vary the licence under which the national service is provided to include such conditions relating to the broadcasting of the simulcast radio service as they may determine.” 15
- (2) In subsection (4) to (6) of that section, for “the Authority”, wherever occurring, there shall be substituted “OFCOM”; and in subsection (4), for “subsection (3)(a)” there shall be substituted “subsection (1B)”.
- Reservation of digital capacity for BBC* 20
- 85 (1) In section 49(1) to (3) of the 1996 Act (reservation of digital capacity for BBC), for and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.
- (2) In subsection (4) of that section (determination of capacity to be reserved), for “the Authority shall refer the proposal to the Secretary of State who may” there shall be substituted “OFCOM shall”. 25
- (3) In subsection (5) of that section, for words from “the Secretary of State” onwards there shall be substituted “OFCOM shall give the BBC an opportunity of making representations to them about their proposals.”
- (4) In subsection (6) of that section, after “and the BBC” there shall be inserted “or (in default of agreement) determined under this section”. 30
- (5) After that subsection there shall be inserted –
- “(7) Where the holder of the licence and the BBC fail to agree –
- (a) the payments to be made under a condition included in the licence in accordance with subsection (6), or 35
or
 - (b) the other terms that are to apply in relation to the use of digital capacity in accordance with such a condition,
either of them may refer the matter to OFCOM for determination.
- (8) Before making a determination under subsection (7), OFCOM must give the licence holder and the BBC an opportunity of making representations to them about the matter. 40
- (9) In making any determination under subsection (7), OFCOM shall have regard to –
- (a) the expenses incurred or likely to be incurred, by the licence holder in providing the local radio multiplex service in question, and 45

- (b) the terms on which persons providing local radio multiplex services contract with persons providing local digital additional services for the broadcasting of those services.”

Local radio multiplex licences

- 86 (1) In section 50 of the 1996 Act (notice of proposal to grant local radio multiplex licence), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 5
- (2) In subsection (1)(b) of that section, for “the Secretary of State has” there shall be substituted “OFCOM have”.
- (3) In subsection (2)(d) of that section, for “direction under section 49” substitute “determination under section 49(4)”. 10

Award of local multiplex licences

- 87 (1) In section 51 of the 1996 Act (award of local multiplex licences), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 5
- (2) For paragraphs (f) and (g) of subsection (2) of that section, there shall be substituted “and 15
- (f) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.”

Power to require two or more local radio multiples licences to be granted to one person 20

- 88 In section 52 of the 1996 Act (power to require two or more local radio multiples licences to be granted to one person), for “The Authority” and “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Failure to begin to provide licensed service

- 89 In section 53 of the 1996 Act (failure to provide licensed service), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 25

Conditions which may be attached to radio multiplex licences

- 90 (1) In section 54 of the 1996 Act (conditions which may be attached to a radio multiplex licence), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 30
- (2) Paragraphs (e), and (f) of subsection (1) (duty to have conditions securing fair and effective competition and to fix the proportion of capacity used for digital additional services) shall cease to have effect.

Additional payments to be made in respect of national radio multiplex licences

- 91 In section 55 of the 1996 Act (additional payments to be made in respect of national radio multiplex licences) for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 35

Multiplex revenue

- 92 In subsections (7) and (8) of section 56 of the 1996 Act (computation of multiplex revenue), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”.

Further provisions in relation to radio multiplex licensing 5

- 93 In sections 57 to 59 of the 1996 Act (which relate to the enforcement, duration and renewal of radio multiplex licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Digital sound programme licensing

- 94 In sections 60 to 62 of the 1996 Act (digital sound programme licensing), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”. 10

Digital additional services

- 95 In section 64 of the 1996 Act (licensing of additional digital services), for “the Authority”, wherever occurring, there shall be substituted “OFCOM”. 15

Digital additional services licensing

- 96 In sections 65 and 66 of the 1996 Act (digital additional services licences), for “the Authority” and “The Authority”, wherever occurring, there shall be substituted “OFCOM”.

Interpretation 20

- 97 (1) In section 72(1) of the 1996 Act (interpretation), for the definition of “radio multiplex service” there shall be substituted –
“‘radio multiplex service’ means a radio multiplex service within the meaning of Part 3 of the Communications Act 2002 (c. 00);
‘the radio transfer date’ has the same meaning as in the Communications Act 2002;”. 25

PART 3

OTHER AMENDMENTS

AMENDMENTS OF THE 1990 ACT 30

Proscription of foreign satellite services

- 98 In section 177 of the 1990 Act (proscription of foreign satellite stations) –
(a) in subsection (2), for “the Independent Television Commission or the Radio Authority consider that the quality of any relevant” there shall be substituted “OFCOM consider that the quality of any”; 35
(b) in subsection (3), for the words from the beginning to “Authority” there shall be substituted “OFCOM”; and

- (c) in subsection (6), the definition of “relevant foreign satellite service” shall be omitted.

Gaelic Broadcasting

- 99 (1) In section 183 of the 1990 Act (Gaelic Broadcasting) –
- (a) for “the Commission” and “The Commission”, wherever occurring, there shall be substituted “OFCOM”; 5
 - (b) in subsection (2), for “by them under this section to be” there shall be substituted “by the Independent Television Commission under this section and”; and
 - (c) in subsection (9), the definition of “the Commission” shall be omitted. 10
- (2) In section 184(4) of that Act, for “the Commission” there shall be substituted “OFCOM”.

Maintenance of the national television archive

- 100 (1) In section 185 of the 1990 Act (maintenance of the national television archive) – 15
- (a) for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”.
 - (b) in subsection (5), the definition of “the Commission” shall be omitted. 20
- (2) This paragraph so far as it relates to subsection (1) of that section has effect in relation only to financial years beginning after the television transfer date.

Search warrants

- 101 In section 196(1) of the 1990 Act (grant of search warrant to person authorised by the Independent Television Commission or the Radio Authority), for “the relevant authority” there shall be substituted “OFCOM”. 25

Interpretation

- 102 (1) In subsection (1) of section 202 of the 1990 Act (general interpretation), after the definition of “modifications” there shall be inserted – 30
- “‘OFCOM’ means the Office of Communications;”.
- (2) After that subsection there shall be inserted –
- “(1A) Subsections (2) and (3) of section 239 of the Communications Act 2002 (c. 00) (persons by whom licensable content services provided) shall apply for the purposes of this Act as it applies for the purposes of Part 3 of that Act.” 35

Disqualified persons

- 103 (1) In Schedule 2 to the 1990 Act (disqualified persons) –
- (a) for “the Commission or the Authority”, wherever occurring, there shall be substituted “OFCOM”;
 - (b) in paragraph 2(3) of Part 2, for “The Commission and the Authority shall each” there shall be substituted “OFCOM shall”; 40

- (c) in paragraph 3(1) of Part 2, for “the Authority” there shall be substituted “OFCOM under Part 3 of this Act or Part 2 of the Broadcasting Act 1996”;
- (d) in Part 4, for “the relevant authority”, wherever occurring, there shall be substituted “OFCOM”.

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The Gaelic Television Committee

- 104 In Schedule 19 to the 1990 Act (the Gaelic Television Committee) –
- (a) for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”; and
 - (b) in paragraph 11(4), the words “or the Radio Authority” and the words “or, as the case may be, the Authority” shall be omitted.

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AMENDMENTS OF THE 1996 ACT

Review of digital broadcasting

- 105 In section 33 of the 1996 Act (reports for the purposes of the Secretary of State’s review of digital broadcasting), for “the Commission”, wherever occurring, there shall be substituted “OFCOM”.

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Broadcasting standards

- 106 (1) Part 5 of the 1996 Act (the Broadcasting Standards Commission) shall be amended as follows.
- (2) For “the BSC” and “The BSC”, wherever occurring in any of sections 107, 110, 111, 114, 115 or 118 to 121, there shall be substituted “OFCOM”.
 - (3) In section 110(1), for “to them” there shall be substituted “to OFCOM”.
 - (4) In section 115 of the 1996 Act (consideration of fairness complaints)
 - (a) in subsection (2)(d), for “to (c)” there shall be substituted “or (b)”;
 - (b) in subsection (8), for “they shall send a statement of their” there shall be substituted “OFCOM shall send a copy of their”.
 - (5) In section 117 (duty of broadcasting body to retain recordings of programmes), for “sections 115 and 116” there shall be substituted “section 115”.
 - (6) For subsections (1) and (2) of section 119 there shall be substituted –
 - “(1) Where OFCOM have considered and adjudicated upon a fairness complaint they may direct the relevant person to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions.”
 - (7) In that section –
 - (a) in subsection (5), for “(3)(a), (b) or (c)” there shall be substituted “(3)(a) or (b)”;
 - (b) in subsection (6), for “broadcasting or regulatory body” there shall be substituted “relevant person” and for “them” there shall be substituted “him”;
 - (c) in subsection (8), the words “or standards complaint” and in paragraph (c) the words “, a regulatory body” shall be omitted;

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- (d) in subsection (10), for paragraphs (a) and (b) there shall be substituted “a relevant person”; and
- (e) subsection (12) shall cease to have effect.
- (8) After subsection (11) of that section there shall be inserted –
- “(11A) In this section “relevant person” means – 5
- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
- (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service.”
- (9) In section 130(1) (interpretation of Part 5), in paragraph (b) of the definition of “licensed service”, after “that Part” there shall be inserted “and falls within any of paragraphs (a) to (c) of section 168(2) of the Communications Act 2002 (c. 00)”. 10

Standards for transmission systems

- 107 In section 142 of the 1996 Act (standards for transmission systems), 15
- (a) in subsection (1) for words from the beginning to “the Commission” there shall be substituted “OFCOM”;
- (b) in subsections (3) to (5), for “The Commission” and “the Commission”, wherever occurring, there shall be substituted “OFCOM”; and 20
- (c) for subsection (7) there shall be substituted –
- “(7) In this section ‘licensed service’ means any service licensed under Part 1 of the 1990 Act or Part 1 of this Act, other than one which is broadcast or transmitted only for reception outside the European Economic Area.” 25

Interpretation

- 108 In section 147(1) of the 1996 Act (general interpretation), after the definition of “the BBC” there shall be inserted –
- “‘OFCOM’ means the Office of Communications;”.

SCHEDULE 11

Section 258

30

MINOR AND CONSEQUENTIAL AMENDMENTS

Wireless Telegraphy Act 1949

- 1 (1) In section 1 of the Wireless Telegraphy Act 1949 (c. 54) (licensing wireless telegraphy), in subsection (1) – 35
- (a) for paragraphs (a) and (b) there shall be substituted “by OFCOM;”; and
- (b) in the proviso, for the words from “Provided” to “by regulations” there shall be substituted “Provided that OFCOM may by regulations”.
- (2) After subsection (1) of that section there shall be inserted – 40

- “(1AA) Subsection (1) shall not apply to the use of a television receiver (within the meaning of Part 4 of the Communications Act 2002 (c. 00)) for receiving a television programme or to the installation of a television receiver for use solely for that purpose.”
- (3) In subsection (2) of that section, for paragraphs (a) and (b) there shall be substituted “as OFCOM think fit”. 5
- (4) In subsection (3) of that section, for the words from “revoked by” to “BBC” there shall be substituted “revoked by OFCOM”.
- (5) In subsection (4) of that section, for the words from “notice in writing of” to “served”, in the first place where it occurs, there shall be substituted “notice in writing from OFCOM served by them”. 10
- (6) In subsection (5) of that section, for the words from “surrendered” to “so to do” there shall be substituted “surrendered to OFCOM if required by them to do so”.
- 2 (1) Section 1D of that Act (procedure for grant of licences for providing a telecommunications service) shall be amended as follows. 15
- (2) For the words “the Secretary of State” (or “The Secretary of State”), “him”, “himself”, “he” and “his”, in each place where they occur, there shall be substituted, respectively, “OFCOM”, “them”, “themselves”, “they” and “their”. 20
- (3) Subsections (1) and (2) (which confine sections 1D to 1F to licences for the purposes of a telecommunications service) shall cease to have effect.
- (4) For subsection (3) there shall be substituted –
- “(3) An application for a grant of a wireless telegraphy licence shall be determined in accordance with procedures prescribed in regulations made by OFCOM.” 25
- (5) After subsection (4) there shall be inserted –
- “(4A) The time limits fixed for the purposes of subsection (4) in relation to any application made after the coming into force of this subsection must require a decision on the application to be made, notified to the applicant and published – 30
- (a) in the case of an application for a licence relating to a frequency allocated in accordance with the United Kingdom Plan for Frequency Authorisation, not more than six weeks after the receipt of the application; and 35
- (b) in any other case, as soon as possible after the receipt of the application.
- (4B) The period of six weeks specified in subsection (4A)(a) may be extended by OFCOM where it appears to them necessary to do so – 40
- (a) for the purpose of enabling the requirements of any international agreement relating to frequencies or to orbital positions or to satellite co-ordination to be complied with; or
- (b) in a case where a determination falls to be made as to which of a number of applicants is the more or most suitable to be licensed, for the purpose of securing that the procedure for the making of that determination is fair, reasonable, open and transparent; 45

- but that period shall not be extended by virtue of paragraph (b) by more than eight months.”
- (6) In subsection (5) for “requires” there shall be substituted “require”.
- (7) In subsection (6), for “proposes” there shall be substituted “propose”.
- (8) Subsections (7) and (8) shall cease to have effect. 5
- (9) For subsection (9) there shall be substituted –
- “(9) In determining any terms, provisions or limitations to which a wireless telegraphy licence is to be subject OFCOM shall impose only such terms provisions or limitations as they are satisfied are –
- (a) objectively justifiable in relation to the networks and services to which they relate; 10
- (b) not such as to discriminate unduly against particular persons or against a particular description of persons; and
- (c) proportionate to what they are intended to achieve and transparent.” 15
- 3 (1) In subsection (1) of section 3 of that Act (regulations as to wireless telegraphy), for the words before paragraph (a) there shall be substituted “OFCOM may make regulations –”.
- (2) After subsection (2) of that section there shall be inserted –
- “(2A) The approval of the Secretary of State shall be required for the making by OFCOM of any regulations under this section. 20
- (2B) A statutory instrument containing regulations made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 4 (1) In section 10 of that Act (regulations as to radiation of electro-magnetic energy etc.), in subsection (1), for the words before paragraph (a) there shall be substituted “OFCOM may make regulations for either or both of the following purposes –”.
- (2) In subsection (2) of that section –
- (a) for the words from the beginning to “fit” there shall be substituted “The requirements prescribed under subsection (1) shall be such as OFCOM think fit”; and 30
- (b) for the words from “in so far” to “necessary” there shall be substituted “in so far as appears to OFCOM necessary”.
- (3) After subsection (4) of that section there shall be inserted – 35
- “(4A) The approval of the Secretary of State shall be required for the making by OFCOM of any regulations under this section.
- (4B) A statutory instrument containing regulations made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 40
- 5 (1) In section 11 of that Act (enforcement of regulations as to apparatus), in subsection (1) –
- (a) for the words before paragraph (a) there shall be substituted “If OFCOM are of the opinion –”;

- (b) for the word “he”, in both places where it occurs, there shall be substituted “OFCOM”;
 - (c) for the words from “if”, in the second place where it occurs, to “fit” there shall be substituted “if OFCOM think fit”; and
 - (d) in paragraph (ii) of the proviso, for the words from the beginning to “satisfied” there shall be substituted “if OFCOM are satisfied”. 5
- (2) In subsection (2) of that section, for the words from “notice in writing by” to “served”, in the first place where it occurs, there shall be substituted “notice in writing from OFCOM served by them”.
- (3) In subsection (7) of that section, for the words from “notice” to “section” there shall be substituted “notice from OFCOM under this section”. 10
- 6 (1) In section 12 of that Act (enforcement of regulations as to sales etc.), in subsection (1) –
 - (a) for the words from the beginning to “opinion” there shall be substituted “If OFCOM are of the opinion”; and 15
 - (b) for “he” there shall be substituted “OFCOM”.
- (2) In subsection (5) of that section, for the words from “by” to the end there shall be substituted “by OFCOM, be guilty of an offence.”.
- 7 (1) In section 14 of that Act (penalties and legal proceedings), in subsection (1), for paragraph (a) substitute – 20
 - “(a) section 5(1)(a) of this Act;”.
- (2) In subsection (1A) of that section –
 - (a) in paragraph (c), for “of the Secretary of State” there shall be substituted “from OFCOM”; and
 - (b) paragraph (e) shall cease to have effect. 25
- (3) In subsection (3) of that section –
 - (a) paragraph (b) ceases to have effect; and
 - (b) for “the Secretary of State” there shall be substituted “OFCOM”.
- (4) In subsections (3A), (3B), (3D) and (3E) of that section, for “the Secretary of State” there shall be substituted “OFCOM”. 30
- (5) In subsection (3B) of that section, for “he thinks” there shall be substituted “they think”.
- (6) In subsection (3D) of that section, for “him” there shall be substituted “them”.
- (7) In subsection (7) of that section (enforcement by civil proceedings), after the words “the Crown”, where first occurring, there shall be inserted “or OFCOM”. 35
- 8 (1) In section 15 of that Act (powers of entry), in subsection (1), for paragraphs (a) and (b) and the words “with or without any constables” there shall be substituted “any constable or any person or persons authorised for the purpose by OFCOM or the Secretary of State”. 40
- (2) After that subsection there shall be inserted –
 - “(1A) Where a person authorised by OFCOM or the Secretary of State is authorised by a warrant under subsection (1) to enter any premises, he shall be entitled to exercise that warrant alone or to exercise it accompanied by one or more constables.” 45

- (3) In subsection (2) of that section –
- (a) in paragraph (b), for the words from “enable” to “decide” there shall be substituted “enable OFCOM to decide”;
 - (b) in paragraph (c), for the words from “behalf” to “producing” there shall be substituted “behalf by OFCOM and producing”; 5
 - (c) in the words after paragraph (c), for the words from “behalf” to “with” there shall be substituted “behalf by OFCOM, with”; and
 - (d) in paragraph (i) of the proviso, for the words from “that”, in the first place where it occurs, to “satisfied” there shall be substituted “that OFCOM are satisfied”. 10
- (4) In subsection (2A) of that section for “the BBC” there shall be substituted “OFCOM”
- 9 (1) In section 16 of that Act (regulations and orders), after subsection (1) of that section there shall be inserted –
- “(1A) Section 255 of the Communications Act 2002 (c. 00) (procedure for regulations and orders made by OFCOM) applies to every power of OFCOM to make regulations under a provision of this Act.” 15
- (2) In subsection (2) for the words from the beginning to “him” there shall be substituted “Any power conferred on the Secretary of State”.
- 10 In section 19 of that Act (interpretation), after subsection (2) there shall be inserted – 20
- “(2AA) In this Act ‘OFCOM’ means the Office of Communications.”

Continental Shelf Act 1964

- 11 (1) Section 6 of the Continental Shelf Act 1964 (c. 29) shall be amended as follows. 25
- (2) The existing provision shall become subsection (1).
- (3) In that subsection, for the word from “Wireless Telegraphy Act 1949” to “either of those Acts”, there shall be substituted “enactments specified in subsection (2) or any regulations made under any of those enactments”.
- (4) After that subsection, there shall be inserted – 30
- “(2) The enactments are –
- (a) the Wireless Telegraphy Act 1949 (c. 54);
 - (b) the Wireless Telegraphy Act 1998 (c. 6); and
 - (c) Chapter 2 of Part 2 of the Communications Act 2002 and any other provision of that Act so far as it relates to that Chapter.” 35

Marine &c., Broadcasting (Offences) Act 1967

- 12 (1) In section 6(5) of the Marine, &c., Broadcasting (Offences) Act 1967 (c. 41) (restrictions on prosecutions under that Act) after the words “otherwise than”, in each place where they occur, there shall be substituted “by OFCOM or” 40
- (2) In section 7A of that Act (powers of enforcement in relation to marine offences under that Act) –

- (a) after the words “the Secretary of State”, wherever occurring, there shall be inserted “or OFCOM”; and
 - (b) in subsection (7), after “powers” there shall be inserted “except so far as exercisable by virtue of an authorisation issued by OFCOM”.
- (3) In section 9(1) of that Act (interpretation), after the definition of “the high seas” there shall be inserted – 5
- “‘OFCOM’ means the Office of Communications;”.

Wireless Telegraphy Act 1967

- 13 (1) In section 7 of the Wireless Telegraphy Act 1967 (restrictions on dealing in, and custody of, certain apparatus) – 10
- (a) in subsection (2), for “the Secretary of State” and “he” there shall be substituted, respectively, “OFCOM” and “they”; and
 - (b) in subsections (5) to (11), for the words “the Secretary of State”, wherever occurring, there shall be substituted “OFCOM”; 15
 - (c) after subsection (11) there shall be inserted –
- “(11A) Section 255 of the Communications Act 2002 (procedure for regulations and orders made by OFCOM) applies to the power of OFCOM to make an order under this section.
- (11B) The approval of the Secretary of State shall be required for the making by OFCOM of any order under this section. 20
- (11C) A statutory instrument containing an order made by OFCOM under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11D) In this section ‘OFCOM’ means the Office of Communications.” 25
- (2) In section 13(1) of that Act (regulations and order to be made by statutory instrument), after “under” there shall be inserted “Part 1 of”.

Telecommunications Act 1984

- 14 Sections 44 to 46 of the Telecommunications Act 1984 (c. 12) (offences relating to modification and interception of messages and to assaults on the persons engaged on the business of a telecommunications operator) shall cease to have effect; and – 30
- (a) no proceedings shall be capable of being begun at any time after the coming into force of this section for any offence under any of those sections which was committed before the commencement of this sub-paragraph; and 35
 - (b) any proceedings for an offence under any of those sections which have been begun before this sub-paragraph comes into force but in which there has not yet been a conviction must be discontinued immediately. 40
- 15 (1) In sections 79, 83, 85 and 86 of that Act (wireless telegraphy provisions), for the words “the Secretary of State” or “The Secretary of State”, wherever occurring, there shall be substituted “OFCOM”.

- (2) In section 79(6)(b) of that Act (seizure of apparatus etc.), for “section 80 or 81 below” there shall be substituted “Schedule 6 to the Communications Act 2002”.
- (3) In section 83 (disposal of seized apparatus and property), in subsections (1)(b) and (2)(b), for “section 80 or 81 above”, in each case, there shall be substituted “Schedule 6 to the Communications Act 2002”. 5
- (4) In section 83(3) and (4) of that Act for the words “he thinks” and the word “him”, in each place where they occur, there shall be substituted, respectively, “they think” and “them”.
- (5) In section 84 of that Act (approval of wireless telegraphy apparatus) – 10
- (a) for the words “the Secretary of State” or “The Secretary of State”, wherever occurring except in subsection (9) there shall be substituted “the relevant authority” or, as the case requires “The relevant authority”;
- (b) in subsection (5), for “him” there shall be substituted “the relevant authority”; 15
- (c) in subsection (8) for “his” there shall be substituted “the relevant authority’s”;
- (d) after subsection (8) there shall be inserted –
- “(8A) Subject to subsection (8B) in this section ‘the relevant authority’ means – 20
- (a) in such cases as may be specified in an order made by the Secretary of State, the Secretary of State; and
- (b) in any other case, OFCOM.
- (8B) Where an application for the purposes of this section is made to the Secretary of State or OFCOM and it appears to the person to whom it is made that it as an application that should have been made to the other- 25
- (a) that person shall refer the application to the other; and 30
- (b) the application shall be proceeded with as if made to the person to whom it is referred.”
- (6) Section 90 of that Act (funding of wireless interference service by the Secretary of State) shall cease to have effect.
- (7) In section 91 of that Act (construction of references to the conclusion of proceedings) – 35
- (a) in subsection (1), for “section 80 or 81 above” there shall be substituted “Schedule 6 to the Communications Act 2002”; and
- (b) in subsection (2), for section “section 80(9)(b)” there shall be substituted “paragraph 13 of Schedule 6 to the Communications Act 2002”. 40
- 16 (1) Section 96 of that Act (prohibitions and restrictions with respect to telecommunications that apply to leases) shall be amended as follows.
- (2) In subsection (1)(b), for “telecommunications operator of any telecommunication services,” there shall be substituted “provider (within the meaning of the Communications Act 2002) of any electronic communications network or electronic communications service,”. 45

- (3) In subsection (2), for “a telecommunication system.” there shall be substituted “an electronic communications network or electronic communications service.”
- (4) For subsection (3) of that section (matters in relation to which that section has effect) there shall be substituted – 5
- “(3) The matters falling within this subsection are –
- (a) the provision of any electronic communications network or electronic communications service;
- (b) the connection of any electronic communications apparatus to a relevant electronic communications network or of any such network to another; and 10
- (c) the installation, maintenance, adjustment, repair, alteration or use for purposes connected with the provision of such a network or service of any electronic communications apparatus.” 15
- (5) In subsections (4) and (5), for “The Secretary of State” and “the Secretary of State” there shall be substituted “OFCOM”.
- (6) In subsection (7) –
- (a) for “telecommunication apparatus” there shall be substituted “electronic communications apparatus”; 20
- (b) for the definition of “relevant telecommunication system” there shall be substituted –
- “‘relevant electronic communications network’ means any electronic communications network provided for making services or facilities available to the public or to any section of the public, or any electronic communications network that is connected (directly or indirectly) to such a network;” 25
- and
- (c) after that definition there shall be inserted – 30
- “and expressions used in this section and in the Communications Act 2002 have the same meanings in this section as in that Act.”
- 17 In section 98 of that Act (use of conduits for telecommunications purposes) – 35
- (a) for the words “telecommunication apparatus”, wherever occurring, there shall be substituted “electronic communications apparatus”; and
- (b) in subsection (5)(a), for the words “telecommunications purposes” there shall be substituted “the purposes of any electronic communications network (within the meaning of the Communications Act 2002 (c.00)) or of any electronic communications service (within the meaning of that Act)”. 40
- 18 In section 101 of that Act (rules about disclosure of information) –
- (a) in subsection (2)(a), the words “or transferred” and the words “the Director or the Commission” shall be omitted; 45
- (b) in subsection (2)(b), after “the Rail Regulator” there shall be inserted “, OFCOM”; and
- (c) in subsection (3), after paragraph (n) there shall be inserted –

- “(o) the Communications Act 2002 (c. 00);”
- (d) subsection (4) shall cease to have effect.
- 19 In section 104 of that Act (orders and schemes), after subsection (1) there shall be inserted –
- “(1A) Section 255 of the Communications Act 2002 (procedure for regulations and orders made by OFCOM) applies to every power of OFCOM to make an order under a provision of this Act. 5
- (11B) The approval of the Secretary of State shall be required for the making by OFCOM of any order under 85 or 86 above.
- (11C) A statutory instrument containing an order made by OFCOM under section 85 or 86 above shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 10
- 20 In section 106(1) of that Act (general interpretation), after the definition of “modifications” there shall be inserted –
- “‘OFCOM’ means the Office of Communications;”. 15

Copyright, Designs and Patents Act 1988

- 21 In section 73 of the Copyright, Designs and Patents Act 1988 (c. 48) (which provides for there to be no breach of copyright where something is done in pursuance of a relevant requirement), for subsection (7) there shall be substituted – 20
- “(7) In this section ‘relevant requirement’ means a requirement imposed by a general condition (within the meaning of the Communications Act 2002) the setting of which is authorised under section 49 of that Act (must-carry obligations).”

Wireless Telegraphy Act 1998

- 22 (1) Subject to any other amendment made by any other provision of this Act, in sections 1 to 4 of the Wireless Telegraphy Act 1998 (c. 6), for the words “the Secretary of State”, wherever occurring, there shall be substituted “OFCOM”. 25
- (2) In those sections – 30
- (a) in subsection 1(2), for “regulations under this section” there shall be substituted “regulations made by OFCOM”;
- (b) for the words “the Secretary of State thinks” in section 1(3), there shall be substituted “OFCOM think”;
- (c) for the words “he thinks” in section 1(4) and 2(1), there shall be substituted “they think”; 35
- (d) for the word “him”, in section 2(1) and in section 4(1) and (5), there shall be substituted, “them”; and
- (e) for the word “his” in sections 2(1) and 4(1) there shall be substituted “their”. 40
- 23 In section 2 of that Act (matters to be taken into account in prescribing sums payable), after subsection (2) there shall be inserted –

- “(2A) This section does not apply to the exercise of any power to prescribe the sum payable where a wireless telegraphy licence or a grant of recognised spectrum access is varied or revoked at the request or with the consent of the licence holder or as the case may be, the holder of the grant.” 5
- 24 (1) After section 4 of that Act there shall be inserted –
- “4A Recovery of sums payable to OFCOM**
- Where any sum is required to be paid to OFCOM –
- (a) under any provision this Act,
 - (b) in pursuance of any provision of any regulations under this Act, or 10
 - (c) by virtue of any terms or conditions contained by virtue of this Act in any wireless telegraphy licence, or in any grant of recognised spectrum access,
- that sum shall be so paid to them as soon as it becomes due in accordance with that provision, or those terms or conditions, and if not paid is to be recoverable by OFCOM accordingly.” 15
- (2) This paragraph does not apply in relation to any sum that first became payable before the coming into force of this paragraph.
- 25 For section 6 of that Act (regulations) there shall be substituted – 20
- “6 Regulations**
- (1) Section 255 of the Communications Act 2002 (procedure for regulations and orders made by OFCOM) applies to every power of OFCOM to make regulations under a provision of this Act.
 - (2) Subsections (3) to (5) of that section shall not apply in any case in which it appears to OFCOM that by reason of the urgency of the matter it is inexpedient to publish a notice in accordance with subsection (3)(b) of that section. 25
 - (3) Subsections (3) to (5) of that section shall not apply in the case of any regulations under section 3 or 3A modifying previous regulations under that section in a case not falling within subsection (2) if it appears to OFCOM – 30
 - (a) that the modifications would not adversely affect the interests of any person or otherwise put him in a worse position or, as regards someone else, put him at a disadvantage; and 35
 - (b) in so far as the modifications affect any procedure that has already begun, that no person would have acted differently had the modifications begun before the procedure began.
- 6A Meaning of OFCOM** 40
- In this Act ‘OFCOM’ means the Office of Communications.”
- 26 In section 8 of that Act –
- (a) after “in this Act –” there shall be inserted –

“‘recognised spectrum access’ means recognised spectrum access under section 115 of the Communications Act 2002;”

and

- (b) after the definition of “wireless telegraphy licence” there shall be inserted – 5
- “and references in this Act to the issue of a wireless telegraphy licence or the grant of recognised spectrum access include references to the issue of such a licence, or the grant of such access, by way of renewal of a previous licence or grant.” 10

Competition Act 1998

- 27 In paragraph 2(1)(d) of Schedule 7 to the Competition Act 1998 (c. 41) (members of Commission appointed under certain enactments), subparagraph (iii) shall be omitted. 15

Television Licences (Disclosure of Information) Act 2000

- 28 In section 5 of the Television Licences (Disclosure of Information) Act 2000 (c. 15) (interpretation) –
- (a) for the definitions of “the BBC” and “television licence” there shall be substituted – 20
- “‘the BBC’ means the British Broadcasting Corporation;”
- and
- (b) after the definition of “prescribed” there shall be inserted – 25
- “‘television licence’ means a licence for the purposes of section 240 of the Communications Act 2002;”.

Regulation of Investigatory Powers Act 2000

- 29 In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 (c. 23) (relevant public authorities for the purposes of sections 28 and 29 of that Act), after paragraph 23 there shall be inserted – 30
- “23A The Office of Communications.”

Office of Communications Act 2002

- 30 Sections 2, 4, 5 and 6 of the Office of Communications Act 2002 (c. 11) shall cease to have effect.
- 31 In the Schedule to that Act, the following shall cease to have effect – 35
- (a) paragraph 1(4);
- (b) paragraph 17(8) and (9); and
- (c) paragraph 20.

SCHEDULE 12

Section 258

TRANSITIONAL PROVISIONS

General

- 1 Where, at any time before the coming into force of any transfer made by virtue of section 2, any regulations or order has been made or other thing done in connection with the carrying out of those functions either by or in relation to the person from whom that transfer is made – 5
- (a) those regulations or that thing shall have effect, on and after the coming into force of the transfer, and so far as necessary for the purposes of that transfer, as if it had been made or done by or in relation to OFCOM; and 10
 - (b) in the case of any regulations or order shall so have effect as if made in compliance with any applicable requirements of section 255.

Savings for licence conditions imposed under the Telecommunications Act 1984

- 2 (1) This paragraph applies to a licence granted under section 7 of the Telecommunications Act 1984 (c. 12) (“the 1984 Act”) if OFCOM have given the holder of the licence a continuation notice. 15
- (2) A continuation notice is a notice that OFCOM consider that a condition of the licence specified in the notice is a condition imposed by reason of the significance of the market power of the holder of the licence in a market identified in the notice. 20
- (3) Notwithstanding any repeal or revocation made by this Act, the licence under the 1984 Act so far as it relates to any condition specified in a continuation notice shall, for the purposes of that condition, remain in force and may be enforced in accordance with the provisions of that Act. 25
- (4) A continuation notice shall cease to have effect on the giving by OFCOM to the holder of the licence of a notice to that effect.
- (5) It shall be the duty of OFCOM to give a notice under sub-paragraph (4) as soon as reasonably practicable after they have –
- (a) carried out an analysis of the market identified in the continuation notice; and 30
 - (b) determined whether or not to apply SMP conditions to the person concerned by reference to that market.
- (6) In this paragraph “SMP conditions” has the same meaning as in Chapter 1 of Part 2 of this Act. 35
- 3 (1) Sub-paragraph (2) applies where, on the day on which the repeal of section 7 of the Telecommunications Act 1984 comes into force, a licence under that section contains any conditions by virtue of Part A of Part 2 of Schedule 1 to the Telecommunications (Licence Modifications) (Standard Schedules) Regulations 1999 (S.I. 1999/2450). 40
- (2) On and after that day, those conditions –
- (a) shall have effect as if they were conditions set under section 35 as universal service conditions and applied to the licence holder in question; but

- (b) shall so have effect subject to such modifications (if any) as may be specified in a notice given by OFCOM.
- (3) A notice under sub-paragraph (2) shall be published in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM's opinion, are likely to be affected those contents. 5
- (4) In this paragraph "universal service conditions" has the same meaning as in Chapter 1 of Part 2 of this Act.

Administrative charges

- 4 (1) This paragraph applies where – 10
- (a) a person ("the licensee") has paid an amount in accordance with a condition of a licence under section 7 of the Telecommunications Act 1984 (c. 12);
- (b) the amount is one paid under a condition requiring the making of periodic payments and in respect of a period during which he is authorised to run a telecommunication system; and 15
- (c) the whole or a part of the period falls within a charging year for which that person is liable, in respect of the provision of that system, to pay a charge under section 29 of this Act.
- (2) The charge to which the licensee is liable under section 29 of this Act – 20
- (a) must be confined to a charge in respect of the period after the licence ceases by virtue of this Act to be required for the running of the system; and
- (b) if not otherwise so confined, must be adjusted accordingly.
- (3) A sum equal to so much of the amount paid under the licence as, on apportionment, is referable to the time after the licence ceases to be so required must be paid by OFCOM to the licensee. 25
- (4) But the sum due to the licensee under sub-paragraph (3) must first be applied in reducing the amount of the liability of the licensee to pay an administrative charge in respect of the remainder of the period for which the payment in accordance with the conditions of his licence related. 30

Allocated telephone numbers

- 5 (1) Where immediately before the coming into force of section 44 of this Act any telephone numbers are allocated to a person holding a licence under section 7 of the Telecommunications Act 1984 for the purposes of the conditions of that licence, those numbers shall be treated on and after the coming into force of that section as allocated to that person for the purposes of any such general conditions as are mentioned in that section. 35
- (2) An allocation having effect by virtue of sub-paragraph (1) may be withdrawn by OFCOM at any time, but only in accordance with section 46 of this Act. 40
- (3) An allocation shall continue to have effect in accordance with this paragraph so long only as the person to whom the allocation was made for the purposes of the licence conditions is a communications provider.
- (4) The power by virtue of section 44 for general conditions to make provision for the making of periodic payments in respect of the allocation of telephone 45

numbers shall be exercisable, at any time after the coming into force of that section, in relation to an allocation having effect by virtue of this paragraph as it has effect in relation to an allocation made under that paragraph.

- (5) Expressions used in this paragraph and in Chapter 1 of Part 2 of this Act have the same meanings in this paragraph as in that Chapter. 5

Electronic communications code

- 6 (1) Sub-paragraph (2) applies where, immediately before the coming into force of section 82 of this Act, the telecommunications code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12) applies to any person by virtue of the conditions of his licence under section 7 of that Act. 10
- (2) That person shall be treated after the the time of the commencement of section 82 of this Act as a person in whose case the electronic communications code applies by virtue of a direction given by OFCOM in relation to so much of any electronic communications network as consists in the telecommunication system which was the operator’s system for the purposes of the application of that Schedule immediately before that time. 15
- (3) So much of the code comprised in Schedule 2 to the Telecommunications Act 1984 as has effect immediately before the coming into force of Schedule 3 to this Act in relation to any telecommunication apparatus or telecommunication system shall have effect, on and after that time in relation to so much of that apparatus or network as is electronic communications apparatus or the operator’s network for the purposes of the application of that Schedule by virtue of sub-paragraph (1) above or section 82(3)(b). 20
- (4) Any right which for the purposes of the code comprised in Schedule 2 to the the Telecommunications Act 1984 has effect immediately before the coming into force Schedule 3 to this Act as conferred for purposes connected with the provision of any telecommunication services shall have effect on and after that time as conferred for the purposes of the corresponding electronic communications services. 25 30
- (5) In this paragraph “the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of this Act.

Pre-transfer Broadcasting Act licences

- 7 (1) Subject to any express provision made by this Act in relation to any particular description of Broadcasting Act licence, neither – 35
- (a) the transfer from any pre-commencement regulator to OFCOM of the function of granting or awarding such licences or of any other power exercisable in relation to any such licence, nor
- (b) any other modification by this Act of the power to grant or award such licences or of any provision having effect in relation to any such licences, 40
- shall affect the continuing validity of any licence by or under which the provision of any service is authorised immediately before the coming into force of the transfer or modification.
- (2) Accordingly (but except in so far as this Act otherwise expressly provides), any such shall continue to have effect, after the coming into force of the transfer or modification – 45

- (a) on the same terms and conditions and for the same period as it would have done if this Act had not been passed; but
- (b) as if, in relation to times after the coming into force of any relevant transfer of functions to OFCOM, any reference in the licence to a pre-commencement regulator were a reference to OFCOM.

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Channels 3 and 5

- 8 Any determination made by the ITC under or for the purposes of section 14 or 28 of the 1990 Act (Channels 3 and 5) shall have effect on and after the television transfer date as a determination under that section by OFCOM.

Programme quotas

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- 9 Any order which—
- (a) was made under section 16(5)(a) of the 1990 Act (definitions of “qualifying programmes” and “independent productions”), and
 - (b) is in force immediately before commencement of section 189 or 208 of this Act and paragraphs 1 or 5 of Schedule 8 to this Act,
- shall have effect in relation to any time after the commencement of that section and those paragraphs as an order made in exercise of the corresponding powers conferred by that section and those paragraphs.

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Enforcement of licences for licensed public service channels

- 10 Any thing done at any time before the television transfer date under or for the purposes of any of the provisions of sections 40 to 42 of the 1990 Act (enforcement of licences for public service channels) shall have effect in relation to times on and after that date, to the extent that it was done by or in relation to the ITC and so far as necessary for preserving its effect, as a thing done by or in relation to OFCOM.

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Determination of qualifying revenue

- 11 (1) Any statement of the ITC that is for the time being in force immediately before the television transfer date for the purposes of—
- (a) Part 1 of Schedule 7 to the 1990 Act (statement of principles for determining qualifying revenue), or
 - (b) Part 1 of Schedule 1 to the 1996 Act (corresponding statement for the purposes of that Act,
- shall have effect on and after that date as a statement by OFCOM.
- (2) On and after the television transfer date any determination by the ITC under paragraph 2 of Part 1 of either of those Schedules shall have effect as a determination under that paragraph by OFCOM, and sub-paragraph (2) of that paragraph shall have effect accordingly.

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Conditions of Channel 3 TV licences relating to change of control

- 12 Without prejudice to the generality of section 151(2), the repeal by this Act of section 21A of the 1990 Act and section 78 of the 1996 Act (conditions relating to any change of control) shall not affect the conditions deemed by virtue of subsection (2) of section 78 of the 1996 Act to be included in licences granted before the coming into force of that section of the 1996 Act.

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Rules for political broadcasts

- 13 Any rules made by the ITC for the purposes of section 36 of the 1990 Act (party political broadcasts) that are in force immediately before the coming into force of section 192 of this Act shall have effect subsequently as rules made by OFCOM for the purposes of section 192 of this Act. 5

Local and national radio licences licences

- 14 (1) Section 103 of the 1990 Act (restriction on changes of control affecting holders of national licences) shall apply in relation to any pre-transfer national licence as it applies in relation to any national licence within the meaning of Part 3 of the 1990 Act. 10
- (2) Anything done by or in relation to the Radio Authority under any of sections 98 to 102 or 103A of the 1990 Act, so far as it has been done before the radio transfer date in connection with or for the purposes of the grant or renewal of a pre-transfer national licence, shall have effect for the purposes of and in connection with the grant or renewal of any licence at any time on or after that date as if done by or in relation to OFCOM in connection with or for the purposes of the grant or renewal of national licence (within the meaning of Part 3 of that Act). 15
- (3) Anything done by or in relation to the Radio Authority under any of sections 104 to 105 of the 1990 Act, so far as it has been done before the radio transfer date in connection with or for the purposes of the grant or renewal of a pre-transfer local licence, shall have effect for the purposes of and in connection with the grant or renewal of any licence at any time on or after that date as if done by or in relation to OFCOM in connection with or for the purposes of the grant or renewal of local licence (within the meaning of Part 3 of that Act). 20 25
- (4) In this paragraph “pre-transfer local licence” and “pre-transfer national licence each has the same meaning as in section 176 of the Communications Act 2002 (c. 00).

Directions and notices by the Radio Authority under 1990 and 1996 Acts 30

- 15 Where any direction or notice for the purposes of any provision of Part 3 of the 1990 Act or Part 2 of the 1996 Act has been given or served by or in relation to a pre-commencement regulator before the radio transfer date, those Acts shall have effect on and after that date as if – 35
- (a) the direction or notice were a direction or notice given or served for the purposes of that provision by OFCOM; and
- (b) any reference in the direction or notice to the Radio Authority, in relation to times on and after that date, were a reference to OFCOM.

Functions under section 88 of the 1990 Act

- 16 Any requirement imposed or notice given before the radio transfer date by the Radio Authority under section 88 of the 1990 Act shall have effect on and after that date as imposed or given by OFCOM. 40

Notices under section 94 of the 1990 Act

- 17 Any notice given by the Secretary of State or any other Minister of the Crown or by any Northern Ireland Minister under section 94 of the 1990 Act (government control over licensed services) shall have effect on and after the radio transfer date as a notice given to OFCOM under section 223 of this Act. 5

Programme standards: television

- 18 (1) This paragraph applies as respects any time on or after the television transfer date and before the coming into force of section 218 of this Act.
- (2) Sections 6 to 12 of the 1990 Act (general provisions about the content of licensed services) shall have effect as if references in those sections to the Independent Television Commission were references to OFCOM. 10
- (3) Any code drawn up by the ITC under section 6, 7 or 9 of the 1990 Act shall have effect as it had been drawn up by OFCOM.

Programme standards: radio

- 19 (1) This paragraph applies as respects any time on or after the radio transfer date and before the coming into force of section 218 of this Act. 15
- (2) Sections 90 to 96 of the 1990 Act (general provisions about the content of licensed services) shall have effect as if references in those sections to the Radio Authority were references to OFCOM.
- (3) Any code drawn up by the Radio Authority under section 90, 91 or 93 of the 1990 Act shall have effect as it had been drawn up by OFCOM. 20

Standards code

- 20 In relation to time after the coming into force of section 218 of this Act, any code for the time being in force as a code drawn up under section 6, 7, 9, 90, 91 or 93 of the 1990 Act shall have effect as if it were a code issued by OFCOM for the purpose of setting standards under section 212 of this Act. 25

Section 111B of the 1990 Act

- 21 (1) Section 111B of the 1990 Act (power to suspend satellite services) shall have effect in relation to any licence to provide a formerly regulated service (within the meaning of section 174) as it applies in relation to any licence to provide a radio licensable content service as if the reference in subsection (1)(b) of that section to a condition included in the licence in pursuance of the provisions there mentioned included a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act. 30
- (2) In relation to any time on or after the radio transfer date and before the coming into force of section 218 of this Act, section 111B of the 1990 Act shall have effect in relation to any licence to provide a radio licensable content service as if the reference in subsection (1)(b) of section 111B of that Act to a condition included in the licence in pursuance of the provisions there mentioned were a reference to a condition included in the licence in pursuance of section 90(1)(a) of that Act. 35 40

Section 185 of the 1990 Act

- 22 Any determination or nomination made for the purposes of section 185 of the 1990 Act (the national television archive) by the ITC shall have effect on and after that date (in the case of a determination so far only as it relates to a financial year beginning on or after that date) as a determination or nomination made by OFCOM. 5

Licensing under Part 1 of the 1996 Act

- 23 Anything done at any time before the television transfer date under or for the purposes of any of the provisions of Part 1 of the 1996 Act (licensing of television multiplexes and digital programmes service) shall have effect in relation to times on and after that date, to the extent that it was done by or in relation to the ITC and so far as necessary for preserving its effect, as a thing done by or in relation to OFCOM. 10

Section 12(1)(e) of the 1996 Act

- 24 The repeal by this Act of section 12(1)(e) of the 1996 Act (requirement to include conditions in multiplex licence to prevent undue discrimination between for or against providers of services) shall not affect any conditions imposed before the coming into force of the repeal. 15

Section 28 of the 1996 Act

- 25 (1) The repeal by this Act of section 28 of the 1996 Act shall not affect any power to vary a licence under Part 1 of the 1990 Act which is— 20
(a) conferred on the ITC by an order under that section;
(b) transferred to OFCOM by this Act
(2) Sub-paragraph (1) saves the power so far only as it is exercisable in relation to a licence granted before the television transfer date. 25

Section 48 of the 1996 Act

- 26 Subsections (4) to (6) of section 48 of the 1996 Act (reservations of capacity for national radio multiplex licences to independent national broadcasters) shall apply in relation to conditions included in pursuance of that section in licences granted before the radio transfer date as they apply in relation to conditions included in licences by virtue of the amendments of that section made by this Act. 30

Complaints to the Broadcasting Standards Commission

- 27 (1) On and after the transfer to OFCOM under this Act of the functions of the Broadcasting Standards Commission under Part 5 of the 1996 Act, that Part shall have effect in relation to any fairness complaint made to, but not disposed of by, that Commission before the transfer as if— 35
(a) anything done, or treated as done, by or in relation to that Commission in connection with or for the purposes of that complaint had been done by or in relation OFCOM; and 40
(b) those functions had been functions of OFCOM at the time when it was done.

- (2) Where immediately before the coming into force of section 219 any licence to provide a licensed service (within the meaning of Part 5 of the 1996 Act) contains any condition included in that licence by virtue of section 119(7) of that Act, that condition shall have effect on and after the coming into force of section 219 of this Act as a condition requiring the licence holder to comply with any direction given to him by OFCOM under section 119 of that Act. 5
- (3) In this paragraph “fairness complaint” has the same meaning as in Part 5 of the 1996 Act.

Listed events rules 10

- 28 (1) Subject to sub-paragraph (2), Part 4 of the 1996 Act (sporting and other events of national interest) shall have effect in relation to any time on or after the transfer date as if anything done before that date by or in relation to the ITC had been done by or in relation to OFCOM.
- (2) The code drawn up by the ITC under section 104 of the 1996 Act (code of guidance as to the operation of Part 4) and in force immediately before the commencement of section 201 of this Act shall continue to have effect (notwithstanding the substitutions made by that section of this Act) – 15
- (a) until the code drawn up by OFCOM under that section comes into force; but 20
- (b) in relation to any time on or after the transfer date and before the coming into force of OFCOM’s code, as if the reference in section 104(2) of that Act to the ITC were a reference to OFCOM.
- (3) If any provision of sections 200 to 202 comes into force before the transfer date, a reference to OFCOM in any amendment made by that provision shall be construed in relation to times before that date as a reference to the ITC. 25
- (4) On the date on which 200 comes into force, the Secretary of State shall revise the list maintained for the purposes of Part 4 of the 1996 Act in order to allocate each event which is a listed event on that date either to Group A or to Group B. 30
- (5) Where –
- (a) the events listed in the list in force immediately before the Secretary of State revises it under sub-paragraph (4) are treated, for any of the purposes of the code in force under section 104 at that time, as divided into two categories, and 35
- (b) the Secretary of State’s revision under that sub-paragraph makes the same division,
- section 97(2) of the 1996 Act shall not apply in relation to that revision of that list.
- (6) In this paragraph “the transfer date” is the date on which paragraph 14 of Schedule 1 comes into force. 40

Codes of practice drawn up by the Broadcasting Standards Commission

- 29 The code of practice drawn up by the Broadcasting Standards Commission under section 107 of the 1996 Act (code in respect of unjust and unfair treatment and infringements of privacy) shall have effect on and after the transfer under this Act to OFCOM of that Commission’s functions under 45

Part 5 of that Act as if it were the code required to be drawn up under that section by OFCOM.

TV licences

- 30 Any television licence granted under the Wireless Telegraphy Act 1949 (c. 54) before the coming into force of section 240 of this Act shall have effect after the coming into force of that section as a licence for the purposes of that section. 5

Functions under the Fair Trading Act 1973

- 31 (1) In so far as, at any time before the coming into force of section 248 of this Act, anything has been done by or in relation to the Director General of Telecommunications for the purposes of, or in connection with, the carrying out of any of his functions under the Fair Trading Act 1973 (c. 41), that thing shall have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director as if – 10
- (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and 15
 - (b) the provisions conferring those functions on OFCOM had been in force at the time it was done.
- (2) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Fair Trading Act 1973; and any such thing shall have effect, instead, as if done by or in relation to the Director General of Fair Trading 20

Functions under the Competition Act 1998 25

- 32 (1) In so far as, at any time before the coming into force of section 247 of this Act, anything has been done by or in relation to the Director General of Telecommunications for the purposes of, or in connection with, the carrying out of any of his functions under the Competition Act 1998 (c. 41), that thing shall have effect on and after that date, and OFCOM may carry out their functions and continue anything begun by that Director as if – 30
- (a) that thing had been done by or in relation to OFCOM for the purposes of, or in connection with, their functions under that Act by virtue of that section; and
 - (b) the provisions conferring those functions on OFCOM had been in force at the time it was done. 35
- (2) Sub-paragraph (1) does not apply to anything that could not be done by or in relation to OFCOM for the purposes of, or in connection with, the carrying out of their functions under the Competition Act 1998; and any such thing shall have effect, instead, as if done by or in relation to the Director General of Fair Trading 40
- 33 (1) Where any regulations made under section 54(4) of the Competition Act 1998 (regulations about concurrent functions of regulators and the Director General of Fair Trading) are in force at the coming into force of section 247 of this Act, those regulations – 45

- (a) shall, from that time have effect in relation to functions exercisable concurrently by virtue of section 247 of that Act as they have effect in relation to functions exercisable concurrently by virtue of Part 2 or 3 of Schedule 10 to that Act; but
- (b) shall so have effect subject to any amendments or revocations coming into force at or after that time. 5
- (2) Where, at any time before the coming into force of section 247, anything has been done by or in relation to the Director General of Telecommunications under or for the purposes of any regulations made under section 54(4) of the Competition Act 1998 (c. 41) that thing shall have effect, so far as necessary for the purposes of paragraph 32 of this Schedule, as if done by or in relation to OFCOM. 10

Interpretation of Schedule

- 34 In this Schedule –
- “the Director” means the Director General of Telecommunications; 15
- “the ITC” means the Independent Television Commission;

SCHEDULE 13

Section 258

REPEALS

PART 1

REPLACEMENT OF PRE-COMMENCEMENT REGULATORS 20

(1) Enactments

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry relating to the Office of the Director General of Telecommunications.	
House of Commons Disqualification Act 1975 (c. 24)	In Part 2 of Schedule 1, the entries relating to the Broadcasting Standards Commission, the Radio Authority and to the Independent Television Commission.	25
	In Part 3 of Schedule 1, the entry relating to the Director General of Telecommunications.	30
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part 2 of Schedule 1, the entries relating to the Broadcasting Standards Commission, the Radio Authority and to the Independent Television Commission.	
	In Part 3 of Schedule 1, the entry relating to the Director General of Telecommunications.	35
Telecommunications Act 1984 (c. 12)	Section 1. Section 3 Sections 47 to 51 Sections 54 and 55. Schedule 1. In Schedule 4, paragraph 57(1).	40

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Broadcasting Act 1990 (c. 42)	Section 1. Section 83. Sections 122 to 125. Section 183(3A) In section 188(2), paragraphs (b), (d) and (e). Schedule 1. Schedule 8. In Schedule 20 paragraph 38(5).	5
Competition and Service (Utilities) Act 1992 (c. 43)	In Schedule 1, paragraph 1.	10
Deregulation and Contracting Out Act 1994 (c. 40)	In Schedule 2, paragraphs 1 to 3. In Schedule 4, paragraphs 2(a) and 3(a).	
Broadcasting Act 1996 (c. 55)	Section 95(4). Section 106. In section 107(2) and (4)(a), the words “or regulatory”.	15
	Section 112. In section 115 – (a) in subsection (2), paragraph (c); and (b) in subsection (3), paragraph (b), and the word “and” immediately preceding it.	20
	In section 119 – (a) in subsections (6) and (10)(a), the words “or regulatory; and (b) in subsection (8)(c), the words “a regulatory body,”.	25
	Sections 122 to 125. Section 127. In section 130, in subsection (1), the definitions of “the appropriate regulatory body”, “the BSC”, “financial year” and “regulatory body”.	30
Competition Act 1998 (c. 41)	Schedule 3. In Schedule 10, paragraphs 20, 22 and 25.	
	In Schedule 10 – (a) paragraph 2(5) to (10); and (b) paragraph 9(5).	35
Freedom of Information Act 2000 (c. 36)	In Part 6 of Schedule 1, the entries relating to – (a) the Broadcasting Standards Commission; (b) the Independent Television Commission; and (c) the Radio Authority.	40
Political Parties, Elections and Referendums Act 2000 (c. 41)	Section 11(1). In paragraph 8 of Schedule 21, the words “36(3) and”.	45
Office of Communications Act 2002 (c. 11)	Section 2. Sections 4 to 6. In the Schedule, paragraphs 1(4), 17(8) and (9) and 20.	50

(2) Instruments

<i>Title and number</i>	<i>Extent of revocation</i>	
Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 (S.I. 1998/3170).	In Schedule 1, paragraph 1.	55
Telecommunications (Appeals) Regulations 1999	Regulation 3.	

PART 2

60

ABOLITION OF TELECOMMUNICATIONS LICENSING

(1) Enactments

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Telecommunications Act 1984 (c. 12)	Sections 5 to 27. Section 46B. Section 95. In paragraph 10(2)(b) of Schedule 2, the words “(within the meaning of section 6 of this Act)”.	65
Legal Aid Act 1988 (c. 34)	In Schedule 5, paragraph 11.	70
Broadcasting Act 1990 (c. 42)	In Schedule 20, paragraph 38(1) and (2).	
Competition Act 1998 (c. 41)	In Schedule 7, paragraph 2(1)(d)(iii). In Schedule 10, paragraph 9(2) to (4).	
Electronic Communications Act 2000 (c. 7)	Sections 11 and 12.	75

(2) Instruments

<i>Title and number</i>	<i>Extent of revocation</i>	
Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930)	Regulation 3(1) to (13)	80
Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999 (S.I. 1999/2450).	The whole regulations.	
Telecommunications (Licence Modification) (Fixed Voice Telephony and International Facilities Operator Licences) Regulations 1999 (S.I. 1999/2451).	The whole regulations.	85
		90

<i>Title and number</i>	<i>Extent of revocation</i>	
Telecommunications (Licence Modification) (Mobile Public Telecommunications Operators) Regulations 1999 (S.I. 1999/2452).	The whole regulations.	5
Telecommunications (Licence Modification) (British Telecommunications plc) Regulations 1999 (S.I. 1999/2453).	The whole regulations.	10
Telecommunications (Licence Modification) (Cable and Local Delivery Operator Licences) Regulations 1999 (S.I. 1999/2454).	The whole regulations.	15
Telecommunications (Licence Modification) (Kingston Communications (Hull) plc) Regulations 1999 (S.I. 1999/2455).	The whole regulations.	20
Telecommunications (Appeals) Regulations 1999 (S.I. 1999/3180).	Regulation 3.	
Telecommunications (Licence Modification) (Satellite Operator Licences) Regulations 2000 (S.I. 2000/1711).	The whole regulations.	25
Telecommunications (Licence Modification) (Regional Public Access Mobile Radio Operator Licences) Regulations 2000 (S.I. 2000/1712).	The whole regulations.	30
Telecommunications (Licence Modification) (Amendment) Regulations 2000 (S.I. 2000/1713).	The whole regulations.	35
Telecommunications (Licence Modification) (Mobile Data Operator Licences) Regulations 2000 (S.I. 2000/1714).	The whole regulations.	40
Telecommunications (Licence Modification) (Paging Operator Licences) Regulations 2000 (S.I. 2000/1715).	The whole regulations.	45

<i>Title and number</i>	<i>Extent of revocation</i>	
Telecommunications (Licence Modifications) (Amendment No. 2) Regulations 2000 (S.I. 2000/2098).	The whole regulations.	5
Telecommunications (Licence Modifications) (Amendment) Regulations 2001 (S.I. 2001/2495).	The whole regulations.	

PART 3

10

USE OF THE RADIO SPECTRUM

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Wireless Telegraphy Act 1949 (c. 54)	Section 1D(1), (2), (7) and (8). In section 1E, paragraph (a) of subsection (4) and the word “or” immediately after that paragraph. Section 1F. Section 9.	15
Marine, &c., Broadcasting (Offences) Act 1967 (c. 41)	Section 6(2) and (7).	25
Wireless Telegraphy Act 1967 (c. 72)	In section 7(5), paragraph (b) and the word “or” immediately preceding it.	
Post Office Act 1969 (c. 48)	Section 3(2)(b).	
Telecommunications Act 1984	Sections 80 and 81. Section 88. Section 90. Section 102	30
Courts and Legal Services Act 1990 (c. 41)	In Schedule 10, paragraph 8.	
Judicial Pensions and Retirement Act 1993 (c. 8)	In Schedule 6, paragraph 58.	35
Arbitration Act 1996 (c. 23)	In Schedule 3, paragraph 7.	
Wireless Telegraphy Act 1998 (c. 6)	In section 3 – (a) in subsection (1) the words “or determined by him under” and paragraph (a) and the word “and” immediately after it; (b) subsection (2); and (c) in subsection (3), paragraph (h) and the word “and” immediately preceding it.	40
	Section 5.	45

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Broadcasting Act 1990 (c. 42) – <i>cont.</i>	<p>Section 60(1) to (3) and (6). Section 65. Section 69. Section 70. 5</p> <p>In section 71(1), the definitions of “the Commission”, “licensable programme service” and “satellite television service”. Part 2.</p> <p>Section 84. 10</p> <p>In section 85, subsections (3) and (4). In section 87(2)(b), sub-paragraph (ii) and the word “or” immediately preceding it. Section 89(2). Sections 90 to 96. 15</p> <p>In section 98(3)(a), the word “both” and sub-paragraph (ii) and the word “and” immediately preceding it. In section 99(1)(a), the word “both” and sub-paragraph (ii) and the word “and” immediately preceding it. 20</p> <p>In section 104B – (a) in subsection (2)(b), the word “local”; and (b) in subsection (6), the word “local” in the first place where it occurs, and the words from “or by substituting” onwards. 25</p> <p>In section 106(1), the words from “except” to the end. Section 106A(2)(a). 30 Section 108. Sections 112 and 113. Section 114(5). In section 116(1)(b)(iii), the words “(subject to the approval of the Secretary of State)”. 35 Section 117(2) and (7). Section 119(2). In section 126(1), the definitions of “assigned frequency” and “licensable sound programme service”. 40 In section 177(6), the definition of “relevant foreign satellite service”. In section 183(9), the definition of “the Commission”. In section 185(5), the definition of “the Commission”. 45 Sections 186 and 187. In section 196 – (a) in subsection (1)(a), the words “82”; (b) subsection (2). 50</p> <p>In Part 2 of Schedule 2, paragraph 6. In Schedule 6, in sub-paragraph (2), the words from “and shall include” onwards. Schedule 12.</p>

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Broadcasting Act 1990 (c. 42) – cont. – <i>cont.</i>	In paragraph 11(4) of Schedule 19, the words “or the Radio Authority” and “or, as the case may be, the Authority”.
Broadcasting Act 1996 (c. 55)	Section 1(1A) to (3). 5 Section 2(1) and (7). Section 6. In section 8(2), paragraph (f) and the word “and immediately preceding it.” In section 11(5), the words from “not exceeding” onwards. 10 In section 12 – (a) in subsection (1) paragraph (e); and (b) subsection (7). Section 18(5) and (6). 15 Section 19(2) and (4) to (10). Sections 20 to 22. Section 25(5) and (6). Section 28. In section 29(2), the words “59”. 20 Section 31. Section 34. In section 39(1), the definition of “the Commission”. In section 40(4), the words “provided on a frequency or frequencies assigned to the Authority under section 45(1)”. 25 Section 45. In section 46(1), paragraph (e). In section 47 – 30 (a) in subsection (2), paragraph (f) and the word “and” immediately preceding it; (b) subsection (4). In section 54(1) paragraphs (e) and (f). In section 60, subsections (7) to (10). 35 Section 68. Section 78. Section 86(3). Sections 88 to 90. Section 91(1). 40 In section 97(3)(b), the words “by the Commission” and “by them”. In section 105(1), the definitions of “the Commission” and “live”. Sections 108 and 109. 45 In section 110 – (a) subsection (2); (b) in subsection (3), the words from “and in exercising” onwards; and (c) in subsection (4), the definition of “standards complaint” and the word “and” immediately preceding it. 50 Section 113.

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Broadcasting Act 1996 (c. 55) – <i>cont.</i>	<p>In section 114 –</p> <p>(a) in subsection (1), the words “or a standards complaint”; and</p> <p>(b) in subsection (2), the words “or a standards complaint” and the words “, or in the case of a fairness complaint,”.</p> <p>Section 116.</p> <p>In section 118, the words “or a standards complaint”.</p> <p>In section 119 –</p> <p>(a) in subsection (3), paragraph (c);</p> <p>(b) in subsection (8), the words “or standards complaint” and, in paragraph (c), the words “, a regulatory body;”</p> <p>(c) in subsection (9), the words “or standards complaint” and “113(1)”; and</p> <p>(d) subsection (12).</p> <p>In section 120(1), the words “or a standards complaint”.</p> <p>In section 130 –</p> <p>(a) in subsection (1), in the definition of “licensed services”, the words from “subject to” to “125(6) and the definitions of “sexual conduct” and “standards complaint”; and</p> <p>(b) in subsection (2), paragraph (b) and the word “and” immediately preceding it.</p> <p>In Schedule 8, paragraph 4.</p> <p>In Schedule 10, paragraphs 1, 4 to 6, 12, 13, 18, 19 and 26(b)(i).</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
2	The repeal of section 20 of the 1990 Act has effect subject to section 151(3) of this Act.	
3	<p>The repeals of sections 84 and 112 of the 1990 Act shall have no effect –</p> <p>(a) in relation to the definition by section 168 of this Act of “satellite services” or “licensable programme service”; or</p> <p>(b) in relation to the determination for the purposes of any provision of that Act or of this Act of the person by whom any such service is being or has been provided.</p>	35

