

Independent Broadcasting Authority Act 1974

1974 CHAPTER 16

An Act to make further provision as to the payments to be made to the Independent Broadcasting Authority by television programme contractors : and for purposes connected therewith. [23rd May 1974]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards making an addition to the public revenue, have freely and voluntarily resolved to make the following provisions; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Rental payments by television programme contractors. 1973 c. 19.

1. For section 26 of the Independent Broadcasting Authority Act 1973 there shall be substituted the following section—

"26.—(1) The contracts between the Authority and the various programme contractors for the provision of television programmes shall provide for payments to be made by the programme contractors to the Authority under two heads, namely—

(*a*) payments representing what appear to the Authority, in relation to the branch of their undertaking consisting of the provision of television broadcasting services, to be the appropriate contributions of the respective programme contractors towards meeting the sums which the Authority regard as necessary in order to discharge their

duty under section 25(2) of this Act in relation to that branch of their undertaking; and

(*b*) additional payments (in this and the following sections of this Act referred to as "additional payments") of amounts determined in accordance with this section.

(2) The additional payments shall not form part of the revenue of the Authority and, when received by the Authority, shall be paid into the Consolidated Fund of the United Kingdom or the Consolidated Fund of Northern Ireland as provided by section 27(4) of this Act.

(3) If the accounting period of a programme contractor is a period of 12 months, the amount of the additional payments to be made by him shall be that provided in the following Table.

TABLE

RATES OF ADDITIONAL PAYMENTS

	Appropriate rate for determining amount of additional payments
For so much of the profits for the accounting period as does not exceed £250,000 or does not exceed 2 per cent. of the advertising receipts for the accounting period.	Nil
For so much of the profits for the accounting period as exceeds £250,000 and exceeds 2 per cent. of those advertising receipts	66.7 per cent.

(4) If the accounting period is more or less than 12 months, for the sum of £250,000 in the Table above there shall be substituted that sum multiplied by X where X is $\frac{\text{the number of weeks in the accounting period, counting an odd 4 days or more as a week.}}{52}$

(5) Where an order under section 27B of this Act applies to the accounting period of the programme contractor, the amount of the additional payments to be made by him for that accounting period shall be—

(*a*) that prescribed by the preceding provisions of this section, or

(*b*) the amount prescribed by the order,

whichever is the greater.

(6) The Secretary of State may with the approval of the Treasury, and after consultation with the Authority, by order amend subsections (3) and (4) of this section so as to increase or reduce any rate, or the number of different rates, or the amount to which any rate applies; and the references in this subsection to a rate include the case where the rate is nil.

The power of making orders under this subsection to vary or revoke a previous order shall be exercisable by statutory instrument; but no such statutory instrument shall be made unless a draft thereof has been laid before Parliament and approved by resolution of each House.

An order under this subsection shall have effect as respects all additional payments for any accounting period beginning on or after the date on which the order comes into force, whether the contracts under which the additional payments are due were executed before or after the making of the order.

(7) Schedule 2A to this Act shall have effect for supplementing this section, and in that Schedule this section, together with sections 27, 27A and 27B, are referred to as 'the principal sections'".

Instalments payable on account by programme contractors.

2. After section 27 of the said Act of 1973 there shall be inserted the following section.

"27A.—(1) It shall be the duty of the Authority in framing the contracts with the various programme contractors to include terms enabling the Authority to estimate before the beginning of an accounting period the additional payments due for that accounting period, and requiring the programme contractor to pay the estimated amount by monthly instalments throughout the accounting period.

(2) The Authority shall in particular include terms—

(*a*) authorising the Authority to revise any estimate on one or more occasions, and to adjust the instalments payable by the programme contractor to take account of the revised estimate;

(*b*) providing for the adjustment of any overpayment or underpayment when the amount due from the programme contractor for the accounting period has been finally ascertained;

(*c*) ensuring that any amount due under the contract is paid promptly and in full.

(3) Where any amount falls to be paid to a programme contractor to adjust an overpayment made by him, that amount shall be paid to the programme contractor out of

the Consolidated Fund of the United Kingdom, or, if the contract is for the supply of programmes to be broadcast from stations all of which are in Northern Ireland, out of the Consolidated Fund of Northern Ireland.

(4) Any reference in section 27 of this Act to additional payments shall be construed as including any sum payable in pursuance of this section as being an instalment or unpaid balance of any additional payments.

(5) The account to be prepared under section 27(5) of this Act shall show any sums paid in pursuance of subsection (3) of this section in respect of the financial year in question."

Provision for supplementing additional payments.

3. After section 27 of the said Act of 1973 there shall be inserted the following section:—

"27B.—(1) Where the Secretary of State is advised by the Authority, or after consultation with the Authority is of the opinion, that (apart from the provisions of this section)—

(*a*) the aggregate amount of the additional payments to be made for an accounting period of a programme contractor in accordance with section 26 of this Act is likely to be deficient, and

(*b*) the deficiency would be wholly or mainly attributable to excessive expenditure forming part of the relevant expenditure by reference to which those additional payments fall to be calculated,

the Secretary of State, with the consent of the Treasury, may make an order prescribing the minimum amount of additional payments to be made by the programme contractor for that accounting period.

(2) In determining, for the purposes of the preceding subsection, whether in the case of a programme contractor any particular expenditure is excessive, the Authority or the Secretary of State, as the case may be, shall have regard to such considerations as they or he may consider relevant in the circumstances, and in particular to—

(*a*) the scale (if any) on which any comparable expenditure has formed part of the relevant expenditure by reference to which the additional payments of that programme contractor for any previous accounting period have fallen to be calculated, and

(*b*) the scale (if any) on which any comparable expenditure has formed or is expected to form part of the relevant expenditure by reference to which the

additional payments of any other programme contractor for any current accounting period of his have fallen or are expected to fall to be calculated.

For the purposes of paragraph (*b*) of this subsection an accounting period of another programme contractor shall be treated as current if the whole or part of it is comprised in the accounting period referred to in subsection (1) of this section.

(3) Any order made under subsection (1) of this section in respect of an accounting period may, by a further order made by the Secretary of State after consultation with the Authority, and with the consent of the Treasury—

(*a*) be revoked, or

(*b*) be varied by substituting a greater or lesser amount for the amount specified in the order (whether as originally made or as previously varied under this subsection).

(4) No order shall be made under this section after the end of the accounting period to which it relates.

(5) In making their contracts with programme contractors for the provision of television programmes, it shall be the duty of the Authority to require those contracts to include such provisions as in the opinion of the Authority will ensure that the Authority will be in a position to comply with any order made under this section.

(6) Any power to make an order under this section shall be exercisable by statutory instrument; and no such order shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(7) An order made under this section shall, notwithstanding that it makes different provision in relation to one programme contractor from the provision made by any order under this section in relation to any other programme contractor, proceed in Parliament as if its provisions would, apart from this section, require to be enacted by a public Bill which cannot be committed to a Select or other Committee of either House under the Standing Orders of either House relating to Private Bills.

(8) Nothing in this section shall have effect in relation to contracts between the Authority and the programme contractors in so far as they relate to local sound broadcasts ".

Short title, etc.

4.—(1) This Act may be cited as the Independent Broadcasting Authority Act 1974.

(2) It is hereby declared that this Act extends to Northern Ireland.

(3) Her Majesty may by Order in Council direct that all or any of the provisions of this Act shall extend to the Isle of Man or any of the Channel Islands with such adaptations and modifications, if any, as may be specified in the Order ; and any Order in Council under this section may be revoked or varied by a subsequent Order in Council.

(4) This Act shall come into operation at the end of the period of one month beginning with the day on which it is passed.

(5) This Act shall have effect subject to the transitional provisions contained in Schedule 2 to this Act.

(6) The enactments specified in Schedule 3 to this Act shall be repealed to the extent specified in the third column of that Schedule.

SCHEDULES

Section 1.

SCHEDULE 1

The following Schedule shall be inserted in the principal Act after Schedule 2, and shall be numbered 2A—

"RENTAL PAYMENTS

Advertising receipts

1.—(1) In the principal sections and this Schedule "advertising receipts" means, in relation to a programme contractor, and in relation to any period, the payments received or to be received by the programme contractor in consideration of the insertion of advertisements in programmes provided by the programme contractor and broadcast in the United Kingdom by the Authority in the period.

(2) If, in connection with the insertion of advertisements which are paid for by payments constituting advertising receipts, any payments are made to the programme contractor to meet any additional payments, those payments shall be regarded as made in consideration of the insertion of the advertisements in question.

(3) In the case of an advertisement inserted in a programme under arrangements made between a programme contractor and a person acting as advertising agent, the amount of any receipt by the programme contractor which represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall be the amount of the payment by the advertiser after the deduction of the commission, so, however, that if the amount so deducted exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt shall be the amount of that payment less 15 per cent.

(4) Any contract shall provide that where for any insertion of an advertisement a programme contractor receives or is entitled to an entire consideration not solely referable to that insertion, the advertising receipts shall be calculated by reference to so much only of the consideration as is referable to that insertion according to an apportionment made in such manner as the contract may provide.

Profits

2.—(1) The profits of a programme contractor for an accounting period shall be computed in accordance with this paragraph.

(2) The profits shall consist of the excess of relevant income over relevant expenditure.

(3) "Relevant income" means—

(*a*) income which accrues to the contractor in connection (directly or indirectly) with the provision of television programmes by him, and

(*b*) where income accrues to a subsidiary of the contractor in connection (directly or indirectly) with the provision

of television programmes by the contractor, such part of that income as, in the opinion of the Authority, should be attributed to the contractor as reflecting the contractor's financial interest in the subsidiary.

(4) Without prejudice to the generality of sub-paragraph (3) above, "relevant income" includes all the contractor's advertising receipts for the accounting period in question.

(5) "Relevant expenditure" means—

(*a*) expenditure properly chargeable to revenue account which is incurred by the contractor in connection (directly or indirectly) with the provision of television programmes by him, and

(*b*) where a subsidiary of the contractor incurs expenditure properly chargeable to revenue account in connection (directly or indirectly) with the provision of television programmes by the contractor, such part of that expenditure as, in the opinion of the Authority, should be attributed to the contractor as reflecting the contractor's financial interest in the subsidiary.

(6) In ascertaining relevant income or relevant expenditure no account shall be taken of—

(*a*) interest on a loan, or

(*b*) so much of any receipt or expenditure as in the opinion of the Authority is attributable to the provision of television programmes outside the United Kingdom.

(7) Where relevant income consists of advertising receipts, the income shall be attributed to accounting periods in accordance with the provisions of paragraph 1 of this Schedule, and the same principle should be followed in relating other items of income, and items of expenditure, to accounting periods.

Disputes

3.—(1) For the purposes of the principal sections and this Schedule—

(*a*) the amount of any advertising receipts, or

(*b*) the amount of any profits, or

(*c*) the amount of any additional payments, or of an instalment of additional payments,

shall, in the event of a disagreement between the Authority and the programme contractor, be the amount determined by the Authority.

(2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent—

(*a*) the bringing of proceedings in the High Court, or the High Court in Northern Ireland, for an order of certiorari; or

(*b*) the exercise of the jurisdiction of the Court of Session to entertain an application for the reduction or suspension of the determination, or otherwise to consider the validity of the determination.

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Accounting periods

4.—(1) Subject to the provisions of this Schedule, each period for which a body corporate which is a programme contractor makes up a profit and loss account which is laid before the body corporate in general meeting shall be an accounting period, whether that period is a year or not.

(2) If part of the said period for which a profit and loss account is made up falls before, and part after—

(*a*) the commencement of the Independent Broadcasting Authority Act 1974, or

(*b*) the commencement of an order under section 26 of this Act (made after the commencement of the said Act of 1974), or

(*c*) the time when the programme contractor begins or ceases to provide programmes for broadcasting by the Authority,

the two parts shall be treated as separate accounting periods.

(3) If sub-paragraph (2) above would produce an accounting period of three months or less, that period shall be added on to the accounting period (if any), which precedes or succeeds it (and which does not fall to be divided from it under sub-paragraph (2) above).

(4) A contract which varies another contract may modify the preceding provisions of this paragraph.

(5) Nothing in this paragraph shall create an accounting period which is a period during which the programme contractor is not providing programmes for broadcasting by the Authority, or an accounting period falling before the commencement of the Independent Broadcasting Authority Act 1974.

5. If the programme contractor is not a body corporate the contractor's accounting periods shall be such as the Authority may direct, or as may be provided in the contract.

Information

6.—(1) Every contract shall impose on the contractor such requirements with respect to the furnishing of information to the Authority as appear to the Authority, after consultation with the Secretary of State, to be requisite—

(*a*) for enabling the Authority to perform their functions under the provisions of the principal sections and this Schedule, and

(*b*) for enabling the Authority to furnish to the Secretary of State such information as he may require for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.

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(2) It shall be the duty of the Authority to furnish to the Secretary of State such information (whether obtained from contractors or otherwise) as is in their possession and is required by the Secretary of State for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.

7. It shall be the duty of the Authority in framing any contract to include terms ensuring that the Authority will have the right to inspect all accounts and records—

(*a*) of the programme contractor, and

(*b*) of any subsidiary of the programme contractor,

for the purpose of discharging their functions under the principal sections and this Schedule.

Interpretation

8.—(1) In this Schedule, and in the principal sections, except where the context otherwise requires—

"accounting period" shall be construed in accordance with paragraph 4 above,

"additional payments" has the meaning given by section 26 of this Act,

"contract" means a contract between the Authority and a programme contractor under which television programmes are to be provided by the programme contractor,

"subsidiary", in relation to any person, means a company in which that person holds, directly or indirectly, 10 per cent. or more of the equity share capital.

(2) In this Schedule "payment" includes any valuable consideration, and references to receipts and expenditure shall be construed accordingly."

SCHEDULE 2

Section 4.

TRANSITIONAL PROVISIONS

1. In this Schedule "the existing statutory provisions" means the provisions of the Independent Broadcasting Authority Act 1973 (in this Schedule called the "principal Act") as in force immediately before the commencement of this Act, "the new statutory provisions" means the provisions of that Act as amended by this Act, and "the Authority" means the Independent Broadcasting Authority. 1973 c. 19.

2.—(1) Subject to the following provisions of this Schedule, any contract between the Authority and a programme contractor which is in force immediately before the commencement of this Act shall, until it is varied or superseded by a further contract between them or expires or is otherwise terminated, whichever first occurs, be deemed to be modified by virtue of this Schedule so as—

(*a*) to substitute provisions in conformity with the new statutory provisions for so much of the contract as is in accordance

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with the existing statutory provisions and is not in conformity with the new statutory provisions, and

(*b*) to incorporate in the contract such additional provisions as a contract between the Authority and a programme contractor is required to include in accordance with the new statutory provisions;

and (subject to paragraph 3 of Schedule 2A to the principal Act as amended by this Act) any provisions of the contract which provide for arbitration as to any matters contained in the contract in accordance with the existing statutory provisions shall be construed (with the necessary modifications) as making the like provision for arbitration in relation to matters deemed to be included in the contract by virtue of the preceding provisions of this sub-paragraph.

(2) Where it appears to the Authority that the new statutory provisions call for the inclusion of additional terms in any such contract, but do not afford sufficient particulars of what those terms should be, the Authority may, after consulting the programme contractor, decide what those terms are to be.

3. Nothing in the existing statutory provisions shall create an accounting period falling after the commencement of this Act, and if part of an accounting period under the existing statutory provisions would fall before that time, and part after, the part before shall be a separate accounting period.

4. For the purposes of section 27B of the principal Act, as amended by this Act, account may be taken of any expenditure which is referable to any period before the commencement of this Act.

Section 4.

SCHEDULE 3

REPEALS

Chapter	Short Title	Extent of Repeal
1973 c. 19.	The Independent Broadcasting Authority Act 1973.	In section 27 subsection (1), and in subsection (4)(*c*) the words "or the payments became due as a result of an estimate made by the Authority".