

CSAs for Bills Committee meeting on 25.5.2000

BROADCASTING BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Information

Technology and Broadcasting

Clause

Amendment Proposed

1(2)

By deleting the clause and substituting -

“(2) Subject to subsection (3), this Ordinance shall come into operation on the day it is published in the Gazette.

(3) Sections 13, 14, 15 and 16 shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.”.

2

(a) In subclause (1), in the definition of “Telecommunications Authority” (), by deleting “[]” and substituting “[]”.

(b) In subclause (11) -

(i) in paragraph (a), by adding “under

this Ordinance” after “decision”;

(ii) by deleting paragraph (b) and substituting -

“(b) when forming an opinion or making a determination, direction or decision under this Ordinance, provide reasons in writing for it.”.

4

(a) By renumbering it as clause 4(1).

(b) By adding -

“(2) Without prejudice to the generality of subsection (1), the Broadcasting Authority shall, as soon as is practicable, issue guidelines indicating the manner in which it proposes to -

(a) perform its function under section 9(2), including the licensing criteria and other relevant matters it proposes to consider;

(b) perform its function under section 10(2), including the licensing criteria and other relevant matters it

proposes to consider;

(c) perform its function in forming an opinion under section 13 or 14;

(d) perform its function under section 17(2), including the criteria it proposes to consider.

(3) The Broadcasting Authority shall, before issuing guidelines under subsection (2) (c), carry out such consultation with such bodies representative of licensees who may be affected by the guidelines as is reasonable in all the circumstances of the case.”.

6 (a) In subclause (1), by adding “export,” after “import,”.

(b) In subclause (3), by adding “exported,” after “imported,”.

(c) In subclause (4), by adding “exports,” after “imports,”.

9 By adding -

“(3) Where an application is submitted to the Broadcasting Authority, it shall -

- (a) cause a notice to be published in the Gazette as soon as is practicable -
- (i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and
 - (ii) stating that members of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and
- (b) consider the representations, if any, received by the date.”.

10(4), (5),

By deleting the clause and substituting -

(6) and (7)

“(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).

(5) A licensee may make representations to the Broadcasting Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the Chief Executive in Council, the Broadcasting Authority shall fairly reflect the representations to the Chief Executive in Council.

(6) The Chief Executive in Council or the Broadcasting Authority, as the case may require, shall take into account the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4).”.

11

(a) By adding -

“(3A)Where subsection (3) applies to

a domestic free television programme service licence, or a domestic pay television programme service licence, which may be extended or renewed for a period of 6 years or more, the Broadcasting Authority shall conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.”.

- (b) In subclause (4), by adding “as soon as is reasonably practicable” after “them and”.
- (c) In subclause (5), by adding “, at a time reasonable in all the circumstances before the expiry of the licence” after “shall”.

12

- (a) In subclause (4), by deleting “Where” and substituting “Subject to subsection (4A), where”.

- (b) By adding -

“(4A) The Broadcasting Authority shall, before making a determination under subsection (4) -

- (a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in

relation to whether or not the television programme service concerned -

- (i) primarily targets Hong Kong; or
- (ii) does not primarily target Hong Kong; and

(b) take into account the representations, if any, made.

(4B) In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters -

- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and

size of the audiences targeted by the service; and

- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.”.

- 13
- (a) In subclause (1), by adding “, distorting” after “preventing”.
- (b) In subclause (5) (a), by adding “wholly or substantially” after “produced”.
- (c) By deleting subsection (6) and substituting -

“(6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.”.

- 14(4) By adding “, distorting” after “preventing”.

- New By adding -

“14A. Provisions supplementary to sections 13 and 14

The conduct of an associate of a licensee,

or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14.”.

- 16(2) (a) In subclause (1), by deleting “practices” and substituting “principles”.
- (b) In subclause (2) -
- (i) by deleting “practice” and substituting “principle”;
 - (ii) in paragraph (c), by deleting “practices” and substituting “principles”.

18 By adding “educational” after “any”.

- 20 (a) In subclause (2) -
- (i) by deleting “A” and substituting “Subject to subsection (2A), a”;
 - (ii) by deleting “at all reasonable times when directed in writing to do so by the Broadcasting Authority” and substituting “on or before the 1st of April of each year”.
- (b) By adding -
- “(2A) Subsection (2) shall not apply to a licensee which has been a licensee

for less than 4 months.”.

23 By adding -

“(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.”.

24 (a) In subclause (1), by deleting “this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance” and substituting “a prescribed Ordinance in order to ensure a licensee’s compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision of a Code of Practice which is applicable to it”.

(b) In subclause (3) (a), by adding “as referred to in subsection (1)” after “Authority”.

(c) By adding -

“(11) For the avoidance of doubt, it is hereby declared that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this section.”.

25 By adding -

“(3) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.”.

26(3) By deleting the clause and substituting -

“(3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of the information under subsection (2) (c) or (d) before the Broadcasting Authority makes a final decision to disclose the information.”.

27 By adding -

“(3A)The Broadcasting Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.”.

29(1) By adding “(including within such time)” after

“manner”.

30

(a) In subclause (2) (b) (iii), by deleting “, or has been facilitated by a neglect of,”.

(b) In subclause (3) -

(i) in paragraph (a) (i), by deleting “; and” and substituting “;”;

(ii) in paragraph (b), by deleting “suspension.” and substituting “suspension; and”;

(iii) by adding -

“(c) in the case of a domestic free television programme service or a domestic pay television programme service where subsection (2) (b) is applicable, conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.”.

31(4)

By deleting the clause and substituting -

“(4) After section 32 has been complied with but subject to subsection (4A), the Chief Executive in Council or the Broadcasting

Authority, as the case may require, may, by notice in writing served on the licensee, revoke a licence -

(a) for failure by the licensee to pay -

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 60 days beginning on the date the payment is due; or

(ii) any financial penalty within 60 days beginning on the date the payment is due under section 28(4);

(b) if the licensee -

(i) goes into compulsory liquidation or into voluntary liquidation other than for the purposes of amalgamation or reconstruction; or

(ii) enters into a

composition or arrangement with its
creditors; or

(c) if, as may be applicable in the particular case,
having regard to all the circumstances,
including the number of occasions and the
gravity in respect of which, after the issue of
the licence -

(i) the licensee has contravened -

(A) a licence condition;

(B) a requirement under this
Ordinance which is applicable to
it;

(C) a direction, order, or
determination, under this
Ordinance which is applicable to
it; or

(D) a provision of a

Code of Practice which is
applicable to it,

and the licensee has failed to comply
with a direction under section 23(1)
relating to that contravention;

- (ii) another person has contravened a
condition, requirement, direction,
order, determination or provision
mentioned in subparagraph (i) and
such contravention has taken place
with the consent or connivance of the
licensee.

(4A) The Chief Executive in Council or the Broadcasting
Authority shall not exercise a power under subsection (4) until
after considering -

- (a) in the case of the Chief

Executive in Council, the recommendations of the Broadcasting Authority; and

- (b) in the case of both the Chief Executive in Council and the Broadcasting Authority, such information, matter and advice as he or it thinks fit.”.

35

By adding -

“(5A) Where subsection (3) applies to an application under subsection (2), the Court of First Instance shall not make an interim order under subsection (4) or (5) unless it is satisfied that it is a case of urgency.”.

41(2)

By adding “, or subsection (1) (f) in so far as it relates to section 13(4) (b),” after “(b)”.

42(1)

By adding “or 3” after “Schedule 1”.

Schedule 1

- (a) In the heading immediately before Part 1, by adding “DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE” after “HOLDING”.
- (b) In Part 2, in the heading, by adding “DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE” after “HOLDING”.

(c) in Part 3, in the heading, by adding “(NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCES)” after “CONTROLLERS”.

(d) In section 29 -

(i) by deleting subsection (5) and substituting -

“(5) Subject to subsection (6), any information which is furnished by a person in confidence under this Part shall be treated as confidential.”;

(ii) by deleting subsection (6) (c).

(e) In Part 4, in the heading, by adding “DOMESTIC FREE OR PAY TELEVISION SERVICE PROGRAMME” after “RESTRICTION ON”.

(f) In section 33, by adding “and subject to such conditions as are specified in the approval” after “Council”.

Schedule 4

(a) In section 3(1) (a), (b) and (c), by adding “or the Broadcasting Authority” after “Government”.

(b) By deleting section 13 and substituting -

“13. Annual payment of fees

Subject to section 5 of Schedule 8

to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed.”.

Schedule 8

(a) By deleting section 5 and substituting -

“5. Payment of annual fees

(1) In the case of a deemed licence falling within

section 2(1), (2) or (3) -

(a) the Financial Secretary may, by notice in writing served on the licensee, specify the fee to be paid to the Government by the licensee -

(i) for the year commencing on the relevant day; and

(ii) not later than 30 days after the relevant day; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee

until the expiration of that year.

(2) In the case of a deemed licence falling within section 2(4) -

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

- (i) the expiration of the licence; or
- (ii) the surrender of the licence for another licence,

whichever is the earlier; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the occurrence of the event mentioned in paragraph (a) (i) or (ii).

(3) In the case of a deemed licence falling within section 2(5) -

(a) the licensee shall continue to comply with

the provisions of the licence relating to a
licence fee until -

- (i) the expiration of the licence; or
- (ii) the surrender of the licence for
another licence,

whichever is the earlier; and

(b) section 13 of Schedule 4 to this Ordinance

shall not apply to the licensee until -

- (i) the occurrence of the event
mentioned in paragraph (a) (i) or
(ii); and

- (ii) the licence held by the licensee
does not specify a licence fee to
be paid by the licensee to the
Government.

(4) A notice under subsection (1) (a) served on a licensee shall be deemed to be a condition specified in the deemed license held by the licensee requiring the licensee to pay to the Government the fee specified in the notice.

(5) Where -

- (a) a licensee has before the relevant day paid an annual fee for a deemed licence falling within section 2(1), (2) or (3);
- (b) the period for which that fee has been paid would, but for the commencement of section 43(1) of this Ordinance, expire on or after the relevant day; and
- (c) the licensee has paid the fee required by subsection (1) (a),

then the Financial Secretary shall remit to the licensee so much of the annual fee referred to in paragraph (c) as is equivalent to so much of the fee referred to in paragraph (a) which, on a pro rata

basis, relates to so much of the period referred to in paragraph (b) which would, but for the commencement of section 43(1) of this Ordinance, run on and after the relevant day.”.

(b) In section 8 -

(a) by renumbering it as section 8(1);

(b) by adding -

“(2) It is hereby declared that a royalty within the meaning of the repealed Ordinance payable by a licensee (or former licensee) within the meaning of that Ordinance is payable on a pro rata basis in respect of that portion of the licensee’s (or former licensee’s) accounting year which has effluxed before the relevant day, and subsection (1) shall apply accordingly.”.

(c) By adding -

**“10. Certain Codes of Practice
applicable for interim
period for licensees that
are holders of deemed
licence**

Where -

- (a) a Code of Practice (“old Code”) within the meaning of section 2 of the repealed Ordinance was in force immediately before the relevant day; and
- (b) a licensee who is the holder of a deemed licence was required to comply with the old Code immediately before the relevant day,

then -

- (i) the old Code shall, in relation to the licensee, be deemed to be a Code of Practice within the meaning of section 2 of this Ordinance until the date on which a Code of Practice approved under section 3 of this Ordinance, and expressed to be in substitution for the old Code, comes into effect; and
- (ii) subject to paragraph (iii),

the licensee shall comply with the old Code until that date; and

(iii) the old Code shall be read and have effect with such modifications as are necessary to take into account the provisions of this Ordinance,

and the provisions of this Ordinance (including sections 22(2) (d), 23, 27(2) (d), 30(2) (b) (i) (D) and 31 (4) (c) (i) (D) of this Ordinance) shall be construed accordingly.”.

Schedule 9

(a) In section 6 -

(i) by deleting paragraph (a) and substituting -

“(a) by repealing “HOTEL TELEVISION SERVICES LICENCE” and substituting “HOTEL TELEVISION (TRANSMISSION) LICENCE”;;”;

(ii) in paragraph (b) -

(A) by adding “a service, licence or licensee under” after “form to”;

(B) by adding “a service, licence or licensee under”

after “reference to”.

(b) By deleting section 19 and substituting -

**“19. Authority may impose
financial penalties**

Section 24 is amended -

(a) in subsection (3) -

(i) in paragraph (a), by repealing

“\$20,000” and substituting

“\$80,000”;

(ii) in paragraph (b), by repealing

“\$50,000” and substituting

“\$200,000”;

(iii) in paragraph (c), by repealing

“\$100,000” and substituting

“\$400,000”;

(b) by adding -

“(3A) The Authority shall not

impose a financial

penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.”.