

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)

Communications Act 2003

2003 CHAPTER 21

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

[17th July 2003]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:--

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UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/1 Functions and general powers of OFCOM

Part 1

Functions of OFCOM

Transferred and assigned functions

1 Functions and general powers of OFCOM

(1) The Office of Communications ("OFCOM") shall have the following functions--

- (a) the functions transferred to OFCOM under section 2; and
- (b) such other functions as may be conferred on OFCOM by or under any enactment (including this Act).

(2) OFCOM shall also have any functions in relation to telephone numbers that are conferred on them by the law of the Isle of Man or of any of the Channel Islands.

(3) OFCOM may do anything which appears to them to be incidental or conducive to the carrying out of their functions, including borrow money.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1), (2), (3) (remainder), (4), (5)(a), (b), (c) (remainder), (d), (6)-(8): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (3): Appointment (in part, to the extent that this sub-s is taken for the purposes of s 408(3) hereof to be brought into force for the purpose of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-s (5)(c): Appointment (to the extent that this para is taken for the purposes of s 408(3) hereof to be brought into force for the purpose of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State

respectively, during the transitional period (as provided for by s 408(6) hereof): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 3, 4; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 2, 3; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, paras 1, 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/2 Transfer of functions of pre-commencement regulators

2 Transfer of functions of pre-commencement regulators

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

(2) References in any enactment to a person who is a person from whom functions are transferred by virtue of this section are to have effect, so far as necessary for the purposes of the transfers, as references to OFCOM.

(3) The functions of OFCOM are to include the carrying out of the transferred functions, at times after the time when they become functions of OFCOM, in relation to anything occurring before that time.

(4) The provisions of this section have effect subject to--

(a) the modifications made by this Act of the enactments relating to the transferred functions; and

(b) any express transitional or consequential provisions made by or under this Act in relation to those enactments.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (except in relation to television licences): 29 December 2003: see SI 2003/3142, art 3(1), (3), Sch 1.

Appointment (for remaining purposes): 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5),

2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/3 General duties of OFCOM

General duties in carrying out functions

3 General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions--
- (a) to further the interests of citizens in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following--
- (a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;
 - (b) the availability throughout the United Kingdom of a wide range of electronic communications services;
 - (c) the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - (d) the maintenance of a sufficient plurality of providers of different television and radio services;
 - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both--
 - (i) unfair treatment in programmes included in such services; and
 - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to--
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (b) any other principles appearing to OFCOM to represent the best regulatory practice.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances--
- (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
 - (b) the desirability of promoting competition in relevant markets;
 - (c) the desirability of promoting and facilitating the development and use of effective forms of self-

regulation;

- (d) the desirability of encouraging investment and innovation in relevant markets;
- (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- (f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
- (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
- (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
- (j) the desirability of preventing crime and disorder;
- (k) the opinions of consumers in relevant markets and of members of the public generally;
- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
- (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

(5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

(6) Where it appears to OFCOM, in relation to the carrying out of any of the functions mentioned in section 4(1), that any of their general duties conflict with one or more of their duties under sections 4, 24 and 25, priority must be given to their duties under those sections.

[(6A) Where it appears to OFCOM, in relation to the carrying out of any of their functions in relation to postal services, that any of their general duties conflict with their duty under section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service), priority must be given to their duty under that section.]

(7) Where it appears to OFCOM that any of their general duties conflict with each other in a particular case, they must secure that the conflict is resolved in the manner they think best in the circumstances.

(8) Where OFCOM resolve a conflict in an important case between their duties under paragraphs (a) and (b) of subsection (1), they must publish a statement setting out--

- (a) the nature of the conflict;
- (b) the manner in which they have decided to resolve it; and
- (c) the reasons for their decision to resolve it in that manner.

(9) Where OFCOM are required to publish a statement under subsection (8), they must--

- (a) publish it as soon as possible after making their decision but not while they would (apart from a statutory requirement to publish) be subject to an obligation not to publish a matter that needs to be included in the statement; and
- (b) so publish it in such manner as they consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the matters to which the decision relates.

- (10) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c 11) (OFCOM's annual report) for a financial year must contain a summary of the manner in which, in that year, OFCOM resolved conflicts arising in important cases between their general duties.
- (11) A case is an important case for the purposes of subsection (8) or (10) only if--
- (a) it involved one or more of the matters mentioned in subsection (12); or
 - (b) it otherwise appears to OFCOM to have been of unusual importance.
- (12) Those matters are--
- (a) a major change in the activities carried on by OFCOM;
 - (b) matters likely to have a significant impact on persons carrying on businesses in any of the relevant markets; or
 - (c) matters likely to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.
- (13) This section is subject to sections 370(11) and 371(11) of this Act and to section 119A(4) of the Enterprise Act 2002 (c 40) (which applies to functions conferred on OFCOM by Chapter 2 of Part 5 of this Act).
- (14) In this section--
- "citizens" means all members of the public in the United Kingdom;
 - "communications matters" means the matters in relation to which OFCOM have functions;
 - "general duties", in relation to OFCOM, means--
 - (a) their duties under subsections (1) to (5); and
 - (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;
 - "relevant markets" means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (6A): inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 57.

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 5; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 4; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 3; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/4 Duties for the purpose of fulfilling Community obligations

4 Duties for the purpose of fulfilling Community obligations

- (1) This section applies to the following functions of OFCOM--
- (a) their functions under Chapter 1 of Part 2;
 - (b) their functions under the enactments relating to the management of the radio spectrum;
 - (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
 - (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
 - (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.
- (2) It shall be the duty of OFCOM, in carrying out any of those functions, to act in accordance with the six Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive and are to be read accordingly).
- (3) The first Community requirement is a requirement to promote competition--
- (a) in relation to the provision of electronic communications networks and electronic communications services;
 - (b) in relation to the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or electronic communications services; and
 - (c) in relation to the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.
- (4) The second Community requirement is a requirement to secure that OFCOM's activities contribute to the development of the European internal market.
- (5) The third Community requirement is a requirement to promote the interests of all persons who are citizens of the European Union (within the meaning of Article 17 of the Treaty establishing the European Community).
- (6) The fourth Community requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour--
- (a) one form of electronic communications network, electronic communications service or associated facility; or
 - (b) one means of providing or making available such a network, service or facility,

over another.

[(6A) The fourth Community requirement does not apply to--

- (a) the imposition, in relation to a wireless telegraphy licence, of a limitation of a kind falling within section 9ZA(1) of the Wireless Telegraphy Act 2006; or
- (b) the review, variation or removal of such a limitation.]

(7) The fifth Community requirement is a requirement to encourage, to such extent as OFCOM consider appropriate for the purpose mentioned in subsection (8), the provision of network access and service interoperability.

(8) That purpose is the purpose of securing--

- (a) efficiency and sustainable competition . . . ; . . .
- [(aa) efficient investment and innovation; and]
- (b) the maximum benefit for the persons who are customers of communications providers and of persons who make [associated facilities] available.

(9) The sixth Community requirement is a requirement to encourage such compliance with the standards mentioned in subsection (10) as is necessary for--

- (a) facilitating service interoperability; and
- (b) securing freedom of choice for the customers of communications providers.

(10) Those standards are--

- (a) standards or specifications from time to time drawn up and published in accordance with Article 17 of the Framework Directive;
- (b) the standards and specifications from time to time adopted by--
 - (i) the European Committee for Standardisation;
 - (ii) the European Committee for Electrotechnical Standardisation; [and]
 - (iii) the European Telecommunications Standards Institute; and
- (c) the international standards and recommendations from time to time adopted by--
 - (i) the International Telecommunication Union;
 - (ii) the International Organisation for Standardisation; . . .
 - [(iia) the European Conference of Postal and Telecommunications Administrations; and]
 - (iii) the International Electrotechnical Committee.

(11) Where it appears to OFCOM that any of the Community requirements conflict with each other, they must secure that the conflict is resolved in the manner they think best in the circumstances.

(12) In this section--

...

"network access" and "service interoperability" each has the same meaning as in Chapter 1 of Part 2.

[(13) In this section and sections 4A and 5, "the Framework Directive" has the same meaning as in Chapter 1 of Part 2.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Amendment

Sub-s (6A): inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(a).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (8): in para (a) first words omitted repealed by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(b)(i).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (8): in para (a) second word omitted repealed by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(b)(ii).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (8): para (aa) inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(b)(ii).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (8): in para (b) words "associated facilities" in square brackets substituted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(b)(iii).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (10): in para (b)(ii) word "and" in square brackets substituted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(c)(i).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (10): in para (c)(ii) word omitted repealed by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(c)(ii).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (10): para (c)(ia) inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(c)(ii).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (12): definition "the Framework Directive" (omitted) repealed by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(d).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (13): inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 5(e).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/
[4A Duty to take account of European Commission recommendations for harmonisation]

[4A Duty to take account of European Commission recommendations for harmonisation]

[(1) This section applies to the following functions of OFCOM--

- (a) their functions under Chapter 1 of Part 2;
- (b) their functions under the enactments relating to the management of the radio spectrum;
- (c) their functions under Chapter 3 of Part 2 in relation to disputes referred to them under section 185;
- (d) their functions under sections 24 and 25 so far as they relate to information required for purposes connected with matters in relation to which functions specified in this subsection are conferred on OFCOM; and
- (e) their functions under section 26 so far as they are carried out for the purpose of making information available to persons mentioned in subsection (2)(a) to (c) of that section.

(2) In carrying out those functions, OFCOM must take due account of all applicable recommendations issued (whether before or after the coming into force of this section) by the European Commission under Article 19(1) of the Framework Directive.

(3) Where OFCOM decide not to follow such a recommendation they must notify the Commission of their decision, and of the reasons for it.]

NOTES

Amendment

Inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 6.

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/5 Directions in respect of networks and spectrum functions

5 Directions in respect of networks and spectrum functions

(1) This section applies to the following functions of OFCOM--

- (a) their functions under Part 2; and
- (b) their functions under the enactments relating to the management of the radio spectrum that are not

contained in that Part.

(2) It shall be the duty of OFCOM to carry out those functions in accordance with such general or specific directions as may be given to them by the Secretary of State.

(3) The Secretary of State's power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes--

- (a) in the interests of national security;
- (b) in the interests of relations with the government of a country or territory outside the United Kingdom;
- (c) for the purpose of securing compliance with international obligations of the United Kingdom;
- (d) in the interests of the safety of the public or of public health.

[(3A) The Secretary of State may not give a direction under this section in respect of a function that Article 3(3a) of the Framework Directive requires OFCOM to exercise without seeking or taking instructions from any other body.]

(4) The Secretary of State is not entitled by virtue of any provision of this section to direct OFCOM to suspend or restrict--

- (a) a person's entitlement to provide an electronic communications network or electronic communications service; or
- (b) a person's entitlement to make available associated facilities.

[(4A) Before giving a direction under this section, the Secretary of State must take due account of the desirability of not favouring--

- (a) one form of electronic communications network, electronic communications service or associated facility, or
- (b) one means of providing or making available such a network, service or facility,

over another.]

(5) The Secretary of State must publish a direction under this section in such manner as appears to him to be appropriate for bringing it to the attention of the persons who, in his opinion, are likely to be affected by it.

(6) The Secretary of State is not required by subsection (5) to publish a direction, and he may exclude matter from a direction he does publish, if he considers the publication of the direction or matter to be--

- (a) against the interests of national security; or
- (b) against the interests of relations with the government of a country or territory outside the United Kingdom.

(7) Subsection (4) does not affect the Secretary of State's powers under section 132.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (to the extent that this section is taken for the purposes of s 408(3) hereof to be brought into force for the purpose of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for remaining purposes): 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

Amendment

Sub-s (3A): inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 7(a).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (4A): inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 7(b).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 6; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 5; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 4; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/6 Duties to review regulatory burdens

6 Duties to review regulatory burdens

(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve--

- (a) the imposition of burdens which are unnecessary; or
- (b) the maintenance of burdens which have become unnecessary.

(2) In reviewing their functions under this section it shall be the duty of OFCOM--

- (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
- (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.

(3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular--

- (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/7 Duty to carry out impact assessments

7 Duty to carry out impact assessments

(1) This section applies where--

- (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and
- (b) it appears to them that the proposal is important;

but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.

(2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following--

- (a) to involve a major change in the activities carried on by OFCOM;
- (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
- (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

(3) Before implementing their proposal, OFCOM must either--

- (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
- (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.

(4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.

(5) An assessment carried out under this section--

- (a) may take such form, and
- (b) must relate to such matters,

as OFCOM consider appropriate.

(6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.

(7) Where OFCOM publish an assessment under this section--

- (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM's opinion, are likely to be affected to a significant extent by its implementation;
- (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
- (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.

(8) Where OFCOM are required (apart from this section)--

- (a) to consult about a proposal to which this section applies, or
- (b) to give a person an opportunity of making representations about it,

the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.

(9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c 11) (OFCOM's annual report) must set out--

- (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
- (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.

(10) The publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected if their proposal is implemented.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 7; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 6; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 5; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/8 Duty to publish and meet promptness standards

8 Duty to publish and meet promptness standards

(1) It shall be the duty of OFCOM to publish a statement setting out the standards they are proposing to meet with respect to promptness in--

- (a) the carrying out of their different functions; and
- (b) the transaction of business for purposes connected with the carrying out of those functions.

(2) This section does not require standards to be set out with respect to anything which (apart from this section) is required to be done by a time, or within a period, provided for by or under an enactment.

(3) OFCOM may, if they think fit, at any time revise the statement for the time being in force under this section.

(4) It shall be the duty of OFCOM--

- (a) in carrying out their functions, and
- (b) in transacting business for purposes connected with the carrying out of their functions,

to have regard to the statement for the time being in force under this section.

(5) Where OFCOM revise a statement under this section, they must publish the revision as soon as practicable.

(6) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/9 Secretary of State's powers in relation to promptness standards

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

(1) Where the Secretary of State considers that the statement published by OFCOM under section 8 is not adequate for securing that they meet satisfactory promptness standards, he may give them a notification to that effect.

(2) If the period of three months after the date of the giving of a notification under subsection (1) expires without OFCOM taking steps which the Secretary of State is satisfied remedy the situation, he may give them a direction under this section.

(3) A direction under this section is one requiring OFCOM to issue a new or revised statement under section 8 in accordance with the direction.

(4) Before giving a direction under this section, the Secretary of State must--

- (a) give OFCOM an opportunity of making representations to him about his proposed direction; and

- (b) have regard to any representations made to him by them.
- (5) Where the Secretary of State gives a direction to OFCOM under this section, he must publish a copy of it in such manner as he considers appropriate for bringing it to the attention of persons who, in his opinion, are likely to be affected by OFCOM's promptness standards.
- (6) It shall be the duty of OFCOM to revise their statement under section 8 in accordance with any direction of the Secretary of State under this section.
- (7) In this section "promptness standards" means standards of promptness in--
- (a) the carrying out by OFCOM of their different functions; and
 - (b) the transaction by them of business for purposes connected with the carrying out of those functions.
- (8) No notification is to be given under subsection (1) at any time in the period of twelve months beginning with the commencement of section 8.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/10 Duty to encourage availability of easily usable apparatus

Accessible domestic communications apparatus

10 Duty to encourage availability of easily usable apparatus

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated to encourage others to secure--
- (a) that domestic electronic communications apparatus is developed which is capable of being used with ease, and without modification, by the widest possible range of individuals (including those with disabilities); and
 - (b) that domestic electronic communications apparatus which is capable of being so used is as widely available as possible for acquisition by those wishing to use it.

- (2) It shall be the duty of OFCOM from time to time to review whether they need to take further steps, or to enter into further arrangements, for the purpose of performing their duty under this section.
- (3) OFCOM must not do anything under this section that would be inconsistent with the Community requirements set out in section 4.
- (4) In this section "electronic communications apparatus" means apparatus that is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network.
- (5) For the purposes of this section electronic communications apparatus is domestic electronic communications apparatus except to the extent that it is designed or adapted for use solely for the purposes of, or in connection with, a business.
- (6) In this section "signal" includes--
- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
 - (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/11 Duty to promote media literacy

Media literacy

11 Duty to promote media literacy

- (1) It shall be the duty of OFCOM to take such steps, and to enter into such arrangements, as appear to them calculated--
- (a) to bring about, or to encourage others to bring about, a better public understanding of the nature and characteristics of material published by means of the electronic media;
 - (b) to bring about, or to encourage others to bring about, a better public awareness and understanding of the processes by which such material is selected, or made available, for publication by such means;
 - (c) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which access to material published by means of the electronic media is or can be regulated;
 - (d) to bring about, or to encourage others to bring about, the development of a better public awareness of the available systems by which persons to whom such material is made available may control what is received and of the uses to which such systems may be put; and

(e) to encourage the development and use of technologies and systems for regulating access to such material, and for facilitating control over what material is received, that are both effective and easy to use.

(2) In this section, references to the publication of anything by means of the electronic media are references to its being--

- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/12 Duty to establish and maintain Content Board

OFCOM's Content Board

12 Duty to establish and maintain Content Board

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c 11) (committees of OFCOM) to establish and maintain a committee to be known as "the Content Board".

(2) The Content Board shall consist of--

- (a) a chairman appointed by OFCOM; and
- (b) such number of other members appointed by OFCOM as OFCOM think fit.

(3) The chairman of the Content Board must be a non-executive member of OFCOM but is not to be the chairman of OFCOM.

(4) At least one of the other members of the Content Board must also be a non-executive member of OFCOM other than the chairman of OFCOM.

(5) In appointing persons to be members of the Content Board, OFCOM must secure that, for each of

the following parts of the United Kingdom--

- (a) England,
- (b) Scotland,
- (c) Wales, and
- (d) Northern Ireland,

there is a different member of the Board capable of representing the interests and opinions of persons living in that part of the United Kingdom.

(6) In appointing a person for the purposes of subsection (5)(a), OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions of persons living in all the different regions of England.

(7) The validity of any proceedings of the Content Board shall not be affected by any failure by OFCOM to comply with subsection (5) or (6).

(8) It shall be the duty of OFCOM when appointing members of the Content Board to secure, so far as practicable, that a majority of the members of the Board (counting the chairman) consists of persons who are neither members nor employees of OFCOM.

(9) The following shall be disqualified from being the chairman or another member of the Content Board--

- (a) governors and employees of the BBC;
- (b) members and employees of the Welsh Authority; and
- (c) members and employees of C4C.

(10) Before appointing a person to be the chairman or another member of the Content Board, OFCOM must satisfy themselves that he will not have any financial or other interest which would be likely prejudicially to affect the carrying out by him of any of his functions as chairman or member of the Content Board.

(11) A person is not to be taken to have such an interest by reason only that he is or will be a member or employee of OFCOM.

(12) Every person whom OFCOM propose to appoint to be the chairman or another member of the Content Board, shall, whenever requested to do so by OFCOM, furnish OFCOM with any information they consider necessary for the performance of their duty under subsection (10).

(13) In addition to paying remuneration and expenses under paragraph 14(4) of the Schedule to the Office of Communications Act 2002 (c 11), OFCOM may--

- (a) pay to, or in respect of, any member of the Content Board who is not a member or employee of OFCOM, such sums by way of pensions, allowances or gratuities as OFCOM may determine; and
- (b) provide for the making of such payments to or in respect of any such member of the Content Board.

(14) In subsection (13)--

- (a) the reference to pensions, allowances and gratuities includes a reference to similar benefits payable on death or retirement; and
- (b) the reference to providing for the payment of a pension, allowance or gratuity to, or in respect of, a person includes a reference to the making of payments towards the provision or payment of a pension, allowance or gratuity, or of any such similar benefits, to or in respect of that person.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 8; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 7; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/13 Functions of the Content Board

13 Functions of the Content Board

(1) The Content Board shall have such functions as OFCOM, in exercise of their powers under the Schedule to the Office of Communications Act 2002 (c 11), may confer on the Board.

(2) The functions conferred on the Board must include, to such extent and subject to such restrictions and approvals as OFCOM may determine, the carrying out on OFCOM's behalf of--

(a) functions in relation to matters that concern the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks; and

(b) functions in relation to the promotion of public understanding or awareness of matters relating to the publication of matter by means of the electronic media.

(3) In determining what functions to confer on the Content Board, OFCOM must have particular regard to the desirability of securing that the Board have at least a significant influence on decisions which--

(a) relate to the matters mentioned in subsection (2); and

(b) involve the consideration of different interests and other factors as respects different parts of the United Kingdom.

(4) It shall be the duty of the Content Board to ensure, in relation to--

(a) the carrying out of OFCOM's functions under Part 3 of this Act, Parts 1 and 3 of the 1990 Act and Parts 1 and 2 of the 1996 Act,

(b) the matters with respect to which functions are conferred on the Board, and

(c) such other matters mentioned in subsection (2) as OFCOM may determine,

that OFCOM are aware of the different interests and other factors which, in the Board's opinion, need to be taken into account as respects the different parts of the United Kingdom in relation to the carrying out of

OFCOM's functions.

(5) The power of OFCOM to determine the Content Board's functions includes power to authorise the Board to establish committees and panels to advise the Board on the carrying out of some or all of the Board's functions.

(6) The power of OFCOM to authorise the establishment of a committee or panel by the Content Board includes power to authorise the establishment of a committee or panel that includes persons who are not members of the Board.

(7) In this section references to the publication of anything by means of the electronic media are references to its being--

- (a) broadcast so as to be available for reception by members of the public or of a section of the public; or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 9; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 8; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 6; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/14 Consumer research

Functions for the protection of consumers

14 Consumer research

(1) OFCOM must make arrangements for ascertaining--

- (a) the state of public opinion from time to time about the manner in which electronic communications networks and electronic communications services are provided;
- (b) the state of public opinion from time to time about the manner in which associated facilities are made available;
- (c) the experiences of consumers in the markets for electronic communications services and

associated facilities, in relation to the manner in which electronic communications networks and electronic communications services are provided and associated facilities made available;

(d) the experiences of such consumers in relation to the handling, by communications providers and by persons making such facilities available, of complaints made to them by such consumers;

(e) the experiences of such consumers in relation to the resolution of disputes with communications providers or with persons making associated facilities available; and

(f) the interests and experiences of such consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of electronic communications networks and electronic communications services or of the availability of associated facilities.

(2) The matters to which the arrangements must relate do not include the incidence or investigation of interference (within the meaning of [the Wireless Telegraphy Act 2006]) with wireless telegraphy.

(3) The matters to which the arrangements must relate do not (except so far as authorised or required by subsections (4) to (6)) include public opinion with respect to--

(a) the contents of anything broadcast or otherwise published by means of an electronic communications network; or

(b) the experiences or interests of consumers in any market for electronic communications services with respect to anything so broadcast or published.

(4) OFCOM must make arrangements for ascertaining--

(a) the state of public opinion from time to time concerning programmes included in television and radio services;

(b) any effects of such programmes, or of other material published by means of the electronic media, on the attitudes or behaviour of persons who watch, listen to or receive the programmes or material; and

(c) so far as necessary for the purpose mentioned in subsection (5), the types of programmes that members of the public would like to see included in television and radio services.

(5) That purpose is the carrying out by OFCOM of their functions under Chapter 4 of Part 3 of this Act.

(6) OFCOM must make arrangements for the carrying out of research into the following--

(a) the matters mentioned in section 11(1);

(b) matters relating to, or connected with, the setting of standards under section 319 of this Act;

(c) matters relating to, or connected with, the observance of those standards by persons providing television and radio services;

(d) matters relating to, or connected with, the prevention of unjust or unfair treatment in programmes included in such services; and

(e) matters relating to, or connected with, the prevention of unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

[(6A) OFCOM must make arrangements for ascertaining--

(a) the state of public opinion from time to time about the way in which postal services are provided;

(b) the experiences of consumers in the markets for postal services, in relation to the way in which those services are provided;

(c) the experiences of such consumers in relation to the handling, by persons providing postal services, of complaints made to them by such consumers;

(d) the experiences of such consumers in relation to the resolution of disputes with persons providing postal services;

(e) the interests and experiences of such consumers in relation to matters that are incidental to or otherwise connected with their experiences of the provision of postal services.]

(7) Arrangements made by OFCOM for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways--

- (a) by members or employees of OFCOM;
- (b) by the Content Board;
- (c) in accordance with arrangements made by that Board;
- (d) by persons who are neither members nor employees of OFCOM.

(8) In this section references to the publication of anything by means of the electronic media are references to its being--

- (a) broadcast so as to be available for reception by members of the public or of a section of the public;
or
- (b) distributed by means of an electronic communications network to members of the public or of a section of the public.

(9) This section does not restrict OFCOM's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (2): words "the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 26.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (6A): inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 58.

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 7; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/15 Duty to publish and take account of research

15 Duty to publish and take account of research

- (1) It shall be the duty of OFCOM--
- (a) to publish the results of any research carried out by them or on their behalf under section 14; and
 - (b) to consider and, to such extent as they think fit, to take account of the results of such research in the carrying out of their functions.
- (2) OFCOM are not required under this section--
- (a) to publish any matter that is confidential in accordance with subsection (3) or (4); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (3) A matter is confidential under this subsection if--
- (a) it relates specifically to the affairs of a particular body; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (4) A matter is confidential under this subsection if--
- (a) it relates to the private affairs of an individual; and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (5) The publication of research under this section must be in such manner as OFCOM consider appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 8; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/16 Consumer consultation

16 Consumer consultation

- (1) It shall be the duty of OFCOM to establish and maintain effective arrangements for consultation about the carrying out of their functions with--

- (a) consumers in the markets for the services and facilities in relation to which OFCOM have functions;
 - (b) consumers in the markets for apparatus used in connection with any such services or facilities [(other than postal services)];
 - (c) consumers in the markets for directories capable of being used in connection with the use of an electronic communications network or electronic communications service.
- (2) The arrangements must include the establishment and maintenance of a panel of persons (in this Act referred to as "the Consumer Panel") with the function of advising both--
- (a) OFCOM; and
 - (b) such other persons as the Panel think fit.
- (3) The arrangements must secure that the matters about which the Consumer Panel are able to give advice include the interests of domestic and small business consumers in relation to the following matters--
- (a) the provision of electronic communications networks;
 - (b) the provision and making available of the services and facilities mentioned in subsection (4);
 - (c) the supply of apparatus designed or adapted for use in connection with *any such services or facilities* [a service or facility mentioned in subsection (4)(a) to (e)];
 - (d) the supply of directories capable of being used in connection with the use of an electronic communications network or electronic communications service;
 - (e) the financial and other terms on which *such services or facilities* [services or facilities mentioned in subsection (4)] are provided or made available, or on which such apparatus or such a directory is supplied;
 - (f) standards of service, quality and safety for such services, facilities, apparatus and directories;
 - (g) the handling of complaints made by persons who are consumers in the markets for such services, facilities, apparatus or directories to the persons who provide the services or make the facilities available, or who are suppliers of the apparatus or directories;
 - (h) the resolution of disputes between such consumers and the persons who provide such services or make such facilities available, or who are suppliers of such apparatus or directories;
 - (i) the provision of remedies and redress in respect of matters that form the subject-matter of such complaints or disputes;
 - (j) the information about service standards and the rights of consumers that is made available by persons who provide or make available such services or facilities, or who are suppliers of such apparatus or directories;
 - (k) any other matter appearing to the Panel to be necessary for securing effective protection for persons who are consumers in the markets for any such services, facilities, apparatus or directories.
- (4) Those services and facilities are--
- (a) electronic communications services;
 - (b) associated facilities;
 - (c) directory enquiry facilities;
 - (d) a service consisting in the supply of information for use in responding to directory enquiries or of

an electronic programme guide; *and*

(e) every service or facility not falling within any of the preceding paragraphs which is provided or made available to members of the public--

(i) by means of an electronic communications network; and

(ii) in pursuance of agreements entered into between the person by whom the service or facility is provided or made available and each of those members of the public;

[(f) postal services].

(5) The matters about which the Consumer Panel are to be able to give advice do not include any matter that concerns the contents of anything which is or may be broadcast or otherwise transmitted by means of electronic communications networks.

(6) The arrangements made by OFCOM under this section must also secure that the Consumer Panel are able, in addition to giving advice on the matters mentioned in subsection (3), to do each of the following--

(a) at the request of OFCOM, to carry out research for OFCOM in relation to any of the matters in relation to which OFCOM have functions under section 14;

(b) to make arrangements for the carrying out of research into such other matters appearing to the Panel to be relevant to the carrying out of the Panel's functions as they think fit;

(c) to give advice to OFCOM in relation to any matter referred to the Panel by OFCOM for advice;

(d) to publish such information as the Panel think fit about the advice they give, about the carrying out of the Panel's other functions and about the results of research carried out by them or on their behalf.

(7) It shall be the duty of OFCOM, in the carrying out of their functions, to consider and, to such extent as they think appropriate, to have regard to--

(a) any advice given to OFCOM by the Consumer Panel; and

(b) any results notified to OFCOM of any research undertaken by that Panel.

(8) It shall also be the duty of OFCOM (subject to subsection (9))--

(a) to provide the Consumer Panel with all such information as, having regard, in particular, to the need to preserve commercial confidentiality, OFCOM consider appropriate to disclose to the Panel for the purpose of enabling the Panel to carry out their functions; and

(b) to provide the Panel with all such further information as the Panel may require.

(9) OFCOM are not required to provide information by virtue of subsection (8)(b) if, having regard to--

(a) the need to preserve commercial confidentiality, and

(b) any other matters that appear to OFCOM to be relevant,

it is reasonable for OFCOM to refuse to disclose it to the Panel.

(10) It shall be the duty of OFCOM, in the case of any advice or opinion received from and published by the Panel which OFCOM propose to disregard in whole or in part, or with which OFCOM disagree in whole or in part--

(a) to ensure that the Panel know OFCOM's reasons for disregarding or disagreeing with the advice or opinion; and

(b) to ensure that those reasons are or have been published in such manner as OFCOM consider appropriate for bringing them to the attention of persons who are aware of the Panel's advice or opinion.

(11) The Consumer Panel must--

(a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and

(b) as soon as practicable after the end of each subsequent period of twelve months,

prepare a report on the carrying out of their functions in that period.

(12) The Consumer Panel must publish each report--

(a) as soon as practicable after its preparation is complete; and

(b) in such manner as they consider appropriate.

(13) In this section--

"domestic and small business consumer" means a person who--

(a) is a consumer in the market for services or facilities mentioned in subsection (4) or for apparatus designed or adapted for use in connection with *any such services or facilities* [a service or facility mentioned in subsection (4)(a) to (e)]; but

(b) is neither--

(i) a communications provider or a person who makes associated facilities available; nor

(ii) a person who is a consumer in the market in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

"electronic programme guide" means a service which consists of--

(a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): in para (b) words "(other than postal services)" in square brackets inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (3): in para (c) words "any such services or facilities" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (3) (a).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (3): in para (e) words "such services or facilities" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (3)(b).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (4): in para (d) word "and" in italics repealed by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (4)(a).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (4): para (f) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (4) (b).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (13): in definition "domestic and small business consumer" in para (a) words "any such services or facilities" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 59(1), (5).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/17 Membership etc of the Consumer Panel

17 Membership etc of the Consumer Panel

(1) The members of the Consumer Panel shall be appointed by OFCOM and shall comprise a chairman and such other members as OFCOM may determine.

(2) The approval of the Secretary of State is required for the appointment of a person to be the chairman or to be another member of the Panel.

(3) In appointing persons to be members of the Consumer Panel, OFCOM must secure that, for each of the following parts of the United Kingdom--

- (a) England,
- (b) Scotland,
- (c) Wales, and
- (d) Northern Ireland,

there is a different member of the Panel capable of representing the interests and opinions of persons living in that part of the United Kingdom.

(4) In appointing persons to be members of the Consumer Panel, OFCOM must secure, so far as practicable, that the Panel are able to give informed advice about matters referable to each of the following--

- (a) the interests of persons living in rural areas;

- (b) the interests of persons living in urban areas;
- (c) the interests of small businesses;
- (d) the interests of disadvantaged persons; persons with low incomes and persons with disabilities; and
- (e) the interests of the elderly.

[(4A) The Secretary of State may direct OFCOM to appoint as a member of the Consumer Panel a person specified by the Secretary of State who--

- (a) is a non-executive member of the National Consumer Council, and
- (b) is nominated for the purposes of this subsection by the National Consumer Council after consultation with OFCOM.

(4B) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (4A); but that does not prevent OFCOM appointing as a member of the Consumer Panel any person who is also a member of the National Consumer Council.

(4C) A person appointed in accordance with a direction under subsection (4A) ceases to be a member of the Panel on ceasing to be a non-executive member of the National Consumer Council.]

(5) The validity of any proceedings of the Consumer Panel shall not be affected by any failure by OFCOM to comply with [subsections (3) to (4A)].

(6) It shall be the duty of the Consumer Panel, in carrying out their functions, to have regard to the following interests--

- (a) the interests of persons from the different parts of the United Kingdom; and
- (b) the interests specified in subsection (4).

(7) A person shall be disqualified from being the chairman or a member of the Consumer Panel if he is a member or employee of OFCOM.

(8) The chairman and every member of the Consumer Panel--

- (a) shall be appointed for a fixed period specified in the terms of his appointment but shall be eligible for re-appointment at the end of that period; and
- (b) may at any time be removed from the Panel by a notice given by OFCOM with the approval of the Secretary of State.

(9) OFCOM may pay to the chairman and to any other member of the Consumer Panel such remuneration and allowances as OFCOM consider appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-ss (4A)-(4C): inserted by the Consumers, Estate Agents and Redress Act 2007, s 40(a).

Date in force: 21 December 2007: see SI 2007/3546, art 3, Schedule.

Sub-s (5): words "subsections (3) to (4A)" in square brackets substituted by the Consumers, Estate Agents and Redress Act 2007, s 40(b).

Date in force: 21 December 2007: see SI 2007/3546, art 3, Schedule.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/18 Committees and other procedure of the Consumer Panel

18 Committees and other procedure of the Consumer Panel

- (1) The Consumer Panel may make such arrangements as they think fit for committees established by the Panel to give advice to them about matters relating to the carrying out of the Panel's functions.
- (2) The Consumer Panel may make such other arrangements for regulating their own procedure, and for regulating the procedure of the committees established by them, as they think fit.
- (3) Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority.
- (4) The committees established by the Panel may include committees the membership of which includes persons (including persons constituting a majority of the committee) who are not members of the Panel.
- (5) The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel.
- (6) Where a person who is not a member of the Consumer Panel is a member of a committee established by the Panel, OFCOM may pay to that person such remuneration and expenses as OFCOM may determine.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/19 Power to amend remit of Consumer Panel

19 Power to amend remit of Consumer Panel

- (1) The Secretary of State may by order modify subsection (3) of section 16 so as to add to the matters about which the Consumer Panel are required to be able to give advice.
- (2) Before making an order under this section the Secretary of State must consult OFCOM and such other persons as he thinks fit.
- (3) No order is to be made containing provision authorised by this section unless a draft of the order has

been laid before Parliament and approved by a resolution of each House.

(4) The power to amend or revoke an order under this section does not include power to provide for a matter to cease to be a matter about which the Consumer Panel are required to be able to give advice.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/20 Advisory committees for different parts of the United Kingdom

Advisory committees

20 Advisory committees for different parts of the United Kingdom

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c 11) (committees of OFCOM) to establish and maintain a committee for each of the following parts of the United Kingdom--

- (a) England;
- (b) Wales;
- (c) Scotland; and
- (d) Northern Ireland.

(2) Each committee shall consist of--

- (a) a chairman appointed by OFCOM; and
- (b) such number of other members appointed by OFCOM as OFCOM think fit.

(3) In appointing a person in accordance with this section to be a member of a committee, OFCOM must have regard to the desirability of ensuring that the person appointed is able to represent the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.

(4) The function of each committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests and opinions, in relation to communications matters, of persons living in the part of the United Kingdom for which the committee has been established.

(5) A committee established under this section may also, at the request of the Consumer Panel, provide advice about those interests and opinions to the Consumer Panel.

(6) The consent of OFCOM is required for the giving of advice under subsection (5).

(7) In this section "communications matters" has the same meaning as in section 3.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/21 Advisory committee on elderly and disabled persons

21 Advisory committee on elderly and disabled persons

(1) It shall be the duty of OFCOM, in accordance with the following provisions of this section, to exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (c 11) (committees of OFCOM) to establish and maintain a committee to provide the advice specified in this section.

(2) The committee shall consist of--

- (a) a chairman appointed by OFCOM; and
- (b) such number of other members appointed by OFCOM as OFCOM think fit.

(3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include--

- (a) persons who are familiar with the needs of the elderly; and
- (b) persons who are familiar with the needs of persons with disabilities.

(4) The function of the committee shall be to provide advice to OFCOM (including other committees established by OFCOM) about the interests, in relation to communications matters, of--

- (a) the elderly; and
- (b) persons with disabilities.

(5) The committee may also, at the request of the Consumer Panel, provide advice about those interests to the Consumer Panel.

(6) The consent of OFCOM is required for the giving of advice under subsection (5).

(7) In this section "communications matters" has the same meaning as in section 3.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/22 Representation on international and other bodies

International matters**22 Representation on international and other bodies**

(1) It shall be the duty of OFCOM to do, as respects the United Kingdom, such of the following things as they are required to do by the Secretary of State--

- (a) provide representation on behalf of Her Majesty's Government in the United Kingdom on international and other bodies having communications functions;
- (b) become or serve as a member of an international or other body having such functions;
- (c) subscribe to such a body;
- (d) provide representation on behalf of Her Majesty's Government in the United Kingdom at international meetings about communications.

(2) OFCOM shall also have the power, if requested to do so by the Secretary of State, to do one or more of those things as respects any of the Channel Islands, the Isle of Man or a British overseas territory.

(3) It shall be the duty of OFCOM to carry out their functions under this section in accordance with such general or specific directions as may be given to them by the Secretary of State.

(4) The Secretary of State--

- (a) is not entitled to direct OFCOM to comply with a request made under subsection (2); but
- (b) may give directions about how OFCOM are to carry out any representative role that they undertake in accordance with such a request.

(5) In this section--

"communications functions" means--

- (a) functions relating to the use of the electro-magnetic spectrum for wireless telegraphy;
- (b) functions relating to the regulation of television or radio broadcasting or the provision of television and radio services; *and*
- [(ba) functions relating to postal services; and]
- (c) any other function which relates to, or is connected with, a matter in respect of which OFCOM have functions;

"international meetings about communications" means international meetings relating to, or to matters connected with, one or more of the following--

- (a) the use of the electro-magnetic spectrum for wireless telegraphy;
- (b) the regulation of television or radio broadcasting or of the provision of television and radio services;

[(ba) the regulation of postal services;]

(c) any other matter in respect of which OFCOM have functions.

(6) In relation to--

(a) a part of the British Islands outside the United Kingdom, or

(b) a British overseas territory,

the references in subsection (5) to matters in respect of which OFCOM have functions include references to matters corresponding, in the case of that part of those Islands or of that territory, to matters in respect of which OFCOM's functions are confined to the United Kingdom.

(7) In subsection (5) "television or radio broadcasting" includes the provision by means other than broadcasting of services similar to those provided by television or radio broadcasts.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (5): in definition "communication functions" in para (b) word "and" in italics repealed by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 60(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (5): in definition "communication functions" para (ba) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 60(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (5): in definition "international meetings about communication" para (ba) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 1, 60(1), (3).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts

1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/23 Directions for international purposes in respect of broadcasting functions

23 Directions for international purposes in respect of broadcasting functions

- (1) This section applies to--
- (a) OFCOM's functions under the enactments relating to broadcasting; and
 - (b) the matters in relation to which those functions are conferred.
- (2) It shall be the duty of OFCOM--
- (a) to carry out those functions in accordance with any general or specific directions given to them by the Secretary of State for the purpose mentioned in subsection (3); and
 - (b) to carry out such other functions in relation to the matters to which this section applies as they are required to carry out by any general or specific directions so given.
- (3) The Secretary of State is not to give a direction under this section except for the purpose of securing compliance, in relation to a matter to which this section applies, with an international obligation of the United Kingdom.
- (4) A direction under this section must be contained in an order made by the Secretary of State.
- (5) In this section "the enactments relating to broadcasting" means--
- (a) the 1990 Act;
 - (b) the 1996 Act;
 - (c) Part 3 of this Act; and
 - (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 10; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 9; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/24 Provision of information to the Secretary of State

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

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

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 11; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 10; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/25 Community requirement to provide information

25 Community requirement to provide information

- (1) This section applies if--
- (a) the European Commission requires OFCOM to provide it with information for the purpose of enabling it to perform any of its functions in relation to electronic communications networks, electronic communications services or associated facilities; and
- (b) the information is information obtained by OFCOM in the course of carrying out any of their functions under--

- (i) Part 2; or
- (ii) the enactments relating to the management of the radio spectrum that are not contained in that Part.

(2) It shall be the duty of OFCOM to comply with the requirement.

(3) If information provided to the European Commission under this section has been obtained by OFCOM from a person who is or, at the time the information was obtained from him, was--

- (a) a communications provider, or
- (b) a person making associated facilities available,

OFCOM must notify him that they have provided the information to the Commission.

(4) It shall be for OFCOM to determine the manner in which a notification is given under subsection (3).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

See Further

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/26 Publication of information and advice for consumers etc

26 Publication of information and advice for consumers etc

(1) OFCOM [must] arrange for the publication of such information and advice about matters in relation to which they have functions as it appears to them to be appropriate to make available to the persons mentioned in subsection (2).

(2) Those persons are--

- (a) the customers of communications providers;

(b) the customers of persons who make associated facilities available;

[(ba) any person affected by the application of the electronic communications code (within the meaning of section 106(1));]

(c) persons who use electronic communications networks, electronic communications services or associated facilities; *and*

(d) persons to whom radio and television services are provided or who are otherwise able or likely to take advantage of any of those services;

[(e) the customers of persons who provide postal services].

[(2A) In subsection (2)(e) the reference to customers of persons who provide postal services includes--

(a) persons who wish to be provided with such services,

(b) persons who are likely to seek to be provided with such services, and

(c) addressees.]

(3) In arranging for the publication of information or advice under this section, OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (4) and (5).

(4) A matter is confidential under this subsection if--

(a) it relates specifically to the affairs of a particular body; and

(b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(5) A matter is confidential under this subsection if--

(a) it relates to the private affairs of an individual; and

(b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

(6) The publication of information or advice under this section must be in such manner as OFCOM consider appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1), (2)(a)-(c), (3)-(6): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (1), (2)(a)-(c), (3)-(6): Appointment (for remaining purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (2)(d): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): word "must" in square brackets substituted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 8(a).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (2): para (ba) inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 8(b).

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (2): in para (c) word "and" in italics repealed by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 61(1), (2)(a).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (2): para (e) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 61(1), (2)(b).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (2A): inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 61(1), (3).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/27 Training and equality of opportunity

Employment in broadcasting

27 Training and equality of opportunity

(1) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting the development of opportunities for the training and retraining of persons--

- (a) for employment by persons providing television and radio services; and
- (b) for work in connection with the provision of such services otherwise than as an employee.

(2) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting equality of opportunity in relation to both--

- (a) employment by those providing television and radio services; and

- (b) the training and retraining of persons for such employment.
- (3) It shall also be the duty of OFCOM, in relation to such employment, training and retraining, to take all such steps as they consider appropriate for promoting the equalisation of opportunities for disabled persons.
- (4) The reference in subsection (2) to equality of opportunity is a reference to equality of opportunity--
- (a) between men and women; and
- (b) between persons of different racial groups.
- (5) In this section--
- "disabled" has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,] the Disability Discrimination Act 1995 (c 50);
- "racial group" has the same meaning as in the [Equality Act 2010] or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (NI 6)).
- (6) The Secretary of State may by order amend subsection (4) by adding any other form of equality of opportunity that he considers appropriate.
- (7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (5): in definition "disabled" words "the Equality Act 2010 or, in Northern Ireland," in square brackets inserted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 54(a) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

Sub-s (5): in definition "racial group" words "Equality Act 2010" in square brackets substituted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 54(b) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/28 General power to charge for services

Charging

28 General power to charge for services

(1) OFCOM may provide a service to which this section applies to any person on such terms as to the making of payments to OFCOM--

- (a) as they may determine in advance; or
- (b) as may be agreed between that person and OFCOM.

(2) This section applies to a service which is provided by OFCOM to a person in the course of carrying out their functions and is neither--

- (a) a service which OFCOM are under a duty to provide to that person; nor
- (b) one in respect of which express provision is made by or under an enactment for authorising or forbidding the payment of fees or charges.

(3) In this section references to providing a service to a person include references to a service consisting in--

- (a) the giving of advice to that person;
- (b) the entry of his particulars in a register or other record kept by OFCOM otherwise than in pursuance of an express statutory duty to keep the register or record; or
- (c) the taking of steps for the purposes of determining whether to grant an application for an entry in a register or record so kept.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/29 Secretary of State guarantees for OFCOM borrowing

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

- (1) The Secretary of State may guarantee--
- (a) the repayment of the principal of any borrowing by OFCOM;
 - (b) the payment of interest on any such borrowing; and
 - (c) the discharge of other financial obligations incurred by OFCOM in connection with any such borrowing.
- (2) The power of the Secretary of State to give a guarantee under this section is a power (subject to subsection (3)) to give it in such manner and on such conditions as he thinks fit.
- (3) The Secretary of State must not give a guarantee under this section if the aggregate of--
- (a) the amounts that he may be required to pay for fulfilling that guarantee, and
 - (b) the amounts that he may be required to pay for fulfilling other guarantees previously given under this section and still in force,
- exceeds £5 million.
- (4) The Secretary of State may by order substitute another amount for the amount for the time being specified in subsection (3).
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of the House of Commons.
- (6) Immediately after a guarantee is given under this section, the Secretary of State must lay a statement of the guarantee before each House of Parliament.
- (7) Where any sum is paid by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before each House of Parliament as soon as practicable after the end of each of the financial years--
- (a) beginning with the one in which the sum is paid; and
 - (b) ending with the one in which OFCOM's liabilities under subsection (8) in respect of that sum are finally discharged.
- (8) If sums are paid by the Secretary of State in fulfilment of a guarantee given under this section OFCOM must pay him--
- (a) such amounts in or towards the repayment to him of those sums as he may direct; and
 - (b) interest, at such rates as he may determine, on amounts outstanding under this subsection.
- (9) Payments to the Secretary of State under subsection (8) must be made at such times and in such manner as he may determine.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/30 Transfers of property etc from pre-commencement regulators

Provisions supplemental to transfer of functions**30 Transfers of property etc from pre-commencement regulators**

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

and such a scheme shall come into force on such day as the Secretary of State may appoint (whether in

the scheme or subsequently).

(11) The Secretary of State is not to make a scheme for the transfer of property, rights and liabilities from a pre-commencement regulator to OFCOM unless--

- (a) that regulator has failed to comply with a direction under subsection (1); or
- (b) that regulator has complied with such a direction by submitting a scheme to the Secretary of State that he has decided not to approve (with or without modifications).

(12) Schedule 2 (which makes further provision about schemes under this section) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 1 Functions of OFCOM (ss 1-31)/31 Transitional functions and abolition of pre-commencement regulators

31 Transitional functions and abolition of pre-commencement regulators

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

Authority shall cease to exist.

(5) Section 54 of the Telecommunications Act 1984 (c 12) (which provides for the establishment of advisory bodies) shall cease to have effect; and each of the bodies established under that section shall cease to exist on such day as the Secretary of State may by order appoint.

(6) Different days may be appointed under this section for the Director General of Telecommunications and for each of the different bodies mentioned in subsections (4)(b) and (5).

NOTES

Initial Commencement

Royal Assent

Sub-ss (1)-(4), (6): Royal Assent: 17 July 2003: see s 411(2), (3).

To be appointed

Sub-s (5): To be appointed: see s 411(2).

Appointment

Sub-s (5): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions see art 5 thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 12; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 11; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 9; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 2 Networks, Services and the Radio Spectrum (ss 32-197)/32 Meaning of electronic communications networks and services

Part 2

Networks, Services and the Radio Spectrum

Chapter 1

Electronic Communications Networks and Services

Preliminary

32 Meaning of electronic communications networks and services

(1) In this Act "electronic communications network" means--

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

"network access" has the same meaning as in Chapter 1 of this Part;

"the Tribunal" means the Competition Appeal Tribunal; and

"Tribunal rules" means rules made under section 15 of the Enterprise Act 2002.

(2) References in this Chapter, in relation to a dispute, to the regulatory authorities of other member States are references to such of the authorities of the other member States as have been notified under the Framework Directive to the European Commission as the regulatory authorities of those States for the purposes of the matters to which the dispute relates.

(3) In this section "the Framework Directive" has the same meaning as in Chapter 1 of this Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 33; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 32; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 25; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/198 Functions of OFCOM in relation to the BBC

Part 3

Television and Radio Services [etc]

NOTES

Amendment

Word "etc" in square brackets inserted by the Digital Economy Act 2010, s 22(4).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Chapter 1
The BBC, C4C the Welsh Authority and the Gaelic Media Service

The BBC

198 Functions of OFCOM in relation to the BBC

(1) It shall be a function of OFCOM, to the extent that provision for them to do so is contained in--

- (a) the BBC Charter and Agreement, and
- (b) the provisions of this Act and of Part 5 of the 1996 Act,

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

(2) For the purposes of the carrying out of that function OFCOM--

- (a) are to have such powers and duties as may be conferred on them by or under the BBC Charter and Agreement; and
- (b) are entitled, to the extent that they are authorised to do so by the Secretary of State or under the terms of that Charter and Agreement, to act on his behalf in relation to that Charter and Agreement.

(3) The BBC must pay OFCOM such penalties in respect of contraventions by the BBC of provision made by or under--

- (a) this Part,
- [(aa) Part 4A,] or
- (b) the BBC Charter and Agreement,

as are imposed by OFCOM in exercise of powers conferred on them by that Charter and Agreement.

(4) The BBC are also to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the BBC as may be--

- (a) agreed from time to time between the BBC and OFCOM; or
- (b) (in default of agreement) fixed by the Secretary of State.

(5) The maximum penalty that may be imposed on the BBC on any occasion by OFCOM in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000.

(6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (5).

(7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(8) It shall be the duty of OFCOM to have regard to their functions under this section when carrying out their functions under the 1990 Act, the 1996 Act and this Part in relation to services provided by persons other than the BBC.

(9) In this section "the BBC's services" means such of the services provided by the BBC (excluding the services comprised in the World Service) as are of a description of service which, if provided by a BBC company, would fall to be regulated by OFCOM by virtue of section 211 or 245 [or by the appropriate regulatory authority by virtue of section 368C].

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (3): para (aa) inserted by SI 2009/2979, reg 3(1)(a).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (9): words "or by the appropriate regulatory authority by virtue of section 368C" in square brackets inserted by SI 2009/2979, reg 3(1)(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 2, 34; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[198A C4C's functions in relation to media content]

C4C**[198A C4C's functions in relation to media content]**

[(1) C4C must participate in--

(a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,

(b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and

(c) the broadcasting and distribution of such content and films.

(2) C4C must, in particular, participate in--

(a) the making of relevant media content that consists of news and current affairs,

(b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,

(c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and

(d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.

(3) In performing their duties under subsections (1) and (2) C4C must--

(a) promote measures intended to secure that people are well-informed and motivated to participate in society in a variety of ways, and

(b) contribute towards the fulfilment of the public service objectives (as defined in section 264A).

(4) In performing their duties under subsections (1) to (3) C4C must--

(a) support the development of people with creative talent, in particular--

(i) people at the beginning of their careers in relevant media content or films, and

(ii) people involved in the making of innovative content and films,

(b) support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world and by challenging established views,

(c) promote alternative views and new perspectives, and

(d) provide access to material that is intended to inspire people to make changes in their lives.

(5) In performing those duties C4C must have regard to the desirability of--

(a) working with cultural organisations,

(b) encouraging innovation in the means by which relevant media content is broadcast or distributed, and

(c) promoting access to and awareness of services provided in digital form.

(6) In this section--

"participate in" includes invest in or otherwise procure;

"relevant media content" means material, other than advertisements, which is included in any of the following services that are available to members of the public in all or part of the United Kingdom--

(a) television programme services, additional television services or digital additional television services,

(b) on-demand programme services, or

(c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service;

and a film is a "third party film" if C4C did not participate in making it.

(7) The services that are to be taken for the purposes of this section to be available to members of the public include any service which--

(a) is available for reception by members of the public (within the meaning of section 361); or

(b) is available for use by members of the public (within the meaning of section 368R(4)).]

NOTES**Amendment**

Inserted by the Digital Economy Act 2010, s 22(1).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[198B Statement of media content policy]

[198B Statement of media content policy]

[(1) C4C must prepare a statement of media content policy--

(a) at the same time as they prepare the first statement of programme policy that is prepared under section 266 after this section comes into force, and

(b) subsequently at annual intervals.

(2) C4C must monitor their performance in carrying out the proposals contained in their statements of media content policy.

(3) A statement of media content policy must--

(a) set out C4C's proposals for securing that, during the following year, they will discharge their duties under section 198A, and

(b) include a report on their performance in carrying out the proposals contained in the previous statement.

(4) In preparing the statement, C4C must--

(a) have regard to guidance given by OFCOM, and

(b) consult OFCOM.

(5) C4C must publish each statement of media content policy--

(a) as soon as practicable after its preparation is complete, and

(b) in such manner as they consider appropriate, having regard to any guidance given by OFCOM.

(6) OFCOM must--

(a) from time to time review the guidance for the time being in force for the purposes of this section, and

(b) revise that guidance as they think fit.]

NOTES**Amendment**

Inserted by the Digital Economy Act 2010, s 23(1).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[198C OFCOM reports on C4C's media content duties]

[198C OFCOM reports on C4C's media content duties]

[(1) For each relevant period, OFCOM must--

- (a) carry out a review of the extent to which C4C have discharged their duties under section 198A, and
- (b) prepare a report on the matters found on the review.

(2) OFCOM must publish each report under this section--

- (a) as soon as practicable after its preparation is complete, and
- (b) in such manner as they consider appropriate.

(3) "Relevant period" means each period selected by OFCOM for the purposes of section 264(1)(b) that ends after this section comes into force.]

NOTES

Amendment

Inserted by the Digital Economy Act 2010, s 23(1).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[198D Directions in relation to C4C's media content duties]

[198D Directions in relation to C4C's media content duties]

[(1) This section applies if OFCOM--

- (a) are of the opinion that C4C have failed to perform one or more of their duties under section 198A or section 198B(1), (3) or (5),
- (b) are of the opinion that the failure is serious and is not excused by economic or market conditions, and
- (c) determine that the situation requires the exercise of their functions under this section.

(2) In making a determination under subsection (1)(c), OFCOM must have regard, in particular, to--

- (a) C4C's statements of media content policy,
- (b) C4C's effectiveness and efficiency in monitoring their own performance, and
- (c) general economic and market conditions affecting the provision of relevant media content (as defined in section 198A).

(3) OFCOM may give directions to C4C to do one or both of the following--

- (a) to revise the latest statement of media content policy in accordance with the direction;
- (b) to take such steps for remedying the failure as OFCOM specify in the direction.

(4) A direction given under this section must set out--

- (a) a reasonable timetable for complying with it, and

(b) the factors that OFCOM will take into account in determining whether or not a failure has been remedied.

(5) OFCOM must consult C4C before giving a direction under this section.]

NOTES

Amendment

Inserted by the Digital Economy Act 2010, s 23(1).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/199 [Other] functions of C4C

199 [Other] functions of C4C

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

(a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and

(b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.

(2) [In subsection (1) "primary functions" means--

(za) the performance of C4C's duties under section 198A;]

(a) securing the continued provision of Channel 4; and

(b) the fulfilment of the public service remit for that Channel under section 265.

(3) Section 24(5)(b) and (6) of the 1990 Act (power of C4C to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

(4) For sub-paragraphs (3) and (4) of paragraph 1 of Schedule 3 to the 1990 Act (power of C4C to do things incidental or conducive to the carrying out of their functions) there shall be substituted--

"(3) The Corporation may do anything which appears to them to be incidental or conducive to the carrying out of their functions.

(4) The powers of the Corporation under sub-paragraph (3) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so--

(a) to borrow money;

(b) to carry on activities (other than those comprised in their duty to carry out their primary functions) through Channel 4 companies; and

(c) to participate with others in the carrying on of any such activities."

(5) Schedule 9 (which makes provision for the approval by OFCOM, and for the enforcement, of arrangements made by C4C about the carrying on of their activities) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Section heading: word "Other" in square brackets inserted by the Digital Economy Act 2010, s 22(2).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (2): words from "In subsection (1)" to "under section 198A," in square brackets substituted by the Digital Economy Act 2010, s 22(2).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/200 Removal of members of C4C

200 Removal of members of C4C

(1) In paragraph 3 of Schedule 3 to the 1990 Act (term of office of members of C4C), after sub-paragraph (2) there shall be inserted--

"(2A) OFCOM may at any time, by notice to a member of the Corporation, terminate the appointment of that member.

(2B) Before terminating a person's appointment under sub-paragraph (2A), OFCOM must consult the Secretary of State."

(2) This section applies only to a member whose appointment was made, or last renewed, after the coming into force of this section.

NOTES**Initial Commencement****To be appointed**

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/201 Deficits and surpluses of C4C

201 Deficits and surpluses of C4C

(1) Sections 26 and 27 of the 1990 Act (revenue deficits of C4C to be funded by providers of Channel 3 services and application of excess revenues of C4C) shall cease to have effect.

(2) This section has effect in relation to a deficit or excess for a year ending after the commencement of this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/202 Borrowing limit for C4C

202 Borrowing limit for C4C

(1) The Secretary of State may by order provide for a limit on the borrowing that C4C is allowed to undertake.

(2) The order may fix the limit either--

(a) by specifying the sum which the outstanding borrowing of C4C must not at any time exceed; or

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Channel Four Television Corporation (Borrowing Limit) Order 2003, SI 2003/3176.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/203 Function of OFCOM in relation to the Welsh Authority

The Welsh Authority

203 Function of OFCOM in relation to the Welsh Authority

It shall be a function of OFCOM, to the extent that provision for them to do so is contained in this Act and Part 5 of the 1996 Act, to regulate the services provided by the Welsh Authority.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/204 Welsh Authority's function of providing S4C and S4C Digital

204 Welsh Authority's function of providing S4C and S4C Digital

(1) The Welsh Authority shall continue in existence with the substitution of the following function for their functions under section 57 of the 1990 Act.

(2) The Welsh Authority shall have the function of providing television programme services of high quality with a view to their being available for reception wholly or mainly by members of the public in Wales.

[(3) The carrying out of that function--

(a) must include the continuing provision of the service provided in digital form and known as S4C Digital; and

(b) may include the continuing provision of the television broadcasting service known as Sianel Pedwar Cymru ("S4C").]

[(4) The duty of the Welsh Authority to provide S4C Digital includes a duty to secure that arrangements are made and remain in force for it to be broadcast in digital form.]

(5) It shall be the duty of the Welsh Authority to secure that S4C and S4C Digital each represents a public service for the dissemination of information, education and entertainment.

(6) The Welsh Authority may use part of the signals carrying S4C to provide--

(a) subtitling in relation to programmes included in the service; and

(b) other services which are ancillary to programmes included in S4C and which are directly related to their contents.

(7) In providing S4C Digital the Welsh Authority may also provide--

(a) assistance for disabled people in relation to programmes included in the service; and

(b) any other service (other than one mentioned in paragraph (a)) which is an ancillary service in relation to S4C Digital.

(8) The Secretary of State may by order modify this Act and such other enactments as he thinks fit for the purpose of--

(a) replacing the requirement of the Welsh Authority to provide S4C with a requirement to provide a service in digital form;

(b) requiring the Welsh Authority to secure that arrangements are made for that service and S4C Digital to be merged and provided as one service (also to be known as "S4C Digital"); and

(c) applying enactments relating to the provision of S4C or S4C Digital to the provision of the merged service.

(9) An order under subsection (8) may require the Welsh Authority to ensure that, from the coming into force of a requirement to provide a merged service in digital form until a time determined in the manner described in the order, the whole or a part of the merged service is also to be provided for broadcasting in analogue form.

(10) In this section "programme" does not include an advertisement.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (3): substituted by SI 2009/1968, art 2(1), (2).

Date in force: 12 August 2009: see SI 2009/1968, art 1.

Sub-s (4): substituted by SI 2009/1968, art 2(1), (3).

Date in force: 12 August 2009: see SI 2009/1968, art 1.

Subordinate Legislation

Welsh Authority (Digital Switchover) Order 2009, SI 2009/1968 (made under sub-s (8)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/205 Powers to provide other services

205 Powers to provide other services

(1) The Welsh Authority are not, in the carrying out of their function under section 204, to provide any television programme service (apart from S4C and S4C Digital) unless--

- (a) the service appears to them to satisfy the requirements of subsection (3); and
- (b) the provision by them of the service has been approved by an order made by the Secretary of State.

(2) The functions of the Welsh Authority include the provision of services that are neither television programme services nor sound services but--

- (a) are provided with a view to being made available for reception wholly or mainly by members of the public in Wales or otherwise to be received or used by persons in Wales;
- (b) are services appearing to them to satisfy the requirements of subsection (3); and
- (c) are services the provision of which by the Authority has been approved by an order made by the Secretary of State.

(3) A service provided under this section must be a public service of high quality for the dissemination of information, education or entertainment (or a combination of them) wholly or mainly to members of the public in Wales.

(4) The Welsh Authority are not to provide a television programme service under this section unless it is one the provision of which by them broadens the range of television programme services available for reception by members of the public in Wales.

(5) The Welsh Authority must ensure, in the case of every television programme service provided with

the approval of the Secretary of State under this section, that a substantial proportion of the programmes included in the service consists of programmes in Welsh.

- (6) An order under this section approving the provision of a service must set out--
- (a) the nature and other characteristics of the service that is approved; and
 - (b) in the case of a service that is a television programme service, a public service remit for that service.
- (7) In providing a service approved under this section the Welsh Authority may also provide--
- (a) assistance for disabled people in relation to programmes included in the service;
 - (b) other services which are ancillary to programmes included in the service and which are directly related to their contents; and
 - (c) any other service (other than one mentioned in paragraph (a) or (b)) which is an ancillary service in relation to so much of the service as is provided in digital form.
- (8) A television programme service provided under this section in digital form is a qualifying service for the purposes of the 1996 Act.
- (9) In this section "sound service" means a service which would fall to be regulated under section 245 if provided by an S4C company.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/206 Other activities of Welsh Authority

206 Other activities of Welsh Authority

- (1) The activities that the Welsh Authority are able to carry on include activities which appear to them--
- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their function of providing S4C, S4C Digital or a service the provision of which is approved under section 205; and
 - (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of that function.
- (2) The approval of the Secretary of State is required for the carrying on by the Welsh Authority of activities authorised only by subsection (1).
- (3) The approval of the Secretary of State--
- (a) must be contained in an order made by him; and
 - (b) may be a general approval in relation to a description of activities or a specific approval in relation to particular activities.

- (4) The activities capable of being authorised under subsection (1)--
- (a) do not include the provision of a licensable service; but
 - (b) do include activities for securing the provision of such a service by an S4C company and other activities connected with the provision of such a service by such a company.
- (5) The activities referred to in subsection (4)(b) include--
- (a) the formation of a company to provide a programme service;
 - (b) the taking of steps by means of which a company that is providing such a service becomes an S4C company.
- (6) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 6 to the 1990 Act (power of Welsh Authority to do things incidental or conducive to the carrying out of their functions) there shall be substituted--
- "(2) The Authority may do anything which appears to them to be incidental or conducive to the carrying out of their functions.
- (3) The powers of the Authority under sub-paragraph (2) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so--
- (a) to carry on activities (other than those comprised in their duty to carry out their functions under section 204 of the Communications Act 2003) through S4C companies; and
 - (b) to participate with others in the carrying on of any such activities."

(7) In this section "licensable service" means a service that would fall to be regulated under section 211 or 245 if provided by an S4C company.

(8) Section 57(1A)(b) and (1B) of the 1990 Act (power of Welsh Authority to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Subordinate Legislation

S4C (Investment Activities) Approval Order 2008, SI 2008/693 (made under sub-s (2)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/207 Welsh Authority finances

207 Welsh Authority finances

- (1) The Welsh Authority must not, whether directly or indirectly, impose charges on persons--
- (a) in respect of their reception or use in Wales of any of the Authority's public services;

- (b) in respect of their reception in Wales of any service consisting in the provision of assistance for disabled people in relation to programmes included in any one or more of those services; or
- (c) in respect of their reception in Wales of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to any of the Authority's public services provided in digital form.
- (2) It shall be unlawful to impose a charge in contravention of subsection (1).
- (3) The power of the Welsh Authority to do anything that appears to them to be conducive or incidental to the carrying out of their functions includes power, subject to subsection (4), to borrow money.
- (4) The Welsh Authority are not to borrow money except with the approval of the Secretary of State.
- (5) The consent of the Treasury is to be required for the giving of an approval for the purposes of subsection (4).
- (6) The Welsh Authority are to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the Authority as may be--
- (a) agreed from time to time between the Authority and OFCOM; or
- (b) (in default of agreement) fixed by the Secretary of State.
- (7) In section 61(4) of the 1990 Act (power of Secretary of State to increase amount of grant to the Welsh Authority), for "transmitting S4C and the service referred to in section 57(1A)(a), by order" there shall be substituted--
- "(a) providing services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003), and
- (b) arranging for the broadcasting or distribution of those services,
- by order".
- (8) In section 61A of the 1990 Act (the public service fund)--
- (a) in subsection (2) (application of fund), for "their functions under section 57(1) or (1A)(a)" there shall be substituted "their functions in relation to the provision of the services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003)."; and
- (b) in subsection (4) (programmes to be broadcast first on S4C or S4C Digital), for the words from "on S4C" onwards there shall be substituted "on a television programme service that is one of their public services (within the meaning of section 207 of the Communications Act 2003)".
- (9) In this section references to the Welsh Authority's public services are references to the following--
- (a) S4C;
- (b) S4C Digital; and
- (c) the services the provision of which by the Authority is authorised by or under section 205.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/208 The Gaelic Media Service

The Gaelic Media Service**208 The Gaelic Media Service**

(1) The body established for the purposes of section 183 of the 1990 Act (financing of programmes in Gaelic out of the Gaelic Television Fund) is hereby renamed Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service).

(2) References in any instrument or other document to Comataidh Craolaidh Gàidhlig or to the Gaelic Broadcasting Committee are to be construed accordingly.

(3) For subsection (4) of that section there shall be substituted--

"(3B) The functions of the Service shall be to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland.

(4) The Service may--

- (a) make grants out of the Fund, or
- (b) otherwise apply it,

for any of the purposes of carrying out their functions or for any purpose connected with the carrying out of those functions.

(4A) In carrying out their functions, the Service may finance, or engage in, any of the following--

- (a) the making of programmes in Gaelic with a view to those programmes being broadcast or otherwise transmitted so as to be available to persons in Scotland;
- (b) the provision of training for persons employed, or to be employed, in connection with the making of programmes in Gaelic to be so broadcast or otherwise transmitted;
- (c) research into the types of programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast or otherwise transmitted.

(4B) But the Service are not to be entitled, for the purpose of carrying out their functions, to provide--

- (a) a Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;
- (d) a national sound broadcasting service;
- (e) a national digital sound programme service; or
- (f) a television multiplex service or a radio multiplex service."

(4) For subsection (9) of that section there shall be substituted--

"(9) In this section, section 183A and Schedule 19--

"Channel 3 service", "Channel 4" and "Channel 5" each has the same meaning as in Part 1;

"national digital sound programme service" has the same meaning as in Part 2 of the Broadcasting Act 1996;

"national sound broadcasting service" means a sound broadcasting service within the meaning of Part 3 which, under subsection (4)(a) of section 245 of the Communications Act 2003, is a national service for the purposes of that section;

"Gaelic" means the Gaelic language as spoken in Scotland;

"programme" includes any item included in a programme service;

"radio multiplex service" has the same meaning as in Part 2 of the Broadcasting Act 1996;

"the Service" means the body established under subsection (3) and known as Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service);

"television multiplex service" has the meaning given by section 241(1) of the Communications Act 2003 to a multiplex service within the meaning of Part 1 of the Broadcasting Act 1996;

and a reference to being available to persons in Scotland includes a reference to being available both to persons in Scotland and to others."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/209 Membership of the Service

209 Membership of the Service

After section 183 of the 1990 Act there shall be inserted--

"183A Membership of the Gaelic Media Service

- (1) The Service shall consist of not more than twelve members.
- (2) The members of the Service are to be appointed by OFCOM
- (3) OFCOM must appoint one of the members to be the chairman of the Service.
- (4) The approval of the Secretary of State is required for the appointment of a person as a member of the Service, and for the appointment of a member as their chairman.
- (5) The members of the Service must include--
 - (a) a member nominated by the BBC;

- (b) a member nominated by Highlands and Islands Enterprise; and
 - (c) a member nominated by Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency).
- (6) When appointing members of the Service, OFCOM must have regard to--
- (a) the desirability of having members of the Service who are proficient in written and spoken Gaelic; and
 - (b) any guidance issued by the Secretary of State for the purposes of this section.
- (7) OFCOM must secure, so far as practicable, that the membership of the Service is such that the interests of each of the following are adequately represented--
- (a) the holders of licences to provide regional Channel 3 services for areas wholly in Scotland;
 - (b) the holders of licences to provide regional Channel 3 services in respect of which determinations under section 184(4)(b) are for the time being in force;
 - (c) the independent television and radio production industries in Scotland;
 - (d) other persons and bodies concerned with the promotion and use of the Gaelic language, including those concerned with education in Gaelic and in Gaelic culture.
- (8) Schedule 19 to this Act shall have effect with respect to the Service.
- (9) In this section--
- "Bòrd Gàidhlig na h-Alba" means the body of that name formed under section 5 of the National Heritage (Scotland) Act 1985;
- "regional Channel 3 service" has the same meaning as in Part 1.
- (10) The Secretary of State may by order amend the reference in subsection (5) to Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency)--
- (a) by substituting a reference to another body formed under section 5 of the National Heritage (Scotland) Act 1985 with functions relating to the promotion of Gaelic; or
 - (b) for the purpose of giving effect to a change to the name of the body referred to in that subsection.
- (11) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/210 Supplementary provisions about the Service

210 Supplementary provisions about the Service

(1) Schedule 19 to the 1990 Act (supplementary provisions about the Gaelic Broadcasting Committee) shall be amended as follows.

(2) In paragraph 2 (tenure of office and remuneration)--

(a) in sub-paragraph (1), for "sub-paragraph (2)" there shall be substituted "sub-paragraphs (1A) and (2)";

(b) after sub-paragraph (1) there shall be inserted--

"(1A) A person is not to be appointed as a member of the Service for a term of more than four years (but a person so appointed shall be eligible for re-appointment at the end of his term of office)."

(3) In paragraph 7 (employees of the Committee), after sub-paragraph (3) there shall be inserted--

"(4) A person who is an employee of the Service is not to be eligible to be appointed as a member of the Service."

(4) After paragraph 8 (financial provision) there shall be inserted--

"8A

(1) The Service must pay all their receipts to OFCOM.

(2) OFCOM must hold amounts received by them under this paragraph to the credit of the Gaelic Broadcasting Fund (and, accordingly, those amounts are not to be regarded as forming part of OFCOM's revenues)."

(5) In paragraph 12 (annual reports), after sub-paragraph (1) there shall be inserted--

"(1A) The report must include a statement of how the Service are proposing to carry out their functions during the next financial year."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/211 Regulation of independent television services

Chapter 2 Regulatory Structure for Independent Television Services

Preliminary

211 Regulation of independent television services

(1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the

1990 Act and the 1996 Act--

- (a) services falling within subsection (2) that are provided otherwise than by the BBC or the Welsh Authority; and
 - (b) services falling within subsection (3) that are provided otherwise than by the BBC.
- (2) The services referred to in subsection (1)(a) are--
- (a) television broadcasting services that are provided from places in the United Kingdom with a view to their being broadcast otherwise than only from a satellite;
 - (b) television licensable content services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the [Audiovisual Media Services Directive];
 - (c) digital television programme services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of that Directive;
 - (d) restricted television services that are provided from places in the United Kingdom; and
 - (e) additional television services that are provided from places in the United Kingdom.
- (3) The services referred to in subsection (1)(b) are--
- (a) television multiplex services that are provided from places in the United Kingdom; and
 - (b) digital additional television services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the [Audiovisual Media Services Directive].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (2): in para (b) words "Audiovisual Media Services Directive" in square brackets substituted by SI 2009/2979, reg 8(a).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (3): in para (b) words "Audiovisual Media Services Directive" in square brackets substituted by SI 2009/2979, reg 8(a).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 35; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 34; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 26; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/212 Abolition of function of assigning television frequencies

212 Abolition of function of assigning television frequencies

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies for the purposes of any of the following--

- (a) services falling to be licensed under Part 1 of the 1990 Act;
- (b) S4C; or
- (c) television multiplex services falling to be licensed under Part 1 of the 1996 Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 36; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 35; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/213 Abolition of licensing for local cable systems

213 Abolition of licensing for local cable systems

On and after the television transfer date no licence shall be required under Part 2 of the 1990 Act for the provision of a local delivery service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/214 Digital Channel 3 and Channel 5 licences

Channels 3 and 5**214 Digital Channel 3 and Channel 5 licences**

(1) This section applies to the grant by OFCOM, at any time on or after the television transfer date, of a licence under Part 1 of the 1990 Act to provide a Channel 3 service or to provide Channel 5.

(2) The licence must--

- (a) be a licence to provide the licensed service with a view to its being broadcast in digital form; and
- (b) contain such condition (if any) requiring the provider of the service to ensure that the whole or a part of the service is also provided for broadcasting in analogue form as OFCOM consider appropriate.

(3) The conditions included in a licence by virtue of subsection (2)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.

(4) Where the licence contains a condition falling within subsection (2)(b), it must also contain a condition that--

- (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
- (b) the times at which they are broadcast,

are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.

(5) The licence--

- (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
- (b) shall be renewable, on one or more occasions, under section 216.

(6) For the purposes of subsection (5) a licensing period[, in relation to a licence,] is--

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence].

(7) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.

(8) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of the following--

- (a) charges on persons in respect of their reception in the United Kingdom of the licensed service;

(b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in the licensed service; and

(c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of the licensed service as is provided in digital form.

(9) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (8).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (6): words ", in relation to a licence," in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6): in para (a) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6): in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(c).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 37; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 36; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 27; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/215 Replacement of existing Channel 3 and Channel 5 licences

215 Replacement of existing Channel 3 and Channel 5 licences

(1) It shall be the duty of OFCOM to make an offer under this section to every person who, when the

offer is made, is the holder of a licence (an "existing licence")--

- (a) to provide a Channel 3 service; or
- (b) to provide Channel 5.

(2) The offer made to a person under this section--

- (a) must be an offer to exchange his existing licence for a replacement licence; and
- (b) must be made as soon as practicable after the television transfer date.

(3) The replacement licence offered must be one granted in accordance with the provisions of--

- (a) Part 1 of the 1990 Act; and
- (b) section 214 of this Act;

but sections 15 to 17A of the 1990 Act (award of licences) are not to apply in the case of the replacement licence.

(4) Subject to subsection (5), where OFCOM make an offer under this section to a person, the service which they are proposing to license by the replacement licence must be a service which--

- (a) is provided with a view to its being broadcast in digital form; but
- (b) subject to that and to any requirements of section 214, appears to OFCOM to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence.

(5) An offer under this section may, to such extent as OFCOM think fit, propose the grant of a licence to provide a service for an area or at times which, though substantially the same as in the case of the existing licence, are not identical.

(6) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of--

- (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
- (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,

as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.

(7) That offer must also propose the conditions for allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.

(8) An offer under this section must set out--

- (a) the terms of the proposed replacement licence;
- (b) the conditions on which OFCOM are proposing to grant the replacement licence;
- (c) the period for which the offer is open;
- (d) the date on which the proposed replacement licence will be granted if the offer is accepted;
- (e) the time as from which it is proposed that that licence will take effect if the offer is accepted; and
- (f) the time from which the existing licence will cease to have effect if the offer is not accepted.

- (9) The times set out under subsection (8) must--
- (a) in the case of the time set out under paragraph (e), be in the period of twelve months beginning with the television transfer date; and
 - (b) in the case of the time set out under paragraph (f), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (10) Where a person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him--
- (a) he is entitled, on the date set out in the offer, to be granted, in accordance with Part 1 of the 1990 Act and section 214 of this Act, a replacement licence under that Part in the terms, and on the conditions, so set out;
 - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct; and
 - (c) the service which he is authorised to provide by the replacement licence, so far as it is provided in digital form, shall be a qualifying service for the purposes of Part 1 of the 1996 Act.
- (11) Where the person to whom an offer has been made under this section--
- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
 - (b) rejects the offer before the end of that period,
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (8)(f).
- (12) In this section "qualifying revenue" has the same meaning as in section 19 of the 1990 Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/216 Renewal of Channel 3 and 5 licences

216 Renewal of Channel 3 and 5 licences

(1) The holder of--

- (a) a licence to provide a Channel 3 service, or
- (b) a licence to provide Channel 5,

may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.

(2) An application for renewal may only be made in the period which--

- (a) begins four years before the end of the current licensing period; and
- (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.

(3) A determination for the purposes of subsection (2)(b)--

- (a) must be made at least one year before the day determined; and
- (b) must be notified by OFCOM to every person who, at the time of the determination, holds a licence in respect of which there is right to apply for renewal under this section.

[(4) Where OFCOM receive an application under this section for the renewal of a licence they must--

- (a) decide whether to renew the licence; and
- (b) notify the applicant of their decision.

(4A) If OFCOM decide to renew the licence they must--

- (a) in the case of a licence to provide a Channel 3 service, determine in accordance with section 216A the area for which the licence will be renewed;
- (b) in every case, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
- (c) notify the applicant of their determinations.]

(5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if references to the award of a licence were references to its renewal.

(6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to--

- (a) the public service remit for the licensed service;
- (b) programming quotas;
- (c) news and current affairs programmes; and
- (d) programme production and regional programming.

[(6A) OFCOM may also decide not to renew a licence to provide a Channel 3 service if, for the licensing period in question, they have renewed or propose to renew one or more other licences to provide a Channel 3 service for all of the area to which the licence relates.]

(7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for a

service replacing the licensed service which would differ from the licensed service in--

- (a) the area for which it would be provided; or
- (b) the times of the day, or days of the week, between or on which it would be provided.

(8) In all cases in which--

- (a) the applicant notifies OFCOM that he accepts the terms notified to him under [subsection (4A)(c)], and
- (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal,

they must grant the renewal as soon as reasonably practicable.

(9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.

(10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions, subject only to such modifications as are required to give effect[--

- (a) to any determination under subsection (4A)(a);
- (b) in accordance with the determination under subsection (4A)(b), to the requirements imposed by section 217(4)].

(11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence--

- (a) to make a decision or determination, or
- (b) to take any other step under this section,

at any time after an order under section 230 has come into force preventing the renewal of the licence.

(12) For the purposes of this section a licensing period[, in relation to a licence,] is--

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence].

(13) In this section "tender notice" means a notice under section 15 of the 1990 Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-ss (4), (4A): substituted, for sub-s (4) as originally enacted, by the Digital Economy Act 2010, s 24(2), (3).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6A): inserted by the Digital Economy Act 2010, s 24(2), (4).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (8): in para (a) words "subsection (4A)(c)" in square brackets substituted by the Digital Economy Act 2010, s 24(2), (5).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (10): paras (a), (b) substituted by the Digital Economy Act 2010, s 24(2), (6).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (12): words ", in relation to a licence," in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (12): in para (a) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (12): in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (2)(c).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[216A Renewal of Channel 3 licences: determination of licence areas]

[216A Renewal of Channel 3 licences: determination of licence areas]

[(1) This section applies if OFCOM decide under section 216(4) to renew a licence to provide a Channel 3 service.

(2) The area determined under section 216(4A)(a) for the licence--

(a) must include all or part of the area to which the licence being renewed currently relates, and

(b) may include all or part of another area if the holder of the licence to provide a Channel 3 service for the other area gives (and does not withdraw) consent before the determination is made.]

NOTES

Amendment

Inserted by the Digital Economy Act 2010, s 24(7).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/217 Financial terms of licence renewed under s 216

217 Financial terms of licence renewed under s 216

(1) The determination under [section 216(4A)(b)] must comprise--

(a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period; and

(b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which the holder of that licence will be required by those conditions to pay to OFCOM.

(2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 15 of the 1990 Act.

(3) For the purposes of subsection (1)(b)--

(a) different percentages may be determined for different accounting periods; and

(b) the percentages that may be determined for an accounting period include a nil percentage.

(4) The renewed licence is required, as renewed, to include conditions requiring the licence holder to pay to OFCOM--

(a) in addition to any fees required to be paid by virtue of section 4(1)(b) of the 1990 Act, but

(b) instead of the amounts payable under the corresponding provision applicable under the conditions of the licence to the period before the renewal takes effect,

the amounts specified in subsection (5).

(5) Those amounts are--

(a) in respect of the first complete calendar year falling within the renewal period, the amount determined under subsection (1)(a);

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

(c) in respect of each accounting period of the licence holder falling within the renewal period, an amount representing a specified percentage of qualifying revenue for that accounting period.

(6) The percentage specified for the purposes of subsection (5)(c) in respect of an accounting period must be the amount determined for that period under subsection (1)(b).

(7) In this section--

"the appropriate percentage" and "qualifying revenue" each has the same meaning as in section 19 of the 1990 Act; and

"renewal period", in relation to a licence, means the period for which the licence is in force by reason of its renewal.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): words "section 216(4A)(b)" in square brackets substituted by the Digital Economy Act 2010, s 24(8).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/218 Duty [Power] to secure the provision of a public teletext service

The public teletext service

218 Duty [Power] to secure the provision of a public teletext service

(1) OFCOM *must do all that they can to* [may] secure the provision, in accordance with this Chapter and Part 1 of the 1996 Act, of a teletext service that is available nationwide [and complies with this section].

(2) The service must consist of--

(a) a single teletext service provided in digital form with a view to its being broadcast by means of a television multiplex service; and

(b) for so long as Channel 4; S4C and one or more Channel 3 services are broadcast in analogue form, an analogue teletext service.

- (3) The service, if licensed to do so in accordance with section 219, may continue to include an analogue teletext service after it is no longer required under subsection (2)(b) to include such a service.
- (4) The analogue teletext service that must be or may be comprised in the public teletext service is a single additional television service that uses the combined spare capacity available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 and S4C (or any of them) are broadcast in analogue form.
- (5) For so long as the public teletext service must consist of both a teletext service provided in digital form and an analogue teletext service, OFCOM must secure that both services are provided by the same person.
- (6) But nothing in this section--
- (a) requires the contents of the two services comprised in the public teletext service to be the same;
 - (b) prevents the service from including different items for different parts of the United Kingdom or prevents the different items from being made available only in the parts of the United Kingdom for which they are included; or
 - (c) prevents the licence holder from making arrangements authorised by virtue of section 220 for the provision of the whole or a part of the public teletext service by another.
- (7) *OFCOM must exercise their powers* [if there is a public teletext provider, OFCOM must take account of the requirements of the public teletext service when exercising their powers]
- (a) to make frequencies available for the purposes of Channel 3 services, Channel 4 and S4C; and
 - (b) to make determinations for the purposes of section 48(2)(b) of the 1990 Act (determinations of spare capacity),

in a manner that takes account of their duty under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Section heading: word "Duty" in italics repealed and subsequent word in square brackets substituted by the Digital Economy Act 2010, s 28(1), (4).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

Sub-s (1): words "must do all that they can do" in italics repealed and subsequent word in square brackets substituted by the Digital Economy Act 2010, s 28(1), (2)(a).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

Sub-s (1): words "and complies with this section" in square brackets inserted by the Digital Economy Act

2010, s 28(1), (2)(b).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

Sub-s (7): words "OFCOM must exercise their powers" in italics repealed and subsequent words in square brackets substituted by the Digital Economy Act 2010, s 28(1), (3)(a).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

Sub-s (7): words "in a manner that takes account of their duty under this section" in italics repealed by the Digital Economy Act 2010, ss 28(1), (3)(b), 45, Sch 2.

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 38; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 37; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 28; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[218A Duty to report on public teletext service]

[218A Duty to report on public teletext service]

[(1) OFCOM must--

- (a) prepare a report on the public teletext service, and
- (b) send it to the Secretary of State as soon as practicable after this section comes into force.

(2) OFCOM must prepare and send to the Secretary of State further reports on the public teletext service when asked to do so by the Secretary of State.

(3) Each report must include, in particular--

- (a) an assessment of the advantages and disadvantages for members of the public of the public teletext service being provided, and
- (b) an assessment of whether the public teletext service can be provided at a cost to the licence holder that is commercially sustainable.

(4) An assessment under subsection (3)(a) must take account of alternative uses for the capacity that would be available if the public teletext service were not provided.

(5) OFCOM must publish every report under this section--

- (a) as soon as practicable after they send it to the Secretary of State, and
- (b) in such manner as they consider appropriate.

(6) "Capacity" means capacity on the frequencies on which Channel 3 services, Channel 4, S4C and television multiplex services are broadcast.]

NOTES**Amendment**

Inserted by the Digital Economy Act 2010, s 27.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/219 Licensing of the public teletext service

219 Licensing of the public teletext service

(1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of the public teletext service is a licence under Part 1 of that Act complying with this section.

(2) The licence--

(a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and

(b) shall be renewable, on one or more occasions, under section 222.

(3) For the purposes of subsection (2) a licensing period is--

(a) the period beginning with the commencement of this section and ending with the initial expiry date [for the licence to provide the public teletext service]; or

(b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence].

(4) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.

(5) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of any charges on persons in respect of their reception in the United Kingdom of the licensed service.

(6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).

(7) The service authorised by a licence under this section, so far as it comprises a service provided in digital form, is a qualifying service for the purposes of Part 1 of the 1996 Act.

(8) Schedule 10 (which makes further provision about the award and grant of the licence for the public teletext service and about the conditions and enforcement of that licence) shall have effect.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing licence (as referred to in s 221(1) hereof) see art 8(1) thereof.

Amendment

Sub-s (3): in para (a) words "for the licence to provide the public teletext service" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (3)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (3): in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (3)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 39; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 38; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 29; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/220 Delegation of provision of public teletext service

220 Delegation of provision of public teletext service

(1) The licence for the provision of the public teletext service may--

(a) include provision enabling the licence holder to authorise an eligible person to provide the whole or a part of the public teletext service on his behalf; and

(b) impose conditions subject to and in accordance with which the whole or a part of that service may be provided by a person authorised by the licence holder.

(2) The conditions of the licence to provide the public teletext service apply in relation to its provision by a person authorised to do so on the licence holder's behalf as they apply to its provision by the licence holder.

(3) A contravention of those conditions by a person so authorised shall be treated for the purposes of this Chapter and the 1990 Act as a contravention on the part of the licence holder.

(4) In this section "eligible person" means a person who is not a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to the licence for the public teletext service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing licence (as referred to in s 221(1) hereof) see art 8(1) thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/221 Replacement of existing public teletext provider's licence

221 Replacement of existing public teletext provider's licence

(1) *It shall be the duty of OFCOM to make an offer under this section to the person who, when the offer is made, is the holder of the licence to provide the existing service (the "existing licence").*

(2) *The offer made to a person under this section--*

- (a) *must be an offer to exchange his existing licence for a replacement licence; and*
- (b) *must be made as soon as practicable after the television transfer date.*

(3) *The replacement licence is to be one which is granted--*

- (a) *for the purposes of section 218 of this Act; and*
- (b) *in accordance with section 219 of this Act and the provisions of Part 1 of the 1990 Act;*

but Part 1 of Schedule 10 to this Act is not to apply in the case of the replacement licence.

(4) *Where OFCOM make an offer under this section, the service which they are proposing to license by or under the replacement licence must be a service which comprises both--*

- (a) *a service that appears to OFCOM to be equivalent in all material respects to the existing service; and*
- (b) *a service that appears to them to be equivalent in all material respects to the teletext service in digital form which that person is required to provide by virtue of section 30 of the 1996 Act.*

(5) *The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of--*

- (a) *the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and*
- (b) *an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,*

as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.

(6) *That offer must also propose conditions allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.*

(7) *An offer under this section must set out--*

- (a) *the terms of the proposed replacement licence;*
- (b) *the conditions on which OFCOM are proposing to grant the replacement licence;*

- (c) *the period for which the offer is open;*
- (d) *the time as from which it is proposed the replacement licence will take effect if the offer is accepted; and*
- (e) *the time from which the existing licence will cease to have effect if the offer is not accepted.*
- (8) *The times set out under subsection (7) must--*
- (a) *in the case of the time set out under paragraph (d), be in the period of twelve months beginning with the television transfer date; and*
- (b) *in the case of the time set out under paragraph (e), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.*
- (9) *Where the person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him--*
- (a) *he is entitled to be granted the replacement licence in the terms, and on the conditions, set out in the offer; and*
- (b) *the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct.*
- (10) *Where the person to whom an offer has been made under this section--*
- (a) *does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or*
- (b) *rejects the offer before the end of that period,*
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (7)(e).*
- (11) *In this section "the existing service" means the teletext service which--*
- (a) *is being provided immediately before the television transfer date on the combined spare capacity available for the provision of additional television services on frequencies on which Channel 3 services and Channel 4 are provided; and*
- (b) *is the service by reference to which the Independent Television Commission have discharged their duty under section 49(2) of the 1990 Act.*
- (12) *In this section "qualifying revenue" means the revenue which would be qualifying revenue (within the meaning of section 52 of the 1990 Act) in relation to the holder of a licence to provide the analogue teletext service comprised in the public teletext service.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Repealed by the Digital Economy Act 2010, ss 28(5), 45, Sch 2.

Date in force: to be appointed: see the Digital Economy Act 2010, ss 28(8), 47(3)(b)-(d)).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/222 Renewal of public teletext licence

222 Renewal of public teletext licence

(1) The holder of the licence to provide the public teletext service may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.

(2) An application for renewal may only be made in the period which--

(a) begins four years before the end of the current licensing period; and

(b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.

(3) A determination for the purposes of subsection (2)(b)--

(a) must be made at least one year before the day determined; and

(b) must be notified by OFCOM to the holder, at the time of the determination, of the licence to provide the public teletext service.

(4) Where OFCOM receive an application under this section for the renewal of a licence, they must--

(a) decide whether they will be renewing the licence;

(b) if they decide that they will be, determine in accordance with section 223 the financial terms on which the licence will be renewed; and

(c) notify the applicant of their decision and determination.

(5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if--

(a) references to the award of a licence were references to its renewal; and

(b) the reference in subsection (7)(a) to section 19(1) of that Act were a reference to paragraph 7 of Schedule 10.

(6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this

Part by conditions relating to--

- (a) the public service remit for the public teletext service;
- (b) news; and
- (c) regional matters.

(7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for the public teletext service which would differ in any material respect from the licensed service.

(8) In all cases in which--

- (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
- (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal,

they must grant the renewal as soon as reasonably practicable.

(9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.

(10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to paragraph 7 of Schedule 10.

(11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence--

- (a) to make a decision or determination, or
- (b) to take any other step under this section,

at any time after an order under section 230 has come into force preventing the renewal of the licence.

(12) For the purposes of this section a licensing period is--

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for the licence to provide the public teletext service]; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence].

(13) In this section "tender notice" means a notice under paragraph 1 of Schedule 10.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (12): in para (a) words "for the licence to provide the public teletext service" in square brackets

inserted by the Digital Economy Act 2010, s 26(1), (3)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (12): in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (3)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/223 Financial terms of licence renewed under s 222

223 Financial terms of licence renewed under s 222

- (1) The determination under section 222(4)(b) must comprise--
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period;
 - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which he will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with Part 1 of Schedule 10.
- (3) For the purposes of subsection (1)(b)--
- (a) different percentages may be determined for different accounting periods; and
 - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) In this section "renewal period", in relation to a licence, means the period for which the licence is in force by reason of its renewal.
- (5) Part 3 of Schedule 10 applies for construing this section as it applies for construing that Schedule.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/224 Meaning of "initial expiry date"

Meaning of initial expiry date

224 Meaning of "initial expiry date"

[(1) Subject to any postponement under this section, for the purposes of this Part the initial expiry date for the following types of licence is 31 December 2014--

- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5;
- (c) the licence to provide the public teletext service.]

(2) The Secretary of State may (on one or more occasions) by order postpone the initial expiry date [for one or more of the types of licence mentioned in subsection (1)].

(3) ...

(4) Where the Secretary of State makes an order under this section at a time after he has fixed a date for digital switchover, the date to which the initial expiry date is postponed must be a date not less than eighteen months after the date for digital switchover.

(5) The Secretary of State must exercise his power to postpone the initial expiry date if it at any time appears to him that that date would otherwise fall within the period of eighteen months immediately following the date fixed for digital switchover.

(6) Where an order under this section extends a licensing period for which a licence has been granted in accordance with section 214 or 219, the 1990 Act and this Part shall have effect (subject to subsection (7)) as if the licence had originally been granted for the extended period.

(7) Where an order under this section extends the period for which a licence is to continue in force--

- (a) that order shall not affect the earliest time at which an application for the renewal of that licence may be made in accordance with section 216(2)(a) or 222(2)(a);
- (b) as soon as reasonably practicable after making the order, OFCOM must make such modification of any determination made by them in the case of that licence for the purposes of section 216(2)(b) or 222(2)(b) as they consider appropriate in consequence of the extension; and
- (c) neither section 216(3)(a) nor section 222(3)(a) applies to the making of that modification.

(8) In this section a reference to the date for digital switchover is a reference to the date fixed by the Secretary of State for the purposes of this section as the date which appears to him, in consequence of directions given by him for the purposes of the conditions of the licences for the relevant public

broadcasting services, to be the date after which none of those services will be broadcast to any significant extent in analogue form.

(9) In this section "the relevant public broadcasting service" means any of the following--

- (a) the services comprised in Channel 3; and
- (b) Channel 5.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): substituted by the Digital Economy Act 2010, s 25(1), (2).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (2): words "for one or more of the types of licence mentioned in subsection (1)" in square brackets inserted by the Digital Economy Act 2010, s 25(1), (3).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (3): repealed by the Digital Economy Act 2010, ss 25(1), (4), 45, Sch 2.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/225 Application for review of financial terms of replacement licences

Reviews relating to licensing of Channels 3 & 5 and teletext

225 Application for review of financial terms of replacement licences

- (1) The holder of a replacement licence granted under section 215 or 221 may apply to OFCOM, at any time in the first or any subsequent review period, for a review of the financial terms on which that licence is held.
- (2) For the purposes of this section the first review period is the period which--
- (a) begins four years before the first notional expiry date; and
 - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the first notional expiry date.
- (3) For the purposes of this section a subsequent review period in the case of a replacement licence is so much (if any) of the following period as falls before the end of the initial expiry date [for that type of licence], namely, the period which--
- (a) begins four years before a subsequent notional expiry date; and
 - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from that notional expiry date.
- (4) A determination for the purposes of subsection (2)(b) or (3)(b) in respect of a replacement licence--
- (a) must be made at least one year before the day determined; and
 - (b) must be notified by OFCOM to the person who, at the time of the determination, holds the licence in question.
- (5) No application under this section for a review of the financial terms on which a replacement licence is held is to be made--
- (a) at any time when an application under section 226 for a review of those terms is pending; or
 - (b) at any time in the period of twelve months following the day on which a determination by OFCOM on such an application is notified to the licence holder.
- (6) For the purposes of this section an application for a review under section 226 is pending from the time when the application is made until the end of the day on which OFCOM's determination on the review is notified to the licence holder.
- (7) In this section--
- "the first notional expiry date", in relation to a replacement licence, means the date with which (apart from this Act) the existing licence would have expired if not renewed;
- "subsequent notional expiry date", in relation to a replacement licence, means--
- (a) in a case in which an application by the licence holder for a review under this section was made during the review period beginning four years before the last notional expiry date, the tenth anniversary of the date on which OFCOM's determination on that review was notified to the licence holder; and
 - (b) in any other case, the tenth anniversary of the last notional expiry date;
- "tender notice" means a notice under section 15(1) of the 1990 Act or (as the case may be) paragraph 1 of Schedule 10.
- (8) In subsection (7) "existing licence" has the same meaning as in section 215 or (as the case may be) 221.

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (3): words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (4).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/226 Application for review of financial terms in consequence of new obligations

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

(1) This section applies where an order is made under section 411 that brings section 272, 273 or 274 (or any two or more of them) into force for the purpose of including conditions in the regulatory regime for--

- (a) a Channel 3 service;
- (b) Channel 5; or
- (c) the public teletext service.

(2) The holder of a licence in which conditions mentioned in section 272, 273 or 274 will fall to be included when the order comes into force may apply to OFCOM, at any time in the review period, for a review of the financial terms on which the licence is held.

(3) For the purposes of this section the review period in the case of an order under section 411 is the period which--

- (a) begins with the day on which the order is made; and
- (b) ends with the time at which, by virtue of the order, one or more of sections 272, 273 and 274 come into force in the case of the licence in question.

(4) If in the case of the same order there is more than one time falling within subsection (3)(b), the review period ends with the later or latest of them.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/227 Reviews under ss 225 and 226

227 Reviews under ss 225 and 226

(1) This section applies where an application is made under section 225 or 226 for a review of the financial terms on which a licence is held.

(2) As soon as reasonably practicable after receiving the application, OFCOM must--

(a) determine the amount to be paid to them under the conditions of the licence for the first calendar year falling wholly or partly within the period under review to begin after the application date; and

(b) determine the percentage to be used for computing the payments to be made to them under those conditions in respect of each accounting period falling within the period under review to begin after that date.

(3) The amount determined under subsection (2)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence being granted afresh on an application made in accordance with--

(a) section 15 of the 1990 Act (licences for Channel 3 service or Channel 5); or

(b) paragraph 3 of Schedule 10 to this Act.

(4) The determination required by subsection (2)(b) is a determination of the percentage of qualifying revenue for each accounting period that is to be paid to OFCOM.

(5) For the purposes of subsection (2)(b)--

(a) different percentages may be determined for different accounting periods; and

(b) the percentages that may be determined for an accounting period include a nil percentage.

(6) In making their determinations on an application under section 226 OFCOM are to have regard, in particular, to any additional costs that are likely to be incurred by the licence holder in consequence of the commencement of so much of section 272, 273 or 274 (or any two or more of them) as is brought into force by the commencement order in question.

(7) References in this section to qualifying revenue for an accounting period are to be construed--

- (a) in the case of the holder of a licence to provide a Channel 3 service or Channel 5, in accordance with section 19 of and Part 1 of Schedule 7 to the 1990 Act; and
- (b) in the case of the holder of the licence to provide the public teletext service, in accordance with Part 3 of Schedule 10 to this Act.

(8) In this section--

"the application date", in relation to a review, means the date of the making under section 225 or 226 of the application for the review; and

"the period under review", in relation to a review of the financial terms of a licence, means so much of the period for which the licence will (if not renewed) continue in force after the application date.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/228 Giving effect to reviews under ss 225 and 226

228 Giving effect to reviews under ss 225 and 226

- (1) As soon as reasonably practicable after making a determination under section 227 on an application under section 225 or 226, OFCOM must give a notification of their determination to the applicant.
- (2) The notification must set out--
 - (a) the determination made by OFCOM;
 - (b) the modifications of the applicant's licence that are required to give effect to the determination;
 - (c) a date by which the applicant must notify OFCOM whether or not he accepts the determination and modifications; and
 - (d) a subsequent date by which the applicant's licence will cease to have effect if he does not.

(3) The modifications set out in accordance with subsection (2)(b) must secure that the amount falling to be paid under the conditions of the applicant's licence for each calendar year subsequent to that for which an amount has been determined in accordance with section 227(2)(a) is the amount so determined as increased by the appropriate percentage.

(4) In the case of a determination on an application under section 225, the date specified in accordance with subsection (2)(d) must not fall before whichever is the earlier of--

- (a) the next notional expiry date after the application for the review; and
- (b) the end of the licensing period in which that application was made.

(5) Where the applicant notifies OFCOM that he accepts the determination--

- (a) his licence is to have effect with the modifications set out in OFCOM's notification; and
- (b) all such adjustments by way of payment or repayment as may be necessary for giving effect to the modifications are to be made in respect of any payments already made for years or periods affected by the modifications.

(6) Where the applicant does not, before the date specified in accordance with paragraph (c) of subsection (2), notify OFCOM that he accepts the determination, his licence shall have effect as if the period for which it is to continue in force ended with the time specified in accordance with paragraph (d) of that subsection.

(7) Where the time at which a licence would cease to have effect in accordance with subsection (6) is the end of a licensing period, that subsection does not affect any rights of the licence holder with respect to the renewal of his licence from the end of that period.

(8) In this section--

"the appropriate percentage" has the same meaning as in section 19 of the 1990 Act;

"licensing period"[, in relation to a licence,] means--

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence];

"notional expiry date" means a first or subsequent notional expiry date within the meaning of section 225.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (8): in definition "licensing period" words ", in relation to a licence," in square brackets inserted by

the Digital Economy Act 2010, s 26(1), (5)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (8): in definition "licensing period" in para (a) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (5)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (8): in definition "licensing period" in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (5)(c).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/229 Report in anticipation of new licensing round

229 Report in anticipation of new licensing round

(1) OFCOM must, in anticipation of the end of each licensing period [for a type of relevant licence]--

- (a) prepare a report under this section; and
- (b) submit it to the Secretary of State no later than thirty months before the end of that period.

(2) A report under this section must set out OFCOM's opinion on the effect of each of the matters mentioned in subsection (3) on the capacity of the [holder or holders of that type of licence] to contribute, in the next licensing period, to the fulfilment of the purposes of public service television broadcasting in the United Kingdom at a cost to the [licence holder or holders] that is commercially sustainable.

(3) Those matters are--

- (a) the arrangements that (but for an order under section 230) would allow for the renewal of [that type of licence] from the end of the current licensing period; and
- (b) the conditions included in the regulatory regimes for the services provided under [that type of licence].

(4) A report under this section must also include the recommendations (if any) which OFCOM consider, in the light of the opinion set out in the report, should be made to the Secretary of State for the exercise by him of--

- (a) his power under section 230; or
- (b) any of the powers to make statutory instruments that are conferred on him by Chapter 4 of this Part.

[(4A) Subsection (5) applies where the Secretary of State--

- (a) receives a report under this section in anticipation of the end of a licensing period for a type of relevant licence, and
- (b) subsequently makes an order under section 224 extending the licensing period for that type of licence.]

(5) [Where this subsection applies--]

- (a) [the Secretary of State] may require OFCOM to prepare a supplementary report in the light of the postponement of the beginning of the next licensing period [for that type of licence]; and
- (b) it shall be the duty of OFCOM, within such period as may be specified by the Secretary of State, to prepare the required supplementary report and to submit it to him.

(6) In this section--

"licensing period"[, in relation to a licence,] means--

- (a) the period beginning with the commencement of this section and ending with the initial expiry date [for that type of licence]; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period [for that type of licence];

"relevant licence" means--

- (a) a licence to provide a Channel 3 service;
- (b) a licence to provide Channel 5; or
- (c) the licence to provide the public teletext service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): words "for a type of relevant licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (6), (7).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (2): words "holder or holders of that type of licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (8)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (2): words "licence holder or holders" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (8)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (3): in para (a) words "that type of licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (9).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (3): in para (b) words "that type of licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (9).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (4A): inserted by the Digital Economy Act 2010, s 26(1), (6), (10).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (5): words "Where this subsection applies--" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (11)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (5): in para (a) words "the Secretary of State" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (6), (11)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (5): in para (a) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (6), (11)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6): in definition "licensing period" words ", in relation to a licence," in square brackets inserted by the Digital Economy Act 2010, s 26(1), (6), (12)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6): in definition "licensing period" in para (a) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (6), (12)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (6): in definition "licensing period" in para (b) words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (6), (12)(c).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 30; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/230 Orders suspending rights of renewal

230 Orders suspending rights of renewal

(1) This section applies where the Secretary of State has received and considered a report submitted to him by OFCOM under section 229.

(2) If--

- (a) the report contains a recommendation by OFCOM for the making of an order under this section, or
- (b) the Secretary of State considers, notwithstanding the absence of such a recommendation, that it would be appropriate to do so,

he may by order provide that [a licence for the time being in force that is of a description specified in the order is] not to be renewable under section 216 or 222 from the end of the licensing period in which he received the report [(but see subsection (7))].

(3) An order under this section preventing the renewal of [a licence] from the end of a licensing period must be made at least eighteen months before the end of that period.

(4) The Secretary of State is not to make an order under this section preventing the renewal of [a licence] from the end of the initial licensing period unless he has fixed a date before the end of that period as the date for digital switchover.

(5) Where the Secretary of State postpones the date for digital switchover after making an order under this section preventing the renewal of [a licence] from the end of the initial licensing period, the order shall have effect only if the date to which digital switchover is postponed falls before the end of that period.

(6) Subsection (5) does not affect the power of the Secretary of State to make another order under this section after postponing the date for digital switchover.

(7) An order under this section with respect to [a Channel 3 licence] must be an order of one of the following descriptions--

- (a) an order applying to every licence to provide a Channel 3 service;
- (b) an order applying to every licence to provide a national Channel 3 service; or
- (c) an order applying to every licence to provide a regional Channel 3 service.

(8) An order under this section does not affect--

- (a) the person to whom a licence may be granted on an application made under section 15 of the 1990 Act or under paragraph 3 of Schedule 10 to this Act; or
- (b) rights of renewal in respect of [a licence] first granted so as to take effect from the beginning of a licensing period beginning after the making of the order, or from a subsequent time.

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

(10) Subsection (8) of section 224 applies for construing references in this section to the date for digital switchover as it applies for the purposes of that section.

(11) In this section--

"initial licensing period"[, in relation to a licence,] means the licensing period ending with the initial expiry date [for that type of licence]; and

"licensing period" has the same meaning as in section 229.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (2): words from "a licence for" to "the order is" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (14).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (2): words "(but see subsection (7))" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (13), (15).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (3): words "a licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (16).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (4): words "a licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (16).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (5): word "a licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (16).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (7): words "a Channel 3 licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (17).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (8): in para (b) words "a licence" in square brackets substituted by the Digital Economy Act 2010, s 26(1), (13), (16).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (11): in definition "initial licensing period" words ", in relation to a licence, " in square brackets inserted by the Digital Economy Act 2010, s 26(1), (13), (18)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (11): in definition "initial licensing period" words "for that type of licence" in square brackets inserted by the Digital Economy Act 2010, s 26(1), (13), (18)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 39; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/231 Replacement of Channel 4 licence

Replacement of Channel 4 licence

231 Replacement of Channel 4 licence

(1) On the commencement of this subsection--

(a) Channel 4 shall cease to be licensed under the licence in force for the purposes of section 24(3) of the 1990 Act immediately before the commencement of this subsection; and

(b) a licence granted for those purposes in accordance with the following provisions of this section shall come into force as the licence under which Channel 4 is licensed.

(2) It shall be the duty of OFCOM, as soon as practicable after the television transfer date--

(a) to prepare a draft of a licence under Part 1 of the 1990 Act to replace the licence that is likely to be in force for the purposes of section 24(3) of the 1990 Act when subsection (1) of this section comes into force;

(b) to notify C4C of the terms and conditions of the replacement licence they propose; and

(c) after considering any representations made by C4C, to grant such a replacement licence to C4C so that it takes effect in accordance with paragraph (b) of subsection (1) of this section.

(3) A replacement licence proposed or granted under this section--

(a) must be a licence to provide a service with a view to its being broadcast in digital form; and

- (b) must contain such conditions (if any) requiring C4C to ensure that the whole or a part of Channel 4 is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (4) The conditions included in a licence by virtue of subsection (3)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (5) Where a replacement licence proposed or granted under this section contains a condition falling within subsection (3)(b), it must also contain a condition that--
- (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
- (b) the times at which they are broadcast,
- are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.
- (6) The terms of a replacement licence proposed or granted under this section must provide for it to continue in force until the end of 2014.
- (7) But--
- (a) such a licence may be renewed, on one or more occasions, for such period as OFCOM may think fit in relation to the occasion in question; and
- (b) the provisions of this section (apart from subsections (1), (2) and (6)) are to apply in the case of a licence granted by way of a renewal of a licence granted under this section as they apply in the case of the replacement licence.
- (8) The conditions of a replacement licence proposed or granted under this section must include the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (9) The conditions of such a licence must also include a condition prohibiting the imposition, whether directly or indirectly, of the following--
- (a) charges on persons in respect of their reception in the United Kingdom of Channel 4;
- (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in Channel 4; and
- (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of Channel 4 as is provided in digital form.
- (10) It shall be unlawful to impose a charge in contravention of a condition falling within subsection (9).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-s (1): Appointment: 28 December 2004: see SI 2004/3309, art 3.

Sub-ss (2)(a), (b), (3)-(10): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (2)(c): Appointment: 10 December 2004: see SI 2004/3309, art 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 40 (as amended by SI 2005/856, art 2(a)(i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 40 (as amended by SI 2005/855, art 2(a)(i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of sub-ss (2)(a), (b), (3)-(10) above to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 31; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/232 Meaning of "television licensable content service"

Television licensable content services**232 Meaning of "television licensable content service"**

(1) In this Part "television licensable content service" means (subject to section 233) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or [more] of the following means--

(a) the broadcasting of the service (whether by the person providing it or by another) from a satellite;
...

[(aa) the broadcasting of the service (whether by that person or by another) by means of a radio multiplex service; or]

(b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.

(2) A service falls within this subsection if it--

(a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and

(b) consists of [or has as its principal purpose the provision of] television programmes or electronic programme guides, or both.

(3) Where--

(a) a service consisting of television programmes, an electronic programme guide or both ("the main service") is provided by a person as a service to be made available for reception by members of the public, and

(b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,

subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).

(4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by that person with the main service only if what is comprised in the other service is something over which that person has general control.

(5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both--

(a) for the transmission of visual images or sounds (or both) by the person providing the service to users of the service; and

(b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.

(6) In this section--

"electronic programme guide" means a service which consists of--

(a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and

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

"relevant ancillary service", in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to--

(a) assistance for disabled people in relation to some or all of the programmes included in the main service;

(b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or

(c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): word "more" in square brackets substituted by SI 2006/2131, art 2(1)(a).

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

Sub-s (1): in para (a) word omitted repealed by SI 2006/2131, art 2(1)(b).

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

Sub-s (1): para (aa) inserted by SI 2006/2131, art 2(1)(c).

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

Sub-s (2): in para (b) words "or has as its principal purpose the provision of" in square brackets inserted by

SI 2009/2979, reg 6(1).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/233 Services that are not television licensable content services

233 Services that are not television licensable content services

(1) A service is not a television licensable content service to the extent that it is provided with a view to its being broadcast by means of a [television multiplex service or a general multiplex service].

(2) A service is not a television licensable content service to the extent that it consists of a service the provision of which is authorised by--

- (a) a licence to provide a television broadcasting service;
- (b) the licence to provide the public teletext service; or
- (c) a licence to provide additional television services.

(3) ...

(4) A service is not a television licensable content service if it is a two-way service (within the meaning of section 232).

(5) A service is not a television licensable content service if--

- (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
- (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.

(6) For the purposes of subsection (5)--

- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
- (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.

(7) A service is not a television licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being--

- (a) persons who have a business interest in the programmes included in the service; or
- (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.

(8) For the purposes of subsection (7) a person has a business interest in programmes if he has an

interest in receiving or watching them--

- (a) for the purposes of a business carried on by him; or
- (b) for the purposes of his employment.

(9) In this section--

"business premises", in relation to a person, means premises at or from which any business of that person is carried on;

...

"premises" includes a vehicle;

"vehicle" includes a vessel, aircraft or hovercraft.

(10) References in this section, in relation to a person, to a business include references to--

- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
- (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): words "television multiplex service or a general multiplex service" in square brackets substituted by SI 2006/2131, art 2(2)(a).

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

Sub-s (3): repealed by SI 2009/2979, reg 6(2).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (9): definition "multiplex service" (omitted) repealed by SI 2006/2131, art 2(2)(b).

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent

information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/234 Modification of ss 232 and 233

234 Modification of ss 232 and 233

(1) The Secretary of State may by order modify any of the provisions of section 232 or 233 if it appears to him appropriate to do so having regard to any one or more of the following--

(a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes;

(b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;

(c) the practicability of applying different levels of regulation in relation to different services;

(d) the financial impact for providers of particular services of any modification of the provisions of that section; and

(e) technological developments that have occurred or are likely to occur.

(2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a television licensable content service for the purposes of the provisions of this Act that are so specified.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

Subordinate Legislation

Television Licensable Content Services Order 2006, SI 2006/2131.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services

[etc] (ss 198-362)/235 Licensing of television licensable content services

235 Licensing of television licensable content services

(1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of a television licensable content service is a licence granted under Part 1 of that Act on an application complying with this section.

(2) An application for a licence to provide a television licensable content service--

- (a) must be made in such manner,
- (b) must contain such information about the applicant, his business and the service he proposes to provide, and
- (c) must be accompanied by such fee (if any),

as OFCOM may determine.

(3) Where an application is made to OFCOM in accordance with subsection (2) for a licence to provide a television licensable content service, OFCOM are entitled to refuse the application only if--

- (a) they are required to do so by section 3(3) of the 1990 Act (licences to be held only by fit and proper persons);
- (b) they are required to do so by section 5 of the 1990 Act (restrictions on the holding of licences); or
- (c) they are satisfied that, if the application were to be granted, the provision of the service would be likely to involve contraventions of--
 - (i) standards set under section 319 of this Act; or
 - (ii) the provisions of a code of practice in force under Part 5 of the 1996 Act (fairness).

(4) The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.

(5) A single licence to provide a television licensable content service may authorise the provision of a service which consists (to any extent) of different programmes to be broadcast simultaneously, or virtually so.

(6) A licence to provide a television licensable content service shall continue in force until such time as it is surrendered or is revoked in accordance with any of the provisions of this Chapter or of the 1990 Act.

[(7) A licence to provide a television licensable content service must contain such conditions as OFCOM consider appropriate for requiring the licence holder--

- (a) on entering into any agreement with the provider of a radio multiplex service for the provision of a television licensable content service to be broadcast by means of that multiplex service, to notify OFCOM--
 - (i) of the identity of the radio multiplex service;
 - (ii) of the period during which the service will be provided; and
 - (iii) where under the agreement he will be entitled to the use of a specified amount of digital capacity, of that amount;
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in paragraph (a)(i), (ii) or (iii), to notify OFCOM of the variation so far as relating to those matters; and
- (c) where he is providing a television licensable content service to the provider of a radio multiplex

service in accordance with such an agreement as is mentioned in paragraph (a) but intends to cease doing so, to notify OFCOM of that fact.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (7): inserted by SI 2006/2131, art 3.

Date in force: 25 July 2006: see SI 2006/2131, art 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/236 Direction to licensee to take remedial action

236 Direction to licensee to take remedial action

(1) This section applies if OFCOM are satisfied--

(a) that the holder of a licence to provide a television licensable content service has contravened a condition of the licence; and

(b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).

(2) OFCOM may direct the licence holder to include a correction or a statement of findings (or both) in the licensed service.

(3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.

(4) OFCOM are not to give a person a direction under this section unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.

(5) Where the holder of a licence includes a correction or a statement of findings in the licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.

(6) If OFCOM are satisfied that the inclusion of a programme in a television licensable content service involved a contravention of a condition of the licence to provide that service, they may direct the holder of

the licence not to include that programme in that service on any future occasion.

(7) Where OFCOM--

- (a) give a direction to a BBC company under subsection (2), or
- (b) receive representations from a BBC company by virtue of subsection (4),

they must send a copy of the direction or representations to the Secretary of State.

(8) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/237 Penalties for contravention of licence condition or direction

237 Penalties for contravention of licence condition or direction

(1) If OFCOM are satisfied that the holder of a licence to provide a television licensable content service--

- (a) has contravened a condition of the licence, or
- (b) has failed to comply with a direction given by OFCOM under or by virtue of a provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act,

they may serve on him a notice requiring him to pay them, within a specified period, a specified penalty.

(2) The amount of the penalty under this section must not exceed the maximum penalty given by subsection (3).

(3) The maximum penalty is whichever is the greater of--

- (a) £250,000; and
- (b) 5 per cent of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(4) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3) is to be construed as referring to 5 per cent of the

amount which OFCOM estimate will be the qualifying revenue for that accounting period.

(5) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, are to apply for the purposes of subsection (3) as they apply for the purposes of Part 1 of that Act.

(6) OFCOM are not to serve a notice on a person under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.

(7) Where OFCOM--

- (a) serve a notice on a BBC company under subsection (1), or
- (b) receive representations from a BBC company by virtue of subsection (6),

they must send a copy of the notice or representations to the Secretary of State.

(8) An exercise by OFCOM of their powers under subsection (1) does not preclude any exercise by them of their powers under section 236 in respect of the same contravention.

(9) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3)(a).

(10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions see art 9 thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 2, 41; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 41; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/238 Revocation of television licensable content service licence

238 Revocation of television licensable content service licence

(1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied--

- (a) that the holder of the licence is in contravention of a condition of the licence or is failing to comply with a direction given by them under or by virtue of any provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act; and

(b) that the contravention or failure, if not remedied, would justify the revocation of the licence.

(2) A notice under this subsection must--

(a) state that OFCOM are satisfied as mentioned in subsection (1);

(b) specify the respects in which, in their opinion, the licence holder is contravening the condition or failing to comply with the direction; and

(c) state that OFCOM will revoke the licence unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified.

(3) If, at the end of the period specified in a notice under subsection (2), OFCOM are satisfied--

(a) that the person on whom the notice was served has failed to take the steps specified in it, and

(b) that it is necessary in the public interest to revoke his licence,

they shall serve a notice on him revoking his licence.

(4) If OFCOM are satisfied in the case of a licence to provide a television licensable content service--

(a) that the holder of the licence has ceased to provide the licensed service, and

(b) that it is appropriate for them to do so,

they shall serve a notice on him revoking his licence.

(5) If OFCOM are satisfied--

(a) that the holder of a licence to provide a television licensable content service has provided them, in connection with his application for the licence, with information which was false in a material particular, or

(b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,

they may serve a notice on him revoking his licence.

(6) A notice under this section revoking a licence to provide a television licensable content service takes effect as from the time when it is served on the licence holder.

(7) OFCOM are not to serve a notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.

(8) Where OFCOM--

(a) serve a notice on a BBC company under this section, or

(b) receive representations from a BBC company by virtue of subsection (7),

they must send a copy of the notice or representations to the Secretary of State.

(9) Nothing in this section applies to the revocation of a licence in exercise of the power conferred by section 239.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/239 Action against licence holders who incite crime or disorder

239 Action against licence holders who incite crime or disorder

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied--
- (a) that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder;
 - (b) that, in doing so, he has contravened conditions contained by virtue of Chapter 4 of this Part in the licence to provide that service; and
 - (c) that the contravention is such as to justify the revocation of the licence.
- (2) A notice under this subsection must--
- (a) state that OFCOM are satisfied as mentioned in subsection (1);
 - (b) specify the respects in which, in their opinion, the licence holder has contravened the condition mentioned in paragraph (b) of that subsection;
 - (c) state that OFCOM may revoke the licence after the end of the period of twenty-one days beginning with the day on which the notice is served on the licence holder; and
 - (d) inform the licence holder of his right to make representations to OFCOM within that period about the matters appearing to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) shall be to suspend the licence as from the time when the notice is served on the licence holder until either--
- (a) the revocation of the licence takes effect; or
 - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder within the period specified for the purposes of subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they shall serve a notice of revocation on the licence holder.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from such time as may be specified in the notice.
- (6) A notice of revocation under subsection (4) must not specify a time for it to take effect that falls

before the end of the period of twenty-eight days beginning with the day on which the notice is served on the licence holder.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/240 Abolition of separate licences for certain television services

240 Abolition of separate licences for certain television services

(1) The authorisations that are to be capable of being granted on or after the television transfer date by or under a licence under Part 1 of the 1990 Act do not include the authorisation of the provision, as such, of—

(a) any satellite television service (as defined, disregarding its repeal by this Act, in section 43(1) of the 1990 Act); or

(b) any licensable programme service (as defined, disregarding its repeal by this Act, in section 46(1) of that Act).

(2) Subsection (1) does not affect OFCOM's power, by means of a licence authorising the provision of a service falling within section 211(1), to authorise the provision of so much of any formerly regulated television service as is comprised in the licensed service.

(3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a television licensable content service—

(a) shall have effect, on and after the television transfer date, as a licence under Part 1 of the 1990 Act authorising the provision of the television licensable content service comprised in the licensed service;

(b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of this Chapter or of the 1990 Act; and

(c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the television transfer date.

(4) It shall be the duty of OFCOM to exercise their power under section 3 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (4)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.

(5) In this section--

"formerly regulated television service" means a service mentioned in subsection (1); and

"relevant existing licence", means any licence which--

(a) was granted by the Independent Television Commission under Part 1 of the 1990 Act before the television transfer date; and

(b) is in force immediately before the television transfer date as a licence authorising the provision of a formerly regulated service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 42; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 42; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/241 Television multiplex services

Television multiplex services

241 Television multiplex services

(1) Subject to the following provisions of this section, references in Part 1 of the 1996 Act to a multiplex service, other than those comprised in express references to a general multiplex service, shall have effect as references to any service ("a television multiplex service") which--

(a) falls within subsection (2); and

(b) is provided for broadcasting for general reception but otherwise than from a satellite.

(2) A service falls within this subsection if--

(a) it consists in the packaging together of two or more services which include at least one relevant television service and are provided for inclusion together in the service by a combination of the relevant information in digital form; or

(b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one service is for the time being comprised in digital form in what is provided.

(3) The provision, at a time after the commencement of this section, of a television multiplex service the

provision of which is not authorised by or under a licence under Part 1 of the 1996 Act is not to be an offence under section 13 of the 1990 Act.

(4) Accordingly, after the commencement of this section, a licence under Part 1 of the 1996 Act shall be required for the provision of a television multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) that is contained in a wireless telegraphy licence, or is deemed to be so contained.

(5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only television multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 1 of the 1996 Act.

(6) Where immediately before the coming into force of this section--

- (a) a television multiplex service is licensed under Part 1 of the 1996 Act; and
- (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,

that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).

(7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the television multiplex service in question--

- (a) ceases to be licensed under Part 1 of the 1996 Act in respect of that service, or
- (b) ceases to exist,

OFCOM may revoke the wireless telegraphy licence.

(8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.

(9) In subsection (2) "relevant television service" means any of the following--

- (a) any Channel 3 service in digital form;
- (b) Channel 4 in digital form;
- (c) Channel 5 in digital form;
- (d) S4C Digital;
- (e) any digital television programme service;
- (f) the digital public teletext service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 43; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 43; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/242 Composition of services in television multiplexes

242 Composition of services in television multiplexes

(1) In subsection (1) of section 12 of the 1996 Act--

(a) in paragraph (c), (digital programme services included in multiplex must be provided by a licence holder or EEA broadcaster), after "section 18" there shall be inserted ", by the BBC";

(b) in paragraph (d), (digital additional services included in multiplex must be provided by a licence holder or EEA broadcaster), after "section 25" there shall be inserted ", by the BBC";

(c) after that paragraph there shall be inserted--

"(da) that the only digital sound programme services broadcast under the licence are services provided by the holder of a national digital sound programme licence (within the meaning of section 60) or by the BBC;"

(d) in paragraph (e), after "digital programme services" there shall be inserted ", digital sound programme services";

(e) in paragraph (f), after "digital programme service" there shall be inserted ", a digital sound programme service"; and

(f) for paragraph (h) (conditions as to composition of multiplex service), there shall be substituted--

"(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A)."

(2) After that subsection there shall be inserted--

"(1A) The services falling within this subsection are--

(a) qualifying services;

(b) digital programme services licensed under this Part or provided by the BBC;

(c) digital sound programme services provided by the BBC;

(d) programme-related services; and

(e) relevant technical services."

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

(a) after the words "digital programme services", in the first place where they occur, there shall be inserted "or digital sound programme services"; and

(b) for "digital programme services broadcast under the licence" there shall be substituted "so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services,".

(4) In subsection (4) of that section (interpretation of subsection (1)(h))--

(a) for "(1)(h)" there shall be substituted "(1A)";

(b) in paragraph (a), for "the qualifying teletext service" there shall be substituted "the digital public teletext service";

(c) in paragraph (b)(i), after "the 1990 Act)" there shall be inserted ", or in one or more digital sound programme services provided by the BBC,"

(d) in paragraph (c), for "digital programme services" there shall be substituted "services falling within subsection (1A) which are comprised in the multiplex in question".

(5) After that subsection there shall be inserted--

"(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent as OFCOM--

(a) consider appropriate; and

(b) specify in the condition."

(6) In subsection (5) of that section (power to change percentage in subsection (1)(h)), for "(1)(h)" there shall be substituted "(4A)".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/243 Powers where frequencies reserved for qualifying services

243 Powers where frequencies reserved for qualifying services

- (1) The Secretary of State may by order provide, in relation to the matters mentioned in subsection (2)--
- (a) for any or all of the provisions of sections 7 to 16 and of sections 18 and 19 of the 1996 Act to have effect with the modifications specified in the order; and
 - (b) for provision made by the order to have effect in place of any or all of those provisions.
- (2) Those matters are--
- (a) licences under Part 1 of the 1996 Act, and
 - (b) the awarding and grant of such licences,

in a case in which the licence is, or is to be, a licence to provide a service for broadcasting on any one or more reserved frequencies.

- (3) An order under this section may require OFCOM to include conditions falling within subsection (4) in any Broadcasting Act licence to provide a television multiplex service to be broadcast on a reserved frequency.
- (4) Conditions falling within this subsection are conditions that OFCOM consider appropriate for securing that, in consideration for the making by any relevant public service broadcaster of such payments as are from time to time--
- (a) agreed between the broadcaster and the holder of the licence to provide the television multiplex service, or
 - (b) in default of agreement, determined by OFCOM in accordance with the order,

the holder of that licence will use digital capacity reserved in accordance with conditions imposed under section 12 of the 1996 Act or any order under this section for the broadcasting of services provided by that broadcaster.

- (5) Subsection (3) is not to be construed as restricting the provision that may be made under subsection (1).
- (6) A frequency is a reserved frequency for the purposes of this section if it is one as respects which OFCOM have made a determination, in exercise of their functions under the enactments relating to the management of the radio spectrum, that the frequency should be reserved for the broadcasting of television multiplex services.
- (7) In this section "relevant public service broadcaster" means any of the following--
- (a) the holder of a licence to provide a Channel 3 service;
 - (b) C4C;
 - (c) the holder of a licence to provide Channel 5;
 - (d) the Welsh Authority;
 - (e) the public teletext provider.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 44; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 44; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Television Multiplex Services (Reservation of Digital Capacity) Order 2008, SI 2008/1420 (made under sub-ss (1), (3)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/244 Local digital television services

Local digital television services**244 Local digital television services**

(1) The Secretary of State may by order provide for--

- (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to sound services), or
- (b) any provision of Part 1 of the 1990 Act or of Part 1 of the 1996 Act (regulation of television services),

to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

(2) The Secretary of State is not to make an order under this section in relation to a description of services except where--

- (a) the description is of services to be provided in digital form with a view to their being included in a television multiplex service;
- (b) the description is confined to services falling within one or both of subsections (3) and (4); and
- (c) the Secretary of State is satisfied that the making of an order under this section in relation to that description of services will make possible, facilitate or encourage the provision of services so falling.

(3) Services fall within this subsection if they are--

- (a) intended for reception only at a particular establishment or otherwise on particular premises; or
- (b) provided for the purposes only of a particular event.

(4) Services fall within this subsection if the Secretary of State considers that they are services in relation to which all the following conditions are satisfied--

- (a) they are intended for reception only within a particular area or locality;
- (b) their provision meets, or would meet, the needs of the area or locality where they are received;
- (c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and
- (d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.
- (5) Services shall be taken for the purposes of subsection (4) to meet the needs of an area or locality if, and only if--
- (a) their provision brings social or economic benefits to the area or locality, or to different categories of persons living or working in that area or locality; or
- (b) they cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of people who do so live and work).
- (6) In subsections (4) and (5), the references to persons living or working in an area or locality include references to persons undergoing education or training in that area or locality.
- (7) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.
- (8) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailliwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 45; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 45; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/245 Regulation of independent radio services

Chapter 3
Regulatory Structure for Independent Radio Services

Preliminary

245 Regulation of independent radio services

(1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act--

- (a) services specified in subsection (2) that are provided from places in the United Kingdom and otherwise than by the BBC;
- (b) services so specified that do not fall within paragraph (a) but are provided by a person, other than the BBC, whose principal place of business is in the United Kingdom.

(2) The services referred to in subsection (1)(a) are--

- (a) sound broadcasting services to which subsection (3) applies;
- (b) radio licensable content services;
- (c) additional radio services;
- (d) radio multiplex services;
- (e) digital sound programme services;
- (f) digital additional sound services.

(3) This subsection applies to a sound broadcasting service which--

- (a) is provided with a view to its being broadcast otherwise than only from a satellite; and
- (b) is a national service, local service or restricted service.

(4) For the purposes of this section--

- (a) a service is a national service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in any such minimum area of the United Kingdom as may be determined in accordance with section 98(2) of the 1990 Act;
- (b) a service is a local service if it is a sound broadcasting service which (without being a national service) is provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in a particular area or locality in the United Kingdom; and
- (c) a service is a restricted service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception--
 - (i) within a particular establishment in the United Kingdom or at another defined location in the United Kingdom; or
 - (ii) for the purposes of a particular event taking place within the United Kingdom.

(5) The services that are to be treated for the purposes of this section as provided from places in the United Kingdom include every radio licensable content service which would not fall to be so treated apart from this subsection but which--

- (a) is provided with a view to its being broadcast from a satellite;

(b) is a service the broadcasting of which involves its transmission to the satellite by means of an electronic communications network from a place in the United Kingdom; and

(c) is not a service the provision of which is licensed or otherwise authorised under the laws of another EEA State.

(6) The services that are to be treated as so provided also include every service provided by a BBC company, a C4 company or an S4C company.

(7) A reference in subsection (4)(b) to an area of the United Kingdom does not include an area which comprises or includes the whole of England.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 46; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 46; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 32; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, the application of this section, with modifications, in relation to a community radio service: the Community Radio Order 2004, SI 2004/1944, art 4, Schedule, Pt 2, paras 9, 10.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/246 Abolition of function of assigning radio frequencies

246 Abolition of function of assigning radio frequencies

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies--

(a) for any of the purposes of Part 3 of the 1990 Act (regulation of radio services); or

(b) for the purposes of the provision of any radio multiplex services.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/247 Meaning of "radio licensable content services"

Radio licensable content services**247 Meaning of "radio licensable content services"**

(1) In this Part "radio licensable content service" means (subject to section 248) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or both of the following means--

- (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or
- (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.

(2) A service falls within this subsection if it--

- (a) consists of sound programmes; and
- (b) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 1; for specific commencement and extent information see arts 1

(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/248 Services that are not radio licensable content services

248 Services that are not radio licensable content services

- (1) A service is not a radio licensable content service to the extent that--
- (a) it is provided with a view to its being broadcast by means of a multiplex service;
 - (b) it is a sound broadcasting service to which subsection (3) of section 245 applies; or
 - (c) it is comprised in a television licensable content service.
- (2) A service is not a radio licensable content service to the extent that it is provided by means of an electronic communications service if--
- (a) it forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
 - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available services of radio programmes or television programmes (or both) for reception by members of the public.
- (3) A service is not a radio licensable content service if it is a two-way service.
- (4) A service is a two-way service for the purposes of subsection (3) if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both--
- (a) for the transmission of sounds by the person providing the service to users of the service; and
 - (b) for the transmission of sounds by those users for reception by the person providing the service or by other users of the service.
- (5) A service is not a radio licensable content service if--
- (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
 - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)--
- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
 - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a radio licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being--
- (a) persons who have a business interest in the programmes included in the service; or
 - (b) persons who are to receive the programmes for the purpose only of allowing them to be listened to by persons falling within sub-paragraph (a) or by persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an

interest in receiving or listening to them--

- (a) for the purposes of a business carried on by him; or
- (b) for the purposes of his employment.

(9) In this section--

"business premises", in relation to a person, means premises at or from which any business of that person is carried on;

"multiplex service" means a television multiplex service, a radio multiplex service or a general multiplex service;

"premises" includes a vehicle;

"vehicle" includes a vessel, aircraft or hovercraft.

(10) References in this section, in relation to a person, to a business include references to--

- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
- (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/249 Modification of ss 247 and 248

249 Modification of ss 247 and 248

(1) The Secretary of State may by order modify any of the provisions of section 247 or 248 if it appears to him appropriate to do so having regard to any one or more of the following--

- (a) the protection which is expected by members of the public as respects the contents of sound programmes;
- (b) the practicability of applying different levels of regulation in relation to different services;

(c) the financial impact for providers of particular services of any modification of the provisions of that section; and

(d) technological developments that have occurred or are likely to occur.

(2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a radio licensable content service for the purposes of the provisions of this Act that are so specified.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 47; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 47 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(ii)(aa)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/250 Licensing of radio licensable content services

250 Licensing of radio licensable content services

(1) The licence that is required for the purposes of section 97 of the 1990 Act in respect of a radio licensable content service is a licence granted under Part 3 of that Act on an application complying with this section.

(2) An application for a licence under Part 3 of the 1990 Act to provide a radio licensable content service—

(a) must be made in such manner,

(b) must contain such information about the applicant, his business and the service he proposes to provide, and

(c) must be accompanied by such fee (if any),

as OFCOM may determine.

(3) Sections 109 to 111A of the 1990 Act (enforcement of licences) apply in relation to licences for radio licensable content services as they apply in relation to licences under Chapter 2 of Part 3 of the 1990 Act but with—

(a) the substitution of the word "or" for paragraph (b) of subsection (1) of section 110 (power to

shorten licence period); and

(b) the omission of "(b)" in subsection (4) of that section and of subsection (5) of that section (which refer to the power disapplied by paragraph (a) of this subsection).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 48; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/251 Abolition of separate licences for certain sound services

251 Abolition of separate licences for certain sound services

- (1) The authorisations that are to be capable of being granted on or after the radio transfer date by or under a licence under Part 3 of the 1990 Act do not include the authorisation of the provision, as such, of--
- (a) any satellite service (as defined, disregarding its repeal by this Act, in section 84(2)(b) of the 1990 Act); or
 - (b) any licensable sound programme service (as defined, disregarding its repeal by this Act, in section 112(1) of that Act).
- (2) Subsection (1) does not affect OFCOM's power, by means of a licence authorising the provision of a service falling within section 245(1), to authorise the provision of so much of any formerly regulated radio service as is comprised in the licensed service.
- (3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a radio licensable content service--
- (a) shall have effect, on and after the radio transfer date, as a licence under Part 3 of the 1990 Act authorising the provision of the radio licensable content service comprised in the licensed service;
 - (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of the 1990 Act; and
 - (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the radio transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 86 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (5)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.

(5) In this section—

"formerly regulated radio service" means a service mentioned in subsection (1); and

"relevant existing licence" means any licence which—

- (a) was granted by the Radio Authority under Part 3 of the 1990 Act before the radio transfer date; and
- (b) is in force immediately before the radio transfer date as a licence authorising the provision of a formerly regulated service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/252 Extension of licence periods

Licence periods etc

252 Extension of licence periods

(1) In subsection (1) of section 86 of the 1990 Act (period of licences), for the words from "for such period" onwards there shall be substituted

"(subject to a suspension of the licence under section 111B)—

- (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
- (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence."

(2) For subsection (3) of that section there shall be substituted—

"(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 49; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/253 Extension and modification of existing licences

253 Extension and modification of existing licences

- (1) A person who immediately before the radio transfer date holds a pre-transfer national licence or a pre-transfer local licence is entitled, in accordance with the following provisions of this section, to apply to OFCOM for an extension of the licence.
- (2) The period for which a licence may be extended on such an application is a period ending not more than four years after the end of the period for which it was granted originally or (if it has been renewed) for which it was last renewed.
- (3) An application under subsection (1) may only be made in the period which--
- (a) begins three years before the date on which the licence would otherwise expire; and
 - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a notice under section 98(1) or 104(1) of the 1990 Act if they were proposing to grant a fresh licence to take effect from that date.
- (4) A determination for the purposes of subsection (3)(b)--
- (a) must be made at least one year before the day determined; and
 - (b) must be notified by OFCOM to the person who holds the licence in question.
- (5) An application under subsection (1)--
- (a) must be made in such manner,
 - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
 - (c) must be accompanied by such fee (if any),
- as OFCOM may determine.
- (6) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (7), they shall--

- (a) modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit; and
- (b) make such other modifications as appear to them to be necessary for the purpose of securing that the provisions of the licence correspond to those that would be contained in a national sound broadcasting licence or (as the case may be) a local sound broadcasting licence granted after the radio transfer date.
- (7) Those matters are--
- (a) the ability of the licence holder to maintain the service for the period of the extension; and
- (b) the likelihood of a contravention by the licence holder of a requirement imposed by--
- (i) a condition included in the licence by virtue of section 106 of the 1990 Act; or
- (ii) a condition of the licence varied in accordance with subsection (8).
- (8) For the purposes of the modification under this section of a national licence, OFCOM--
- (a) shall determine an amount which is to be payable to OFCOM by the licence holder in respect of the first complete calendar year falling within the period for which the licence is extended; and
- (b) may, in relation to any accounting period of the licence holder during the period of the extension, modify a condition included in the licence in pursuance of section 102(1)(c) of the 1990 Act (additional payments to be made in respect of national licences) by specifying a different percentage of the qualifying revenue for that accounting period from that which was previously specified in the condition.
- (9) The amount determined by OFCOM under subsection (8)(a) must be the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being extended) being granted afresh on an application made in accordance with section 98 of the 1990 Act.
- (10) For the purposes of subsection (8)(b)--
- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage.
- (11) The modifications set out in accordance with subsection (6)(b) must secure--
- (a) that the amount falling to be paid under the conditions of the licence for each calendar year subsequent to that for which an amount has been determined in accordance with subsection (8)(a) is the amount so determined as increased by the appropriate percentage; and
- (b) that such adjustments as are appropriate are made as respects sums already paid in respect of any year or accounting period to which a modification under subsection (8) applies.
- (12) Where OFCOM have granted a person's application under this section, the extensions and modifications take effect only if that person--
- (a) has been notified by OFCOM of their proposals for modifications by virtue of subsection (6)(b) or (8)(b), and for the making of a determination under subsection (8)(a); and
- (b) has consented to the extension on the terms proposed.
- (13) In this section--
- "the appropriate percentage" has the same meaning as in section 102 of the 1990 Act;
- "national sound broadcasting licence" means a licence under Part 3 of the 1990 Act to provide a sound broadcasting service which, under subsection (4)(a) of section 245 is a national service for the purposes

of that section;

"pre-transfer licence" means a licence which was granted under Part 3 of the 1990 Act before the radio transfer date and has not been modified under this section or renewed at any time on or after that date;

"pre-transfer local licence" means a pre-transfer licence which was granted as a local licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act);

"pre-transfer national licence" means a pre-transfer licence granted or last renewed as a national licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 2 January 2004: see SI 2003/3142, art 4(1); for transitional provisions in relation to applications for extension of pre-transfer licences see s 406(6), Sch 18, para 49 hereto.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 33; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, in relation to the application of this Chapter, with modifications, for the purposes of community radio services: the Community Radio Order 2004, SI 2004/1944, art 4, Schedule, Pt 2, paras 9, 10A (as amended by SI 2010/118, arts 2, 5).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/254 Renewal of local licences

254 Renewal of local licences

In section 104A(5) of the 1990 Act (conditions of renewal of local licence), after paragraph (b) there shall be inserted--

"(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;"

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/255 Extension of special application procedure for local licences

255 Extension of special application procedure for local licences

In section 104B(1) of the 1990 Act (special application procedure for local licences for areas with 4.5 million residents or fewer)--

- (a) the word "and" shall be inserted at the end of paragraph (a); and
- (b) paragraph (b) (which excludes areas with more than 4.5 million residents) shall cease to have effect.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/256 Definition of simulcast radio services

Provision of simulcast radio services**256 Definition of simulcast radio services**

(1) In section 41 of the 1996 Act (meaning of simulcast radio service), for subsection (2) there shall be substituted--

"(2) In this Part, a "simulcast radio service" means a service provided by a person for broadcasting in digital form and corresponding to a service which is a national service within the meaning of Part 3 of the 1990 Act and is provided by that person."

(2) In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3), before the definition of "sound broadcasting service" there shall be inserted--

""simulcast radio service" means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;".

(3) After that subsection there shall be inserted--

"(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act."

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/257 Promotion of simulcast radio services

257 Promotion of simulcast radio services

(1) Chapter 2 of Part 3 of the 1990 Act (sound broadcasting services) shall be amended as follows.

(2) In section 98(1) (notices of proposals to grant national licences), after paragraph (b)(ii) there shall be inserted--

"(iia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;"

(3) In section 98(3) (applications for national licences), after paragraph (a) there shall be inserted--

"(aa) the applicant's proposals (if any) for providing a simulcast radio service corresponding to the service;"

(4) In section 98(7) (construction of section), after "this section" there shall be inserted--

""national radio multiplex licence" has the same meaning as in Part 2 of the Broadcasting Act 1996; and"

(5) In section 100 (award of national licence to person submitting highest cash bid), for subsection (2) there shall be substituted--

"(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a "simulcast applicant"), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may--

(a) disregard the requirement imposed by subsection (1); and

(b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.

(2) Where--

- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,

OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.

(2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if--

- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
- (b) they propose to exercise their power under subsection (3).

(2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).

(2C) In this Part references to a person's cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid."

(6) After section 100 there shall be inserted--

"100A Licence conditions relating to simulcast radio services

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder--

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service."

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts

1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/258 Radio multiplex services

Multiplexes broadcasting sound programmes

258 Radio multiplex services

(1) Subject to the following provisions of this section, references in Part 2 of the 1996 Act to a radio multiplex service shall have effect as references to any service which--

- (a) falls within subsection (2);
- (b) is provided for broadcasting for general reception but otherwise than from a satellite; and
- (c) is not a television multiplex service.

(2) A service falls within this subsection if--

- (a) it consists in the packaging together (with or without other services) of two or more relevant sound services which are provided for inclusion together in that service by a combination of the relevant information in digital form; or
- (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one relevant sound service is for the time being comprised in digital form in what is provided.

(3) The provision, at a time after the commencement of this section, of a radio multiplex service the provision of which is not authorised by or under a licence under Part 2 of the 1996 Act is not to be an offence under section 97 of the 1990 Act.

(4) Accordingly, after the commencement of this section, a licence under Part 2 of the 1996 Act shall be required for the provision of a radio multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) which is contained in a wireless telegraphy licence, or is deemed to be so contained.

(5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only radio multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 2 of the 1996 Act.

(6) Where immediately before the coming into force of this section--

- (a) a radio multiplex service is licensed under Part 2 of the 1996 Act; and
- (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,

that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).

(7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the radio multiplex service in question--

- (a) ceases to be licensed under Part 2 of the 1996 Act in respect of that service, or
- (b) ceases to exist,

OFCOM may revoke the wireless telegraphy licence.

(8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.

- (9) In subsection (2) "relevant sound service" means any of the following--
- (a) a digital sound programme service;
 - (b) a simulcast radio service; and
 - (c) a digital additional sound service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/259 Composition of services in radio multiplexes

259 Composition of services in radio multiplexes

(1) Section 54 of the 1996 Act (conditions attached to radio multiplex licences) shall be amended as follows.

(2) For paragraph (h) of subsection (1) (conditions as to composition of service) there shall be substituted--

"(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A)."

(3) After that subsection there shall be inserted--

"(1A) The services falling within this subsection are--

- (a) digital sound programme services;
- (b) simulcast radio services;
- (c) programme-related services; and
- (d) relevant technical services."

- (4) In subsection (2) (meaning of services referred to in paragraph (h) of subsection (1))--
- (a) for "paragraph (1)(h)" there shall be substituted "subsection (1A)"; and
 - (b) in sub-paragraph (i), for the words from "(within" to "1990 Act" there shall be substituted "(within the meaning of section 245 of the Communications Act 2003)".
- (5) After that subsection there shall be inserted--
- "(2A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 80 per cent as OFCOM--
- (a) consider appropriate; and
 - (b) specify in the condition."
- (6) In subsection (3) (power to vary percentage in subsection (1)(h))--
- (a) for "subsection (1)" there shall be substituted "subsection (2A)"; and
 - (b) for "paragraph (h) of that subsection" there shall be substituted "that subsection".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/260 Digital sound services for inclusion in non-radio multiplexes

260 Digital sound services for inclusion in non-radio multiplexes

(1) In section 60(1)(a) of the 1996 Act (national digital sound programme services defined as services broadcast with a view to being broadcast by means of a national radio multiplex service), after "national radio multiplex service" there shall be inserted ", by means of a television multiplex service or by means of a general multiplex service".

(2) In section 63(1) of the 1996 Act (meaning of digital additional sound service), for paragraph (a) there

shall be substituted--

"(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;

(aa) is so provided with a view to the broadcasting being by means of a radio multiplex service or by means of a general multiplex service; and".

(3) After subsection (3) of section 63 of the 1996 Act there shall be inserted--

"(3A) In this section "available for reception by members of the public" shall be construed in accordance with section 361 of the Communications Act 2003."

(4) In section 72(1) of the 1996 Act (interpretation of Part 2)--

(a) after the definitions of "digital sound programme service" and "digital sound programme licence" there shall be inserted--

""general multiplex service" has the same meaning as in Part 3 of the Communications Act 2003;"

(b) after the definition of "technical service" there shall be inserted--

""television multiplex service" has the meaning given by section 241 of the Communications Act 2003."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/261 Renewal of radio multiplex licences

261 Renewal of radio multiplex licences

In section 58(2) of the 1996 Act (renewal for twelve years of radio multiplex licences granted within six years of commencement)--

- (a) for "which is granted within six years" there shall be substituted "granted within ten years"; and
- (b) for the words from "for a period" onwards there shall be substituted--

"(a) in the case of a licence granted within six years of that commencement, for a period of twelve years beginning with the date on which it would otherwise expire; and

- (b) in any other case, for a period of eight years beginning with that date."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/262 Community radio

Community radio

262 Community radio

- (1) The Secretary of State may by order provide for--

- (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to television), or

- (b) any provision of Part 3 of the 1990 Act or of Part 2 of the 1996 Act (regulation of radio services),

to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

- (2) The Secretary of State is not to make an order under this section in relation to a description of services unless--

- (a) the description is of services to be provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons; and

- (b) he considers that the provision of services of that description confer, or would confer, significant

benefits on the public or on the communities for which they are provided.

(3) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.

(4) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 50; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

Subordinate Legislation

Community Radio Order 2004, SI 2004/1944.

Community Radio (Amendment) Order 2010, SI 2010/118.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/263 Application of regulatory regimes

Chapter 4 Regulatory Provisions

Application of regulatory regimes

263 Application of regulatory regimes

(1) It shall be the duty of OFCOM, by exercising--

- (a) their powers under the 1990 Act and the 1996 Act, and
- (b) their powers under this Part,

to secure that the holder of every Broadcasting Act licence at all times holds his licence on the conditions which are for the time being included, under this Chapter and Chapter 5 of this Part, in the regulatory regime for the licensed service.

(2) It shall also be the duty of OFCOM to do all that they can to secure that the holder of every such licence complies, in relation to the licensed service, with the conditions so included in the regulatory regime for that service.

(3) Where--

- (a) the licence for a Channel 3 service, for Channel 4, for Channel 5 or for the public teletext service ("the main service") authorises or requires a corresponding or additional service to be provided in analogue form, and
- (b) the regulatory regime for the main service imposes obligations in relation to programmes and other items included in that service,

those obligations are to apply equally to programmes that are included in the analogue service without being included in the main service.

[(4) The Secretary of State may by order provide for--

- (a) a condition included by virtue of this Act in a regulatory regime to be excluded from the regime;
- (b) a condition excluded from a regulatory regime by an order under this subsection to be included in the regime again.

(4A) An order under subsection (4) may, in particular, provide for a condition to be included or excluded for a period specified in the order.]

(5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) This section does not restrict OFCOM's powers and duties apart from this section to impose obligations by means of the inclusion of conditions in a Broadcasting Act licence.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-ss (4), (4A): substituted, for sub-s (4) as originally enacted, by the Digital Economy Act 2010, s 37.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 51; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 48; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of

Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/264 OFCOM reports on the fulfilment of the public service remit

The public service remit for television

264 OFCOM reports on the fulfilment of the public service remit

(1) It shall be the duty of OFCOM--

- (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
- (b) as soon as practicable after the end of each such subsequent period as may be selected by OFCOM for the purposes of this section,

to satisfy, for that period, the review and reporting obligations of subsection (3).

(2) The period selected by OFCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OFCOM have satisfied those review and reporting obligations.

(3) The review and reporting obligations for a period are--

- (a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom; and
- (b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom, to prepare a report on the matters found on the review.

(4) The purposes of public service television broadcasting in the United Kingdom are--

- (a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
- (b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
- (c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
- (d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to--
 - (i) the contents of the programmes;
 - (ii) the quality of the programme making; and
 - (iii) the professional skill and editorial integrity applied in the making of the programmes.

(5) When--

- (a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom are fulfilled, and

- (b) reviewing and reporting on that matter,

OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).

(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures--

- (a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;
- (b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;
- (c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;
- (d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;
- (e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;
- (f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
- (g) that the programmes included in those services that deal with religion and other beliefs include--
 - (i) programmes providing news and other information about different religions and other beliefs;
 - (ii) programmes about the history of different religions and other beliefs; and
 - (iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);
- (h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;
- (i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;
- (j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.

(7) In carrying out a review under this section OFCOM must consider--

- (a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and
- (b) the sources of income available to each of them for meeting those costs.

(8) Every report under this section must--

- (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television

broadcasting in the United Kingdom have been satisfied;

(b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;

(c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and

(d) set out OFCOM's conclusions on the current state of public service television broadcasting in the United Kingdom.

(9) In performing their duties under this section, OFCOM must have regard, in particular, to--

(a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;

(b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and

(c) such matters arising at times before the coming into force of this section as OFCOM consider material.

(10) Every report prepared by OFCOM under this section must be published by them--

(a) as soon as practicable after its preparation is complete; and

(b) in such manner as they consider appropriate.

(11) The following are relevant television services for the purposes of this section--

(a) the television broadcasting services provided by the BBC;

(b) the television programme services that are public services of the Welsh Authority (within the meaning of section 207);

(c) every Channel 3 service;

(d) Channel 4;

(e) Channel 5;

(f) the public teletext service.

(12) The following are public service broadcasters for the purposes of this section--

(a) the BBC;

(b) the Welsh Authority;

(c) the providers of the licensed public service channels; and

(d) the public teletext provider.

(13) In this section--

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

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

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 25 July 2003: see SI 2003/1900, art 2(1), Sch 1; for transitional provisions see art 4 thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 52; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 49; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 34; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[264A OFCOM reports: wider review and reporting obligations]

[264A OFCOM reports: wider review and reporting obligations]

[(1) When carrying out a review under section 264 for a period, OFCOM must also carry out a review of the extent to which material included in media services during that period (taken together over the period as a whole) contributed towards the fulfilment of the public service objectives.

(2) Every report under section 264 must--

- (a) include a report on the matters found on the review under this section,
- (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service objectives have been fulfilled,
- (c) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those objectives are fulfilled, and
- (d) set out OFCOM's conclusions on the current state of material included in media services.

(3) "The public service objectives" are the objectives set out in paragraphs (b) to (j) of section 264(6) (as modified by subsection (4)).

(4) Paragraphs (b) to (j) of section 264(6) have effect for the purposes of subsection (3) as if--

- (a) references to the relevant television services were to media services, and
- (b) references to programmes were to material included in such services.

(5) In this section--

"material" does not include advertisements;

"media services" means any of the following services that are available to members of the public in all or part of the United Kingdom--

- (a) television and radio services,

- (b) on-demand programme services, and
- (c) other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.

(6) The services that are to be taken for the purposes of this section to be available to members of the public include any service which--

- (a) is available for reception by members of the public (within the meaning of section 361); or
- (b) is available for use by members of the public (within the meaning of section 368R(4)).]

NOTES

Amendment

Inserted by the Digital Economy Act 2010, s 2.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/265 Public service remits of licensed providers

265 Public service remits of licensed providers

(1) The regulatory regime for every licensed public service channel, and for the public teletext service, includes a condition requiring the provider of the channel or service to fulfil the public service remit for that channel or service.

(2) The public service remit--

- (a) for every Channel 3 service, and
- (b) for Channel 5,

is the provision of a range of high quality and diverse programming.

(3) The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular--

- (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
- (b) appeals to the tastes and interests of a culturally diverse society;
- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character.

(4) The public service remit for the public teletext service is the provision of a range of high quality and diverse text material.

(5) For so long as the public teletext service comprises both--

- (a) an analogue teletext service, and
- (b) a teletext service provided in digital form,

the conditions imposed under this section must require the public service remit of the public teletext

service to be fulfilled separately in the case of each of those services.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2005/856, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7 (as amended by SI 2005/855, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/266 Statements of programme policy

266 Statements of programme policy

- (1) The regulatory regime for every licensed public service channel includes a condition requiring the provider of the channel--
- (a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of programme policy; and
 - (b) to monitor his own performance in the carrying out of the proposals contained in the statements made in pursuance of the condition.
- (2) The condition must require every statement of programme policy prepared in accordance with the condition to set out the proposals of the provider of the channel for securing that, during the following year--
- (a) the public service remit for the channel will be fulfilled; and
 - (b) the duties imposed on the provider by virtue of sections 277 to 296 will be performed.
- (3) The condition must also require every such statement to contain a report on the performance of the provider of the channel in the carrying out, during the period since the previous statement, of the proposals contained in that statement.
- (4) The condition must also provide that every such statement--
- (a) must be prepared having regard to guidance given by OFCOM;
 - (b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;
 - (c) must take special account of the most recent such reports;
 - (d) must be published by the provider of the channel in question as soon as practicable after its preparation is complete; and

- (e) must be published in such manner as, having regard to any guidance given by OFCOM, the provider considers appropriate.
- (5) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of programme policy.
- (6) 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 section; and
 - (b) to make such revisions of that guidance as they think fit.
- (7) The conditions of a licence to provide a licensed public service channel may provide that a previous statement of policy made by the provider of the channel is to be treated for the purposes of this Part--
- (a) as if it were a statement made in relation to such period as may be so specified; and
 - (b) were a statement of programme policy for the purposes of a condition imposed under this section.
- (8) The reference in subsection (7) to a previous statement of policy is a reference to any statement made by the provider of the channel--
- (a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the channel; or
 - (b) at any time before the commencement of this section, for any other purpose.
- (9) A condition under subsection (7) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of programme policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2005/856, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7 (as amended by SI 2005/855, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/267 Changes of programme policy

267 Changes of programme policy

- (1) The regulatory regime for every licensed public service channel includes a condition requiring

compliance with subsection (2) in the case of a statement of programme policy containing proposals for a significant change.

(2) This subsection requires the provider of the channel--

(a) to consult OFCOM before preparing the statement; and

(b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the channel by OFCOM.

(3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of programme policy has been prepared by the provider of the channel in contravention of a condition imposed under subsection (1), the provider is--

(a) to revise that statement in accordance with any directions given to him by OFCOM; and

(b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.

(4) A change is a significant change for the purposes of this section if it is a change as a result of which the channel would in any year be materially different in character from in previous years.

(5) In determining for the purposes of any condition under this section whether a change is a significant change--

(a) regard must be had to any guidance issued by OFCOM;

(b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years; and

(c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur.

(6) 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 section; and

(b) to make such revisions of that guidance as they think fit.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2005/856, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7 (as amended by SI 2005/855, art 2(a)(ii)); for specific commencement and extent

information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/268 Statements of service policy by the public teletext provider

268 Statements of service policy by the public teletext provider

(1) The regulatory regime for the public teletext service includes a condition requiring the public teletext provider--

(a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of service policy; and

(b) to monitor his own performance in the carrying out of the proposals contained in statements made in pursuance of the condition.

(2) The condition must require every statement of service policy prepared in accordance with the condition to set out the proposals of the public teletext provider for securing that, during the following year, the public service remit for the public teletext service will be fulfilled.

(3) The condition must also require every such statement to contain a report on the performance of the public teletext provider in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

(4) The condition must provide that the proposals or report for a period in the course of which the public teletext service will comprise or has comprised both--

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,

must deal separately with each of those services.

(5) The condition must also provide that every statement in pursuance of the condition--

(a) must be prepared having regard to guidance given by OFCOM;

(b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;

(c) must take special account of the most recent such reports;

(d) must be published by the public teletext provider as soon as practicable after its preparation is complete; and

(e) must be published in such manner as, having regard to any guidance given by OFCOM, that provider considers appropriate.

(6) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of service policy by the public teletext provider.

(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 section; and

(b) to make such revisions of that guidance as they think fit.

(8) The conditions of the licence to provide the public teletext service may provide that a previous statement of policy made by the public teletext provider is to be treated for the purposes of this Part--

(a) as if it were a statement made in relation to such period as may be so specified; and

(b) were a statement of service policy for the purposes of a condition imposed under this section.

(9) The reference in subsection (8) to a previous statement of policy is a reference to any statement made by the public teletext provider--

(a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the public teletext service or for the existing service (within the meaning of section 221); or

(b) at any time before the commencement of this section, for any other purpose.

(10) A condition under subsection (8) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of service policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2005/856, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7 (as amended by SI 2005/855, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/269 Changes of service policy

269 Changes of service policy

(1) The regulatory regime for the public teletext service includes a condition requiring compliance with subsection (2) in the case of a statement of service policy containing proposals for a significant change.

(2) This subsection requires the provider of the service--

(a) to consult OFCOM before preparing the statement; and

(b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the service by OFCOM.

(3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of service policy has been prepared by the public teletext provider in contravention of a condition imposed under subsection (1), that provider is--

(a) to revise that statement in accordance with any directions given to him by OFCOM; and

(b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.

- (4) A change is a significant change for the purposes of this section if it is a change as a result of which the service would in any year be materially different in character from in previous years.
- (5) In determining for the purposes of any condition under this section whether a change is a significant change--
- (a) regard must be had to any guidance issued by OFCOM;
 - (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years;
 - (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur; and
 - (d) any change that is a significant change in relation to so much of the public teletext service as is provided in digital form or in relation to so much of it as is provided in analogue form is to be regarded as a significant change in relation to the whole service.
- (6) 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 section; and
 - (b) to make such revisions of that guidance as they think fit.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2005/856, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7 (as amended by SI 2005/855, art 2(a)(ii)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/270 Enforcement of public service remits

270 Enforcement of public service remits

- (1) This section applies if OFCOM are of the opinion that the provider of a licensed public service channel or the public teletext provider--
- (a) has failed to fulfil the public service remit for that channel or the public teletext service; or
 - (b) has failed, in any respect, to make an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

- (2) This section does not apply unless--
- (a) OFCOM are of the opinion that the failure of the provider is serious and is not excused by economic or market conditions; and
 - (b) OFCOM determine that the situation requires the exercise of their powers under this section.
- (3) In making a determination under subsection (2)(b), OFCOM must have regard, in particular, to--
- (a) the public service remit of that provider;
 - (b) the statements of programme policy or statements of service policy made (or treated as made) by the provider under section 266 or 268;
 - (c) the record generally of the provider in relation to the carrying out of obligations imposed by conditions of licences under the 1990 Act and the 1996 Act (including past obligations);
 - (d) the effectiveness and efficiency of the provider in monitoring his own performance; and
 - (e) general economic and market conditions affecting generally the providers of television programme services or the providers of television multiplex services, or both of them.
- (4) OFCOM shall have power to give directions to the provider to do one or both of the following--
- (a) to revise the provider's latest statement of programme policy, or statement of service policy, in accordance with the directions; and
 - (b) to take such steps for remedying the provider's failure as OFCOM may specify in the direction as necessary for that purpose.
- (5) A direction given under this section must set out--
- (a) a reasonable timetable for complying with it; and
 - (b) the factors that will be taken into account by OFCOM in determining--
 - (i) whether or not a failure of the provider has been remedied; and
 - (ii) whether or not to exercise their powers under subsection (6).
- (6) If OFCOM are satisfied--
- (a) that the provider of a public service channel or the public teletext provider has failed to comply with a direction under this section,
 - (b) that that provider is still failing to fulfil the public service remit for that channel or service or adequately to contribute to the fulfilment of the purposes of public service television broadcasting in the United Kingdom, and
 - (c) that it would be both reasonable and proportionate to the seriousness of that failure to vary the provider's licence in accordance with this subsection,
- OFCOM may, by notice to the provider, vary that licence so as to replace self-regulation with detailed regulation.
- (7) For the purposes of subsection (6) a variation replacing self-regulation with detailed regulation is a variation which--
- (a) omits the conditions imposed by virtue of sections 265 to 269; and

(b) replaces those conditions with such specific conditions as OFCOM consider appropriate for securing that the provider--

- (i) fulfils the public service remit for his service; and
- (ii) makes an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

(8) If, at any time following a variation in accordance with subsection (6) of a provider's licence, OFCOM consider that detailed regulation is no longer necessary, they may again vary the licence so as, with effect from such time as they may determine--

- (a) to provide for the conditions required by virtue of sections 265 to 269 again to be included in the regulatory regime for the service provided by that provider; and
- (b) to remove or modify some or all of the specific conditions inserted under that subsection.

(9) Before giving a direction under this section to a provider or exercising their power under this section to vary a provider's licence, OFCOM must consult that provider.

(10) In accordance with section 265(5), the reference in subsection (1) to a failure to fulfil the public service remit for the public teletext service includes a failure to fulfil that remit as respects only one of the services comprised in that service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 28 December 2004: see SI 2004/3309, art 3.

See Further

See further, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 53A (as amended by SI 2005/856, art 2(a)(ii), (b)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 49A (as amended by SI 2005/855, art 2(a)(ii), (b)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/271 Power to amend public service remits

271 Power to amend public service remits

(1) The Secretary of State may by order modify any one or more of the following--

- (a) the public service remit for any licensed public service channel or for the public teletext service;
- (b) the purposes of public service television broadcasting in the United Kingdom (within the meaning given by subsection (4) of section 264);
- (c) the matters to which OFCOM are to have regard under subsections (5) and (6) of that section.

- (2) The Secretary of State is not to make an order under this section except where--
- (a) OFCOM have made a recommendation for the making of such an order in their most recent report under section 229 or 264; or
 - (b) subsection (3) applies to the order.
- (3) This subsection applies to an order if--
- (a) it is made by the Secretary of State less than twelve months after the date on which he has received a report under section 229;
 - (b) he has considered that report; and
 - (c) he is satisfied that the making of the order is required, notwithstanding the absence of a recommendation by OFCOM, by circumstances or other matters which are dealt with in that report or which (in his opinion) should have been.
- (4) Before including a recommendation for the making of an order under this section in a report under section 229 or 264, OFCOM must consult--
- (a) members of the public in the United Kingdom;
 - (b) such public service broadcasters as they consider are likely to be affected if the Secretary of State gives effect to the recommendation they are proposing to make; and
 - (c) such of the other persons providing television and radio services as OFCOM consider appropriate.
- (5) Before making an order under this section, the Secretary of State must consult the persons mentioned in subsection (6) about its terms (even if the order is the one recommended by OFCOM).
- (6) Those persons are--
- (a) OFCOM;
 - (b) such public service broadcasters as they consider are likely to be affected by the order; and
 - (c) such of the other persons providing television and radio services as he considers appropriate.
- (7) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (8) In this section "public service broadcaster" means any of the persons who are public service broadcasters for the purposes of section 264.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick

of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 53; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 50; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 35; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[271A Remediating failure by C4C to perform media content duties]

[271A Remediating failure by C4C to perform media content duties]

[(1) This section applies if OFCOM are satisfied--

- (a) that C4C have failed to comply with a direction under section 198D in respect of a failure to perform one or more of their duties under section 198A,
- (b) that C4C are still failing to perform that duty or those duties, and
- (c) that it would be both reasonable and proportionate to the seriousness of the failure to vary the licence under which Channel 4 is licensed ("the Channel 4 licence") in accordance with this section.

(2) OFCOM may, by notice to C4C, vary the Channel 4 licence by adding such conditions, or making such modifications of conditions, as OFCOM consider appropriate for remediating (entirely or partly) C4C's failure to perform the duty or duties under section 198A.

(3) If, at any time following such a variation, OFCOM consider that any of the additional conditions or modifications is no longer necessary, they may again vary the licence with effect from such time as they may determine.

(4) OFCOM must consult C4C before exercising their power under this section to vary the Channel 4 licence.]

NOTES

Amendment

Inserted by the Digital Economy Act 2010, s 23(2).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/272 Must-offer obligations in relation to networks

Must-offer obligations etc affecting public service television

272 Must-offer obligations in relation to networks

(1) The regulatory regime for--

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every licensed television service added by order under section 64 to the list of must-carry services,

includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by provision made under section 243).

(2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast or distributed by means of every appropriate network.

(3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure--

(a) that the channel or other service, so far as it is provided in digital form, is broadcast or distributed on appropriate networks; and

(b) that the broadcasting and distribution of the channel or other service, in accordance with those arrangements, result in its being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.

(4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of an appropriate network, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that network.

(5) The three objectives apply only in relation to times when the channel or other service in its digital form is included in the list of must-carry services in section 64.

(6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate--

(a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary service by reference to the channel or other service in question as they apply to the channel or other service itself; and

(b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular appropriate networks, as constituting such services comprised in or provided with that channel or other service as may be determined by OFCOM.

(7) In this section--

"appropriate network" means (subject to subsection (8)) an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes;

"intended audience", in relation to a channel or other service, means--

(a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;

(b) if the channel or other service is one provided for members of a particular community, members of that community; and

(c) in any other case, members of the public in the United Kingdom;

"licensed television service" means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act.

(8) For the purposes of this section an electronic communications network is not an appropriate network in relation to so much of a channel or other service as is provided only for a particular area or locality of the United Kingdom unless it is a network by means of which electronic communications services are provided to persons in that area or locality

(9) In subsection (7) "public electronic communications service" and "end-user" each has the same meaning as in Part 2.

(10) An order under section 411 must not appoint a day for provisions of this section to come into force

that falls less than six months after the day on which the order is made.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 31 January 2010: see SI 2009/2130, art 2.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/273 Must-offer obligations in relation to satellite services

273 Must-offer obligations in relation to satellite services

(1) The regulatory regime for--

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every other licensed television service specified for the purposes of this section in an order made by the Secretary of State,

includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by conditions imposed under section 272).

(2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast by means of every satellite television service that is available for reception by members of the public in the whole or a part of the United Kingdom.

(3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure--

- (a) that the channel or other service, so far as it is provided in digital form, is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in the United Kingdom; and
- (b) that the broadcasting, in accordance with those arrangements, of the channel or other service by means of those satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.

(4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that service.

(5) The three objectives apply only in relation to a time when the channel or service is included, in its digital form, in the list of services that are must-provide services for the purposes of section 274.

(6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate--

- (a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary service by reference to the channel or other

service in question as they apply to the channel or other service itself; and

(b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular satellite television services, as constituting such services comprised in or provided with the channel or other service as may be determined by OFCOM.

(7) In this section--

"intended audience", in relation to a channel or other service, means--

- (a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
- (b) if the channel or other service is one provided for members of a particular community, members of that community; and
- (c) in any other case, members of the public in the United Kingdom;

"licensed television service" means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act; and

"satellite television service" means a service which--

- (a) consists in or involves the broadcasting of television programme services from a satellite; and
- (b) is used by a significant number of the persons by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.

(8) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 31 January 2010: see SI 2009/2130, art 2.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/274 Securing reception of must-provide services in certain areas

274 Securing reception of must-provide services in certain areas

(1) The regulatory regime for--

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every licensed television service added by order under section 275 to the list of must-provide services,

includes the conditions that OFCOM consider appropriate for securing that arrangements satisfying the requirements of this section are entered into and maintained by all the persons who provide must-provide services.

(2) The conditions imposed on a person under this section may include the conditions that OFCOM consider appropriate for securing, in a case where--

- (a) the persons providing must-provide services fail to enter into or maintain arrangements satisfying the requirements of this section, and
- (b) OFCOM make and impose arrangements of their own instead,

that the person bound by the conditions is required to act in accordance with arrangements imposed by OFCOM.

(3) The arrangements that are to be entered into, or may be imposed, are arrangements that secure--

- (a) that a facility for receiving each must-provide service is made available to every member of the intended audience for that service who is unable, without the use of that facility, to receive it in an intelligible form and free of charge;
- (b) that the facility is one under which every such member of the intended audience for a must-provide service is entitled, free of charge, to receive in an intelligible form so much of a service broadcast from a satellite as includes that must-provide service;
- (c) that the cost of making that facility available is shared, in appropriate proportions, by all the persons providing must-provide services;
- (d) that procedures are established and maintained for dealing with complaints from persons claiming to be entitled, in accordance with the arrangements, to receive a service free of charge, and for resolving disputes about the existence or extent of such an entitlement;
- (e) that the availability of those procedures is adequately publicised in accordance with guidance given from time to time by OFCOM.

(4) Arrangements entered into by the providers of must-provide services for the purposes of subsection (3), and any modifications of such arrangements made by the parties to them, are to have effect only if approved by OFCOM.

(5) Before imposing any arrangements for the purposes of a condition under subsection (2), OFCOM must consult all the persons who provide must-provide services.

(6) For the purposes of this section the reception of a service is not free of charge--

- (a) if reception of the service is made conditional on the acceptance of an entitlement to receive another service in relation to which a charge is imposed (whether directly or indirectly);
- (b) if a charge is made for or in connection with the provision of a service which is an ancillary service in relation to the service in question;
- (c) if any consideration is required from the persons to whom it is made available for the provision of assistance for disabled people in respect of programmes included in the service; or
- (d) if any other consideration is required to be given, by the person entitled to receive it, for or in connection with its provision or availability.

(7) A service is not prevented from being free of charge by a requirement to pay sums in accordance with regulations under section 365.

(8) The quality of reception that is required before someone is to be treated for the purposes of any conditions imposed under this section as able to receive a service in an intelligible form is to be determined by OFCOM.

(9) References in this section to a facility for receiving a must-provide service include references to--

- (a) software to be used in giving effect to the entitlement to receive a must-provide service in an

intelligible form, and

(b) apparatus to be used in associating apparatus capable of being used for receiving such a service, or for putting it into an intelligible form, with a person having such an entitlement,

but do not otherwise include references to apparatus.

(10) In this section--

"intended audience", in relation to a must-provide service, means--

(a) if the service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;

(b) if the service is one provided for members of a particular community, members of that community; and

(c) in any other case, members of the public in the United Kingdom;

"licensed television service" means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act;

"must-provide service" means a service for the time being included in the list of must-provide services in section 275.

(11) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/275 Must-provide services for the purposes of s 274

275 Must-provide services for the purposes of s 274

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

(a) every service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;

(b) the Channel 3 services so far as provided in digital form;

(c) Channel 4 so far as provided in digital form;

(d) Channel 5 so far as provided in digital form;

(e) S4C Digital;

(f) the digital public teletext service.

(2) The Secretary of State may by order modify the list of must-provide services in subsection (1).

(3) In determining whether it is appropriate, by an order under subsection (2), to add a service to the list of must-provide services or to remove a service from that list, the Secretary of State must have regard, in particular, to--

- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
- (b) the likely effect of the proposed modification as respects the costs to be borne, under arrangements entered into or imposed under section 274, by the persons who, after the coming into force of the modification, would have to be parties to those arrangements; and
- (c) the extent to which that effect is proportionate to the benefit mentioned in paragraph (a).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 54; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 51; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/276 Co-operation with the public teletext provider

276 Co-operation with the public teletext provider

(1) The regulatory regime for every Channel 3 service and for Channel 4 includes the conditions that OFCOM consider appropriate for securing that *the provider of the service or channel* [if there is a public teletext provider, the provider of the Channel 3 service or Channel 4] grants access to the facilities mentioned in subsection (2)--

- (a) to the public teletext provider; and
- (b) to any person authorised by virtue of section 220 to provide the whole or a part of the public teletext service on his behalf.

(2) Those facilities are the facilities that are reasonably required by the public teletext provider or the authorised person for the purposes of, or in connection with, the provision of the public teletext service.

(3) A licence holder granting access to facilities in pursuance of a condition imposed under this section may require the public teletext provider or authorised person to pay a reasonable charge in respect of the facilities.

(4) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing service (as defined in s 221(11) hereof) see art 8(2) thereof.

Amendment

Sub-s (1): words "the provider of the service or channel" in italics repealed and subsequent words in square brackets substituted by the Digital Economy Act 2010, s 28(6).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/277 Programming quotas for independent productions

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

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this section--

(a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this section;

(b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this section; and

(c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.

(4) The Secretary of State may also by order provide for the regulatory regime for every licensed public

service channel to include conditions falling within subsection (5), either instead of or as well as those falling within subsection (1).

(5) The conditions falling within this subsection are those that OFCOM consider appropriate for securing that, in each year, not less than the percentage specified in the order of the programming budget for that year for that channel is applied in the acquisition of independent productions.

(6) The power to make an order under subsection (4) includes power to provide that conditions that have previously ceased under such an order to be included in the regulatory regime for every licensed public service channel are again so included, in addition to or instead of the conditions already so included (apart from the exercise of that power) by virtue of this section.

(7) The Secretary of State is not to make an order for the regulatory regime of every licensed public service channel to include or exclude conditions falling within subsection (1) or conditions falling within subsection (5) unless--

- (a) OFCOM have made a recommendation to him for those conditions to be included or excluded; and
- (b) the order gives effect to that recommendation.

(8) The regulatory regime for every licensed public service channel also includes a condition requiring the provider of the channel to comply with directions given to him by OFCOM for the purpose of--

- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in his compliance with the requirements of conditions imposed by virtue of subsection (1) or (4); and
- (b) thereby increasing the percentage applicable for the purposes of those conditions to the subsequent year or years.

(9) For the purposes of conditions imposed by virtue of this section--

- (a) the amount of the programming budget for a licensed public service channel for a year, and
- (b) the means of determining the amount of that budget that is applied for any purpose,

are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(10) The powers of the Secretary of State to make orders under this section do not include--

- (a) power to specify different percentages for the purposes of subsection (1), or of a condition falling within subsection (5), for different regional Channel 3 services or for different national Channel 3 services; or
- (b) power to make different provision for different licensed public service channels as to whether conditions falling within subsection (1) or conditions falling within subsection (5), or both, are included in the regulatory regimes for those services.

(11) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

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

(13) In this section--

"acquisition", in relation to a programme, includes commissioning and the acquisition of a right to include it in a service or to have it broadcast;

"programme" does not include an advertisement; and

"programming budget" means the budget for the production and acquisition of qualifying programmes.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 55; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 52 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(ii)(bb)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/278 Programming quotas for original productions

278 Programming quotas for original productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing--

(a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the channel; and

(b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.

(2) The proportion determined by OFCOM for the purposes of subsection (1)--

(a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and

(b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(3) A condition contained in a licence by virtue of this section may provide--

(a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;

(b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.
- (7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.
- (8) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) In this section--
- "peak viewing time", in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and
- "programme" does not include an advertisement.
- (11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 July 2004: see SI 2003/3142, art 4(4)(a) (as inserted by SI 2004/545, art 2(1), (2)).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 56; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 53 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(i)(aa), (ii)(cc); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Broadcasting (Original Productions) Order 2004, SI 2004/1652 (made under sub-ss (6), (7)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/279 News and current affairs programmes

News provision etc on public service television

279 News and current affairs programmes

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing--

- (a) that the programmes included in the channel include news programmes and current affairs programmes;
- (b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and
- (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that, in each year--

- (a) the time allocated to the broadcasting of news programmes included in the service, and
- (b) the time allocated to the broadcasting of current affairs programmes so included,

each constitutes no less than what appears to OFCOM to be an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the channel.

(3) It further includes the conditions that OFCOM consider appropriate for securing that the time allocated--

- (a) to the broadcasting of news programmes included in the service, and
- (b) to the broadcasting of current affairs programmes so included,

is, in each case, split in what appears to OFCOM to be an appropriate manner between peak viewing times and other times.

(4) The proportion determined by OFCOM for the purposes of subsection (2) may, for the purposes of subsection (3), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(5) In this section "peak viewing time", in relation to a licensed public service channel, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that channel.

(6) Before determining for the purposes of this section--

- (a) the proportion of time to be allocated to the broadcasting of news programmes or current affairs programmes; or
- (b) what constitutes a peak viewing time for a channel,

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

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

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/280 Appointed news providers for Channel 3

280 Appointed news providers for Channel 3

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing the nationwide broadcasting, on the regional Channel 3 services (taken together), of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.

(2) The conditions imposed under this section must include a condition requiring the holder of a regional Channel 3 licence to do all that he can to ensure--

(a) that arrangements for the appointment of a single body corporate as the appointed news provider are maintained between all the holders of regional Channel 3 licences; and

(b) that, at all times while he is providing a regional Channel 3 service, there is in force an appointment made in accordance with those arrangements.

(3) The arrangements that are required to be maintained by virtue of conditions imposed under subsection (2) must provide--

(a) for the terms on which a body is appointed as the appointed news provider to include the terms appearing to OFCOM to be appropriate for securing that the body's finances are adequate, throughout the period of its appointment, to ensure that the Channel 3 news obligations are capable of being met; and

(b) for the approval of OFCOM to be required for the purposes of paragraph (a) to the terms on which an appointment is made.

(4) The conditions imposed under this section must include the conditions that OFCOM consider appropriate for securing that arrangements maintained between--

(a) the holders of regional Channel 3 licences, and

(b) the body which is the appointed news provider,

ensure that that body is subject to an obligation, enforceable by OFCOM, to provide OFCOM with all such information as they may require for the purpose of carrying out their functions.

(5) The conditions imposed under this section must include a condition requiring the news programmes included in a regional Channel 3 service--

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 57; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 54; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 36; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/281 Disqualification from appointment as news provider

281 Disqualification from appointment as news provider

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

- (a) that a body is not appointed as the appointed news provider if it falls within subsection (2); and
- (b) that the appointment of a body as the appointed news provider ceases to have effect if it becomes a body falling within that subsection.

(2) A body falls within this subsection if—

- (a) it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or
- (b) there would be a contravention of Part 1 of Schedule 14 to this Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided.

[(3) The reference in subsection (2)(a) to a body which is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence includes a reference to a person who is disqualified by virtue of a disqualification order under section 145 of the 1996 Act.]

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (3): inserted by SI 2003/3299, art 13(1).

Date in force: 29 December 2003: see SI 2003/3299, art 1(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/282 Power to repeal or modify Channel 3 news provider provisions

282 Power to repeal or modify Channel 3 news provider provisions

(1) If it appears to the Secretary of State appropriate to do so, he may by order repeal or otherwise

modify any of the provisions of section 280 or 281.

(2) Except in a case to which subsection (3) applies, the Secretary of State must consult OFCOM before making an order under this section.

(3) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 12 December 2003: see SI 2003/3142, art 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 58; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 55; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Media Ownership (Local Radio and Appointed News Provider) Order 2003, SI 2003/3299 (made under sub-s (1)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/283 News providers for Channel 5

283 News providers for Channel 5

(1) If it appears to the Secretary of State appropriate to do so, he may by order make provision requiring news programmes included in Channel 5 to be provided by a person appointed as a news provider in accordance with the order.

(2) An order under this section may make provision in relation to Channel 5 that corresponds, with such modifications as the Secretary of State thinks fit, to any provision made in relation to regional Channel 3 services by section 280 or 281.

(3) Subsection (2) applies irrespective of any repeal or other modification by an order under this Act of section 280 or 281.

(4) An order under this section may include provision for section 194A of the 1990 Act (application of Competition Act 1998 to Channel 3 news provision) to have effect (with such modifications as may be specified in the order) in relation to the appointment of a person as a news provider for Channel 5 as it has effect in relation to the appointment of a body as a news provider for Channel 3.

(5) The Secretary of State is not to make an order under this section for the imposition of obligations in

relation to Channel 5 unless he is satisfied that Channel 5's share of the audience for television broadcasting services is broadly equivalent to that of the services comprising Channel 3.

(6) An order under this section must require a licence holder to have a reasonable opportunity of making representations to OFCOM before his licence is varied in pursuance of the order.

(7) Except in a case to which subsection (8) applies, the Secretary of State must consult OFCOM before making an order under this section.

(8) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 59; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 56; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/284 News provision on the public teletext service

284 News provision on the public teletext service

(1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing--

(a) that the service includes what appears to OFCOM to be a suitable quantity and variety of news items; and

(b) that the news items included in the service are up to date and regularly revised.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both--

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,

must apply to both services but may make different provision for each of them.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/285 Code relating to programme commissioning

Independent and regional productions and programmes for public service television

285 Code relating to programme commissioning

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provider of the channel draws up and from time to time revises a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that the provider of every licensed public service channel--

(a) at all times complies with a code of practice which has been drawn up by him by virtue of this section and is for the time being in force; and

(b) exercises his power to revise his code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this section.

(3) The conditions imposed under this section must ensure that the code for the time being in force in the case of every licensed public service channel secures, in the manner described in guidance issued by OFCOM--

(a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;

(b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;

(c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;

(d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and

exclusivity of those rights;

(e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;

(f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;

(g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.

(4) The conditions imposed under this section must also ensure that the drawing up or revision of a code by virtue of this section is in accordance with guidance issued by OFCOM as to--

(a) the times when the code is to be drawn up or reviewed with a view to revision;

(b) the consultation to be undertaken before a code is drawn up or revised; and

(c) the publication of every code or revised code.

(5) The provision that may be included in a condition imposed under this section includes--

(a) provision requiring a draft of a code or of any revision of a code to be submitted to OFCOM for approval;

(b) provision for the code or revision to have effect only if approved by OFCOM; and

(c) provision for a code or revision that is approved by OFCOM subject to modifications to have effect with those modifications.

(6) OFCOM--

(a) must issue and may from time to time revise guidance for the purposes of this section;

(b) must ensure that there is always guidance for those purposes in force;

(c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and

(d) must publish their guidance or revised guidance in such manner as they think appropriate.

(7) Guidance issued by OFCOM for the purposes of this section must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.

(8) Conditions imposed under this section requiring a code to be drawn up or approved may include transitional provision for treating a code drawn up before the imposition of the condition--

(a) as satisfying the requirements of that condition; and

(b) as a code approved by OFCOM for the purposes of conditions so imposed.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 60; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 57; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/286 Regional programme-making for Channels 3 and 5

286 Regional programme-making for Channels 3 and 5

(1) The regulatory regime for every Channel 3 service includes the conditions (if any) that OFCOM consider appropriate in the case of that service for securing--

(a) that what appears to OFCOM to be a suitable proportion of Channel 3 programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;

(b) that the Channel 3 programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of the providers of Channel 3 services on Channel 3 programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(2) In the case of a national Channel 3 service, subsection (1) requires the inclusion of conditions in the licence for the service only where OFCOM consider, having regard to the nature of the service, that it would be appropriate for conditions falling within that subsection to be so included.

(3) The regulatory regime for Channel 5 includes the conditions that OFCOM consider appropriate for securing--

(a) that what appears to OFCOM to be a suitable proportion of the programmes made in the United Kingdom for viewing on that Channel are programmes made in the United Kingdom outside the M25 area;

(b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of the provider of Channel 5 on programmes made in the United Kingdom for viewing on that Channel is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a

variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(6) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.

(7) In this section--

"Channel 3 programmes" means programmes made for viewing on Channel 3 in more than one area for which regional Channel 3 services are provided, including any programme made for viewing on a national Channel 3 service other than a regional programme;

"expenditure", in relation to a programme, means--

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

"programme" does not include an advertisement; and

"regional programme" means a programme made with a view to its inclusion in a national Channel 3 service as a programme of particular interest to persons living within a particular area of the United Kingdom.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 61; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 58 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (e)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 37; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/287 Regional programmes on Channel 3

287 Regional programmes on Channel 3

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing--

- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given

in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;

- (b) that the regional programmes included in the service are of high quality;
- (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in that area;
- (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing--
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.

(2) The regulatory regime for every local Channel 3 service includes the conditions that OFCOM consider appropriate for securing--

- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of local programmes;
- (b) that, in the case of each part of an area or each community for which the service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
- (c) that the local programmes included in the service are of high quality;
- (d) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the local programmes included in the service consists of programmes made in the area for which the service is provided;
- (e) that the local news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (f) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other local programmes that are included in the service consists of programmes broadcast for viewing--
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.

(3) In the case of a local Channel 3 service, the conditions included in the regulatory regime for the service include conditions falling within subsection (1) to the extent only that it appears to OFCOM that the requirements of subsection (1) are not adequately met by conditions falling within subsection (2).

(4) In the case of a national Channel 3 service in the case of which OFCOM consider that it would be appropriate to impose conditions under this subsection, the regulatory regime for the service includes the conditions that OFCOM consider appropriate for securing--

- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within particular areas of the United Kingdom;
- (b) that the regional programmes included in the service are of high quality;

- (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in the area by reference to which they are regional programmes;
- (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
- (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing--
- (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.

(5) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

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

(7) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes in question.

(8) In this section--

"local Channel 3 service" means a regional Channel 3 service the provision of which includes the provision (in pursuance of a determination under section 14(3) of the 1990 Act) of different programmes for different parts of an area or for different communities living within an area;

"local programme", in relation to a service provided for different parts of an area or for different communities, means a programme included in that service for any of the parts of that area or for any of those communities, and "local news programme" is to be construed accordingly;

"peak viewing time", in relation to a service, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that service;

"programme" does not include an advertisement;

"regional programme"--

(a) in relation to a regional Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within the area for which the service is provided;

(b) in relation to a national Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within a particular area of the United Kingdom;

and "regional news programme" is to be construed accordingly.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 62; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 59; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 38; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/288 Regional programme-making for Channel 4

288 Regional programme-making for Channel 4

(1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing--

(a) that what appears to OFCOM to be a suitable proportion of programmes made in the United Kingdom for viewing on Channel 4 are programmes made in the United Kingdom outside the M25 area;

(b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of C4C on programmes made in the United Kingdom for viewing on Channel 4 is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(2) Before imposing a condition under this section, OFCOM must consult C4C.

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

(4) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.

(5) In this section--

"expenditure", in relation to a programme, means--

(a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or

(b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast; and

"programme" does not include an advertisement.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 39; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/289 Regional matters in the public teletext service

289 Regional matters in the public teletext service

(1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the service includes what appears to them to be an appropriate proportion of material that is of particular interest to persons living in different parts of the United Kingdom.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

- (a) an analogue teletext service, and
- (b) a teletext service provided in digital form,

must apply to both services but may make different provision for each of them.

NOTES**Initial Commencement****To be appointed**

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of

Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 40; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/290 Proposals for arrangements

Networking arrangements for Channel 3

290 Proposals for arrangements

(1) An application for a regional Channel 3 licence, in addition to being accompanied by the proposals mentioned in section 15(3)(b) of the 1990 Act, must be accompanied by the applicant's proposals for participating in networking arrangements.

(2) OFCOM may publish general guidance to applicants for regional Channel 3 licences as to the kinds of proposals which they are likely to consider satisfactory.

(3) The publication of guidance under subsection (2) is to be in such manner as OFCOM consider appropriate.

(4) Arrangements are networking arrangements for the purposes of this Part if they--

(a) apply to all the holders of regional Channel 3 licences;

(b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services; and

(c) are made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of services which is able to compete effectively with other television programme services provided in the United Kingdom.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 63; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 60; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 41; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/291 Obligation as to making and continuance of approved arrangements

291 Obligation as to making and continuance of approved arrangements

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that approved networking arrangements are in force whenever--

- (a) the licence holder is providing the licensed service; and
- (b) no networking arrangements imposed by OFCOM under section 292 are in force.

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

(3) In paragraph 5 of Schedule 2 to the Competition Act 1998 (c 41) (exclusion of networking arrangements from Chapter I prohibition), for sub-paragraph (1) there shall be substituted--

"(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they--

- (a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or
- (b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed."

(4) For sub-paragraph (4) of that paragraph there shall be substituted--

"(4) In this paragraph "networking arrangements" has the same meaning as in Part 3 of the Communications Act 2003."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 64; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 61; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 42; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/292 OFCOM's power to impose arrangements

292 OFCOM's power to impose arrangements

- (1) This section applies on each occasion on which OFCOM--
- (a) are proposing to award one or more regional Channel 3 licences; and
 - (b) for that purpose publish a notice under section 15(1) of the 1990 Act.
- (2) OFCOM must--
- (a) determine the date by which the holders of the licences awarded and all other regional Channel 3 providers (if any) must have entered into networking arrangements (the "networking date"); and
 - (b) set out that date in that notice.
- (3) The networking date must be the date by which, in OFCOM's opinion, the networking arrangements must have been entered into if approved networking arrangements are to be fully in force before the persons awarded licences begin to provide their licensed services.
- (4) If--
- (a) no suitable networking arrangements exist by the networking date, or
 - (b) the suitable networking arrangements that exist at that date cease to apply to all regional Channel 3 providers on or after that date,

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

- (5) For the purposes of subsection (4) arrangements are suitable networking arrangements if it appears to OFCOM that they--
- (a) have been submitted to them for approval or have been approved by them; and
 - (b) will be in force as approved networking arrangements when the persons awarded licences begin to provide their licensed services.
- (6) Arrangements imposed under this section come into force on the date determined by OFCOM.
- (7) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with the provisions of any networking arrangements imposed under this section.
- (8) Where--
- (a) networking arrangements are imposed under this section,
 - (b) other networking arrangements are entered into between the licence holders bound by the imposed arrangements, and
 - (c) the other arrangements entered into are approved by OFCOM,

the imposed arrangements shall cease to have effect on the coming into force of the other arrangements as approved networking arrangements.

- (9) In this section--

"approved networking arrangements" has the same meaning as in section 291; and

"regional Channel 3 providers" means persons who will be licensed to provide regional Channel 3 services and will be providing such services when the licences to be awarded come into force.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/293 Review of approved networking arrangements etc

293 Review of approved networking arrangements etc

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

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/294 Supplemental provision about networking arrangements

294 Supplemental provision about networking arrangements

(1) Schedule 11 (which makes provision about the approval of networking arrangements and the imposition or modification of such arrangements) shall have effect.

(2) The obligations arising under conditions imposed in accordance with sections 291 to 293 are subject to the rights of appeal conferred by that Schedule.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/295 Involvement of C4 Corporation in programme-making

Special obligations for Channel 4

295 Involvement of C4 Corporation in programme-making

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/296 Schools programmes on Channel 4

296 Schools programmes on Channel 4

- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing that what appears to them to be a suitable proportion of the programmes which are included in Channel 4 are schools programmes.
- (2) A licence under the 1990 Act to provide Channel 4 may also include conditions authorised by the following provisions of this section.
- (3) The conditions authorised by this section include conditions requiring C4C--
 - (a) to finance the production of schools programmes; and
 - (b) to acquire schools programmes provided by other persons.
- (4) The conditions authorised by this section include conditions requiring C4C to ensure that schools programmes on Channel 4--
 - (a) are of high quality; and
 - (b) are suitable to meet the needs of schools throughout the United Kingdom.

(5) The conditions authorised by this section include conditions specifying the minimum number of hours in term time, or within normal school hours, that are to be allocated to the broadcasting of schools programmes on Channel 4.

(6) The conditions authorised by this section include conditions requiring C4C to provide such material for use in connection with the schools programmes broadcast by them as may be necessary to secure that effective use is made of those programmes in schools.

(7) The conditions authorised by this section include conditions requiring C4C from time to time to consult such persons who--

(a) are concerned with schools or with the production of schools programmes, or

(b) have an interest in schools or in the production of schools programmes,

as OFCOM think fit.

(8) Before imposing a condition under this section, OFCOM must consult C4C.

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

(10) In determining for the purposes of subsection (1) what proportion of the programmes included in Channel 4 should be schools programmes, OFCOM must take into account services, facilities and materials which C4C provide to schools, or make available for schools, otherwise than by the inclusion of programmes in Channel 4.

(11) Section 34 of the 1990 Act (requirement as to schools programmes in relation to all licensed public service channels taken together) shall cease to have effect.

(12) In this section "schools programmes" means programmes which are intended for use in schools.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 43; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/297 Channel 4 contribution towards national television archive

297 Channel 4 contribution towards national television archive

(1) Section 185 of the 1990 Act (contributions towards maintenance of the national television archive) shall be amended as follows.

(2) In subsections (1) and (3), after "Channel 3" there shall be inserted ", Channel 4".

(3) In subsection (5), at the end there shall be inserted--

""Channel 4 licence" means--

- (a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and
- (b) a licence renewing that licence on the first or any subsequent occasion."

(4) This section has effect in relation only to financial years beginning after the television transfer date.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/298 Conditions prohibiting interference with other services

Special obligation for the public teletext provider**298 Conditions prohibiting interference with other services**

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

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

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing licence (as referred to in s 221(1) hereof) see art 8(1) thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/299 Categorisation of listed events

Sporting and other events of national interest**299 Categorisation of listed events**

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

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

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

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

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

(a) OFCOM,

(b) the BBC,

(c) the Welsh Authority, and

(d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired.

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

(a) to include in a list maintained under subsection (1),

(b) to omit from such a list, or

- (c) to move from one category in such a list to the other."
- (2) In subsection (3)(b) of that section, the words "by the Commission" and "by them" shall be omitted.
- (3) In subsection (5) of that section--
- (a) for the words "addition of any relevant event to" there shall be substituted "inclusion of any event in"; and
- (b) in paragraph (a), for "addition" there shall be substituted "inclusion".
- (4) After that subsection, there shall be inserted--
- "(5A) The allocation or transfer of an event to group A does not affect the validity of a contract entered into before the day on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed allocation or transfer.
- (5B) The Secretary of State may direct that, for the transitional purposes set out in the direction, the transfer of a Group B event to Group A is not to affect the application to that event of provisions of this Part relating to a Group B event."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-s (2): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/300 Effects of categorisation of listed events

300 Effects of categorisation of listed events

- (1) In section 99(1) of the 1996 Act (avoidance of contracts for exclusive rights to televise listed events), for "listed event" there shall be substituted "Group A listed event".
- (2) In section 101 of that Act (restriction on televising of listed events), for subsection (1) there shall be substituted--
- "(1) A television programme provider who--
- (a) is providing a service ("the first service") falling within either category, and

(b) is providing it with a view to its being available (within the meaning of Part 3 of the Communications Act 2003) for reception by members of the public in the United Kingdom, or in any area of the United Kingdom,

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

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

(a) a television programme provider (other than the provider of the first service) has acquired the right to include live coverage of the event in his service ("the second service"); and

(b) the second service--

(i) falls into a different category from the first service, and

(ii) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.

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

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

(a) the listed event is a Group B event,

(b) rights to provide coverage of the event have been acquired by one or more persons in addition to the provider of the first service,

(c) that additional coverage constitutes adequate alternative coverage of the event, and

(d) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made under section 104ZA for the purposes of this paragraph.

(1D) Subsections (1) to (1C) apply to the coverage of a part of a listed event as they apply to the coverage of the whole of that event."

(3) In subsection (2) of that section, for "under subsection (1)" there shall be substituted "for the purposes of subsection (1B)."

(4) After subsection (4) of that section there shall be inserted--

"(5) References in this section to a category of service are references to a category of service set out in section 98(1)."

(5) In section 102(2) of that Act (penalties), for "under subsection (1) of section 101" there shall be substituted "for the purposes of section 101(1B)".

(6) In section 103(2) of that Act (reports to the Secretary of State), for "under subsection (1) of section 101" there shall be substituted "for the purposes of section 101(1B)".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/301 Code relating to listed events

301 Code relating to listed events

(1) For subsection (1) of section 104 of the 1996 Act (code in relation to listed events) there shall be substituted--

"(1) OFCOM shall draw up, and may from time to time revise, a code giving guidance--

(a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101(1B) or section 101B(1); and

(b) as to the matters which they will take into account in determining for the purposes of section 102 (1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) or section 101B(1)."

(2) Where OFCOM are required to draw up a code by virtue of this section--

(a) they shall do so as soon as practicable after the commencement of this section; but

(b) the code shall have no effect in relation to any time before the commencement of section 300 of this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/302 Regulations about coverage of listed events

302 Regulations about coverage of listed events

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

"104ZA Regulations about coverage of listed events

(1) OFCOM may make regulations for determining for the purposes of this Part--

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/303 Code relating to provision for the deaf and visually impaired

Television services for the deaf and visually impaired

303 Code relating to provision for the deaf and visually impaired

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to--

- (a) the extent to which the services to which this section applies should promote the understanding and enjoyment by--

- (i) persons who are deaf or hard of hearing,
- (ii) persons who are blind or partially-sighted, and
- (iii) persons with a dual sensory impairment,

of the programmes to be included in such services; and

- (b) the means by which such understanding and enjoyment should be promoted.

(2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

(3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following--

- (a) the twelve month period beginning with the anniversary in question; and
- (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.

(4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent of so much of every service which--

- (a) is a service to which this section applies, and
- (b) has a relevant date after the passing of this Act,

as consists of programmes that are not excluded programmes must be accompanied by subtitling.

(5) The obligations to be fulfilled from the tenth anniversary of the relevant date are--

- (a) that at least 90 per cent of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (b) that at least 80 per cent of so much of every other service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by subtitling;
- (c) that at least 10 per cent of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and
- (d) that at least 5 per cent of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated into, sign language.

(6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.

(7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.

(8) In complying with subsection (7), OFCOM must have regard, in particular, to--

- (a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;
- (b) the size of the intended audience for the programmes;

- (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
- (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
- (e) the technical difficulty of providing the assistance; and
- (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- (9) The exclusions that may be set out in the code under subsection (7)--
- (a) may include different descriptions of programmes in relation to different services to which this section applies; and
- (b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in the service.
- (10) The requirements that may be imposed by the code include, in particular--
- (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
- (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
- (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.
- (11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).
- (12) This section applies to the following services--
- (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;
- (b) any licensed public service channel;
- (c) a digital television programme service but not an electronic programme guide;
- (d) a television licensable content service but not an electronic programme guide;
- (e) a restricted television service.
- (13) In this section--
- "electronic programme guide" means a service which--
- (a) is or is included in a television licensable content service or a digital television programme service; and
- (b) consists of--
- (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
- (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

"programme" does not include an advertisement.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 66; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 63; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 44; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/304 Procedure for issuing and revising code under s 303

304 Procedure for issuing and revising code under s 303

(1) Before drawing up a code under section 303 or reviewing or revising it in pursuance of that section, OFCOM must consult--

(a) such persons appearing to them to represent the interests of persons falling within subsection (1)(a)(i), (ii) or (iii) of that section as OFCOM think fit; and

(b) such persons providing services to which that section applies as OFCOM think fit.

(2) OFCOM must publish the code drawn up under section 303, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to--

(a) persons who are deaf or hard of hearing,

(b) persons who are blind or partially sighted, and

(c) persons with a dual sensory impairment,

they consider appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/305 Meaning of "relevant date" in s 303

305 Meaning of "relevant date" in s 303

(1) In relation to a service, the relevant date for the purposes of section 303 is--

- (a) in a case to which any of subsections (2) to (4) applies, the date given by that subsection; and
- (b) in any other case, the date (whether before or after the passing of this Act) when the provision of that service began or begins.

(2) In the case of a service the provision of which began before the television transfer date but which is not--

- (a) a service provided by the Welsh Authority,
- (b) a licensed public service channel, or
- (c) a digital television programme service,

the relevant date is the date of the coming into force of this section.

(3) In the case of--

- (a) a Channel 3 service the provision of which began before the date of the passing of this Act, and
- (b) Channel 4 and S4C Digital,

the relevant date is 1st January 2000.

(4) In the case of Channel 5, so far as it consists of a service the provision of which began before the date of the passing of this Act, the relevant date is 1st January 1998.

(5) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 303 and this section as a continuation of a service previously provided by him.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 67; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 64; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/306 Power to modify targets in s 303

306 Power to modify targets in s 303

(1) Where it appears to the Secretary of State, in the case of services of a particular description, that the obligation specified in section 303(4) has been or is likely to be fulfilled in their case before the anniversary so specified, he may by order modify section 303 so as to do one or both of the following--

- (a) increase the percentage so specified in relation to services of that description;
- (b) substitute a different anniversary for the anniversary by which that obligation must be fulfilled in the case of such services.

(2) The Secretary of State may by order modify section 303 so as to do one or both of the following--

- (a) substitute a later anniversary for the anniversary by which the obligations specified in subsection (5) of that section must be fulfilled;
- (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of that subsection.

(3) The provision that may be made by an order under this section includes--

- (a) modifications for requiring the code to set out additional obligations to be fulfilled once the obligations previously required to be set out in the code have been fulfilled; and
- (b) savings for the obligations previously set out in the code.

(4) Before making an order under this section the Secretary of State must consult OFCOM.

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

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 68; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 65; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/307 Observance of code under s 303

307 Observance of code under s 303

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

(2) This section applies to every service to which section 303 applies which is licensed by a Broadcasting Act licence.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/308 Assistance for the visually impaired with the public teletext service

308 Assistance for the visually impaired with the public teletext service

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

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing service (as defined in s 221(11) hereof) see art 8(2) thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/309 Quotas for independent programmes

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

(1) The regulatory regime for every digital television programme service that is not comprised in a licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 10 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.

(2) In subsection (1)–

(a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of that subsection;

(b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of that subsection; and

(c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.

(4) Before making an order under this section the Secretary of State must consult OFCOM.

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

(6) In this section "programme" does not include an advertisement.

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 69; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 66 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(i)(bb), (ii)(dd)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/310 Code of practice for electronic programme guides

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

- (1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.
- (2) The practices required by the code must include the giving, in the manner provided for in the code, of such degree of prominence as OFCOM consider appropriate to--
- (a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and
 - (b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.
- (3) The practices required by the code must also include the incorporation of such features in electronic programme guides as OFCOM consider appropriate for securing that persons with disabilities affecting their sight or hearing or both--
- (a) are able, so far as practicable, to make use of such guides for all the same purposes as persons without such disabilities; and
 - (b) are informed about, and are able to make use of, whatever assistance for disabled people is provided in relation to the programmes listed or promoted.
- (4) Subject to subsection (5), in subsection (2) the reference to the public service channels is a reference to any of the following--
- (a) any service of television programmes provided by the BBC in digital form so as to be available for reception by members of the public;
 - (b) any Channel 3 service in digital form;
 - (c) Channel 4 in digital form;

- (d) Channel 5 in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (5) The Secretary of State may by order--
- (a) add any programme service to the services for the time being specified in subsection (4) as public service channels; or
 - (b) delete a service from that subsection.
- (6) Before making an order under subsection (5) the Secretary of State must consult OFCOM.
- (7) In this section "intended audience", in relation to a service of any description, means--
- (a) if the service is provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
 - (b) if it is provided for members of a particular community, members of that community; and
 - (c) in any other case, members of the public in the United Kingdom.
- (8) In this section "electronic programme guide" means a service which consists of--
- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 70; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 67; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 45; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/311 Conditions to comply with code under s 310

311 Conditions to comply with code under s 310

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

(2) In this section "electronic programme guide" has the same meaning as in section 310.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/312 Character and coverage of sound broadcasting services

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

(1) Section 106 of the 1990 Act (requirements as to character and coverage of local and national radio services) shall be amended as follows.

(2) In subsection (1), the words from "except" onwards shall be omitted.

(3) After subsection (1) (duty to ensure character preserved subject to departures that do not restrict service) there shall be inserted--

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

(a) that the departure would not substantially alter the character of the service;

(b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;

(c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or

(d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.

(1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service."

(4) For subsection (5) (restriction on power to extend licence to new area or locality) there shall be substituted--

"(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them--

(a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or

(b) that the increase that would result is justifiable in the exceptional circumstances of the case."

(5) After subsection (6) of that section there shall be inserted--

"(7) In this section "relevant independent radio services" means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003--

(a) sound broadcasting services;

(b) radio licensable content services;

(c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 46; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/313 Consultation about change of character of local services

313 Consultation about change of character of local services

After section 106 of the 1990 Act there shall be inserted--

"106ZA Consultation about change of character of local services

(1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying--

- (a) the proposed departure; and
- (b) the period in which representations may be made to OFCOM about the proposal.

(2) That period must end not less than 28 days after the date of publication of the notice.

(3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by the departure.

(4) OFCOM--

- (a) are not required to publish a notice under this section, and
- (b) may specify a period of less than 28 days in such a notice as the period for representations,

if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.

(5) OFCOM are not required under this section--

- (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
- (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.

(6) A matter is confidential under this subsection if--

- (a) it relates specifically to the affairs of a particular body; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(7) A matter is confidential under this subsection if--

- (a) it relates specifically to the private affairs of an individual; and
- (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual."

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/314 Local content and character of local sound broadcasting services

314 Local content and character of local sound broadcasting services

(1) It shall be the duty of OFCOM to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure--

- (a) that programmes consisting of or including local material are included in such services . . . ; and
- (b) that, where such programmes are included in such a service, what appears to OFCOM to be a suitable proportion of them consists of locally-made programmes.

[(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service only if and to the extent (if any) that OFCOM consider it appropriate in that case.]

(2) OFCOM must--

- (a) draw up guidance as to how they consider the requirements of subsection (1)(a) and (b) should be satisfied; and
- (b) have regard to that guidance in carrying out their functions in relation to local sound broadcasting services.

(3) The guidance may be different for different descriptions of services.

(4) OFCOM may revise the guidance from time to time.

(5) Before drawing up or revising the guidance, OFCOM must consult--

- (a) such persons as appear to them to represent the interests of persons for whom local sound broadcasting services are or would be provided;
- (b) persons holding licences to provide local sound broadcasting services or persons appearing to represent such persons, or both; and
- (c) such other persons as they consider appropriate.

(6) OFCOM must publish the guidance and every revision of it in such manner as they consider appropriate.

(7) In this section--

["approved area", in relation to programmes included in a local sound broadcasting service, means an area approved by OFCOM for the purposes of this section that includes the area or locality for which the service is provided;]

"local material", in relation to a local sound broadcasting service, means material which is of particular interest--

- (a) to persons living or working within the area or locality for which the service is provided;

- (b) to persons living or working within a part of that area or locality; or
- (c) to particular communities living or working within that area or locality or a part of it;

"locally-made", in relation to programmes included in a local sound broadcasting service, means made wholly or partly at premises in the area or locality for which that service is provided [or, if there is an approved area for the programmes, that area];

"material" includes news, information and other spoken material and music; and

"programme" does not include an advertisement.

(8) References in this section to persons living or working within an area or locality include references to persons undergoing education or training in that area or locality.

[(9) Before approving an area for the purposes of this section, OFCOM must publish a document specifying--

- (a) the area that they propose to approve, and
- (b) a period in which representations may be made to OFCOM about the proposals.

(10) OFCOM may withdraw their approval of all or part of an area at any time if the holder of the licence to provide the local sound broadcasting service concerned consents.

(11) Where OFCOM approve an area or withdraw their approval of an area, they must publish, in such manner as they consider appropriate, a notice giving details of the area.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): in para (a) words omitted repealed by the Digital Economy Act 2010, ss 34(2), (3), (7), 45, Sch 2.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (1A): inserted by the Digital Economy Act 2010, s 34(2), (4).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (7): definition "approved area" inserted by the Digital Economy Act 2010, s 34(2), (5)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (7): in definition "locally-made" words "or, if there is an approved area for the programmes, that area" in square brackets inserted by the Digital Economy Act 2010, s 34(2), (5)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-ss (9)-(11): inserted by the Digital Economy Act 2010, s 34(2), (6).

Date in force: 8 June 2010 (except in respect of the requirement under sub-s (9) above which may be satisfied by the publication of a document before that date): see the Digital Economy Act 2010, ss 34(7), 47(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/315 Variations of radio multiplex licences affecting service characteristics

315 Variations of radio multiplex licences affecting service characteristics

For subsection (6) of section 54 of the 1996 Act (variations of radio multiplex licence affecting service characteristics) there shall be substituted--

"(6) Where the licence holder applies to OFCOM for the variation of a condition which--

- (a) was imposed under subsection (1)(b), and
- (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,

then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.

(6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.

(6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied--

- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
- (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
- (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 47; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/316 Conditions relating to competition matters

Competition between licensed providers etc

316 Conditions relating to competition matters

(1) The regulatory regime for every licensed service includes the conditions (if any) that OFCOM consider appropriate for ensuring fair and effective competition in the provision of licensed services or of connected services.

(2) Those conditions must include the conditions (if any) that OFCOM consider appropriate for securing that the provider of the service does not--

- (a) enter into or maintain any arrangements, or
- (b) engage in any practice,

which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(3) A condition imposed under this section may require a licence holder to comply with one or both of the following--

- (a) a code for the time being approved by OFCOM for the purposes of the conditions; and
- (b) directions given to him by OFCOM for those purposes.

(4) In this section--

"connected services", in relation to licensed services, means the provision of programmes for inclusion in licensed services and any other services provided for purposes connected with, or with the provision of, licensed services; and

"licensed service" means a service licensed by a Broadcasting Act licence.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/317 Exercise of Broadcasting Act powers for a competition purpose

317 Exercise of Broadcasting Act powers for a competition purpose

- (1) This section applies to the following powers of OFCOM (their "Broadcasting Act powers")--
- (a) their powers under this Part of this Act and under the 1990 Act and the 1996 Act to impose or vary the conditions of a Broadcasting Act licence;
 - (b) every power of theirs to give an approval for the purposes of provision contained in the conditions of such a licence;
 - (c) every power of theirs to give a direction to a person who is required to comply with it by the conditions of such a licence; and
 - (d) every power of theirs that is exercisable for the purpose of enforcing an obligation imposed by the conditions of such a licence.
- (2) Before exercising any of their Broadcasting Act powers for a competition purpose, OFCOM must consider whether a more appropriate way of proceeding in relation to some or all of the matters in question would be under the Competition Act 1998 (c 41).
- (3) If OFCOM decide that a more appropriate way of proceeding in relation to a matter would be under the Competition Act 1998, they are not, to the extent of that decision, to exercise their Broadcasting Act powers in relation to that matter.
- (4) If OFCOM have decided to exercise any of their Broadcasting Act powers for a competition purpose, they must, on or before doing so, give a notification of their decision.
- (5) A notification under subsection (4) must--
- (a) be given to such persons, or published in such manner, as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by their decision; and
 - (b) must describe the rights conferred by subsection (6) on the persons affected by that decision.
- (6) A person affected by a decision by OFCOM to exercise any of their Broadcasting Act powers for a competition purpose may appeal to the Competition Appeal Tribunal against so much of that decision as relates to the exercise of that power for that purpose.
- (7) Sections 192(3) to (8), 195 and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).
- (8) The jurisdiction of the Competition Appeal Tribunal on an appeal under subsection (6) excludes--
- (a) whether OFCOM have complied with subsection (2); and
 - (b) whether any of OFCOM's Broadcasting Act powers have been exercised in contravention of subsection (3);

and, accordingly, those decisions by OFCOM on those matters fall to be questioned only in proceedings for judicial review.

(9) For the purposes of this section a power is exercised by OFCOM for a competition purpose if the only or main reason for exercising it is to secure that the holder of a Broadcasting Act licence does not--

- (a) enter into or maintain arrangements, or
- (b) engage in a practice,

which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(10) Nothing in this section applies to--

- (a) the exercise by OFCOM of any of their powers under sections 290 to 294 or Schedule 11;
- (b) the exercise by them of any power for the purposes of any provision of a condition included in a licence in accordance with any of those sections;
- (c) the exercise by them of any power for the purpose of enforcing such a condition.

(11) In subsection (9) "connected services" and "licensed service" each has the same meaning as in section 316.

(12) References in this section to the exercise of a power include references to an exercise of a power in pursuance of a duty imposed on OFCOM by or under an enactment.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/318 Review of powers exercised for competition purposes

318 Review of powers exercised for competition purposes

(1) It shall be the duty of OFCOM, at such intervals as they consider appropriate, to carry out a review of so much of each of the following as has effect for a competition purpose--

- (a) every code made or approved by them under or for the purposes of a broadcasting provision;
- (b) the guidance issued by them under or for the purposes of broadcasting provisions; and
- (c) every direction given by them under or for the purposes of a broadcasting provision.

(2) Before modifying or revoking, or withdrawing their approval from, anything which is subject to periodic review under this section, OFCOM must consult such persons as they consider appropriate.

(3) Subsection (2) applies irrespective of whether the modification, revocation or withdrawal is in consequence of a review under this section.

(4) For the purposes of this section a provision has effect for a competition purpose to the extent that its only or main purpose is to secure that the holder of a Broadcasting Act licence does not--

- (a) enter into or maintain arrangements, or
- (b) engage in a practice,

which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.

(5) In this section "broadcasting provision" means--

- (a) a provision of this Part of this Act, of the 1990 Act or of the 1996 Act, or
- (b) any provision of a Broadcasting Act licence,

other than provision contained in any of sections 290 to 294 of this Act or Schedule 11 to this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/319 OFCOM's standards code

Programme and fairness standards for television and radio

319 OFCOM's standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are--
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
- [(fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);]

- (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
 - (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
 - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
 - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
 - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters--
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
 - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include--
- (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve--
- (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

(8) In this section "news" means news in whatever form it is included in a service.

[(9) Subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (2): para (fa) inserted by SI 2010/831, reg 2(1), (2).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (9): inserted by SI 2010/831, reg 2(1), (3).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 71; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 68; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/320 Special impartiality requirements

320 Special impartiality requirements

(1) The requirements of this section are--

(a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);

(b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;

(c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.

- (2) Those matters are--
- (a) matters of political or industrial controversy; and
 - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require--
- (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
 - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section--
- (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters--
- (a) the application of the requirement specified in subsection (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
 - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately)--
- (a) matters of major political or industrial controversy, and
 - (b) major matters relating to current public policy,

as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.

(7) In this section "national radio service" and "local radio service" mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 48; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[321 Objectives for advertisements, sponsorship and product placement]

[321 Objectives for advertisements, sponsorship and product placement]

- (1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and [(fa)] to (j)--
- (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes [and, in relation to television programme services, general provision governing standards and practice in product placement]; . . .
 - (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances); and
 - (c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances)].
- (2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is--
- (a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
 - (b) an advertisement which is directed towards a political end; or
 - (c) an advertisement which has a connection with an industrial dispute.
- (3) For the purposes of this section objects of a political nature and political ends include each of the following--
- (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
 - (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
 - (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;
 - (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
 - (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
 - (f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
 - (g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

[(3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements

set out in Schedule 11A.]

(4) OFCOM--

(a) [shall--]

[(i)] in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and

[(ii)] in relation to television programme services, have a general responsibility with respect to methods of product placement; and]

(b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.

(5) OFCOM must, from time to time, consult the Secretary of State about--

(a) the descriptions of advertisements that should not be included in programme services; . . .

(b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services; and

(c) the forms and methods of product placement that should not be employed in the provision of a television programme service (including the descriptions of products, services or trade marks for which product placement should not be employed)].

(6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.

(7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of--

(a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or

(b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.

(8) In this section "programme service" does not include a service provided by the BBC [(except in the expression "television programme")].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Section heading: substituted by SI 2010/831, reg 3(1), (2).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (1): reference to "(fa)" in square brackets substituted by SI 2010/831, reg 3(1), (3)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (1): in para (a) words from "and, in relation" to "in product placement" in square brackets inserted by SI 2010/831, reg 3(1), (3)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (1): in sub-para (a) word omitted repealed by SI 2010/831, reg 3(1), (3)(c).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (1): para (c) and word "; and" immediately preceding it inserted by SI 2010/831, reg 3(1), (3)(d).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (3A): inserted by SI 2010/831, reg 3(1), (4).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (4): in para (a) word "shall--" in square brackets substituted by SI 2010/831, reg 3(1), (5)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (4): para (a)(i) numbered as such by SI 2010/831, reg 3(1), (5)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (4): para (a)(ii) inserted by SI 2010/831, reg 3(1), (5)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (5): in para (a) word omitted repealed by SI 2010/831, reg 3(1), (6)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (5): para (c) and word "; and" immediately preceding it inserted by SI 2010/831, reg 3(1), (6)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (8): words "(except in the expression "television programme service")" in square brackets inserted by SI 2010/831, reg 3(1), (7).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 72; for specific commencement and extent

information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 69 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (f)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 49; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/322 Supplementary powers relating to advertising

322 Supplementary powers relating to advertising

(1) The regulatory regime for each of the following--

- (a) every television programme service licensed by a Broadcasting Act licence,
- (b) the public teletext service, and
- (c) every other teletext service so licensed that consists in an additional television service or a digital additional television service,

includes a condition requiring the person providing the service to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (2).

(2) Those matters are--

- (a) the maximum amount of time to be given to advertisements in any hour or other period;
- (b) the minimum interval which must elapse between any two periods given over to advertisements;
- (c) the number of such periods to be allowed in any programme or in any hour or day; and
- (d) the exclusion of advertisements from a specified part of a licensed service.

(3) Directions under this section--

- (a) may be either general or specific;
- (b) may be qualified or unqualified; and
- (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

(4) In giving a direction under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 73; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 70; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/323 Modification of matters to be taken into account under s 319

323 Modification of matters to be taken into account under s 319

- (1) The Secretary of State may by order modify the list of matters in section 319(4) to which OFCOM are to have regard when setting or revising standards.
- (2) Before making an order under this section, the Secretary of State must consult OFCOM.
- (3) No order is to be made containing provision authorised by subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 74; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 71 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(ii)(ee)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/324 Setting and publication of standards

324 Setting and publication of standards

- (1) Before setting standards under section 319, OFCOM must publish, in such manner as they think fit, a draft of the proposed code containing those standards.
- (2) After publishing the draft code and before setting the standards, OFCOM must consult every person who holds a relevant licence and such of the following as they think fit--

- (a) persons appearing to OFCOM to represent the interests of those who watch television programmes;
 - (b) persons appearing to OFCOM to represent the interests of those who make use of teletext services; and
 - (c) persons appearing to OFCOM to represent the interests of those who listen to sound programmes.
- (3) After publishing the draft code and before setting the standards, OFCOM must also consult--
- (a) the Welsh Authority, about so much of the draft code as relates to television programme services;
 - (b) the BBC, about so much of the draft code as contains standards other than those for advertising or sponsorship; and
 - (c) such of the persons mentioned in subsection (4) as OFCOM think fit, about so much of the draft code as contains standards for advertising or sponsorship [or for product placement].
- (4) Those persons are--
- (a) persons appearing to OFCOM to represent the interests of those who will have to take account of the contents of the proposed standards for advertising or sponsorship [or for product placement];
 - (b) bodies and associations appearing to OFCOM to be concerned with the application of standards of conduct in advertising; and
 - (c) professional organisations appearing to OFCOM to be qualified to give relevant advice in relation to the advertising of particular products.
- (5) If it appears to OFCOM that a body exists which represents the interests of a number of the persons who hold relevant licences, they may perform their duty under subsection (2) of consulting such persons, so far as it relates to the persons whose interests are so represented, by consulting that body.
- (6) OFCOM may set standards under section 319 either--
- (a) in the terms proposed in a draft code published under subsection (1); or
 - (b) with such modifications as OFCOM consider appropriate in the light of the consultation carried out as a result of subsections (2) to (5).
- (7) Subsections (1) to (6) apply to a proposal by OFCOM to revise standards set under section 319 as they apply to a proposal to set such standards.
- (8) Where OFCOM set standards under section 319, they must publish the code containing the standards in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the standards.
- (9) Where OFCOM revise standards set under section 319, they shall so publish the code containing the standards as revised.
- (10) Where OFCOM publish a code under subsection (8) or (9), they shall send a copy of it--
- (a) to the Secretary of State;
 - (b) except in the case of a code containing standards for advertising or sponsorship, to the BBC; and
 - (c) if the code relates to television programme services, to the Welsh Authority.
- (11) A code (or draft code) contains standards for advertising or sponsorship for the purposes of this section to the extent that it sets standards under section 319 for securing any of the objectives mentioned in any of paragraphs (g) to (k) of subsection (2) of that section.

[(11A) A code (or draft code) contains standards for product placement for the purposes of this section to the extent that it sets standards under section 319 for securing the objective mentioned in paragraph (fa) of subsection (2) of that section.]

(12) In this section "relevant licence", in relation to a draft code, means--

(a) to the extent that the draft code relates to

- (i) television programme services,
- (ii) the public teletext service, or
- (iii) an additional television service,

a licence under Part 1 of the 1990 Act (independent television services), under section 18 of the 1996 Act (digital television programme services) under section 25 of that Act (digital additional television services) or under section 219 of this Act; and

(b) to the extent that the draft code relates to radio programme services, any licence under Part 3 of the 1990 Act (independent radio services), under section 60 of the 1996 Act (digital sound programme service) or under section 64 of that Act (digital additional services).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (3): in para (c) words "or for product placement" in square brackets inserted by SI 2010/831, reg 4 (1), (2).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (4): in para (a) words "or for product placement" in square brackets inserted by SI 2010/831, reg 4 (1), (2).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (11A): inserted by SI 2010/831, reg 4(1), (3).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 75; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order

2003, SI 2003/3197, arts 6, 7, Sch 2, para 72; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/325 Observance of standards code

325 Observance of standards code

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing--

- (a) that standards set under section 319 are observed in the provision of that service; and
- (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.

(2) It shall be the duty of OFCOM themselves to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.

(3) OFCOM may from time to time make a report to the Secretary of State on any issues with respect to OFCOM's standards code which--

- (a) have been identified by them in the course of carrying out their functions; and
- (b) appear to them to raise questions of general broadcasting policy.

(4) The conditions of a licence which is granted by OFCOM for a programme service must, for the purpose of securing compliance--

- (a) with OFCOM's standards code, so far as it relates to advertising[, the sponsorship of programmes and product placement], and
- (b) with any such requirements as are mentioned in section 321(4) which relate to advertising[, sponsorship and product placement] but go beyond that code,

include a condition requiring the licence holder to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (5).

(5) Those matters are--

- (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
- (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances); . . .
- (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances)[; and
- (d) in the case of a television programme service, the forms and methods of product placement to be excluded from the service (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances)].

(6) OFCOM's powers and duties under this section are not to be construed as restricting any power of theirs, apart from this section--

- (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
- (b) to include conditions in a licence requiring the holder of a licence to comply with directions given

by OFCOM or by any other person.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (4): in para (a) words ", the sponsorship of programmes and product placement" in square brackets substituted by SI 2010/831, reg 5(1), (2)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (4): in para (b) words ", sponsorship and product placement" in square brackets substituted by SI 2010/831, reg 5(1), (2)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (5): in para (b) word omitted repealed by SI 2010/831, reg 5(1), (3)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (5): para (d) and word "; and" immediately preceding it inserted by SI 2010/831, reg 5(1), (3)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/326 Duty to observe fairness code

326 Duty to observe fairness code

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance--

- (a) in connection with the provision of that service, and

(b) in relation to the programmes included in that service,
of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/327 Standards with respect to fairness

327 Standards with respect to fairness

(1) Part 5 of the 1996 Act (functions of the Broadcasting Standards Commission which are transferred to OFCOM so far as they relate to codes of practice and complaints with respect to fairness and privacy) shall be amended as follows.

(2) No person shall be entitled to make a standards complaint under that Part at any time after the coming into force of this section, and no person shall be required to entertain any such complaint that is so made.

(3) In section 115 (consideration of fairness complaint)--

(a) in subsection (4) (matters to be provided in response to a fairness complaint), after paragraph (d) there shall be inserted--

"(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;"

(b) in subsection (7) (requests in relation to which the relevant person is required to secure the compliance of another), after paragraph (c) there shall be inserted--

"(ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;"

(4) For subsection (7) of section 119 (directions on determination of fairness complaint) there shall be substituted--

"(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.

(7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.

(7B) It is hereby declared that, where--

(a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and

(b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,

the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.

(7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint--

(a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but

(b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM."

(5) For subsection (2) of section 120 of that Act (reports on supplementary action taken in response to findings on fairness complaint) there shall be substituted--

"(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by him or by any other person responsible for the making or provision of the relevant programme."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailliwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/328 Duty to publicise OFCOM's functions in relation to complaints

328 Duty to publicise OFCOM's functions in relation to complaints

(1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing that--

(a) the procedures which, by virtue of section 325, are established and maintained for handling and resolving complaints about the observance of standards set under section 319, and

(b) their functions under Part 5 of the 1996 Act in relation to that service,

are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Conditions included in a licence by virtue of subsection (1) may require the holder of the licence to comply with every direction given to him by OFCOM for the purpose mentioned in that subsection.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/329 Proscription orders

Power to proscribe unacceptable foreign television and radio services

329 Proscription orders

(1) Where--

(a) a foreign service to which this section applies comes to OFCOM's attention, and

- (b) they consider that the service is unacceptable and should be the subject of an order under this section,
- they must send a notification to the Secretary of State giving details of the service and their reasons for considering that an order should be made.
- (2) A service is not to be considered unacceptable by OFCOM unless they are satisfied that--
- (a) programmes containing objectionable matter are included in the service; and
 - (b) that the inclusion of objectionable matter in programmes so included is occurring repeatedly.
- (3) Matter is objectionable for the purposes of subsection (2) only if--
- (a) it offends against taste or decency;
 - (b) it is likely to encourage or to incite the commission of crime;
 - (c) it is likely to lead to disorder; or
 - (d) it is likely to be offensive to public feeling.
- (4) Where the Secretary of State has received a notification under this section in the case of a service, he may make an order--
- (a) identifying the service in such manner as he thinks fit; and
 - (b) proscribing it.
- (5) The Secretary of State is not to make an order proscribing a service unless he is satisfied that the making of the order is--
- (a) in the public interest; and
 - (b) compatible with the international obligations of the United Kingdom.
- (6) The television and sound services to which this section applies are--
- (a) television licensable content services provided otherwise than by broadcasting from a satellite;
 - (b) digital television programme services;
 - (c) digital additional television services;
 - (d) radio licensable sound services provided otherwise than by being broadcast from a satellite;
 - (e) digital sound programme services; and
 - (f) digital additional sound services.
- (7) A service to which this section applies is a foreign service if it--
- (a) is a service capable of being received in the United Kingdom for the provision of which no Broadcasting Act licence is either in force or required to be in force; but
 - (b) is also a service for the provision of which such a licence would be required--
 - (i) in the case of a service falling within subsection (6)(a) to (c), if the person providing it were under the jurisdiction of the United Kingdom for the purposes of the [Audiovisual Media Services Directive]; and

- (ii) in any other case, if the person providing it provided it from a place in the United Kingdom or were a person whose principal place of business is in the United Kingdom.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (7): in para (b)(i) words "Audiovisual Media Services Directive" in square brackets substituted by SI 2009/2979, reg 8(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 76; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 73; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/330 Effect of proscription order

330 Effect of proscription order

(1) This section applies where a service is for the time being proscribed by an order under section 329.

(2) The proscribed service is not to be included in--

- (a) a multiplex service; or
- (b) a cable package.

(3) In this section "multiplex service" means a television multiplex service, a radio multiplex service or a general multiplex service.

(4) In this section "cable package" means (subject to subsection (5)) a service by means of which programme services are packaged together with a view to their being distributed--

- (a) by means of an electronic communications service;
- (b) so as to be available for reception by members of the public in the United Kingdom; and
- (c) without the final delivery of the programme services to the persons to whom they are distributed

being by wireless telegraphy.

(5) Programme services distributed by means of an electronic communications service do not form part of a cable package if--

(a) the distribution of those services forms only part of a service provided by means of that electronic communications service; and

(b) the purposes for which the service of which it forms a part is provided do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 77; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 74; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/331 Notification for enforcing proscription

331 Notification for enforcing proscription

(1) Where OFCOM determine that there are reasonable grounds for believing that there has been a contravention of section 330 in relation to a multiplex service or a cable package, they may give a notification under this section to--

(a) the provider of that multiplex service; or

(b) the person providing the cable package.

(2) A notification under this section is one which--

(a) sets out the determination made by OFCOM; and

(b) requires the person to whom it is given to secure that the proscribed service (so long as it remains proscribed) is not--

(i) included in the notified person's multiplex service, or

(ii) distributed as part of his cable package,

at any time more than seven days after the day of the giving of the notification.

(3) If it is reasonably practicable for a person to whom a notification is given under this section to secure that the proscribed service ceases to be included in that person's multiplex service, or to be distributed as part of his cable package, before the end of that seven days, then he must do so.

(4) It shall be the duty of a person to whom a notification is given under this section to comply with the requirements imposed by the notification and by subsection (3).

(5) That duty shall be enforceable in civil proceedings by OFCOM--

(a) for an injunction;

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or

(c) for any other appropriate remedy or relief.

(6) In this section "cable package" and "multiplex service" each has the same meaning as in section 330.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 78; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 75; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/332 Penalties for contravention of notification under s 331

332 Penalties for contravention of notification under s 331

(1) OFCOM may impose a penalty on a person who contravenes a requirement imposed on him by or under section 331.

(2) Before imposing a penalty on a person under this section OFCOM must give him a reasonable opportunity of making representations to them about their proposal to impose the penalty.

(3) The amount of the penalty imposed on a person is to be such amount not exceeding £5,000 as OFCOM determine to be--

(a) appropriate; and

- (b) proportionate to the contravention in respect of which it is imposed.
- (4) In making that determination OFCOM must have regard to--
 - (a) any representations made to them by the person notified under section 331; and
 - (b) any steps taken by him for complying with the requirements imposed on him under that section.
- (5) Where OFCOM impose a penalty on a person under this section, they shall--
 - (a) notify the person penalised; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (6) A penalty imposed under this section must be paid to OFCOM within the period fixed by them.
- (7) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (3).
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (9) For the purposes of this section there is a separate contravention in respect of every day on which the proscribed service is at any time included in a person's multiplex service or distributed as part of his cable package.
- (10) In this section "multiplex service" and "cable package" each has the same meaning as in section 330.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 79; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 76 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (g)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/333 Party political broadcasts

Party political broadcasts on television and radio

333 Party political broadcasts

(1) The regulatory regime for every licensed public service channel, and the regulatory regime for every national radio service, includes--

- (a) conditions requiring the inclusion in that channel or service of party political broadcasts and of referendum campaign broadcasts; and
- (b) conditions requiring that licence holder to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by OFCOM.

(2) The rules made by OFCOM for the purposes of this section may, in particular, include provision for determining--

- (a) the political parties on whose behalf party political broadcasts may be made;
- (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
- (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.

(3) Those rules are to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c 41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).

(4) Rules made by OFCOM for the purposes of this section may make different provision for different cases.

(5) Before making any rules for the purposes of this section, OFCOM must have regard to any views expressed by the Electoral Commission.

(6) In this section--

"designated organisation", in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendums Act 2000 (c 41) in respect of that referendum;

"national radio service" means a national service within the meaning of section 245 of this Act; and

"referendum campaign broadcast" has the meaning given by section 127 of that Act.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/334 Retention and production of recordings

Monitoring of programmes

334 Retention and production of recordings

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions imposing on the provider of the service--
- (a) a requirement in respect of every programme included in the service to retain a recording of the programme in a specified form and for a specified period after its inclusion;
 - (b) a requirement to comply with any request by OFCOM to produce to them for examination or reproduction a recording retained in pursuance of the conditions in the licence; and
 - (c) a requirement, if the provider is able to do so, to comply with any request by OFCOM to produce to them a script or transcript of a programme included in the programme service.
- (2) The period specified for the purposes of a condition under subsection (1)(a) must be--
- (a) in the case of a programme included in a television programme service, a period not exceeding ninety days; and
 - (b) in the case of a programme included in a radio programme service, a period not exceeding forty-two days.
- (3) For the purpose of maintaining supervision of the programmes included in programme services, OFCOM may themselves make and use recordings of those programmes or any part of them.
- (4) Nothing in this Part is to be construed as requiring OFCOM, in the carrying out of their functions under this Part as respects programme services and the programmes included in them, to view or listen to programmes in advance of their being included in such services.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/335 Conditions securing compliance with international obligations

International obligations**335 Conditions securing compliance with international obligations**

(1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the relevant international obligations of the United Kingdom are complied with.

(2) In this section "relevant international obligations of the United Kingdom" means the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this section.

(3) This section applies to the following services--

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;
- (d) the public teletext service;
- (e) any television licensable content service;
- (f) any digital television programme service;
- (g) any additional television service;
- (h) any digital additional television service;
- (i) any restricted television service.

(4) The conditions included in any licence in accordance with the other provisions of this Chapter are in addition to any conditions included in that licence in pursuance of this section and have effect subject to them.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 80; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 77; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/[335A Co-operation with other Member States]

[Co-operation with other Member States]

NOTES

Amendment

Inserted by SI 2009/2979, reg 7.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[335A Co-operation with other Member States]

[(1) Where OFCOM--

(a) receive under Article [4] of the Audiovisual Media Services Directive a request from another member State relating to a relevant broadcaster, and

(b) consider that the request is substantiated, they must ask the broadcaster to comply with the rule identified in that request.

(2) In this section "relevant broadcaster" means--

(a) the BBC;

(b) C4C;

(c) the Welsh Authority; or

(d) the holder of--

(i) a Channel 3 licence;

(ii) a Channel 5 licence; or

(iii) a licence to provide any relevant regulated television service within the meaning of section 13 (1) of the Broadcasting Act 1990.]

NOTES**Amendment**

Inserted by SI 2009/2979, reg 7.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): in para (a) reference to "4" in square brackets substituted by SI 2010/1883, reg 4.

Date in force: 18 August 2010: see SI 2010/1883, reg 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/336 Government requirements for licensed services

Government requirements for licensed services**336 Government requirements for licensed services**

(1) If it appears to the Secretary of State or any other Minister of the Crown to be appropriate to do so in connection with any of his functions, the Secretary of State or that Minister may at any time by notice require OFCOM to give a direction under subsection (2).

- (2) A direction under this subsection is a direction to the holders of the Broadcasting Act licences specified in the notice under subsection (1) to include an announcement so specified in their licensed services.
- (3) The direction may specify the times at which the announcement is to be broadcast or otherwise transmitted.
- (4) Where the holder of a Broadcasting Act licence includes an announcement in his licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (5) The Secretary of State may, at any time, by notice require OFCOM to direct the holders of the Broadcasting Act licences specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice.
- (6) Where--
- (a) OFCOM have given the holder of a Broadcasting Act licence a direction in accordance with a notice under subsection (5),
 - (b) in consequence of the revocation by the Secretary of State of such a notice, OFCOM have revoked such a direction, or
 - (c) such a notice has expired,

the holder of the licence in question may include in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

- (7) OFCOM must comply with every requirement contained in a notice under this section.
- (8) The powers conferred by this section are in addition to any powers specifically conferred on the Secretary of State by or under this Act or any other enactment.
- (9) In this section "Minister of the Crown" includes the Treasury.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 81; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 78; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/337 Promotion of equal opportunities and training

Equal opportunities and training

337 Promotion of equal opportunities and training

(1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, equality of opportunity--

- (a) between men and women; and
- (b) between persons of different racial groups.

(2) That regime includes conditions requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

(3) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for the training and retraining of persons whom he employs, in or in connection with--

- (a) the provision of the licensed service; or
- (b) the making of programmes to be included in that service.

(4) The conditions imposed by virtue of subsections (1) to (3) must contain provision, in relation to the arrangements made in pursuance of those conditions, requiring the person providing the service in question--

- (a) to take appropriate steps to make those affected by the arrangements aware of them (including such publication of the arrangements as may be required in accordance with the conditions);
- (b) from time to time, to review the arrangements; and
- (c) from time to time (and at least annually) to publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements.

(5) The conditions imposed by virtue of this section may include provision for treating obligations to make the arrangements mentioned in subsections (1) to (3), or to do anything mentioned in subsection (4), as discharged where a member of a group of companies to which the licence holder belongs--

- (a) has made the required arrangements in relation to employment with the licence holder; or
- (b) has done anything required by subsection (4) in relation to those arrangements.

(6) This section applies to a service if--

- (a) it is a service the provision of which is authorised by a Broadcasting Act licence; and
- (b) the requirements of both subsections (7) and (8) are satisfied in the case of that service.

(7) The requirements of this subsection are satisfied in the case of a service provided by a person if--

- (a) that person employs, or is likely to employ, more than the threshold number of individuals in connection with the provision of licensed services; or
- (b) the threshold number is exceeded by the aggregate number of individuals who are, or are likely to be, employed in that connection by members of a group of companies comprising that person and one or more other bodies corporate.

(8) The requirements of this subsection are satisfied in the case of a service if the licence authorising the provision of that service authorises either that service or another service authorised by that licence to be provided on a number of days in any year which exceeds the threshold number of days (whether or not the service is in fact provided on those days).

(9) In this section--

"disabled" has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,] the Disability Discrimination Act 1995 (c 50);

"licensed service", in relation to an employee or likely employee of a person, means a service the provision of which--

(a) by that person, or

(b) by a body corporate which is a member of the same group of companies as that person,

is authorised by a Broadcasting Act licence;

"racial group" has the same meaning as in the [Equality Act 2010] or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (NI 6));

"the threshold number" means--

(a) in relation to individuals, twenty; and

(b) in relation to days, thirty-one.

(10) For the purposes of this section a person is a member of a group of companies to which a person licensed to provide a service belongs if, and only if, both of them are bodies corporate and either--

(a) one of them is controlled by the other; or

(b) both of them are controlled by the same person.

(11) In subsection (10) "controlled" has the same meaning as in Part 1 of Schedule 2 to the 1990 Act.

(12) The Secretary of State may, by order--

(a) amend subsection (1) by adding any other form of equality of opportunity that he considers appropriate;

(b) amend the definition of "the threshold number" in subsection (9).

(13) No order is to be made containing provision authorised by subsection (12) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (9): in definition "disabled" words "the Equality Act 2010 or, in Northern Ireland," in square brackets inserted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 55(a) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

Sub-s (9): in definition "racial group" words "Equality Act 2010" in square brackets substituted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 55(b) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/338 Corresponding rules for the BBC and the Welsh Authority

Corresponding rules for the BBC and Welsh Authority

338 Corresponding rules for the BBC and the Welsh Authority

Schedule 12 (which provides for the imposition on the BBC and the Welsh Authority of obligations corresponding to obligations included in the regulatory regime for licensed providers) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for certain purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 82; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 79; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/339 Review of fulfilment by Welsh Authority of public service remits

Enforcement against the Welsh Authority

339 Review of fulfilment by Welsh Authority of public service remits

(1) The Secretary of State may carry out a review of the performance by the Welsh Authority of their duty to secure that each of the following public service remits--

- (a) that for S4C;
- (b) that for S4C Digital; and
- (c) that for each of the television programme services provided by them with the approval of the

Secretary of State under section 205,

is fulfilled in relation the services to which it applies.

(2) The first review carried out under this section--

(a) shall be a review relating to the period since the passing of this Act; and

(b) must not be carried out before the end of the period of five years beginning with the day of the passing of this Act.

(3) A subsequent review--

(a) shall be a review relating to the period since the end of the period to which the previous review related; and

(b) must not be carried out less than five years after the day of the publication of the report of the previous review.

(4) On a review under this section the Secretary of State--

(a) shall consult the National Assembly for Wales and the Welsh Authority on the matters under review; and

(b) shall have regard to their opinions when reaching his conclusions.

(5) The Secretary of State shall also consult such other persons as he considers are likely to be affected by whether, and in what manner, the Welsh Authority perform the duty mentioned in subsection (1).

(6) As soon as practicable after the conclusion of a review under this section the Secretary of State must publish a report of his conclusions.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/340 Directions to Welsh Authority to take remedial action

340 Directions to Welsh Authority to take remedial action

(1) This section applies if the Secretary of State's conclusions on a review under section 339 include a finding--

(a) that the Welsh Authority has failed in any respect to perform their duty to secure that the public service remit for a service mentioned in that section is fulfilled; and

(b) that there is no reasonable excuse for the failure.

(2) The Secretary of State may give the Welsh Authority general or specific directions requiring them to take the steps that he considers will ensure that the Authority perform their duty properly in future.

(3) The Secretary of State is not to give a direction under this section unless a draft of the proposed

direction has been laid before Parliament and approved by a resolution of each House.

(4) Before laying a proposed direction before Parliament, the Secretary of State must consult the Welsh Authority.

(5) It shall be the duty of the Welsh Authority to comply with every direction under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/341 Imposition of penalties on the Welsh Authority

341 Imposition of penalties on the Welsh Authority

(1) This section applies to the following requirements so far as they are imposed on the Welsh Authority in relation to services provided by them--

- (a) the requirements imposed by or under paragraphs 7 and 8 of Schedule 12 (programme quotas);
- (b) the requirements imposed by paragraph 9(1) and (3) of that Schedule (news and current affairs);
- (c) the requirements imposed by paragraph 10 of that Schedule (code relating to programme commissioning) or by a direction under sub-paragraph (3)(d) of that paragraph;
- (d) the requirement imposed by virtue of paragraph 12 of that Schedule to comply with standards set under section 319, so far as that requirement relates to standards set otherwise than for the purpose of securing the objectives set out in subsection (2)(c) or (d) of that section;
- (e) the requirements imposed by paragraphs 14 and 16 of that Schedule (advertising or sponsorship) to comply with a direction under those paragraphs;
- (f) the requirement imposed by paragraph 17 of that Schedule (observance of the fairness code);
- (g) the requirement imposed by paragraph 19 of that Schedule (publicising complaints procedure);
- (h) the requirement imposed by paragraph 20 of that Schedule (monitoring of programmes);
- (i) the requirement imposed by paragraph 21 of that Schedule (international obligations) to comply with a direction under that paragraph;
- (j) the requirement under paragraph 22 of that Schedule (assistance for disabled people) to comply with the code for the time being in force under section 303;
- [(ja) the requirement imposed by paragraph 23A of that Schedule (complaints procedures for on-demand programme services) to comply with a direction under that paragraph;
- (jb) the requirements imposed by section 368D and section 368Q(3) (on-demand programme services), except the requirement imposed by section 368D(1) so far as it relates to advertising [and the requirement imposed by section 368D(3)(za)];]
- (k) the requirement to comply with a direction under section 119(1) of the 1996 Act (directions in

respect of fairness matters).

- (2) If OFCOM are satisfied that there has been a contravention of a requirement to which this section applies, they may serve on the Welsh Authority a notice requiring the Authority, within the specified period, to pay OFCOM a specified penalty.
- (3) The amount of the penalty must not exceed £250,000.
- (4) OFCOM are not to serve a notice on the Welsh Authority under this section unless they have given them a reasonable opportunity of making representations to OFCOM about the matters appearing to OFCOM to provide grounds for the service of the notice.
- (5) An exercise by OFCOM of their powers under this section does not preclude any exercise by them of their powers under paragraph 15 of Schedule 12 in respect of the same contravention.
- (6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3).
- (7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): paras (ja), (jb) inserted by SI 2009/2979, reg 5.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): in para (jb) words "and the requirement imposed by section 368D(3)(za)" in square brackets inserted by SI 2010/419, reg 14(1), (7).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/342 Contraventions recorded in Welsh Authority's annual report

342 Contraventions recorded in Welsh Authority's annual report

In paragraph 13 of Schedule 6 to the 1990 Act (annual report of the Welsh Authority)--

- (a) in sub-paragraph (2), the words from "and shall include" onwards shall be omitted; and
- (b) after that sub-paragraph there shall be inserted--

"(3) The report shall also--

- (a) set out every contravention notification given by OFCOM to the Authority during the year; and

(b) include such other information (including information relating to the Authority's financial position) as the Secretary of State may from time to time direct.

(4) In sub-paragraph (3), "contravention notification" means a notification of a determination by OFCOM of a contravention by the Authority of any obligation imposed by or under this Act, the 1996 Act or Part 3 of the Communications Act 2003."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/343 Provision of information by Welsh Authority

343 Provision of information by Welsh Authority

(1) It shall be the duty of the Welsh Authority to comply with every direction given to them by OFCOM to provide OFCOM with information falling within subsection (2).

(2) The information that the Welsh Authority may be directed to provide is any information which OFCOM may reasonably require for the purposes of carrying out their functions in relation to the Welsh Authority under this Act, the 1990 Act or the 1996 Act.

(3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/344 Transmission of statement of findings

Enforcement of licence conditions

344 Transmission of statement of findings

(1) Sections 40 and 109 of the 1990 Act (power to direct licensee to broadcast correction or apology) shall be amended as follows.

(2) For "apology", wherever occurring, there shall be substituted "a statement of findings".

(3) After subsection (5), there shall be inserted--

"(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/345 Financial penalties imposable on licence holders

345 Financial penalties imposable on licence holders

Schedule 13 (which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of

Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/346 Recovery of fees and penalties

346 Recovery of fees and penalties

(1) This section applies to the following amounts--

- (a) any amount payable to OFCOM under a Broadcasting Act licence;
- (b) the amount of a penalty imposed by OFCOM under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part of this Act.

(2) Every amount to which this section applies shall be recoverable by OFCOM as a debt due to them from the person obliged to pay it.

(3) The following liabilities--

- (a) a person's liability to have a penalty imposed on him under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part in respect of acts or omissions of his occurring while he was the holder of a Broadcasting Act licence, and
- (b) a liability of a person as the holder of such a licence to pay an amount to which this section applies,

are not affected by that person's Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty or the payment of that amount.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/347 Statement of charging principles

Broadcasting Act licence fees

347 Statement of charging principles

(1) OFCOM are not to fix a tariff under section 4(3) or 87(3) of the 1990 Act or under section 4(3) or 43(3) of the 1996 Act (tariffs for fees payable under Broadcasting Act licences for recovering OFCOM's costs) unless--

(a) at the time they do so, there is in force a statement of the principles that OFCOM are proposing to apply in fixing that tariff; and

(b) the tariff is fixed in accordance with those principles.

(2) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs that it is practicable for them to make--

(a) that the aggregate amount of the Broadcasting Act licence fees that are required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the cost to them of the carrying out during that year of their functions relating to the regulation of broadcasting;

(b) that the requirement imposed by virtue of paragraph (a) is satisfied by the application to such fees of tariffs that are justifiable and proportionate to the matters in respect of which they are imposed; and

(c) that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

(3) Before making or revising a statement of principles OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.

(4) The making or revision of a statement of principles for the purposes of this section has to be by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(5) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement setting out, for that year--

(a) the aggregate amount received by them during that year in respect of Broadcasting Act licence fees required to be paid during that year;

(b) the aggregate amount outstanding and likely to be paid or recovered in respect of Broadcasting Act licence fees that are required to be so paid; and

(c) the cost to OFCOM of the carrying out during that year of their functions relating to the regulation of broadcasting.

(6) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (5) shall be--

(a) carried forward; and

(b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (2)(a) in relation to the following year.

(7) References in this section to OFCOM's functions relating to the regulation of broadcasting do not include references to any of their functions in relation to the BBC or the Welsh Authority.

(8) In this section--

"Broadcasting Act licence fee" means a fee required to be paid to OFCOM in pursuance of conditions included in a Broadcasting Act licence under any of the following provisions--

(a) section 4(1)(b) or 87(1)(c) of the 1990 Act; or

(b) section 4(1)(b) or 43(1)(c) of the 1996 Act;

"financial year" means a period of twelve months ending with 31st March.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 83; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 80; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/348 Modification of disqualification provisions

Chapter 5
Media Ownership and Control

Restrictions on licence holders

348 Modification of disqualification provisions

(1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), paragraphs (a) and (b) of paragraph 1(1) (individuals and bodies from outside the member States) shall cease to have effect.

(2) In sub-paragraph (1) of paragraph 2 of that Part (disqualification of religious bodies etc), for the words before paragraph (a) there shall be substituted--

"2

(1) The following persons are disqualified persons in relation only to licences falling within sub-paragraph (1A)--".

(3) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted--

"(1A) A licence falls within this sub-paragraph if it is--

- (a) a Channel 3 licence;
- (b) a Channel 5 licence;
- (c) a national sound broadcasting licence;
- (d) a public teletext licence;

- (e) an additional television service licence;
- (f) a television multiplex licence; or
- (g) a radio multiplex licence.

(1B) In this paragraph--

"additional television service licence" means a licence under Part 1 of this Act to provide an additional television service within the meaning of Part 3 of the Communications Act 2003;

"Channel 3 licence" and "Channel 5 licence" each has the same meaning as in Part 1 of this Act;

"national sound broadcasting licence" means a licence to provide a sound broadcasting service (within the meaning of Part 3 of this Act) which is a national service (within the meaning of that Part);

"public teletext licence" means a licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);

"radio multiplex licence" means a licence under Part 2 of the Broadcasting Act 1996 to provide a radio multiplex service within the meaning of that Part; and

"television multiplex licence" means a licence under Part 1 of the Broadcasting Act 1996 to provide a multiplex service within the meaning of that Part."

(4) In paragraph 4(2)(b) of that Part (bodies that are relevant bodies for the purposes of general disqualification on grounds of undue influence) for "as mentioned in paragraph (a)(i) or (ii) above" there shall be substituted--

- "(i) by a person falling within paragraph 1(1)(c) to (g) above;
- (ii) by a person falling within paragraph 3 above; or
- (iii) by two or more persons taken together each of whom falls within sub-paragraph (i) or (ii) (whether or not they all fall within the same sub-paragraph)."

(5) The Secretary of State may by order make provision--

- (a) for repealing paragraph 2 of Part 2 of Schedule 2 to the 1990 Act; or
- (b) for making such other modifications of that paragraph and any enactment referring to it as he thinks fit.

(6) Before making an order under subsection (5) (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1), (4): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-ss (2), (3), (5)-(7): Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 84; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 81 (as amended by the Broadcasting and Communications (Jersey) Order 2004; SI 2004/308, art 6(3), Sch 2, Pt 3, para (a)(ii)(ff)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/349 Licence holding by local authorities

349 Licence holding by local authorities

(1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), in paragraph 1 (which includes a disqualification for local authorities)--

- (a) in sub-paragraph (1), for "sub-paragraph (2)" there shall be substituted "sub-paragraph (1A)"; and
- (b) after that sub-paragraph there shall be inserted--

"(1A) Where a service is provided exclusively for the purposes of the carrying out of the functions of a local authority under section 142 of the Local Government Act 1972 (provision by local authorities of information relating to their activities), a person is disqualified by virtue of sub-paragraph (1) in relation to a licence to provide that service only if he would be so disqualified disregarding paragraph (c) of that sub-paragraph."

(2) In section 142 of the Local Government Act 1972 (c 70) (provision by local authorities of information relating to their activities), after subsection (1A) there shall be inserted--

"(1AA) A local authority may--

- (a) for the purpose of broadcasting or distributing information falling within subsection (1AB), provide an electronic communications network or electronic communications service, or
- (b) arrange with the provider of such a network or service for the broadcasting or distribution of such information by means of the network or service.

(1AB) Information falls within this subsection, in relation to a local authority, if it is one or both of the following--

- (a) information concerning the services within the area of the authority that are provided either by the authority themselves or by other authorities mentioned in subsection (1B) below;
- (b) information relating to the functions of the authority.

(1AC) Nothing in subsection (1AA) entitles a local authority to do anything in contravention of a requirement or restriction imposed by or under--

- (a) the Wireless Telegraphy Act 1949,
- (b) the Broadcasting Act 1990,

- (c) the Broadcasting Act 1996, or
- (d) the Communications Act 2003,

and in that subsection "electronic communications network" and "electronic communications service" each has the same meaning as in the Communications Act 2003."

(3) In section 2(1) of the Local Government Act 1986 (c 10) (restriction on publication by a local authority of material designed to affect support for a political party), after "publish" there shall be inserted ", or arrange for the publication of,".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/350 Relaxation of licence-holding restrictions

350 Relaxation of licence-holding restrictions

(1) Parts 3 to 5 of Schedule 2 to the 1990 Act (restrictions on accumulations of interests and on licence holding by newspaper proprietors and public telecommunications providers) shall cease to have effect.

(2) In each of sections 5 and 88 of the 1990 Act and of sections 5 and 44 of the 1996 Act (under which the provisions of Schedule 2 to the 1990 Act are given effect), for paragraph (b) of subsection (1) there shall be substituted--

"(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and

(c) that those requirements are not contravened in the case of a person who already holds a licence."

(3) Schedule 14 (which provides for the imposition of requirements which, in the case of Channel 3 services and certain radio services, replace those imposed by or under Parts 3 and 4 of Schedule 2 to the 1990 Act and requires approval for the holding of certain licences by religious bodies etc) shall have effect.

(4) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 11 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of licences for the provision of any local services (within the meaning of Part 3 of that Act).

(5) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 12 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of local digital sound programme licences or the provision of local digital sound programme services.

(6) In this section "the commencement day", in relation paragraph 11 or 12 of Schedule 14, means the day on which the first order to be made under that paragraph comes into force.

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Sub-ss (1), (2), (4)-(6): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (3): Appointment (for certain purposes): 18 September 2003: see SI 2003/1900, art 2(2), Sch 2; for transitional provisions see art 5 thereof.

Sub-s (3): Appointment (for certain purposes): 12 December 2003: by virtue of SI 2003/3142, art 2.

Sub-s (3): Appointment (for remaining purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/351 Changes of control of Channel 3 services

Changes of control**351 Changes of control of Channel 3 services**

(1) The regulatory regime for every Channel 3 service provided by a body corporate includes--

(a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and

(b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 352.

(2) OFCOM must carry out a review where--

(a) they receive notification, in accordance with a condition of a Channel 3 licence, of proposals that may give rise to a relevant change of control; or

(b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).

(3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) to (7), of--

(a) the change to which the proposals may give rise; or

(b) the change that has taken place.

(4) The matters mentioned in this subsection are--

- (a) the extent to which time available for broadcasting programmes included in the service is allocated to programmes of each of the following descriptions--
- (i) original productions;
 - (ii) news programmes; and
 - (iii) current affairs programmes;
- (b) the extent to which programmes of each of those descriptions that are included in the service are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are--
- (a) the extent to which Channel 3 programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
 - (b) the range of Channel 3 programmes made in the United Kingdom outside that area that are included in the service;
 - (c) the extent to which the expenditure of the provider of the service on Channel 3 programmes is referable to programme production at different production centres outside the M25 area;
 - (d) the range of different such production centres to which that expenditure is referable.
- (6) The matters mentioned in this subsection are--
- (a) the quality and range of regional programmes included in the service;
 - (b) the quality and range of other programmes included in the service which contribute to the regional character of the service;
 - (c) the quality and range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1) of the 1990 Act (nationwide Channel 3 service).
- (7) The matters mentioned in this subsection are--
- (a) the amount of time given, in the programmes included in the service--
 - (i) to regional programmes; and
 - (ii) to programmes included in the service which contribute to the regional character of the service;
 - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided;
 - (c) the extent of the use, in connection with the service, of the services of persons employed (whether by the licence holder or any other person) within that area;
 - (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area.
- (8) In relation to a national Channel 3 service, subsections (3) to (7) have effect as if--
- (a) subsection (5) applied only where the service is subject to conditions imposed by virtue of a decision of OFCOM under section 286(2) or OFCOM otherwise consider, having regard to the nature of the service, that it is appropriate to consider the matters mentioned in that subsection;
 - (b) references to regional programmes were references to programmes which are regional programmes (within the meaning of section 287) in relation to that service and are included in it in accordance with a condition imposed under subsection (4)(a) of that section;

- (c) references to the regional character of the service were references to the regional character of parts of the service;
- (d) subsection (6)(c) of this section were omitted; and
- (e) references, in relation to programmes such as are mentioned in paragraph (b), to the area for which the service is provided were references to the part of that area where the people are living to whom those programmes are likely to be of particular interest.
- (9) Where OFCOM carry out a review under subsection (2), they must publish a report of that review--
- (a) setting out their conclusions; and
- (b) specifying any steps which they propose to take under section 352.
- (10) In this section--
- "Channel 3 programmes" and "expenditure" each has the same meaning as in section 286;
- "original production" has the same meaning as in section 278;
- "peak viewing time"--
- (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for the service in question; and
- (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
- "regional programme", in relation to a Channel 3 service, means (subject to subsection (8)) a programme (including a news programme) which is of particular interest--
- (a) to persons living within the area for which the service is provided;
- (b) to persons living within a part of that area; or
- (c) to particular communities living within that area;
- "relevant change of control" means a change in the persons having control over--
- (a) a body holding the licence to provide a Channel 3 service; or
- (b) any body which--
- (i) is connected with a body holding such a licence; and
- (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.
- (11) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1)-(3), (4)(a)(ii), (iii), (b), (5)-(9), (10) (in part), (11): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-ss (4)(a)(i), (10) (remainder): Appointment: 1 July 2004: see SI 2003/3142, art 4(4)(b) (as inserted by SI 2004/545, art 2(1), (2)).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 85; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 82 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (h)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 50; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/352 Action following review under s 351

352 Action following review under s 351

(1) If, on a review under subsection (2) of section 351, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) to (6) of that section, they shall vary the licence in accordance with subsection (2).

(2) The variation--

(a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and

(b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.

(3) If it appears to OFCOM, having regard to the matters mentioned in subsection (7) of section 351--

(a) that the proposed change of control would be prejudicial to the regional character of the service or (as the case may be) of any parts of it, or

(b) that the actual change of control is so prejudicial,

they may vary the licence so as to include in it such conditions relating to any of those matters as they consider appropriate.

(4) Subject to subsection (5), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.

(5) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.

(6) In subsection (5) "the relevant date" is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.

(7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.

- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 351, of making representations to them about the variation.
- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.
- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either--
- (a) with the consent of the licence holder; or
 - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 351 have the same meanings in this section as in that.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/353 Changes of control of Channel 5

353 Changes of control of Channel 5

- (1) The regulatory regime for Channel 5 includes, in every case where it is provided by a body corporate--
- (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
 - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 354.
- (2) OFCOM must carry out a review where--
- (a) they receive notification, in accordance with a condition of the licence to provide Channel 5, of

- proposals that may give rise to a relevant change of control; or
- (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) and (5), of--
- (a) the change to which the proposals may give rise; or
- (b) the change that has taken place.
- (4) The matters mentioned in this subsection are--
- (a) the extent to which time available for broadcasting programmes included in Channel 5 is allocated to programmes of each of the following descriptions--
- (i) original productions;
- (ii) news programmes; and
- (iii) current affairs programmes;
- (b) the extent to which programmes of each of those descriptions that are included in that Channel are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are--
- (a) the extent to which programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
- (b) the range of programmes made in the United Kingdom outside that area that are included in Channel 5;
- (c) the extent to which the expenditure of the provider of Channel 5 on programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area;
- (d) the range of different such production centres to which that expenditure is referable.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review--
- (a) setting out their conclusions; and
- (b) specifying any steps which they propose to take under section 354.
- (7) In this section--
- "expenditure", in relation to a programme, means--
- (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
- (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
- "original production" has the same meaning as in section 278;
- "peak viewing time"--
- (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for Channel 5; and

(b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;

"relevant change of control" means a change in the persons having control over--

- (a) a body holding a licence to provide Channel 5; or
- (b) any body which--
 - (i) is connected with a body holding such a licence; and
 - (ii) is involved, to a substantial extent, in the provision of the programmes included in that channel, or is likely to become so involved.

(8) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1)-(3), (4)(a)(ii), (iii), (b), (5), (6), (7) (in part), (8): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-ss (4)(a)(i), (7) (remainder): Appointment: 1 July 2004: see SI 2003/3142, art 4(4)(b) (as inserted by SI 2004/545, art 2(1), (2)).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 51; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/354 Action following review under s 353

354 Action following review under s 353

(1) If, on a review under subsection (2) of section 353, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) and (5) of that section, they shall vary the licence in accordance with subsection (2).

(2) The variation--

- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
- (b) must be a variation for the inclusion in the licence of such conditions relating to any of those

matters as they consider appropriate.

- (3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (4) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.
- (5) In subsection (4) "the relevant date" is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (6) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (7) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 353, of making representations to them about the variation.
- (8) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.
- (9) A condition included in a licence by a variation under this section may be further varied by OFCOM either--
- (a) with the consent of the licence holder; or
 - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (10) Expressions used in this section and section 353 have the same meanings in this section as in that.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/355 Variation of local licence following change of control

355 Variation of local licence following change of control

(1) The regulatory regime for every local sound broadcasting service provided by a body corporate includes--

(a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to it that may give rise to a relevant change of control; and

(b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 356.

(2) OFCOM must carry out a review where--

(a) they receive notification, in accordance with a condition of a local sound broadcasting licence, of proposals that may give rise to a relevant change of control; or

(b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).

(3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsection (4), of--

(a) the change to which the proposals may give rise; or

(b) the change that has taken place.

(4) Those matters are--

(a) the quality and range of programmes included in the service;

(b) the character of the service;

(c) the extent to which OFCOM's duty under section 314 is performed in relation to the service.

(5) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a local sound broadcasting service, include, in particular, the selection of spoken material and music in programmes included in the service.

(6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review--

(a) setting out their conclusions; and

(b) specifying any steps which they propose to take under section 356.

(7) In this section "relevant change of control" means a change in the persons having control over--

(a) a body holding the licence to provide a local sound broadcasting service; or

(b) any body which--

(i) is connected with a body holding such a licence; and

(ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.

(8) Expressions used in this section and in Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Schedule.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/356 Action following review under s 355

356 Action following review under s 355

(1) If, on a review under section 355, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsection (4) of that section, they must vary the local licence in accordance with subsection (2).

(2) The variation--

(a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and

(b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.

(3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.

(4) A variation under this section must not provide for the inclusion of any new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout--

(a) the three months immediately before the relevant date; or

(b) such other three month period as has been notified under subsection (5).

(5) If OFCOM consider that the performance of the licence holder during the three month period immediately preceding the relevant date is not typical of his performance during the twelve months before the relevant date they--

(a) may determine that subsection (4) is to apply by reference to such other three month period falling within those twelve months as they may determine; and

(b) must notify any determination under this subsection to the licence holder.

(6) In subsection (4) "the relevant date" is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.

(7) A variation of a licence under this section shall be effected by the service of a notice of the variation

on the licence holder.

(8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 355, of making representations to them about the variation.

(9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until that change takes place.

(10) A condition included in a licence by a variation under this section may be further varied by OFCOM either--

(a) with the consent of the licence holder; or

(b) in any other case, after complying with the requirements of section 86(5)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).

(11) Expressions used in this section and section 355 have the same meanings in this section as in that.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/357 Meaning of "control"

Meaning of control

357 Meaning of "control"

(1) In paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act (control where a person will be able, without having at least a 50 per cent interest in it, to have the affairs of a body conducted in accordance with his wishes)--

(a) for "will be able" there shall be substituted "would (if he chose to) be able in most cases or in significant respects"; and

(b) for "the affairs" there shall be substituted "affairs".

(2) It shall be the duty of OFCOM to publish guidance setting out their intentions concerning the inclusion of particular matters in the matters that they will take into account when determining whether a person has control of a body, within the meaning of paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990

Act.

- (3) OFCOM may from time to time revise the guidance issued by them under this section.
- (4) OFCOM must publish the guidance and, where they revise it, the revised guidance in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/358 Annual factual and statistical report

Chapter 6 Other Provisions about Television and Radio Services

Annual report on television and radio

358 Annual factual and statistical report

- (1) It shall be the duty of OFCOM--
- (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of every subsequent period of twelve months,
- to satisfy for that period the review and reporting requirements of this section.
- (2) For any period those obligations are--
- (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom during that period; and
 - (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.

- (3) In carrying out a review for any period under this section, OFCOM must consider, in particular, each of the following--
- (a) the extent to which programmes included during that period in television and radio services are representative of what OFCOM consider to be the principal genres for such programmes;
 - (b) the extent to which codes made by OFCOM under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have been complied with during that period;
 - (c) the extent to which any guidance given by OFCOM under section 314 has been followed during that period;
 - (d) any trends appearing or operating during that period in the size and behaviour of the audience for radio and television services;
 - (e) the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced;
 - (f) what it is appropriate to achieve by conditions and duties under section 277 and paragraphs 1 and 7 of Schedule 12 and the effectiveness for that purpose of the conditions and duties for the time being in force;
 - (g) whether it would be appropriate to recommend to the Secretary of State that he exercises any of his powers under that section or those paragraphs;
 - (h) the extent to which work on independent productions (within the meaning of that section and those paragraphs) that are produced in the United Kingdom is done in a range of production centres outside the M25 area;
 - (i) any issues relating to intellectual property in programmes that have arisen or been of significance during that period;
 - (j) developments in technology that have occurred or become important during that period and are relevant to the provision, broadcasting or distribution of television and radio programmes;
 - (k) the availability during that period of persons with skills that are used or likely to be useful in connection with the provision of television and radio services and the production of programmes for inclusion in such services;
 - (l) the availability during that period of facilities for the provision of training in such skills.
- (4) Every report under this section must set out OFCOM's findings on their consideration of the matters mentioned in subsection (3).
- (5) Every report prepared by OFCOM under this section must be published by them--
- (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (6) OFCOM's duties under this section are in addition to their duties under section 264.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 86; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 83; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 52; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/359 Grants to providers

Community radio and local digital television

359 Grants to providers

(1) OFCOM may make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 262.

(2) The Secretary of State may by order provide that OFCOM may also make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 244.

(3) A grant made by virtue of this section may be made on such terms and conditions, and shall become repayable to OFCOM in such circumstances, as may be specified by OFCOM when making the grant.

(4) A person is not--

(a) by reason of the making to him of a grant by virtue of this section, or

(b) by reason of any terms or conditions (including any provisions for repayment) subject to which such a grant is or has been made to him,

to be a disqualified person by virtue of any provision of Schedule 2 to the 1990 Act in relation to a licence mentioned in subsection (5).

(5) Those licences are--

(a) a licence under Part 1 of the 1990 Act, or under Part 1 of the 1996 Act, which is granted in accordance with any provision made by an order under section 244 of this Act; and

(b) a licence under Part 3 of the 1990 Act, or under Part 2 of the 1996 Act, which is granted in accordance with any provision made by an order under section 262 of this Act.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 87; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 84; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/360 Amendments of the 1990 and 1996 Acts

Supplemental provisions of Part 3**360 Amendments of the 1990 and 1996 Acts**

(1) In section 201 of the 1990 Act (programme services), in subsection (1)--

(a) for paragraphs (a) to (bb) there shall be substituted--

"(aa) any service which is a programme service within the meaning of the Communications Act 2003;"

(b) in paragraph (c), for "a telecommunication system" there shall be substituted "an electronic communications network (within the meaning of the Communications Act 2003)".

(2) For subsection (2) of that section there shall be substituted--

"(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as--

(a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);

(b) satisfies the conditions in section 248(5) of that Act; or

(c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.

(2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as--

(a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);

(b) satisfies the conditions in section 233(5) of that Act; or

(c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act."

(3) Schedule 15 (which makes minor and consequential amendments of the 1990 Act and the 1996 Act for purposes connected with the other provisions of this Chapter) shall have effect.

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Sub-ss (1), (2): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (3): Appointment (for certain purposes): 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Sub-s (3): Appointment (for certain purposes): 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

Sub-s (3): Appointment (for remaining purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions see art 11 thereof.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/361 Meaning of "available for reception by members of the public"

361 Meaning of "available for reception by members of the public"

(1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which--

(a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but

(b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.

[(2) A service is not to be treated as available for reception by members of the public if it is an on-demand programme service.]

(6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom).

(7) The Secretary of State may by order modify any of the provisions of this section if it appears to him appropriate to do so having regard to any one or more of the following--

(a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes or sound programmes;

(b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;

(c) the practicability of applying different levels of regulation in relation to different services;

(d) the financial impact for providers of particular services of any modification of the provisions of that section; and

(e) technological developments that have occurred or are likely to occur.

(8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(9) ...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Amendment

Sub-s (2): substituted, for sub-ss (2)-(5) as originally enacted, by SI 2009/2979, reg 9(a).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (9): repealed by SI 2009/2979, reg 9(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 88; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 85; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 3 Television and Radio Services [etc] (ss 198-362)/362 Interpretation of Part 3

362 Interpretation of Part 3

(1) In this Part--

"additional radio service" means an additional service within the meaning given by section 114(1) of the 1990 Act for the purposes of Part 3 of that Act;

"additional television service" (except in the expression "digital additional television service") means an additional service within the meaning given by section 48 of the 1990 Act for the purposes of Part 1 of the 1990 Act;

"analogue teletext service" is to be construed in accordance with section 218(4);

"ancillary service" has the same meaning as it has, by virtue of section 24(2) of the 1996 Act, in Part 1 of

that Act;

"assistance for disabled people" means any of the following--

- (a) subtitling;
- (b) audio-description for the blind and partially sighted; and
- (c) presentation in, or translation into, sign language;

"available for reception by members of the public" is to be construed in accordance with section 361;

"the BBC Charter and Agreement" means the following documents, or any one or more of them, so far as they are for the time being in force--

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;
- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Act) for purposes that include the regulation of activities carried on by the BBC;

"BBC company" means--

- (a) a body corporate which is controlled by the BBC; or
- (b) a body corporate in which the BBC or a body corporate controlled by the BBC is (to any extent) a participant;

"C4 company" means--

- (a) a body corporate which is controlled by C4C; or
- (b) a body corporate in which C4C or a body corporate controlled by C4C is (to any extent) a participant;

"Channel 3", "Channel 4" and "Channel 5" each has the same meaning as in Part 1 of the 1990 Act (see section 71 of that Act);

"Channel 3 licence" means a licence to provide a Channel 3 service;

"a Channel 3 service" means a television broadcasting service comprised in Channel 3;

"digital additional sound service" means a digital additional service within the meaning given by section 63 of the 1996 Act for the purposes of Part 2 of that Act;

"digital additional television service" means a digital additional service within the meaning given by section 24(1) of the 1996 Act for the purposes of Part 1 of that Act;

"the digital public teletext service" means so much of the public teletext service as consists of a service provided in digital form;

"digital sound programme licence" and "digital sound programme service" each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

"digital television programme service" means a digital programme service within the meaning given by section 1(4) of the 1996 Act for the purposes of Part 1 of that Act;

"EEA State" means the United Kingdom or any other State that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 22nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993, and "another EEA State" means an EEA State other than the United Kingdom;

"general multiplex service" means a multiplex service within the meaning of section 175 which is neither a television multiplex service nor a radio multiplex service;

"initial expiry date" has the meaning given by section 224;

"licensed public service channel" means any of the following services (whether provided for broadcasting in digital or in analogue form)--

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;

"local digital sound programme licence" and "local digital sound programme service" each has the same meaning as in Part 2 of the 1996 Act (see sections 60 and 72 of that Act);

"local radio multiplex licence" and "local radio multiplex service" each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

"local sound broadcasting licence" means a licence under Part 3 of the 1990 Act to provide a local sound broadcasting service;

"local sound broadcasting service" means a sound broadcasting service which, under subsection (4)(b) of section 245, is a local service for the purposes of that section;

"the M25 area" means the area the outer boundary of which is represented by the London Orbital Motorway (M25);

"national Channel 3 service" means a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided;

"national digital sound programme service" has the same meaning as in Part 2 of the 1996 Act;

"national radio multiplex licence" and "national radio multiplex service" each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

"networking arrangements" has the meaning given by section 290;

"Ofcom's standards code" means any code or codes for the time being in force containing standards set by Ofcom under section 319 (whether originally or by way of any revision of any standards previously so set);

["product placement" has the meaning given by paragraph 1 of Schedule 11A;]

"provision", in relation to a service, is to be construed (subject to subsection (3)) in accordance with subsection (2), and cognate expressions are to be construed accordingly;

"the public teletext provider" means--

- (a) subject to paragraph (b), the person holding the licence under section 219 to provide the public teletext service; and
- (b) in relation to a time before the grant of the first licence to be granted under that section, the person holding the Broadcasting Act licence to provide the existing service (within the meaning of section 221);

"the public teletext service" means the service the provision of which *is required to be* is or may be secured in accordance with section 218;

"qualifying service" has the same meaning as in Part 1 of the 1996 Act (see section 2(2) of that Act);

"radio licensable content service" has the meaning given by section 247;

"radio multiplex service" has the same meaning as (by virtue of section 258 of this Act) it has in Part 2 of the 1996 Act;

"radio programme service" means any of the following--

- (a) a service the provision of which is licensed under Part 3 of the 1990 Act;
- (b) a digital sound programme service the provision of which is licensed under Part 2 of the 1996 Act;
- (c) a digital additional sound service the provision of which is licensed under section 64 of the 1996 Act;

"regional Channel 3 licence" means a licence under Part 1 of the 1990 Act to provide a regional Channel 3 service;

"regional Channel 3 service" means a Channel 3 service provided for a particular area determined under section 14(2) of the 1990 Act;

"restricted television service" means any restricted service within the meaning given by section 42A of the 1990 Act for the purposes of Part 1 of that Act;

"S4C" and "S4C Digital" means the services so described in section 204(3);

"S4C company" means--

- (a) a body corporate which is controlled by the Welsh Authority; or
- (b) a body corporate in which that Authority or a body corporate controlled by that Authority is (to any extent) a participant;

"simulcast radio service" means any simulcast radio service within the meaning given by section 41(2) of the 1996 Act for the purposes of Part 2 of that Act;

"sound broadcasting service" has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);

"standards objectives" has the meaning given by section 319(2);

"subtitling" means subtitling for the deaf or hard of hearing, whether provided by means of a teletext service or otherwise;

"television broadcasting service" means (subject to subsection (4)) a service which--

- (a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form);
- (b) is provided so as to be available for reception by members of the public; and
- (c) is not--
 - (i) a restricted television service;
 - (ii) a television multiplex service;
 - (iii) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; or
 - (iv) a service provided under the authority of a licence under Part 1 of the 1996 Act to provide a digital television programme service;

"television licensable content service" has the meaning given by section 232 of this Act;

"television multiplex service" has meaning given by section 241(1) of this Act to a multiplex service within the meaning of Part 1 of the 1996 Act;

"television programme service" means any of the following--

- (a) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) a restricted television service;

...

"text service" means any teletext service or other service in the case of which the visual images broadcast or distributed by means of the service consist wholly or mainly of non-representational images.

(2) In the case of any of the following services--

- (a) a television broadcasting service or sound broadcasting service,
- (b) the public teletext service;
- (c) a television licensable content service or radio licensable content service,
- (d) a digital television programme service or digital sound programme service,
- (e) a restricted television service,
- (f) an additional television service or additional radio service,
- (g) a digital additional television service or a digital additional sound service,

the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service).

(3) For the purposes of this Part--

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by C4C does not include its provision by a C4 company;
- (c) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC, C4C or the Welsh Authority over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service shall be disregarded for the purposes of subsection (2).

(4) References in this Part to a television broadcasting service do not include references to any text service.

(5) References in this Part to imposing a charge on a person in respect of his reception of a service in, or in a part of, the United Kingdom include references to imposing charges--

- (a) for his use of the service at a place in the United Kingdom or in that part of it;
- (b) for an entitlement of his to receive it at such place;
- (c) for the use of a facility by means of which he exercises such an entitlement; or
- (d) for the service's being made available for reception by him at such a place.

(6) In subsection (1) "controlled" and "participant" each has the same meaning as in Schedule 2 to the 1990 Act.

(7) In this section "non-representational images" means visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 25 July 2003: see SI 2003/1900, art 2(1), Sch 1; for transitional provisions in relation to sub-s (1) above see art 6 thereof.

Amendment

Sub-s (1): definition "product placement" inserted by SI 2010/831, reg 6.

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Sub-s (1): in definition "the public teletext service" words "is required to be" in italics repealed and subsequent words in square brackets substituted by the Digital Economy Act 2010, s 28(7).

Date in force: to be appointed: see the Digital Economy Act 2010, s 28(8).

Sub-s (1): definition "the Television without Frontiers Directive" (omitted) repealed by SI 2009/2979, reg 10.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 89; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 86 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 53; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss

363-368)/363 Licence required for use of TV receiver

Part 4

Licensing of TV Reception

363 Licence required for use of TV receiver

(1) A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under this Part.

(2) A person who installs or uses a television receiver in contravention of subsection (1) is guilty of an offence.

(3) A person with a television receiver in his possession or under his control who--

(a) intends to install or use it in contravention of subsection (1), or

(b) knows, or has reasonable grounds for believing, that another person intends to install or use it in contravention of that subsection,

is guilty of an offence.

(4) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(5) Subsection (1) is not contravened by anything done in the course of the business of a dealer in television receivers solely for one or more of the following purposes--

(a) installing a television receiver on delivery;

(b) demonstrating, testing or repairing a television receiver.

(6) The Secretary of State may by regulations exempt from the requirement of a licence under subsection (1) the installation or use of television receivers--

(a) of such descriptions,

(b) by such persons,

(c) in such circumstances, and

(d) for such purposes,

as may be provided for in the regulations.

(7) Regulations under subsection (6) may make any exemption for which such regulations provide subject to compliance with such conditions as may be specified in the regulations.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2004, SI 2004/307, arts 4, 5, Schedule, para 1; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, arts 4, 5, Sch 1, para 1; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, immediately after the 2007 election, the National Assembly for Wales Commission shall be treated as a Crown body for the purposes of this section: the National Assembly for Wales Commission (Crown Status) Order 2007, art 7 and the Government of Wales Act 2006, s 161(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss 363-368)/364 TV licences

364 TV licences

- (1) A licence for the purposes of section 363 ("a TV licence")--
 - (a) may be issued by the BBC subject to such restrictions and conditions as the BBC think fit; and
 - (b) must be issued subject to such restrictions and conditions as the Secretary of State may require by a direction to the BBC.
- (2) The matters to which the restrictions and conditions subject to which a TV licence may be issued may relate include, in particular--
 - (a) the description of television receivers that may be installed and used under the licence;
 - (b) the persons authorised by the licence to install and use a television receiver;
 - (c) the places where the installation and use of the television receiver is authorised by the licence;
 - (d) the circumstances in which the installation and use of such a receiver is so authorised;
 - (e) the purposes for which the installation and use of such a receiver is so authorised;
 - (f) the use of such receiver in a manner that causes, or may cause, interference (within the meaning of [the Wireless Telegraphy Act 2006]) with wireless telegraphy.
- (3) The restrictions and conditions subject to which a TV licence may be issued do not include--
 - (a) a provision conferring a power of entry to any premises; or
 - (b) a provision prohibited by a direction to the BBC by the Secretary of State.
- (4) A TV licence shall continue in force, unless previously revoked by the BBC, for such period as may be specified in the licence.
- (5) The BBC may revoke or modify a TV licence, or the restrictions or conditions of such a licence--
 - (a) by a notice to the holder of the licence; or
 - (b) by a general notice published in such manner as may be specified in the licence.
- (6) It shall be the duty of the BBC to exercise their power under subsection (5) to revoke or modify a TV licence, or any of its restrictions or conditions, if they are directed to do so by the Secretary of State.
- (7) A direction by the Secretary of State under this section may be given either generally in relation to all TV licences (or all TV licences of a particular description) or in relation to a particular licence.

- (8) A notice under subsection (5)(a) must be given--
- (a) in the manner specified in the licence; or
 - (b) if no manner of service is so specified, in the manner authorised by section 394.
- (9) For the purposes of the application, in relation to the giving of such a notice, of--
- (a) section 394; and
 - (b) section 7 of the Interpretation Act 1978 (c 30) (service by post) in its application for the purposes of that section,

a person's proper address is any address where he is authorised by a TV licence to install or use a TV receiver or, if there is no such address, his last known address.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

Amendment

Sub-s (2): in para (f) words "the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 29.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2004, SI 2004/307, arts 4, 5, Schedule, para 2; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, arts 4, 5, Sch 1, para 2; for specific commencement and extent information see arts 1(2), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss 363-368)/365 TV licence fees

365 TV licence fees

- (1) A person to whom a TV licence is issued shall be liable to pay--
- (a) on the issue of the licence (whether initially or by way of renewal), and
 - (b) in such other circumstances as regulations made by the Secretary of State may provide,
- such sum (if any) as may be provided for by any such regulations.

- (2) Sums which a person is liable to pay by virtue of regulations under subsection (1) must be paid to the BBC and are to be recoverable by them accordingly.
- (3) The BBC are entitled, in such cases as they may determine, to make refunds of sums received by them by virtue of regulations under this section.
- (4) Regulations under this section may include provision--
- (a) for the means by which an entitlement to a concession must be established; and
 - (b) for the payment of sums by means of an instalment scheme set out in the regulations.
- (5) The reference to a concession in subsection (4) is a reference to any concession under which a person is, on the satisfaction of specified requirements--
- (a) exempted from the liability to pay a sum in respect of a TV licence; or
 - (b) required to pay only a reduced sum in respect of such a licence.
- (6) The consent of the Treasury shall be required for the making of any regulations under this section by the Secretary of State.
- (7) Subject to subsection (8), sums received by the BBC by virtue of any regulations under this section must be paid into the Consolidated Fund.
- (8) The BBC may retain, out of the sums received by them by virtue of regulations under this section, any sums they require for making refunds of sums so received.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2004, SI 2004/307, arts 4, 5, Schedule, para 3; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, arts 4, 5, Sch 1, para 3: for specific commencement and extent information see arts 1(2), 2 thereof.

Subordinate Legislation

Communications (Television Licensing) Regulations 2004, SI 2004/692 (made under sub-ss (1), (4)).
Communications (Television Licensing) (Amendment) Regulations 2005, SI 2005/606 (made under sub-ss (1), (4)).

Communications (Television Licensing) (Amendment) Regulations 2006, SI 2006/619 (made under sub-ss (1), (4)).

Communications (Television Licensing) (Amendment) Regulations 2007, SI 2007/718 (made under sub-ss (1), (4)).

Communications (Television Licensing) (Amendment) Regulations 2008, SI 2008/643 (made under sub-ss (1), (4)).

Communications (Television Licensing) (Amendment) Regulations 2009, SI 2009/505 (made under sub-ss (1), (4)).

Communications (Television Licensing) (Amendment) Regulations 2010, SI 2010/640 (made under sub-ss (1), (4)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss 363-368)/366 Powers to enforce TV licensing

366 Powers to enforce TV licensing

(1) If a justice of the peace, a sheriff in Scotland or a lay magistrate in Northern Ireland is satisfied by information on oath that there are reasonable grounds for believing--

- (a) that an offence under section 363 has been or is being committed,
- (b) that evidence of the commission of the offence is likely to be on premises specified in the information, or in a vehicle so specified, and
- (c) that one or more of the conditions set out in subsection (3) is satisfied,

he may grant a warrant under this section.

(2) A warrant under this section is a warrant authorising any one or more persons authorised for the purpose by the BBC or by OFCOM--

- (a) to enter the premises or vehicle at any time (either alone or in the company of one or more constables); and
- (b) to search the premises or vehicle and examine and test any television receiver found there.

(3) Those conditions are--

- (a) that there is no person entitled to grant entry to the premises or vehicle with whom it is practicable to communicate;
- (b) that there is no person entitled to grant access to the evidence with whom it is practicable to communicate;
- (c) that entry to the premises or vehicle will not be granted unless a warrant is produced;
- (d) that the purpose of the search may be frustrated or seriously prejudiced unless the search is carried out by a person who secures entry immediately upon arriving at the premises or vehicle.

(4) A person is not to enter premises or a vehicle in pursuance of a warrant under this section at any time more than one month after the day on which the warrant was granted.

(5) The powers conferred by a warrant under this section on a person authorised by OFCOM are exercisable in relation only to a contravention or suspected contravention of a condition of a TV licence relating to interference with wireless telegraphy.

(6) A person authorised by the BBC, or by OFCOM, to exercise a power conferred by a warrant under this section may (if necessary) use such force as may be reasonable in the exercise of that power.

(7) Where a person has the power by virtue of a warrant under this section to examine or test any television receiver found on any premises, or in any vehicle, it shall be the duty--

- (a) of a person who is on the premises or in the vehicle, and
- (b) in the case of a vehicle, of a person who has charge of it or is present when it is searched,

to give the person carrying out the examination or test all such assistance as that person may reasonably

require for carrying it out.

(8) A person is guilty of an offence if he--

(a) intentionally obstructs a person in the exercise of any power conferred on that person by virtue of a warrant under this section; or

(b) without reasonable excuse, fails to give any assistance that he is under a duty to give by virtue of subsection (7).

(9) A person guilty of an offence under subsection (8) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(10) In this section--

"interference", in relation to wireless telegraphy, has the same meaning as in [the Wireless Telegraphy Act 2006]; and

"vehicle" includes vessel, aircraft or hovercraft.

(11) In the application of this section to Scotland, the reference in subsection (1) to information on oath shall have effect as a reference to evidence on oath.

(12) In the application of this section to Northern Ireland, the reference in subsection (1) to a lay magistrate shall have effect, in relation to times before the coming into force of sections 9 and 10 of the Justice (Northern Ireland) Act 2002 (c 26), as a reference to a justice of the peace.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

Amendment

Sub-s (10): in definition "interference" words "the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 30.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 54; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2004, SI 2004/307, arts 4, 5, Schedule, para 4; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, arts 4, 5, Sch 1, para 4; for specific commencement and extent information see arts 1(2), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss 363-368)/367 Interpretation of provisions about dealer notification

367 Interpretation of provisions about dealer notification

(1) Section 6 of the Wireless Telegraphy Act 1967 (interpretation of provisions requiring notification of sale and hire of television sets) shall be amended as follows.

(2) In subsection (1), for the definitions of "television dealer", "television programme" and "television set" there shall be substituted--

"television dealer" means a person of any description specified in regulations made by the Secretary of State setting out the descriptions of persons who are to be television dealers for the purposes of this Part;

"television set" means any apparatus of a description specified in regulations made by the Secretary of State setting out the descriptions of apparatus that are to be television sets for the purposes of this Part."

(3) After that subsection there shall be inserted--

"(1A) Regulations under subsection (1) defining a television set may provide for references to such a set to include references to software used in association with apparatus."

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose of enabling regulations to be made under the Wireless Telegraphy Act 1967, s 6(1)): 9 March 2004: see SI 2003/3142, art 4(1A) (as inserted by SI 2004/697, art 2(1), (2)).

Appointment (for remaining purposes): 1 April 2004: see SI 2003/3142, art 4(2), Sch 2 (as amended by SI 2004/697, art 2(1), (3)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 4 Licensing of TV Reception (ss 363-368)/368 Meanings of "television receiver" and "use"

368 Meanings of "television receiver" and "use"

(1) In this Part "television receiver" means any apparatus of a description specified in regulations made by the Secretary of State setting out the descriptions of apparatus that are to be television receivers for the purposes of this Part.

(2) Regulations under this section defining a television receiver may provide for references to such a receiver to include references to software used in association with apparatus.

(3) References in this Part to using a television receiver are references to using it for receiving television programmes.

(4) The power to make regulations under this section defining a television receiver includes power to modify subsection (3).

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2004, SI 2004/307, arts 4, 5; for specific commencement and extent information see arts 1(2), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, arts 4, 5; for specific commencement and extent information see arts 1(2), 2 thereof.

Subordinate Legislation

Communications (Television Licensing) Regulations 2004, SI 2004/692.

Communications (Television Licensing) (Amendment) Regulations 2007, SI 2007/718.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368A Meaning of "on-demand programme service"]

[Part 4A

On-demand Programme Services]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[Preliminary]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368A Meaning of "on-demand programme service"]

[(1) For the purposes of this Act, a service is an "on-demand programme service" if--

(a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;

(b) access to it is on-demand;

- (c) there is a person who has editorial responsibility for it;
 - (d) it is made available by that person for use by members of the public; and
 - (e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.
- (2) Access to a service is on-demand if--
- (a) the service enables the user to view, at a time chosen by the user, programmes selected by the user from among the programmes included in the service; and
 - (b) the programmes viewed by the user are received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).
- (3) For the purposes of subsection (2)(a), the fact that a programme may be viewed only within a period specified by the provider of the service does not prevent the time at which it is viewed being one chosen by the user.
- (4) A person has editorial responsibility for a service if that person has general control--
- (a) over what programmes are included in the range of programmes offered to users; and
 - (b) over the manner in which the programmes are organised in that range;
- and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service (and see section 368R(6)).
- (5) If an on-demand programme service ("the main service") offers users access to a relevant ancillary service, the relevant ancillary service is to be treated for the purposes of this Part as a part of the main service.
- (6) In subsection (5), "relevant ancillary service" means a service or facility that consists of or gives access to assistance for disabled people in relation to some or all of the programmes included in the main service.
- (7) In this section "assistance for disabled people" has the same meaning as in Part 3.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368B The appropriate regulatory authority]

[368B The appropriate regulatory authority]

- [(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection [(9)].
- (2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.
- (3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.
- (4) OFCOM may provide a designated body with assistance in connection with any of the functions of

the body under this Part.

(5) A designation may in particular--

- (a) provide for a body to be the appropriate regulatory authority in relation to on-demand programme services of a specified description;
- (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body--
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.

(6) The conditions that may be specified pursuant to subsection [(5)(b)(iii)] include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.

(7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.

(8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

(9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body--

- (a) is a fit and proper body to be designated;
- (b) has consented to being designated;
- (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- (d) is sufficiently independent of providers of on-demand programme services; and
- (e) will, in performing any function to which the designation relates, have regard in all cases--
 - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

(10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body--

- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate regulatory authority;
- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of their functions under this Part;
- (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate regulatory authority.

(11) In carrying out their functions as the appropriate regulatory authority, a designated body may carry out, commission or support (financially or otherwise) research.

(12) In this section--

"designation" means a designation under this section and cognate expressions are to be construed accordingly;

"specified" means specified in a designation.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): reference to "(9)" in square brackets substituted by SI 2010/419, regs 2, 3(1).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (6): reference to "(5)(b)(iii)" in square brackets substituted by SI 2010/419, regs 2, 3(2).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R]/[368BA Advance notification to appropriate regulatory authority]

[Notification by providers]

NOTES

Amendment

Inserted by SI 2010/419, regs 2, 4.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

[368BA Advance notification to appropriate regulatory authority]

[(1) A person must not provide an on-demand programme service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before--

- (a) providing the notified service with any significant differences; or
- (b) ceasing to provide it,

give a notification to the appropriate regulatory authority of the differences or (as the case may be) of an intention to cease to provide the service.

(3) A notification for the purposes of this section must--

- (a) be sent to the appropriate regulatory authority in such manner as the authority may require; and

- (b) contain all such information as the authority may require.]

NOTES

Amendment

Inserted by SI 2010/419, regs 2, 4.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1); for transitional provision see reg 13(1) thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368BB Enforcement of section 368BA]

[368BB Enforcement of section 368BA]

[(1) Where the appropriate regulatory authority determine that the provider of an on-demand programme service has contravened section 368BA, they may do one or both of the following--

- (a) give the provider an enforcement notification under this section;
- (b) impose a penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368BA has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for remedying the contravention of section 368BA as may be specified in the notification.

(4) An enforcement notification must--

- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
- (b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a person to whom an enforcement notification has been given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriate regulatory authority--

- (a) for an injunction;
- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
- (c) for any other appropriate remedy or relief.]

NOTES

Amendment

Inserted by SI 2010/419, regs 2, 4.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368C Duties of the appropriate regulatory authority]

[Duties of the appropriate regulatory authority]**NOTES****Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368C Duties of the appropriate regulatory authority]

[(1) It is the duty of the appropriate regulatory authority to take such steps as appear to them best calculated to secure that every provider of an on-demand programme service complies with the requirements of section 368D.

(2) The appropriate regulatory authority must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.

(3) The appropriate regulatory authority must ensure that providers of on-demand programme services promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).

(4) The appropriate regulatory authority must encourage providers of on-demand programme services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages by sponsorship of, or in advertising which accompanies or is included in, children's programmes.]

NOTES**Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368D Duties of service providers]

[Duties of service providers]**NOTES****Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368D Duties of service providers]

[(1) The provider of an on-demand programme service must ensure that the service complies with the requirements of sections 368E to 368H.

(2) The provider of an on-demand programme service ("P") must supply the following information to users of the service--

- (a) P's name;
 - (b) P's address;
 - (c) P's electronic address;
 - (d) the name, address and electronic address of any body which is the appropriate regulatory authority for any purpose in relation to P or the service that P provides.
- (3) The provider of an on-demand programme service must--
- [(za) pay to the appropriate regulatory authority such fee as that authority may require under section 368NA;
 - (zb) retain a copy of every programme included in the service for at least forty-two days after the day on which the programme ceases to be available for viewing;]
 - (a) comply with any requirement under section 368O (provision of information);
 - (b) co-operate fully with the appropriate authority for any purpose within section 368O(2) or (3).
- [(3A) A copy of a programme retained for the purposes of subsection (3)(zb) must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.]
- (4) In this section "electronic address" means an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (3): paras (za), (zb) inserted by SI 2010/419, regs 2, 5.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (3A): inserted by SI 2010/419, regs 2, 5.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368E Harmful material]

[368E Harmful material]

[(1) An on-demand programme service must not contain any material likely to incite hatred based on race, sex, religion or nationality.

(2) If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368F Advertising]

[[368F Advertising]

- [(1) Advertising of the following products is prohibited in on-demand programme services--
- (a) cigarettes or other tobacco products;
 - (b) any prescription-only medicine.
- (2) Advertising of alcoholic drinks is prohibited in on-demand programme services unless--
- (a) it is not aimed at persons under the age of eighteen, and
 - (b) it does not encourage excessive consumption of such drinks.
- (3) Advertising included in an on-demand programme service--
- (a) must be readily recognisable as such, and
 - (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (4) Advertising included in an on-demand programme service must not--
- (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
 - (g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (h) exploit the trust of such persons in parents, teachers or others; or
 - (i) unreasonably show such persons in dangerous situations.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme

Services] (ss 363-[368R])/[368G Sponsorship]

[[368G Sponsorship]

- [(1) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored--
- (a) for the purpose of promoting cigarettes or other tobacco products, or
 - (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.
- (2) An on-demand programme service or a programme included in an on-demand programme service must not be sponsored for the purpose of promoting a [prescription-only] medicine.
- (3) An on-demand programme service may not include a news programme or current affairs programme that is sponsored.
- (4) Subsections (5) to (11) apply to an on-demand programme service that is sponsored or that includes any programme that is sponsored.
- (5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.
- (6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.
- (7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not--
- (a) be aimed specifically at persons under the age of eighteen; or
 - (b) encourage the immoderate consumption of such drinks.
- (8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.
- (9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.
- (10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.
- (11) A sponsorship announcement must not--
- (a) prejudice respect for human dignity;
 - (b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.

(12) For the purposes of this Part a programme included in an on-demand programme service is "sponsored" if a person ("the sponsor") other than--

- (a) the provider of that service, or
- (b) the producer of that programme,

has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.

(13) But a programme is not sponsored if it falls within this section only by virtue of the inclusion of product placement (see section 368H(1)) or prop placement (see section 368H(2)).

(14) For the purposes of subsection (12) a person meets some or all of the costs of a programme included in a service only if that person makes a payment or provides other resources for the purpose of meeting or saving some or all of the costs of--

- (a) producing that programme;
- (b) transmitting that programme; or
- (c) making that programme available as part of the service.

(15) For the purposes of this Part an on-demand programme service is "sponsored" if a person ("the sponsor") other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

(16) For the purposes of subsection (15) a person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

(17) In this section a "sponsorship announcement" means--

- (a) anything included for the purpose of complying with subsection (8) or (9), and
- (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (2): words "prescription-only" in square brackets substituted by SI 2010/419, regs 2, 6.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R]/[368H Prohibition of product placement and exceptions]

[368H Prohibition of product placement and exceptions]

[(1) "Product placement", in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion--

- (a) is for a commercial purpose,
 - (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
 - (c) is not prop placement.
- (2) "Prop placement", in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where--
- (a) the provision of the product, service or trade mark has no significant value; and
 - (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.
- (3) Product placement is prohibited in children's programmes included in on-demand programme services.
- (4) Product placement is prohibited in on-demand programme services if--
- (a) it is of cigarettes or other tobacco products,
 - (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or
 - (c) it is of prescription-only medicines.
- (5) Product placement of alcoholic drinks must not--
- (a) be aimed specifically at persons under the age of eighteen;
 - (b) encourage immoderate consumption of such drinks.
- (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that--
- (a) conditions A to F are met, and
 - (b) if subsection (14) applies, condition G is also met.
- (7) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is--
- (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
- (8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.
- (9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.

(11) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(12) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not--

- (a) prejudice respect for human dignity;
- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

(13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than--

- (a) at the start and end of such a programme, and
- (b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

(14) This subsection applies where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

(15) This section applies only in relation to programmes the production of which begins after 19th December 2009.

(16) In this section--

"connected" has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

"film made for cinema" means a film made with a view to its being shown to the general public first in a cinema;

"producer", in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

["programme" does not include an advertisement;]

"relevant provider", in relation to a programme, means--

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme;

"residual value" means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

"significant value" means a residual value that is more than trivial; and

"trade mark", in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (16): definition "programme" inserted by SI 2010/831, reg 7.

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368I Enforcement of section 368D]

[368I Enforcement of section 368D]

[(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened section 368D they may do one or both of the following--

- (a) give the provider an enforcement notification under this section;
- (b) impose a financial penalty on the provider in accordance with section 368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368D is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368D and for remedying the consequences of the contravention of that section as may be specified in the notification.

(4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following--

- (a) cease providing or restrict access to--
 - (i) a specified programme, or
 - (ii) programmes of a specified description;
- (b) cease showing or restrict access to--
 - (i) a specified advertisement, or
 - (ii) advertisements of a specified description;
- (c) provide additional information to users of the service prior to the selection of a specified programme by the user for viewing;
- (d) show an advertisement only with specified modifications;
- (e) publish a correction in the form and place and at the time specified; or

- (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and at the time specified.
- (5) An enforcement notification must--
- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and
 - (b) fix a reasonable period for the taking of the steps required by the notification.
- (6) Where a provider is required by an enforcement notification to publish a correction or a statement of findings, the provider may publish with the correction or statement of findings a statement that it is published in pursuance of the enforcement notification.
- (7) It is the duty of a provider to whom an enforcement notification has been given to comply with it.
- (8) That duty is enforceable in civil proceedings by the appropriate regulatory authority--
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.
- (9) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on that provider in accordance with section 368J.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368J Financial penalties]

[Financial penalties]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368J Financial penalties]

[(1) The amount of a penalty imposed on a provider under section [368BB or] 368I is to be such amount not exceeding 5 per cent. of the provider's applicable qualifying revenue or £250,000 whichever is the greater amount, as the appropriate regulatory authority determine to be--

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(2) In determining the amount of a penalty under subsection (1) the appropriate regulatory authority must have regard to any statement published by OFCOM under section 392 (guidelines to be followed in determining amount of penalties).

(3) The "applicable qualifying revenue", in relation to a provider, means--

(a) the qualifying revenue for the provider's last complete accounting period falling within the period during which the provider has been providing the service to which the contravention relates; or

(b) in relation to a person whose first complete accounting period falling within that period has not ended when the penalty is imposed, the amount that the appropriate regulatory authority estimate to be the qualifying revenue for that period.

(4) For the purposes of subsection (3) the "qualifying revenue" for an accounting period consists of the aggregate of all the amounts received or to be received by the provider of the service to which the contravention relates or by any connected person in the accounting period--

(a) for the inclusion in that service of advertisements, product placement and sponsorship; and

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

(5) For the purposes of subsection (4), "connected" has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.

(6) A financial penalty imposed under this section--

(a) must be paid into the appropriate Consolidated Fund; and

(b) if not paid within the period fixed by the appropriate regulatory authority, is to be recoverable by the appropriate regulatory authority as a debt due to them from the person obliged to pay it.

(7) For the purposes of subsections (3) and (6)--

(a) the amount of a person's qualifying revenue for an accounting period, or

(b) the amount of any payment to be made into the appropriate Consolidated Fund by any person in respect of any such revenue,

is, in the event of a disagreement between the appropriate regulatory authority and that person, the amount determined by the appropriate regulatory authority.

(8) The references in this section to the payment of an amount into the appropriate Consolidated Fund--

(a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;

(b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and

(c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): words "368BB or" in square brackets inserted by SI 2010/419, regs 2, 7.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368K Suspension or restriction of service for contraventions]

[Suspension or restriction of service]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368K Suspension or restriction of service for contraventions]

[(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied--

- (a) that the provider is in contravention of section [368BA or] 368D;
- (b) that an attempt to secure compliance with section [368BA or] 368D [(as the case may be)] by the imposition of one or more financial penalties or enforcement notifications under section [368BB or] 368I has failed; and
- (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention.

(2) A notice under this subsection must--

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) state the reasons why they are satisfied as mentioned in subsection (1);
- (c) state that the appropriate regulatory authority will give a direction under this section unless the provider takes, within a period specified in the notice, such steps to remedy the contravention within subsection (1)(a) as are so specified;
- (d) specify any conditions that the appropriate regulatory authority propose to impose in the direction under section 368M(5)(b); and
- (e) inform the provider that the provider has the right to make representations to the appropriate regulatory authority about the matters appearing to the authority to provide grounds for giving the proposed direction within the period specified for the purposes of paragraph (c).

(3) If, after considering any representations made to them by the provider within that period, the appropriate regulatory authority are satisfied that the provider has failed to take the steps specified in the notice for remedying the contravention and that it is necessary in the public interest to give a direction under this section, the appropriate regulatory authority must give such of the following as appears to them appropriate and proportionate as mentioned in subsection (1)(c)--

- (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);

- (b) a direction that that entitlement is restricted in the respects set out in the direction.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): in para (a) words "368BA or" in square brackets inserted by SI 2010/419, regs 2, 8(1), (2).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (1): in para (b) words "368BA or" in square brackets inserted by SI 2010/419, regs 2, 8(1), (3)(a).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (1): in para (b) words "(as the case may be)" in square brackets inserted by SI 2010/419, regs 2, 8(1), (3)(b).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (1): in para (b) words "368BB or" in square brackets inserted by SI 2010/419, regs 2, 8(1), (3)(c).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368L Suspension or restriction of service for inciting crime or disorder]

[368L Suspension or restriction of service for inciting crime or disorder]

[(1) The appropriate regulatory authority must serve a notice under subsection (2) on a provider of an on-demand programme service if they are satisfied--

- (a) that the service has failed to comply with any requirement of section 368E to 368H and that accordingly the provider has contravened section 368D(1);
- (b) that the failure is due to the inclusion in the service of material likely to encourage or to incite the commission of crime, or to lead to disorder; and
- (c) that the contravention is such as to justify the giving of a direction under this section.

(2) A notice under this subsection must--

- (a) state that the appropriate regulatory authority are satisfied as mentioned in subsection (1);
- (b) specify the respects in which, in their opinion, the provider has contravened section 368D;
- (c) specify the effect of the notice in accordance with subsection (3);
- (d) state that the appropriate regulatory authority may give a direction under this section after the end of the period of twenty-one days beginning with the day on which the notice is served on the provider; and

- (e) inform the provider of the provider's right to make representations to the appropriate regulatory authority within that period about the matters appearing to the appropriate regulatory authority to provide grounds for giving a direction under this section.
- (3) A notice under subsection (2) has the effect specified under subsection (2)(c), which may be either--
- (a) that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service), or
- (b) that that entitlement is restricted in the respects set out in the notice.
- (4) The suspension or restriction has effect as from the time when the notice is served on the provider until either--
- (a) a direction given under this section takes effect; or
- (b) the appropriate regulatory authority decide not to give such a direction.
- (5) If, after considering any representations made to them by the provider within the period mentioned in subsection (2)(d), the appropriate regulatory authority are satisfied that it is necessary in the public interest to give a direction under this section, they must give such of the following as appears to them justified as mentioned in subsection (1)(c)--
- (a) a direction that the entitlement of the provider to provide an on-demand programme service is suspended (either generally or in relation to a particular service);
- (b) a direction that that entitlement is restricted in the respects set out in the direction.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368M Supplementary provision about directions]

[368M Supplementary provision about directions]

- [(1) This section applies to a direction given to a provider under section 368K or 368L.
- (2) A direction must specify the service to which it relates or specify that it relates to any on-demand programme service provided or to be provided by the provider.
- (3) A direction, except so far as it otherwise provides, takes effect for an indefinite period beginning with the time at which it is notified to the provider.
- (4) A direction under section 368L must specify a time for it to take effect, and that time must not fall before the end of twenty-eight days beginning with the day on which the direction is notified to the provider.
- (5) A direction--
- (a) may provide for the effect of a suspension or restriction to be postponed by specifying that it takes effect only at a time determined by or in accordance with the terms of the direction; and
- (b) in connection with the suspension or restriction contained in the direction or with the postponement of its effect, may impose such conditions on the provider as appear to the appropriate regulatory

authority to be appropriate for the purpose of protecting that provider's customers.

(6) If the appropriate regulatory authority consider it appropriate to do so (whether or not in consequence of representations or proposals made to them), they may revoke a direction or modify its conditions--

- (a) with effect from such time as they may direct;
- (b) subject to compliance with such requirements as they may specify; and
- (c) to such extent and in relation to such services as they may determine.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368N Enforcement of directions under section 368K or 368L]

[368N Enforcement of directions under section 368K or 368L]

[(1) A person ("P") is guilty of an offence if P provides an on-demand programme service--

- (a) while P's entitlement to do so is suspended by a direction under section 368K or 368L, or
- (b) in contravention of a restriction contained in such a direction.

(2) A person guilty of an offence under this section is liable--

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368NA Fees]

[Fees]

NOTES

Amendment

Inserted by SI 2010/419, regs 2, 9.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1); for transitional provision see reg 13 (2)-(6) thereof.

[[368NA Fees]

- [(1) In this section "the authority" means each of these--
- (a) the appropriate regulatory authority;
 - (b) (where they are not the appropriate regulatory authority) OFCOM.
- (2) The authority may require a provider of an on-demand programme service to pay them a fee.
- (3) The authority must be satisfied that the amount of any fee required under subsection (2)--
- (a) represents the appropriate contribution of the provider towards meeting the likely costs described in subsection (5)(a), and
 - (b) is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed.
- (4) A different fee may be required in relation to different cases or circumstances.
- (5) The authority must, for each financial year--
- (a) prepare such estimate as it is practicable for them to make of the likely costs of carrying out the relevant functions during that year;
 - (b) ensure that the aggregate amount of the fees that are required to be paid to them under subsection (2) during that year is sufficient to enable them to meet, but not exceed, the costs estimated under paragraph (a);
 - (c) consult in such manner as they consider appropriate the providers likely to be required to pay them a fee under subsection (2) during that year;
 - (d) publish in such manner as they consider appropriate the amount of the fees they will require providers to pay to them under subsection (2) during that year.
- (6) As soon as reasonably practicable after the end of the financial year, the authority must publish a statement setting out, for that year--
- (a) the aggregate amount received by them during that year in respect of fees required to be paid under subsection (2);
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of fees that were required to be so paid under subsection (2); and
 - (c) the costs to them of carrying out the relevant functions during that year.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) is to be--
- (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (5)(b) in relation to the following year.
- (8) The authority may repay to a person some or all of a fee paid to them by a person under subsection (2) if--
- (a) that person has ceased to provide an on-demand programme service at some time during the period to which the fee relates;

- (b) before ceasing to provide that service, that person gave the appropriate regulatory authority a notification under section 368BA(2); and
- (c) that person did not cease to provide the service following a direction given by the appropriate regulatory authority under section 368K or 368L.
- (9) The authority may make arrangements with any body designated under section 368B for that body to provide the authority with assistance in connection with the collection or repayment of fees required by them under this section.
- (10) For the purposes of this section--
- (a) the authority's costs of carrying out the relevant functions during a financial year include their costs of preparing to carry out the relevant functions incurred during that year; and
- (b) the authority's costs of preparing to carry out the relevant functions incurred after 19 December 2009 but before the financial year in which those functions were first carried out by them are to be treated as if they were incurred during that year.
- (11) In this section "relevant functions" means--
- (a) in relation to the appropriate regulatory authority, their functions as the appropriate regulatory authority;
- (b) in relation to OFCOM (where they are not the appropriate regulatory authority), their other functions under this Part.
- (12) In this section "financial year" means a period of 12 months ending with 31 March.]

NOTES

Amendment

Inserted by SI 2010/419, regs 2, 9.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1); for transitional provision see reg 13 (2)-(6) thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368O Power to demand information]

[Information]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368O Power to demand information]

[(1) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for a purpose within subsection (2) to provide them with all such information as they consider necessary for that purpose.

(2) The following are within this subsection--

- (a) the purposes of an investigation which the appropriate regulatory authority are carrying out in order for it to be determined whether a contravention of section [368BA or section] 368D has occurred or is occurring, where--
- (i) the investigation relates to a matter about which they have received a complaint, or
 - (ii) they otherwise have reason to suspect that there has been a contravention of either of those sections;
- (b) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J.
- (3) The appropriate regulatory authority may require a person who appears to them to be or to have been a provider of an on-demand programme service and to have information that they require for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide them with all such information as they consider necessary for that purpose.
- (4) The appropriate regulatory authority may not require the provision of information under this section unless they have given the person from whom it is required an opportunity of making representations to them about the matters appearing to them to provide grounds for making the request.
- (5) The appropriate regulatory authority must not require the provision of information under this section except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out the appropriate regulatory authority's reasons for requiring it.
- (6) A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by the appropriate regulatory authority in the demand for information.
- (7) Sections 368I and 368K apply in relation to a failure to comply with a demand for information imposed under this section as if that failure were a contravention of a requirement of section 368D.
- (8) In this section "information" includes copies of programmes.]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (2): in para (a) words "368BA or section" in square brackets inserted by SI 2010/419, regs 2, 10.

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R]/[368P Application of Part 4A in relation to the BBC]

[Application and interpretation of Part 4A]

NOTES

Amendment

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

[368P Application of Part 4A in relation to the BBC]

[[A1] Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the BBC.]

[(1) The following provisions do not apply to the BBC--

- (a) section 368D(3) (duties of providers of on-demand programme services);
- (b) section 368F (advertising);
- (c) section 368G (sponsorship);
- (d) section 368NA (fees).]

(2) In the following provisions references to a provider of an on-demand programme service do not include references to the BBC--

- (a) section 368C (duties of appropriate regulatory authority);
- (b) . . .
- (c) . . .
- (d) section 368I (enforcement by appropriate regulatory authority);
- (e) section 368K (suspension or restriction of service for contraventions);
- (f) section 368L (suspension or restriction of service for inciting crime or disorder);
- (g) section 368O (power to demand information).

(3) Paragraph 2(2)(b) of Schedule 12 includes provision imposing obligations on the BBC in relation to on-demand programme services.]

NOTES**Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (A1): inserted by SI 2010/419, regs 2, 11(a).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (1): substituted by SI 2010/419, regs 2, 11(b).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (2): paras (b), (c) repealed by SI 2010/419, regs 2, 11(c).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368Q Application of Part 4A in relation to the Welsh Authority]

[368Q Application of Part 4A in relation to the Welsh Authority]

[[A1] Section 368BA (advance notification) does not apply in relation to an on-demand programme service provided or to be provided by the Welsh Authority, other than a service that includes advertising.]

(1) In section 368C (duties of appropriate regulatory authority) references to a provider of an on-demand programme service do not include references to the Welsh Authority.

(2) It is the duty of the appropriate regulatory authority--

(a) to take such steps as appear to them best calculated to secure that the requirements of sections 368E and 368F are complied with by the Welsh Authority in relation to advertising, and

(b) to encourage the Welsh Authority to develop the codes of conduct referred to in section 368C(4) so far as it relates to advertising.

(3) It is the duty of the Welsh Authority in the provision of any on-demand programme service to promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).

(4) Section 368D(3)[(zb), (a), and (b) (duties of providers of on-demand programme services) do] not apply to the Welsh Authority except in relation to advertising or in relation to the inclusion of advertising in on-demand programme services provided by the Welsh Authority.

(5) Section 368I (enforcement by appropriate regulatory authority), section 368K (suspension or restriction of service for contraventions) and section 368L (suspension or restriction of service for inciting crime or disorder) do not apply in relation to the contravention of section 368D by the Welsh Authority except in the case of a contravention of section 368E or 368F that relates to advertising [or in the case of a contravention of section 368D(3)(za)].

(6) Section 368O does not apply in relation to information held by the Welsh Authority except where that information is required by the appropriate regulatory authority for the purposes of--

(a) an investigation which the appropriate regulatory authority are carrying out (whether or not following receipt by them of a complaint) into a matter relating to compliance by the Welsh Authority with section 368E or 368F in relation to advertising; or

(b) securing compliance with the international obligations of the United Kingdom under the Audiovisual Media Services Directive in relation to advertising.

(7) Part 2 of Schedule 12 includes provision imposing obligations on the Welsh Authority in relation to on-demand programme services.]

NOTES**Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (A1): inserted by SI 2010/419, regs 2, 12(1).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (4): words "(zb), (a), and (b) (duties of providers of on-demand programme services) do" in square brackets substituted by SI 2010/419, regs 2, 12(2).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Sub-s (5): words "or in the case of a contravention of section 368D(3)(za)" in square brackets inserted by SI 2010/419, regs 2, 12(3).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[Part 4A On-demand Programme Services] (ss 363-[368R])/[368R Interpretation of Part 4A]

[368R Interpretation of Part 4A]

[(1) In this Part--

"appropriate regulatory authority" is to be construed in accordance with 368B;

["children's programme" means a programme made--

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen;]

"prescription-only medicine" means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

"product placement" has the meaning given by section 368H(1);

"sponsorship" is to be construed in accordance with section 368G;

"tobacco product" has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002.

(2) For the purposes of this Part, a programme is included in an on-demand programme service if it is included in the range of programmes the service offers to users.

(3) For the purposes of this Part, advertising is included in an on-demand programme service if it can be viewed by a user of the service as a result of the user selecting a programme to view.

(4) The services that are to be taken for the purposes of this Part to be available for use by members of the public include any service which--

- (a) is made available for use only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
- (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.

(5) The person, and the only person, who is to be treated for the purposes of this Part as providing an on-demand programme service is the person who has editorial responsibility for the service (see section 368A(4)).

(6) For the purposes of this Part--

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC or the Welsh Authority over decisions by a BBC company or an S4C company about what is to be comprised in a service is to be disregarded for the purposes of determining who has editorial responsibility for the service.]

NOTES**Amendment**

Inserted by SI 2009/2979, reg 2.

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): definition "children's programme" substituted by SI 2010/831, reg 8.

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/369 Matters in relation to which OFCOM have competition functions

Part 5**Competition in Communications Markets****Chapter 1****Functions of OFCOM under Competition Legislation****369 Matters in relation to which OFCOM have competition functions**

(1) In this Chapter references to communications matters are references to any one or more of the following--

- (a) the provision of electronic communications networks;
- (b) the provision of electronic communications services;
- (c) the provision or making available of services or facilities which are provided or made available--
 - (i) by means of, or in association with the provision (by the same person or another) of, an electronic communications network or electronic communications service; or
 - (ii) for the purpose of facilitating the use of any such network or service (whether provided by the same person or another);
- (d) apparatus used for providing or making available anything mentioned in the preceding paragraphs;
- (e) broadcasting and related matters;
- [(f) the provision of postal services].

(2) The Secretary of State may by order make such amendments of subsection (1) as he may consider appropriate for the purpose of modifying the description of activities in respect of which any of the provisions of this Part--

- (a) confer functions on OFCOM under Part 1 of the Competition Act 1998 (c 41) or relate to the carrying out by OFCOM of those functions; or
- (b) confer functions on OFCOM under Part 4 of the Enterprise Act 2002 (c 40) or relate to the carrying out by OFCOM of those functions.

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1)(a)-(d), (2), (3): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (1)(a)-(d), (2), (3): Appointment (for remaining purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-s (1)(e): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): para (f) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 62.

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/370 OFCOM's functions under Part 4 of the Enterprise Act 2002

370 OFCOM's functions under Part 4 of the Enterprise Act 2002

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the Office of Fair Trading.

(2) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (market investigations) (other than sections 166 and 171) so far as relating to commercial activities connected with communications matters.

(3) So far as necessary for the purposes of, or in connection with, subsections (1) and (2), references in Part 4 of the Enterprise Act 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to OFCOM except--

- (a) in sections 166 and 171; and
- (b) where the context otherwise requires.

(4) In subsection (2) the reference to activities connected with communications matters, so far as it is a reference to activities connected with any apparatus falling within paragraph (d) of section 369(1), includes a reference to--

- (a) the supply and export of any such apparatus; and
- (b) the production or acquisition of any such apparatus for supply or export.

(5) Before the Office of Fair Trading or OFCOM first exercises in relation to any matter functions which are exercisable concurrently by virtue of this section, that person shall consult the other.

(6) Neither the Office of Fair Trading nor OFCOM shall exercise in relation to any matter functions which are exercisable concurrently by virtue of this section if functions which are so exercisable have been exercised in relation to that matter by the other.

(7) It shall be the duty of OFCOM, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference made to them by OFCOM by virtue of subsection (1), to give to the

Commission--

(a) any information which is in OFCOM's possession and relates to matters falling within the scope of the investigation and--

(i) is requested by the Commission for that purpose, or

(ii) is information which, in OFCOM's opinion, it would be appropriate for that purpose to give to the Commission without any such request;

and

(b) any other assistance which the Commission may require, and which it is within OFCOM's power to give, in relation to any such matters,

and the Commission, for the purposes of carrying out any such investigation, shall take into account any information given to it for that purpose under this subsection.

(8) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to any particular case, that question shall be referred to and determined by the Secretary of State.

(9) No objection shall be taken to anything done under Part 4 of the Enterprise Act 2002 (c 40) by or in relation to OFCOM on the ground that it should have been done by or in relation to the Office of Fair Trading.

(10) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by OFCOM by virtue of this section as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to OFCOM.

(11) Subject to subsection (12), *section 3 does not* [section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not] apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by *section 3(1) to (4)* [section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011] if it is a matter to which the Office of Fair Trading is entitled to have regard in the carrying out of those functions.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003; see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Amendment

Sub-s (11): words "section 3 does not" in italics repealed and subsequent words in square brackets

substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 63(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (12): words "section 3(1) to (4)" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 63(1), (3).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/371 OFCOM's functions under the Competition Act 1998

371 OFCOM's functions under the Competition Act 1998

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the Office of Fair Trading.

[(2) This subsection applies to the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to--

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to activities connected with communications matters.]

(3) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the Office of Fair Trading in Part 1 of the Competition Act 1998 are to be read as including references to OFCOM, except--

- (a) [in sections 31D(1) to (6), 38(1) to (6)], 51, 52(6) and (8) and 54, and
- (b) where the context otherwise requires.

(4) In subsection (2), the reference to activities connected with communications matters, so far as it is a reference to activities connected with any apparatus falling within paragraph (d) of section 369(1), includes a reference to--

- (a) the supply and export of any such apparatus; and
- (b) the production or acquisition of any such apparatus for supply or export.

(5) In section 54 of the Competition Act 1998--

- (a) in subsection (1) (definition of "regulator" for the purposes of Part 1 of that Act), for paragraph (a) there shall be substituted--

"(a) the Office of Communications;"

(b) in subsection (4) (power to make regulations about concurrent functions of the Office of Fair Trading and sectoral regulators), "or by Chapter V of Part I of the Transport Act 2000" there shall be inserted "to this Act, by Chapter 5 of Part 1 of the Transport Act 2000 or by section 371 of the Communications Act 2003".

(6) In paragraph 5 of Schedule 2 to the Competition Act 1998 (publication of list of networking arrangements under the 1990 Act excluded from the Chapter 1 prohibition)--

(a) in sub-paragraph (2), for "The Independent Television Commission ("ITC")" there shall be substituted "OFCOM"; and

(b) in sub-paragraph (3), for "The ITC" there shall be substituted "OFCOM".

(7) In section 59(1) of the Competition Act 1998 (interpretation of Part 1), after the definition of "Minister of the Crown" there shall be inserted--

"OFCOM" means the Office of Communications;".

(8) OFCOM may carry out, in respect of activities connected with communications matters and concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under any of paragraphs 3, 7, 19(3) and 36 to 39 of Schedule 13 to the Competition Act 1998 (transitional provisions).

(9) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to a particular case, that question shall be referred to and determined by the Secretary of State.

(10) No objection shall be taken to anything done under by or in relation to OFCOM under the Competition Act 1998 (c 41) on the ground that it should have been done by or in relation to the Office of Fair Trading.

(11) Subject to subsection (12), *section 3 does not* [section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not] apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by *section 3(1) to (4)* [section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011] if it is a matter to which the Office of Fair Trading is entitled to have regard in the carrying out of those functions.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Amendment

Sub-s (2): substituted by SI 2004/1261, reg 5, Sch 2, para 11(1), (2)(a).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b).

Sub-s (3): in para (a) words "in sections 31D(1) to (6), 38(1) to (6)" in square brackets substituted by SI 2004/1261, reg 5, Sch 2, para 11(1), (2)(b).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b).

Sub-s (11): words "section 3 does not" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 64(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (12): words "section 3(1) to (4)" in italics repealed and subsequent words in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 64(1), (3).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Miscellaneous

It is understood that the text purportedly inserted into the Competition Act 1998, s 54(4) by sub-s (5)(b) above should actually be substituted. The amendment has been incorporated accordingly.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/372 Application of the Competition Act 1998 to news provision

372 Application of the Competition Act 1998 to news provision

(1) Section 194A of the 1990 Act (which modifies the Competition Act 1998 in relation to agreements relating to Channel 3 news provision) shall be amended as follows.

(2) In subsection (1) (meaning of "relevant agreement")--

- (a) for "section 31A(a)" there shall be substituted "section 280 of the Communications Act 2003"; and
- (b) for "section 31(2)" (in both places) there shall be substituted "that section".

(3) In subsections (2), (6) and (7)(b)(i) (consultations with and notifications to the Office of Fair Trading), after the words "the OFT", in each place where they occur, there shall be inserted "and OFCOM".

(4) In subsection (3)(b)--

- (a) for "section 31(2)" there shall be substituted "section 280 of the Communications Act 2003"; and
- (b) for "section 31(1) and (2)" there shall be substituted "that section of that Act of 2003".

(5) In subsection (5)(c) (declaration without notification), after "the OFT" there shall be inserted "or OFCOM or both of them".

(6) In subsection (7) (restriction on exercise by Office of Fair Trading of Chapter III powers)--

- (a) for "The OFT may not" there shall be substituted "Neither the OFT nor OFCOM may"; and
- (b) for paragraph (a) there shall be substituted--

"(a) the Secretary of State has been notified by the OFT or (as the case may be) by OFCOM of its or their intention to do so; and".

(7) In subsection (8) (notice by Office of Fair Trading to the Secretary of State), for the words from the beginning to "assist" in paragraph (a) there shall be substituted--

"(8) Where the OFT or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information--

(a) it considers or (as the case may be) they consider will assist".

(8) In subsection (9), in the definition of "Chapter III powers", for "given to the OFT by" there shall be substituted "of the OFT and of OFCOM under".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/373 Repeal of existing newspaper merger regime

Chapter 2 Media Mergers

Introductory

373 Repeal of existing newspaper merger regime

Sections 57 to 62 of the Fair Trading Act 1973 (c 41) (newspaper merger references) shall cease to have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/374 Repeal of exclusion for newspaper mergers from general merger controls

374 Repeal of exclusion for newspaper mergers from general merger controls

Section 69 of the Enterprise Act 2002 (c 40) (exclusion of newspaper mergers from references under Part 3 of that Act) shall cease to have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/375 Media public interest considerations

Adaptation for media mergers of main merger regime

375 Media public interest considerations

(1) After subsection (2) of section 58 of the Enterprise Act 2002 (considerations specified as public interest considerations for the purpose of the main merger regime) there shall be inserted--

"(2A) The need for--

- (a) accurate presentation of news; and
- (b) free expression of opinion;

in newspapers is specified in this section.

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C) The following are specified in this section--

- (a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
- (b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- (c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003."

(2) After that section there shall be inserted, in Chapter 2 of Part 3--

"58A Construction of consideration specified in section 58(2C)

(1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves broadcasting.

- (2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.
- (3) In this Part "newspaper enterprise" means an enterprise consisting in or involving the supply of newspapers.
- (4) Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards.
- (5) For the purposes of section 58, where two or more media enterprises--
- (a) would fall to be treated as under common ownership or common control for the purposes of section 26, or
 - (b) are otherwise in the same ownership or under the same control,
- they shall be treated (subject to subsection (4)) as all under the control of only one person.
- (6) A reference in section 58 or this section to an audience shall be construed in relation to a media enterprise in whichever of the following ways the decision-making authority considers appropriate--
- (a) as a reference to any one of the audiences served by that enterprise, taking them separately;
 - (b) as a reference to all the audiences served by that enterprise, taking them together;
 - (c) as a reference to a number of those audiences taken together in such group as the decision-making authority considers appropriate; or
 - (d) as a reference to a part of anything that could be taken to be an audience under any of paragraphs (a) to (c) above.
- (7) The criteria for deciding who can be treated for the purposes of this section as comprised in an audience, or as comprised in an audience served by a particular service--
- (a) shall be such as the decision-making authority considers appropriate in the circumstances of the case; and
 - (b) may allow for persons to be treated as members of an audience if they are only potentially members of it.
- (8) In this section "audience" includes readership.
- (9) The power under subsection (3) of section 58 to modify that section includes power to modify this section."
- (3) In section 127(1) of that Act (associated persons to be treated as one person), for the word "and" at the end of paragraph (a) there shall be substituted--
- "(aa) for the purposes of section 58(2C); and".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/376 Adaptation of role of OFT in initial investigations and reports

376 Adaptation of role of OFT in initial investigations and reports

(1) In section 44(3)(b) of the Enterprise Act 2002 (c 40) (initial report by OFT in public interest cases must include summary of representations about public interest considerations) after the word "concerned" there shall be inserted "(other than a media public interest consideration)".

(2) After section 44(5) of that Act there shall be inserted--

"(5A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45."

(3) After section 44(7) of that Act there shall be inserted--

"(8) In this Part "media public interest consideration" means any consideration which, at the time of the giving of the intervention notice concerned--

(a) is specified in section 58(2A) to (2C); or

(b) in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58.

(9) In this Part "broadcasting" means the provision of services the provision of which--

(a) is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996; or

(b) would be required to be so licensed if provided by a person subject to licensing under the Part in question.

(10) In this Part "newspaper" means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(11) The Secretary of State may by order amend subsections (9) and (10)."

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/377 Additional investigation and report by OFCOM

377 Additional investigation and report by OFCOM

After section 44 of the Enterprise Act 2002 (investigation and report by OFT in public interest cases) there shall be inserted--

"44A Additional investigation and report by OFCOM: media mergers

- (1) Subsection (2) applies where--
- (a) the Secretary of State has given an intervention notice in relation to a relevant merger situation; and
 - (b) the intervention notice mentions any media public interest consideration.
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain--
- (a) advice and recommendations on any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/378 Extension of special public interest regime for certain media mergers

Extension of special public interest regime

378 Extension of special public interest regime for certain media mergers

(1) In section 59 of the Enterprise Act 2002 (c 40) (intervention by Secretary of State in special public interest cases), for subsections (3) and (4) (definition of "special merger situation") there shall be substituted--

"(3) For the purposes of this Part a special merger situation has been created if--

- (a) the condition mentioned in subsection (3A) is satisfied; and
- (b) immediately before the enterprises concerned ceased to be distinct--
 - (i) the conditions mentioned in subsection (3B) were satisfied;
 - (ii) the condition mentioned in subsection (3C) was satisfied; or

(iii) the condition mentioned in subsection (3D) was satisfied.

(3A) The condition mentioned in this subsection is that--

- (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but
- (b) a relevant merger situation would have been created if those enactments were disregarded.

(3B) The conditions mentioned in this subsection are that--

- (a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and
- (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on."

(2) After subsection (6) of that section there shall be inserted--

"(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3)(b)(ii) and (iii)."

(3) After that section there shall be inserted--

"59A Construction of conditions in section 59(3C) and (3D)

(1) For the purpose of deciding whether the proportion of one-quarter mentioned in section 59(3C) or (3D) is fulfilled with respect to--

- (a) newspapers of any description, or
- (b) broadcasting of any description,

the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(2) References in section 59(3C) to the supply of newspapers shall, in relation to newspapers of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate--

- (a) as references to any of those forms of supply taken separately;
- (b) as references to all those forms of supply taken together; or
- (c) as references to any of those forms of supply taken in groups.

(3) For the purposes of subsection (2) the decision-making authority may treat newspapers as being the subject of different forms of supply whenever--

- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding

circumstances; and

(b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(4) References in section 59(3D) to the provision of broadcasting shall, in relation to broadcasting of any description which is the subject of different forms of provision, be construed in whichever of the following ways the decision-making authority considers appropriate--

(a) as references to any of those forms of provision taken separately;

(b) as references to all those forms of provision taken together; or

(c) as references to any of those forms of provision taken in groups.

(5) For the purposes of subsection (4) the decision-making authority may treat broadcasting as being the subject of different forms of provision whenever--

(a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and

(b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(6) The criteria for deciding when newspapers or broadcasting can be treated, for the purposes of section 59, as newspapers or broadcasting of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(7) In section 59 and this section "provision" and cognate expressions have the same meaning in relation to broadcasting as in Part 3 of the Communications Act 2003; but this subsection is subject to subsections (4) and (5) of this section."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/379 Adaptation of role of OFT in special public interest regime

379 Adaptation of role of OFT in special public interest regime

(1) Section 61 of the Enterprise Act 2002 (c 40) (initial investigation and report by OFT in special public interest cases) shall be amended as follows.

(2) In subsection (3)(b) (report must include summary of representations about considerations specified in section 58) after the word "concerned" there shall be inserted "(other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C))".

(3) In subsection (4) for the words "59(4)(b)" there shall be substituted "59(3B)(b)".

(4) After subsection (4) there shall be inserted--

"(4A) The report may, in particular, contain a summary of any representations about the case which

have been received by the OFT and which relate to any consideration which--

- (a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and
- (b) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/380 Additional investigation and report by OFCOM: special public interest cases

380 Additional investigation and report by OFCOM: special public interest cases

After section 61 of the Enterprise Act 2002 (initial investigation and report by OFT in special public interest cases) there shall be inserted--

"61A Additional investigation and report by OFCOM: certain media mergers

- (1) Subsection (2) applies where--
 - (a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and
 - (b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain--
 - (a) advice and recommendations on any consideration which--
 - (i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and
 - (ii) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/381 Public consultation in relation to media mergers

New general functions in relation to media mergers

381 Public consultation in relation to media mergers

After section 104 of the Enterprise Act 2002 (c 40) there shall be inserted--

"104A Public consultation in relation to media mergers

- (1) Subsection (2) applies where the Commission--
- (a) is preparing--
- (i) a report under section 50 on a reference which specifies a media public interest consideration; or
- (ii) a report under section 65 on a reference which specifies a consideration specified in section 58 (2A) to (2C); and
- (b) is not under a duty to disregard the consideration concerned.
- (2) The Commission shall have regard (among other things) to the need to consult the public so far as they might be affected by the creation of the relevant merger situation or special merger situation concerned and so far as such consultation is practicable.
- (3) Any consultation of the kind mentioned in subsection (2) may be undertaken by the Commission by consulting such representative sample of the public or section of the public concerned as the Commission considers appropriate."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/382 General information duties in relation to media mergers

382 General information duties in relation to media mergers

- (1) Section 105 of the Enterprise Act 2002 (general information duties of OFT and Competition

Commission) shall be amended as follows.

(2) After subsection (1) there shall be inserted--

"(1A) Where OFCOM decide to investigate a matter so as to make a report under section 44A or 61A, they shall, so far as practicable, take such action as they consider appropriate to bring information about the investigation to the attention of those who they consider might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned."

(3) In subsection (2) (exclusion for merger notices) for the words "Subsection (1) does" there shall be substituted "Subsections (1) and (1A) do".

(4) In subsection (3) (duty of OFT to give requested assistance to Competition Commission)--

(a) after the word "Commission", where it occurs for the first time, there shall be inserted "or OFCOM"; and

(b) after the word "Commission", where it occurs for the second, third and fourth time, there shall be inserted "or (as the case may be) OFCOM".

(5) After subsection (3) there shall be inserted--

"(3A) OFCOM shall give the Commission or the OFT--

(a) such information in their possession as the Commission or (as the case may be) the OFT may reasonably require to enable the Commission or (as the case may be) the OFT to carry out its functions under this Part; and

(b) any other assistance which the Commission or (as the case may be) the OFT may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of OFCOM to give."

(6) In subsection (4) (duty of OFT to give unrequested information to Competition Commission)--

(a) after the word "Commission", where it occurs for the first time, there shall be inserted "or OFCOM"; and

(b) after the word "Commission", where it occurs for the second and third time, there shall be inserted "or (as the case may be) OFCOM".

(7) After subsection (4) there shall be inserted--

"(4A) OFCOM shall give the Commission or the OFT any information in their possession which has not been requested by the Commission or (as the case may be) the OFT but which, in the opinion of OFCOM, would be appropriate to give to the Commission or (as the case may be) the OFT for the purpose of assisting it in carrying out its functions under this Part."

(8) In subsection (5) (duty of OFT and Competition Commission to give requested assistance to the Secretary of State) after the word "OFT", in both places where it occurs, there shall be inserted ", OFCOM".

(9) In subsection (6) (duty of OFT to give unrequested information to Secretary of State)--

(a) after the word "OFT", where it occurs for the first time, there shall be inserted "and OFCOM";

(b) for the word "its" there shall be substituted "their"; and

(c) after the word "OFT", where it occurs for the second time, there shall be inserted "or (as the case may be) OFCOM".

(10) In subsection (7) (duty to have regard to information given) for the words "or (4)" there shall be substituted ", (3A), (4) or (4A)".

(11) After subsection (7) there shall be inserted--

"(7A) OFCOM shall have regard to any information given to them under subsection (3) or (4); and the OFT shall have regard to any information given to it under subsection (3A) or (4A)."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/383 Advice and information in relation to media mergers

383 Advice and information in relation to media mergers

After section 106 of the Enterprise Act 2002 (c 40) there shall be inserted--

"106A Advice and information in relation to media mergers

- (1) The Secretary of State may prepare and publish general advice and information about the considerations specified in section 58(2A) to (2C).
- (2) The Secretary of State may at any time publish revised, or new, advice or information.
- (3) Advice or information published under this section shall be prepared with a view to--
 - (a) explaining the considerations specified in section 58(2A) to (2C) to persons who are likely to be affected by them; and
 - (b) indicating how the Secretary of State expects this Part to operate in relation to such considerations.
- (4) Any advice or information published by the Secretary of State under this section shall be published in such manner as the Secretary of State considers appropriate.
- (5) In preparing any advice or information under this section, the Secretary of State shall consult the OFT, OFCOM, the Commission and such other persons as he considers appropriate."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications

Markets (ss 369-389)/384 General advisory functions of OFCOM in relation to media mergers

384 General advisory functions of OFCOM in relation to media mergers

After section 106A of the Enterprise Act 2002 there shall be inserted--

"106B General advisory functions of OFCOM

(1) OFCOM may, in connection with any case on which they are required to give a report by virtue of section 44A or 61A, give such advice as they consider appropriate to the Secretary of State in relation to--

- (a) any report made in such a case by the Commission under section 50 or 65; and
- (b) the taking by the Secretary of State of enforcement action under Schedule 7.

(2) OFCOM may, if requested to do so by the Secretary of State, give such other advice as they consider appropriate to the Secretary of State in connection with any case on which they are required to give a report by virtue of section 44A or 61A.

(3) OFCOM shall publish any advice given by them under this section but advice given by them in relation to a report of the Commission under section 50 or 65 or related enforcement action shall not be published before the report itself is published."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/385 Other general functions of OFCOM in relation to media mergers

385 Other general functions of OFCOM in relation to media mergers

After section 119 of the Enterprise Act 2002 (c 40) there shall be inserted--

"Further provision about media mergers

119A Other general functions of OFCOM in relation to this Part

(1) OFCOM have the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of their functions under this Part.

(2) That function is to be carried out with a view to (among other things) ensuring that OFCOM have sufficient information to take informed decisions and to carry out their other functions effectively.

(3) In carrying out that function OFCOM may carry out, commission or support (financially or otherwise) research.

(4) Section 3 of the Communications Act 2003 (general duties of OFCOM) shall not apply in relation to functions of OFCOM under this Part."

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/386 Monitoring role for OFT in relation to media mergers

386 Monitoring role for OFT in relation to media mergers

After section 119A of the Enterprise Act 2002 there shall be inserted--

"119B Monitoring role for OFT in relation to media mergers

- (1) The OFT has the function of obtaining, compiling and keeping under review information about matters which may be relevant to the Secretary of State in deciding whether to give a special intervention notice mentioning a consideration specified in section 58(2A) to (2C).
- (2) That function is to be carried out with a view to (among other things) ensuring that the Secretary of State is aware of cases where, in the opinion of the OFT, he might wish to consider giving such a notice.
- (3) That function does not extend to obtaining, compiling or keeping under review information with a view to carrying out a detailed analysis in each case of the operation in relation to that case of the consideration specified in section 58(2A) to (2C)."

NOTES**Initial Commencement***To be appointed*

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/387 Enforcement powers in relation to newspaper and other media mergers

Supplemental provisions of Chapter 2**387 Enforcement powers in relation to newspaper and other media mergers**

In Schedule 8 to the Enterprise Act 2002 (provision that may be contained in certain enforcement orders) after paragraph 20 there shall be inserted--

"20A Newspaper mergers

- (1) This paragraph applies in relation to any order--
 - (a) which is to be made following the giving of--

- (i) an intervention notice which mentions a newspaper public interest consideration;
 - (ii) an intervention notice which mentions any other media public interest consideration in relation to a relevant merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise;
 - (iii) a special intervention notice which mentions a consideration specified in section 58(2A) or (2B); or
 - (iv) a special intervention notice which, in relation to a special merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise, mentions a consideration specified in section 58(2C); and
- (b) to which the consideration concerned is still relevant.
- (2) The order may make such provision as the person making the order considers to be appropriate in all circumstances of the case.
- (3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.
- (4) Provision made by virtue of this paragraph may, in particular, include provision--
- (a) altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
 - (b) requiring the agreement of the relevant authority or another person before the taking of particular action (including the appointment or dismissal of an editor, journalists or directors or acting as a shadow director);
 - (c) attaching conditions to the operation of a newspaper;
 - (d) prohibiting consultation or co-operation between subsidiaries.
- (5) In this paragraph "newspaper public interest consideration" means a media public interest consideration other than one which is such a consideration--
- (a) by virtue of section 58(2C); or
 - (b) by virtue of having been, in the opinion of the Secretary of State, concerned with broadcasting and a consideration that ought to have been specified in section 58.
- (6) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order concerned."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/388 Alterations concerning newspaper panel of Competition Commission

388 Alterations concerning newspaper panel of Competition Commission

In paragraph 1 of Schedule 7 to the Competition Act 1998 (c 41) (the Competition Commission: interpretation), in the definition of "newspaper merger reference", for the words from "newspaper", where it occurs for the second time, to "Act" there shall be substituted "reference under section 45 of the Enterprise Act 2002 which specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act) or a reference under section 62 of that Act which specifies a consideration specified in section 58(2A) or (2B) of that Act".

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 5 Competition in Communications Markets (ss 369-389)/389 Further provision in connection with media mergers

389 Further provision in connection with media mergers

(1) Schedule 16 (which contains further amendments in connection with media mergers) shall have effect.

(2) Sections 276(2) and (3) and 277 of the Enterprise Act 2002 (c 40) (power to make transitional and consequential amendments etc) shall apply in relation to this Chapter of this Part of this Act and its related repeals as they apply in relation to that Act.

(3) For the avoidance of doubt, the power conferred by virtue of subsection (2) by applying section 277 of the Act of 2002 includes the power to modify that Act.

(4) Section 402 shall not apply in relation to any power to make an order which is exercisable by the Secretary of State by virtue of subsection (2).

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/390 Annual report on the Secretary of State's functions

Part 6**Miscellaneous and Supplemental*****Annual report***

390 Annual report on the Secretary of State's functions

- (1) The Secretary of State must prepare and lay before Parliament regular reports on the carrying out by him of the functions to which this section applies.
- (2) This section applies to the Secretary of State's functions under the following enactments--
- (a) this Act;
 - (b) the Office of Communications Act 2002 (c 11);
 - (c) the enactments relating to the management of the radio spectrum so far as not comprised in this Act;
 - (d) the 1990 Act;
 - (e) the 1996 Act.
- (3) The first report under this section must relate to the period which--
- (a) begins with 19th March 2002 (the date of the passing of the Office of Communications Act 2002); and
 - (b) ends with the period of twelve months beginning with the first date to be appointed for the purposes of section 2 of this Act.
- (4) Every subsequent report must relate to the period of twelve months beginning with the end of the period to which the previous report related.
- (5) The obligation under this section to prepare and lay a report before Parliament is an obligation to do that as soon as reasonably practicable after the end of the period to which the report relates.
- (6) Where a report for the purposes of this section relates to a period the whole or a part of which falls before the time when the whole of this Act is in force, the functions referred to in subsection (2) are to be taken as excluding all functions under the specified enactments that will have ceased to be functions of the Secretary of State when the whole of this Act is in force.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental

(ss 390-411)/391 Review of media ownership

Review of media ownership

391 Review of media ownership

- (1) It shall be the duty of OFCOM--
- (a) to carry out regular reviews of the operation, taken together, of all the provisions to which this section applies; and
 - (b) to send a report on every such review to the Secretary of State.
- (2) This section applies to--
- (a) the provisions of Schedule 2 to the 1990 Act;
 - (b) the provision made by or under Schedule 14 to this Act;
 - (c) the provisions of sections 280 and 281 of this Act;
 - (d) whatever provision (if any) has been made under section 283 of this Act; and
 - (e) the provisions of Part 3 of the Enterprise Act 2002 (c 40) so far as they relate to intervention by the Secretary of State in connection with newspapers or other media enterprises.
- (3) The first review must be carried out no more than three years after the commencement of this section, and subsequent reviews must be carried out at intervals of no more than three years.
- (4) The report to the Secretary of State on a review must set out OFCOM's recommendations, in consequence of their conclusions on the review, for the exercise by the Secretary of State of--
- (a) his power to make an order under section 348(5);
 - (b) his powers to make orders under Schedule 14;
 - (c) his powers under sections 282 and 283; and
 - (d) his powers under sections 44(11), 58(3) and 59(6A) of the Enterprise Act 2002 (media mergers).
- (5) OFCOM must publish every report sent by them to the Secretary of State under this section in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 90; for specific commencement and extent

information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 87; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/392 Penalties imposed by OFCOM

Guidelines as to penalties

392 Penalties imposed by OFCOM

(1) It shall be the duty of OFCOM to prepare and publish a statement containing the guidelines they propose to follow in determining the amount of penalties imposed by them under provisions contained in this Act or any other enactment apart from the Competition Act 1998 (c 41).

(2) OFCOM may from time to time revise that statement as they think fit.

(3) Where OFCOM make or revise their statement under this section, they must publish the statement or (as the case may be) the revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(4) Before publishing a statement or revised statement under this section OFCOM must consult both--

- (a) the Secretary of State, and
- (b) such other persons as they consider appropriate,

about the guidelines they are proposing to include in the statement.

(5) Before determining how to publish a statement or revised statement under this section OFCOM must consult the Secretary of State.

(6) It shall be the duty of OFCOM, in determining the amount of any penalty to be imposed by them under this Act or any other enactment (apart from the Competition Act 1998 (c 41)) to have regard to the guidelines contained in the statement for the time being in force under this section.

(7) References in this section to penalties imposed by OFCOM under provisions contained in this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 91; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 88; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/393 General restrictions on disclosure of information

Disclosure of information

393 General restrictions on disclosure of information

(1) Subject to the following provisions of this section, information with respect to a particular business which has been obtained in exercise of a power conferred by--

- (a) this Act,
- (b) ...
- (c) the 1990 Act, or
- (d) the 1996 Act,

is not, so long as that business continues to be carried on, to be disclosed without the consent of the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made--

- (a) for the purpose of facilitating the carrying out by OFCOM of any of their functions;
- (b) for the purpose of facilitating the carrying out by any relevant person of any relevant function;
- (c) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions;
- (d) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c 24) (criminal proceedings and investigations);
- (e) for the purpose of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments mentioned in subsection (5); or
- (f) for the purpose of securing compliance with an international obligation of the United Kingdom.

(3) Each of the following is a relevant person for the purposes of this section--

- (a) a Minister of the Crown and the Treasury;
- (b) the Scottish Executive;
- (c) a Northern Ireland department;
- (d) the Office of Fair Trading;
- (e) the Competition Commission;
- (f) the Consumer Panel;
- (g) the Welsh Authority;
- (h) a local weights and measures authority in Great Britain;
- (i) any other person specified for the purposes of this subsection in an order made by the Secretary of

State.

- (4) The following are relevant functions for the purposes of this section--
- (a) any function conferred by or under this Act;
 - (b) any function conferred by or under any enactment or instrument mentioned in subsection (5);
 - (c) any other function specified for the purposes of this subsection in an order made by the Secretary of State.
- (5) The enactments and instruments referred to in subsections (2) and (4) are--
- (a) ...
 - (b) ...
 - (c) the Wireless Telegraphy Act 1967 (c 72);
 - (d) the Trade Descriptions Act 1968 (c 29);
 - (e) the Fair Trading Act 1973 (c 41);
 - (f) the Consumer Credit Act 1974 (c 39);
 - (g) the Competition Act 1980 (c 21);
 - (h) the Telecommunications Act 1984 (c 12);
 - (i) the Consumer Protection Act 1987 (c 43);
 - (j) the 1990 Act;
 - (k) the 1996 Act;
 - (l) ...
 - (m) the Competition Act 1998 (c 41);
 - (n) the Enterprise Act 2002 (c 40);
 - [(na) the Wireless Telegraphy Act 2006;]
 - (o) the Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (NI 20));
 - [(p) the Business Protection from Misleading Marketing Regulations 2008;
 - (q) the Consumer Protection from Unfair Trading Regulations 2008].
- (6) Nothing in this section--
- (a) limits the matters that may be published under section 15, 26 or 390;
 - [(aa) limits the information that may be made available under section 76A;]
 - (b) limits the matters that may be included in, or made public as part of, a report made by OFCOM by virtue of a provision of this Act or the Office of Communications Act 2002 (c 11);
 - (c) prevents the disclosure of anything for the purposes of a report of legal proceedings in which it has been publicly disclosed;
 - (d) applies to information that has been published[, made public or made available] as mentioned in paragraphs (a) to (c).

- (7) Nothing in this section applies to information obtained in exercise of the powers conferred by section 196 of the 1990 Act (powers of entry and search).
- (8) Information obtained by OFCOM in exercise of functions which are exercisable by them concurrently with the Office of Fair Trading under Part 1 of the Competition Act 1998 is subject to Part 9 of the Enterprise Act 2002, and not to the preceding provisions of this section.
- (9) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c 24) (restriction on disclosure of information for overseas purposes) shall have effect in relation to a disclosure by virtue of subsection (2) (d) as it applies in relation to a disclosure in exercise of a power to which section 17 of that Act applies.
- (10) A person who discloses information in contravention of this section is guilty of an offence and shall be liable--
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (11) No order is to be made containing provision authorised by subsection (3) or (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) In this section "legal proceedings" means civil or criminal proceedings in or before any court, or proceedings before any tribunal established by or under any enactment.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-ss (1)(a), (b), (2)-(4), (5)(a)-(i), (l)-(p), (6)(a) (in part), (b)-(d), (8)-(12): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (1)(a), (b), (2)-(4), (5)(a)-(i), (l)-(p), (6)(b)-(d), (8)-(12): Appointment (for remaining purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Sub-ss (1)(c), (d), (5)(j), (k), (6)(a) (remainder), (7): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): para (b) repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

Sub-s (5): paras (a), (b) repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/398 Repeal of certain provisions of the Telecommunications Act 1984

398 Repeal of certain provisions of the Telecommunications Act 1984

- (1) The Telecommunications Act 1984 (c 12) shall be amended as follows.
- (2) In Part 5 (transfer of undertakings of British Telecommunications), the following provisions (which include spent provisions) shall cease to have effect--
 - (a) section 60;
 - (b) section 61(1) to (6);
 - (c) section 62;
 - (d) section 63(1) to (4);
 - (e) sections 64 to 67;
 - (f) section 69 to 71;
 - (g) sections 72(2), (4) and (5); and
 - (h) section 73.
- (3) In section 68(2) (liability of Secretary of State on winding up), after "any outstanding liability of the successor company" there shall be inserted "for the payment of pensions".
- (4) In Part 7 (miscellaneous and supplemental) the following provisions shall cease to have effect--
 - (a) section 93 (grants to promote interests of disabled persons); and
 - (b) section 97 (contributions by local authorities towards the provision of telecommunications facilities).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (1), (3): Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Sub-s (1): Appointment (for certain purposes): 29 December 2003: by virtue of SI 2003/3142, art 3(1), Sch 1.

Sub-ss (2), (4): Appointment (for remaining purposes): 29 December 2003: by virtue of SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 56; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/399 Expenses

Supplemental**399 Expenses**

There shall be paid out of money provided by Parliament--

- (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of any of his functions under this Act; and
- (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/400 Destination of licence fees and penalties

400 Destination of licence fees and penalties

- (1) This section applies (subject to section 401) to the following amounts--
- (a) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 1 of Part 2 (including a penalty imposed by virtue of section 191(5));
 - (b) so much of an amount paid to OFCOM under numbering conditions in respect of an allocation of telephone numbers as is an amount determined by reference to an indication given in response to an invitation such as is mentioned in section 58(5)(a);
 - (c) an amount paid to OFCOM in pursuance of an obligation imposed by or under [Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006];
 - (d) an amount paid to OFCOM in respect of a penalty imposed by them under [section 42 [or 43A] of that Act];
 - (e) a cash bid amount paid to OFCOM under a Broadcasting Act licence for the first year falling within the period for which the licence is in force;
 - (f) an amount paid to OFCOM under such a licence for a subsequent year as the amount equal to a cash bid amount increased by the appropriate percentage;
 - (g) an amount paid to OFCOM under such a licence as an amount representing a percentage of relevant revenue for an accounting period;
 - (h) an amount paid to OFCOM in respect of a penalty imposed by them under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or Part 3 of this Act;
 - (i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011.
- (2) Where OFCOM receive an amount to which this section applies, it must be paid into the appropriate Consolidated Fund; but this subsection does not apply to an amount which is required by OFCOM for making an adjustment in respect of an overpayment.
- (3) The reference in subsection (2) to the payment of an amount into the appropriate Consolidated Fund--
- (a) in the case of an amount received in respect of matters appearing to OFCOM to have no connection with Northern Ireland, is a reference to the payment of the amount into the Consolidated Fund of the United Kingdom;
 - (b) in the case of an amount received in respect of matters appearing to OFCOM to have a connection with Northern Ireland but no connection with the rest of the United Kingdom, is a reference to the payment of the amount into the Consolidated Fund of Northern Ireland; and
 - (c) in any other case, is a reference to the payment of the amount, in such proportions as OFCOM consider appropriate, into each of those Funds.
- (4) OFCOM must, in respect of each financial year, prepare an account showing--
- (a) the amounts to which this section applies that have been received by them during that year;
 - (b) the sums paid into the Consolidated Funds of the United Kingdom and Northern Ireland respectively under this section in respect of those amounts;
 - (c) the aggregate amount of the sums received by them during that year that is retained in accordance with a statement of principles under section 401 for meeting the costs of carrying out functions mentioned in subsection (4) of that section during that year;
 - (d) the aggregate amount that they estimate will fall to be so retained out of amounts due to them and likely to be paid or recovered; and

- (e) the cost to OFCOM of carrying out during that year the functions in respect of which amounts are or are to be retained in accordance with such a statement.
- (5) OFCOM must send that account to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which it relates.
- (6) The Comptroller and Auditor General must examine, certify and report on the account and lay copies of it, together with his report, before each House of Parliament.
- (7) References in this section to penalties imposed by OFCOM under Part 3 of this Act include references to penalties which the BBC is liable to pay to OFCOM by virtue of section 198(3).
- (8) In this section--

"the appropriate percentage" has the same meaning as in section 19 of the 1990 Act;

"cash bid amount" means an amount specified in a cash bid for a Broadcasting Act licence or the amount determined by OFCOM for the purposes of any provision of the 1990 Act or this Part to be what would have been the amount of a cash bid for a licence;

"financial year" has the same meaning as in the Schedule to the Office of Communications Act 2002 (c 11);

"numbering conditions" means conditions the setting of which is authorised by section 58 or 59; and

"relevant revenue" means any of the following--

- (a) the amount which for the purposes of section 19, 52(1), 102(1) or 118 (1) of the 1990 Act is the amount of qualifying revenue for an accounting period;
- (b) the amount which for the purposes of section 13(1) or 55(1) of the 1996 Act is the amount of multiplex revenue for an accounting period; or
- (c) an amount which for the purposes of paragraph 7 of Schedule 10 to this Act is the amount of qualifying revenue for an accounting period.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Sub-s (1): in para (c) words "Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 32(a).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (1): in para (d) words "section 42 of that Act" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 32(b).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (1): in para (d) words "or 43A" in square brackets inserted by the Digital Economy Act 2010, s 39(3).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Sub-s (1): para (i) inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 66.

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 94 (as amended by SI 2006/3325, art 4(2), Sch 2, Pt 2); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 91 (as amended by SI 2006/3324, art 4(2), Sch 2, Pt 2); for specific commencement and extent information see SI 2003/3197, arts 1(3)-(5), 2.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 57; for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/401 Power of OFCOM to retain costs of carrying out spectrum functions

401 Power of OFCOM to retain costs of carrying out spectrum functions

(1) OFCOM have power to make a statement of the principles under which they may retain any or all of the amounts paid to them in pursuance of obligations imposed by or under [Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006].

(2) Where such a statement of principles authorises the retention of an amount, OFCOM are not required to pay it into the appropriate Consolidated Fund in accordance with section 400.

(3) Principles contained in a statement made by OFCOM under this section must be such as appear to them to be likely to secure, on the basis of such estimates of the likely costs as it is practicable to make--

(a) that, on a year by year basis, the aggregate amount of the amounts retained by OFCOM does not exceed the amount required by OFCOM for meeting the annual cost to OFCOM of carrying out the functions mentioned in subsection (4);

(b) that the amounts retained by OFCOM are objectively justifiable and proportionate to the costs in respect of which they are retained; and

(c) that the relationship between meeting the cost of carrying out those functions and the amounts retained is transparent.

(4) Those functions are--

(a) OFCOM's functions under the enactments relating to the management of the radio spectrum except those specified in subsection (5); and

(b) the function of taking any steps that OFCOM consider it necessary to take--

(i) in preparation for the carrying out of any of the functions mentioned in paragraph (a) of this subsection; or

(ii) for the purpose of facilitating the carrying out of those functions or otherwise in connection with carrying them out.

- (5) The excepted functions of OFCOM are--
- (a) their functions under section 22(2);
 - [(b) their functions under section 1(1) and (2) of the Wireless Telegraphy Act 2006 so far as carried out in relation to the use of the electromagnetic spectrum at places outside the United Kingdom, and their functions under section 1(5);
 - (c) their functions under section 4 of that Act;
 - (d) their functions under section 7 of that Act;
 - (e) their functions under section 30 of that Act;
 - (f) their functions under sections 42 to 44 of that Act;
 - (g) any functions conferred on them under sections 47 to 49 of that Act; and]
 - (h) any function not falling within the preceding paragraphs in so far as the costs of carrying it out are met from payments made to OFCOM by virtue of section 28 [of this Act or section 1(8) of the Wireless Telegraphy Act 2006].
- (6) A statement under this section may include provision which, for the purposes of the principles contained in the statement and of the preparation of accounts in accordance with section 400(4), requires an amount actually received in one year--
- (a) to be treated as referable to costs incurred in that year and in one or more subsequent years; and
 - (b) to be brought into account, in each of those years, in accordance with an apportionment for which provision is made in the statement.
- (7) A deficit or surplus shown (after applying this subsection for all previous years) by an account prepared under section 400(4) is to be carried forward and taken into account in determining what is required by OFCOM in relation to the following year for meeting the costs of carrying out the functions mentioned in subsection (4) of this section.
- (8) A statement of principles under this section--
- (a) if it is expressed to apply for a limited period, does not apply to any amounts paid to OFCOM after the end of that period; and
 - (b) in any event, does not apply to amounts paid to them after a withdrawal of the statement takes effect.
- (9) OFCOM may revise a statement made under this section.
- (10) The consent of the Treasury is required for the making, revision or withdrawal of a statement under this section.
- (11) Where OFCOM make or revise a statement of this section they must publish so much of the statement or revised statement as appears to them necessary for demonstrating that the statement or revision complies with subsection (3).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Amendment

Sub-s (1): words "Chapter 1 or 2 of Part 2 of the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 33(1), (2).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (5): paras (b)-(g) substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 33(1), (3).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (5): in para (h) words "of this Act or section 1(8) of the Wireless Telegraphy Act 2006" in square brackets substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 33(1), (4).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/402 Power of Secretary of State to make orders and regulations

402 Power of Secretary of State to make orders and regulations

(1) Every power conferred by [section 124P and] this Act on the Secretary of State to make orders or regulations, other than the powers conferred by Schedule 4, is a power exercisable by statutory instrument.

(2) A statutory instrument containing an order or regulations made in exercise of any such power, other than--

(a) an order under section 31 or 411,

(b) . . . or

(c) any order that is required, by any provision of this Act, to be laid before Parliament and approved in draft,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Every power of the Secretary of State to make an order or regulations under this Act, other than an order under section 31 or 411 or an order made in exercise of a power conferred by Schedule 4, includes power--

(a) to make different provision for different cases (including different provision in respect of different areas);

(b) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and

(c) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Amendment

Sub-s (1): words "section 124P and" in square brackets inserted by the Digital Economy Act 2010, s 20(3).

Date in force: to be appointed: see the Digital Economy Act 2010, s 47(3)(a).

Sub-s (2): para (b) repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1 (as amended by SI 2006/3325, art 4(1), Sch 2, Pt 1, para 3(b)(i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2 (as amended by SI 2006/3324, art 4(1), Sch 2, Pt 1, para 2(a)); for specific commencement and extent information see SI 2003/3197, arts 1(3)-(5), 2.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/403 Regulations and orders made by OFCOM

403 Regulations and orders made by OFCOM

(1) This section applies to any power of OFCOM to make regulations or to make an order or scheme if that power is one to which this section is expressly applied.

(2) The powers to which this section applies shall be exercisable by statutory instrument, and the Statutory Instruments Act 1946 (c 36) is to apply in relation to those powers as if OFCOM were a Minister of the Crown.

(3) Where an instrument made under a power to which this section applies falls to be laid before Parliament, OFCOM must, immediately after it is made, send it to the Secretary of State for laying by him.

(4) Before making any regulations or order under a power to which this section applies, OFCOM must—

(a) give a notice of their proposal to do so to such persons representative of the persons appearing to OFCOM to be likely to be affected by the implementation of the proposal as OFCOM think fit;

(b) publish notice of their proposal in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it and are not given notice by virtue of paragraph (a); and

- (c) consider any representations that are made to OFCOM, before the time specified in the notice.
- (5) A notice for the purposes of subsection (4) must--
- (a) state that OFCOM propose to make the regulations or order in question;
 - (b) set out the general effect of the regulations or order;
 - (c) specify an address from which a copy of the proposed regulations or order may be obtained; and
 - (d) specify a time before which any representations with respect to the proposal must be made to OFCOM.
- (6) The time specified for the purposes of subsection (5)(d) must be no earlier than the end of the period of one month beginning with the day after the latest day on which the notice is given or published for the purposes of subsection (4).
- (7) Every power of OFCOM to which this section applies includes power--
- (a) to make different provision for different cases (including different provision in respect of different areas);
 - (b) to make provision subject to such exemptions and exceptions as OFCOM think fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as OFCOM think fit.
- (8) The Documentary Evidence Act 1868 (c 37) (proof of orders and regulations etc) shall have effect as if--
- (a) OFCOM were included in the first column of the Schedule to that Act;
 - (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 95; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 92; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 58 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/404 Criminal liability of company directors etc

404 Criminal liability of company directors etc

(1) Where an offence under any enactment to which this section applies is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of--

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where an offence under any enactment to which this section applies--

- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner of the firm,

he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) In this section "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) The enactments to which this section applies are every enactment contained in--

- (a) this Act;
- (b) ...
- (c) ...
- (d) the Wireless Telegraphy Act 1967 (c 72); or
- (e) the Telecommunications Act 1984 (c 12); or
- (f) Part 3 of the Postal Services Act 2011.

(5) ...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Amendment

Sub-s (4): paras (b), (c) repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

Sub-s (4): in para (d) word "or" in italics repealed by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 67(a).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (4): para (f) and word "; or" immediately preceding it inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 67(b).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (5): repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 96 (as amended by SI 2006/3325, art 4(1), Sch 2, Pt 1, para 3(b)(i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 93 (as amended by SI 2006/3324, art 4(1), Sch 2, Pt 1, para 2 (a)); for specific commencement and extent information see SI 2003/3197, arts 1(3)-(5), 2.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 59 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/405 General interpretation

405 General interpretation

(1) In this Act, except in so far as the context otherwise requires--

"the 1990 Act" means the Broadcasting Act 1990 (c 42);

"the 1996 Act" means the Broadcasting Act 1996 (c 55);

"access" is to be construed in accordance with subsection (4);

"apparatus" includes any equipment, machinery or device and any wire or cable and the casing or

coating for any wire or cable;

"associated facility" has the meaning given by section 32;

["the Audiovisual Media Services Directive" means Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;]

"the BBC" means the British Broadcasting Corporation;

["BEREC" means the Body of European Regulators for Electronic Communications;]

"body" (without more) means any body or association of persons, whether corporate or unincorporate, including a firm;

"broadcast" means broadcast by wireless telegraphy, and cognate expressions are to be construed accordingly;

"Broadcasting Act licence" means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of the 1996 Act;

"business" includes any trade or profession;

"C4C" means the Channel Four Television Corporation;

"communications provider" means a person who (within the meaning of section 32(4)) provides an electronic communications network or an electronic communications service;

"the Consumer Panel" means the panel established under section 16;

"consumers" has the meaning given by subsection (5);

"Content Board" means the committee of OFCOM established and maintained under section 12;

"contravention" includes a failure to comply, and cognate expressions are to be construed accordingly;

"customers", in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business)--

- (a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;
- (b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

"distribute", in relation to a service, does not include broadcast, and cognate expressions shall be construed accordingly;

"electronic communications network" and "electronic communications service" have the meanings given by section 32;

"enactment" includes any enactment comprised in an Act of the Scottish Parliament or in any Northern Ireland legislation;

"the enactments relating to the management of the radio spectrum" means--

- [(a) the Wireless Telegraphy Act 2006; and]

[(g) the provisions of this Act so far as relating to that Act;]

"frequency" includes frequency band;

"holder", in relation to a Broadcasting Act licence, is to be construed in accordance with subsection (7), and cognate expressions are to be construed accordingly;

"information" includes accounts, estimates and projections and any document;

"intelligible" is to be construed in accordance with subsection (9);

"international obligation of the United Kingdom" includes any Community obligation and any obligation which will or may arise under any international agreement or arrangements to which the United Kingdom is a party;

"modification" includes omissions, alterations and additions, and cognate expressions are to be construed accordingly;

"OFCOM" means the Office of Communications;

["on-demand programme service" has the meaning given by section 368A(1);]

"other member State" means a member State other than the United Kingdom;

["postal services" has the meaning given by section 27 of the Postal Services Act 2011;]

"pre-commencement regulator" means any of the following--

- (a) the Broadcasting Standards Commission;
- (b) the Director General of Telecommunications;
- (c) the Independent Television Commission;
- (d) the Radio Authority;

"programme" includes an advertisement and, in relation to a service, anything included in that service;

"programme service" means--

- (a) a television programme service;
- (b) the public teletext service;
- (c) an additional television service;
- (d) a digital additional television service;
- (e) a radio programme service; or
- (f) a sound service provided by the BBC;

and expressions used in this definition and in Part 3 have the same meanings in this definition as in that Part;

"provide" and cognate expressions, in relation to an electronic communications network, electronic communications service or associated facilities, are to be construed in accordance with section 32(4);

"purposes of public service television broadcasting in the United Kingdom" shall be construed in accordance with subsection (4) of section 264 and subsections (5) and (6) of that section shall apply for the purposes of any provision of this Act referring to such purposes as they apply for the purposes of a report under that section;

"the radio transfer date" means the date on which the Radio Authority's functions under Part 3 of the 1990 Act and Part 2 of the 1996 Act are transferred under this Act to OFCOM;

"representation", in relation to a proposal or the contents of any notice or notification, includes an objection to the proposal or (as the case may be) to the whole or any part of those contents;

"subordinate legislation" means--

- (a) any subordinate legislation, within the meaning of the Interpretation Act 1978 (c 30); or
- (b) any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12));

"television and radio services" means--

- (a) programme services apart from those provided by the BBC; and
- (b) services provided by the BBC in relation to which OFCOM have functions;

"television programme" means any programme (with or without sounds) which--

- (a) is produced wholly or partly to be seen on television; and
- (b) consists of moving or still images or of legible text or of a combination of those things;

"the television transfer date" means the date on which the Independent Television Commission's functions under Part 1 of the 1990 Act and Part 1 of the 1996 Act are transferred under this Act to OFCOM;

"TV licence" means a licence for the purposes of section 363;

"the Welsh Authority" means the authority whose name is, by virtue of section 56(1) of the 1990 Act, Sianel Pedwar Cymru;

["wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 2006;]

["wireless telegraphy licence" means a licence granted under section 8 of the Wireless Telegraphy Act 2006].

- (2) Any power under this Act to provide for the manner in which anything is to be done includes power to provide for the form in which it is to be done.
- (3) References in this Act to OFCOM's functions under an enactment include references to their power to do anything which appears to them to be incidental or conducive to the carrying out of their functions under that enactment.
- (4) References in this Act to access--
 - (a) in relation to an electronic communications network or electronic communications service, are references to the opportunity of making use of the network or service; and
 - (b) in relation to a programme service, are references to the opportunity of viewing in an intelligible form the programmes included in the service or (as the case may be) of listening to them in such a form.
- (5) For the purposes of this Act persons are consumers in a market for a service, facility or apparatus, if they are--
 - (a) persons to whom the service, facility or apparatus is provided, made available or supplied (whether in their personal capacity or for the purposes of, or in connection with, their businesses);
 - (b) persons for whose benefit the service, facility or apparatus is provided, made available or supplied or for whose benefit persons falling within paragraph (a) arrange for it to be provided, made available or

supplied;

(c) persons whom the person providing the service or making the facility available, or the supplier of the apparatus, is seeking to make into persons falling within paragraph (a) or (b); or

(d) persons who wish to become persons falling within paragraph (a) or (b) or who are likely to seek to become persons falling within one or both of those paragraphs.

[(5A) References in this Act to consumers in a market for a service include, where the service is a postal service, addressees.]

(6) References in this Act to services in relation to which OFCOM have functions include references to any services in relation to which OFCOM are required to set standards under section 319.

(7) In this Act references, in relation to a time or a period, to the holder of a Broadcasting Act licence or of a particular description of such licence are references to the person who held that licence at that time or (as the case may be) to every person who held that licence for the whole or a part of that period.

(8) For the purposes of this Act the fact that a service is not in an intelligible form shall be disregarded, except where express provision is made to the contrary, in determining whether it has been provided—

(a) for general reception;

(b) for reception by particular persons; or

(c) for reception at a particular place or in a particular area.

(9) For the purposes of this Act something is not to be regarded as in an intelligible form if it cannot readily be understood without being decrypted or having some comparable process applied to it.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 17 July 2003: see s 411(2), (3).

Amendment

Sub-s (1): definition "the Audiovisual Media Services Directive" substituted by SI 2010/1883, reg 5.

Date in force: 18 August 2010: see SI 2010/1883, reg 1.

Sub-s (1): definition "BEREC" inserted by SI 2011/1210, reg 2(1), Sch 1, paras 4, 99.

Date in force: 26 May 2011: see SI 2011/1210, reg 1(2).

Sub-s (1): in definition "the enactments relating to the management of the radio spectrum" para (a) substituted, for paras (a)-(f) as originally enacted, by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 34(1), (2)(a).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (1): in definition "the enactments relating to the management of the radio spectrum" para (g) substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 34(1), (2)(b).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (1): definition "on-demand programme service" inserted by SI 2009/2979, reg 11(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Sub-s (1): definition "postal services" inserted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 68(1), (2).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

Sub-s (1): definition "wireless telegraphy" substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 34(1), (3).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (1): definition "wireless telegraphy licence" substituted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 34(1), (4).

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

Sub-s (5A): inserted by the Postal Services Act 2011, s 91(1), (3), Sch 12, Pt 2, paras 56, 68(1), (3).

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 97; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 94 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, paras (j), (k)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 60 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/406 Minor and consequential amendments, transitionals and repeals

406 Minor and consequential amendments, transitionals and repeals

(1) Schedule 17 (which provides for minor and consequential amendments in connection with the other provision made by this Act) shall have effect.

(2) The Secretary of State may by order make such consequential modifications of any enactment as--

(a) correspond to amendments of any other enactment that are made by Schedule 17; and

(b) appear to him to be appropriate in consequence of that provision of this Act.

(3) The Secretary of State may by order make any provision that he thinks fit for substituting a reference in any enactment or subordinate legislation to something defined for the purposes of this Act, or of any provisions contained in this Act, for a reference to something equivalent or similar that was defined for the purposes of the Telecommunications Act 1984 (c 12), or of provisions contained in that Act.

(4) The Secretary of State may by order make such further consequential modifications of--

- (a) an enactment extending only to Scotland,
- (b) an enactment extending only to Northern Ireland,
- (c) a local enactment, or
- (d) the provision of any subordinate legislation,

as appear to him to be appropriate in consequence of any provision of this Act.

(5) If it appears to the Secretary of State that a local enactment contains a provision which corresponds to a provision the effect of which is modified by an amendment in Schedule 17 of this Act of a listed provision, it shall be his duty to exercise his powers under this section to secure that a modification corresponding to that effected by that amendment is made to the local enactment.

(6) Schedule 18 (which contains transitional provisions in connection with the other provision made by this Act) shall have effect.

(7) Subject to the provisions of Schedule 18 and to the savings and commencement provisions set out in the notes to Schedule 19, the enactments and instruments specified in Schedule 19 (which include provisions that are spent or have ceased to be of any practical utility) are hereby repealed or revoked to the extent specified in the second column of that Schedule.

(8) In this section "local enactment" means--

- (a) a local or personal Act;
- (b) a public general Act relating only to London;
- (c) an order or scheme made under an Act which has been confirmed by Parliament or brought into operation in accordance with special Parliamentary procedure;
- (d) an enactment in a public general Act but amending a local enactment.

(9) In subsection (5) "listed provision" means the provisions of the following enactments--

- (a) sections 11 and 14 of the London Overground Wires, etc Act 1933 (c xlv);
- (b) section 7(6) of the London County Council (General Powers) Act 1949 (c lv);
- (c) section 17(2) of the Lough Neagh and Lower Bann Drainage and Navigation Act (Northern Ireland) 1955 (c 15 (NI));
- (d) section 17(4)(a) of the London County Council (General Powers) Act 1963 (c xvii);
- (e) section 7(6) of the Greater London Council (General Powers) Act 1969 (c lii);
- (f) section 20(1)(a) of the Thames Barrier and Flood Prevention Act 1972 (c xlv);
- (g) section 32 of and paragraph 3(2)(b) of Schedule 2 and Part 10 of Schedule 7 to the Channel Tunnel Act 1987 (c 53);
- (h) section 25(1) of the Norfolk and Suffolk Broads Act 1988 (c 4);
- (i) section 5 of the London Local Authorities (No 2) Act 1990 (c xxx);
- (j) paragraphs 1(c) and 16 of Schedule 2, paragraph 3(2)(c) of Schedule 4 and paragraph 21 of Schedule 7 to the Cardiff Bay Barrage Act 1993 (c 42);
- (k) section 3(1) of the British Waterways Act 1995 (c i);

(l) paragraphs 6(4) and 15(4) of Schedule 6 and Part 4 of Schedule 15 to the Channel Tunnel Rail Link Act 1996 (c 61).

(10) This section has effect subject to section 408.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Sub-s (1): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003

Sub-s (1): Appointment (for certain purposes): 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Sub-s (1): Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Sub-ss (1), (6), (7): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 18 September 2003: see SI 2003/1900, arts 2(2), 3(1), Sch 2 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (1), (6), (7): Appointment (for certain purposes): 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

Sub-ss (1), (6), (7): Appointment (for certain purposes): 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions see arts 10(1), 11 thereof.

Sub-ss (1), (7): Appointment (for certain purposes): 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

Sub-ss (2)-(5), (8)-(10): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-ss (2)-(5), (8)-(10): Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Sub-s (6): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect from 29 December 2003.

Sub-s (6): Appointment (for certain purposes): 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Sub-s (6): Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Sub-s (6): Appointment (for remaining purposes): 1 April 2004: see SI 2003/3142, art 4(2), Sch 2.

Sub-s (7): Appointment (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by s 408(6) hereof)): 25 July 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and ss 406(6), 408, Sch 18, para 2 hereto. By virtue of SI 2003/3142, art 3(2) the transitional period came to an end on 29 December 2003. This appointment ceases to have effect on 29 December 2003.

Sub-s (7): Appointment (for certain purposes): 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Sub-s (7): Appointment (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

See Further

See further, with modifications, the extension of this section to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 98; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 95; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this section to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 61 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Communications Act 2003 (Consequential Amendments) Order 2003, SI 2003/2155 (made under sub-ss (2)-(4)).

Communications Act 2003 (Amendment of the Medicines (Monitoring of Advertising) Regulations 1994) Order 2003, SI 2003/3093 (made under sub-s (4)).

Communications Act 2003 (Consequential Amendments No 2) Order 2003, SI 2003/3182 (made under sub-s (4)).

Communications Act 2003 (Consequential Amendments) Order 2004, SI 2004/945 (made under sub-ss (3), (4)(b), (d)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/407 Pre-consolidation amendments

407 Pre-consolidation amendments

(1) The Secretary of State may by order make such modifications of--

- (a) . . .
- (b) the enactments relating to broadcasting, and
- (c) enactments referring to enactments falling within paragraph . . . (b),

as in his opinion facilitate, or are otherwise desirable in connection with, the consolidation of those enactments or any of them.

(2) No order is to be made under this section unless a Bill for repealing and re-enacting--

- (a) the enactments modified by the order, or
- (b) enactments relating to matters connected with the matters to which enactments modified by the order relate,

has been presented to either House of Parliament.

(3) An order under this section is not to come into force until immediately before the commencement of the Act resulting from that Bill.

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

(5) In this section "the enactments relating to broadcasting" means--

- (a) the 1990 Act;
- (b) the 1996 Act;
- (c) Part 3 of this Act; and

- (d) the other provisions of this Act so far as relating to the 1990 Act, the 1996 Act or that Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

Amendment

Sub-s (1): para (a) repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

Sub-s (1): in para (c) words omitted repealed by the Wireless Telegraphy Act 2006, s 125(1), Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/Part 6 Miscellaneous and Supplemental (ss 390-411)/408 Transitional provision for anticipatory carrying out of functions

408 Transitional provision for anticipatory carrying out of functions

(1) This section applies where an order under section 411 bringing into force--

- (a) a provision of Part 1, 2 or 6, or
- (b) a provision of Chapter 1 of Part 5,

states that that provision is brought into force at a particular time for the purpose only of enabling specified networks and services functions, or specified spectrum functions, to be carried out during the transitional period by the Director General of Telecommunications or the Secretary of State.

(2) In relation to times falling in the transitional period, that provision is to have effect as if--

- (a) references in that provision to OFCOM, and
- (b) references to OFCOM inserted by that provision in any other enactment,

were references, in accordance with subsection (3), to the Director General of Telecommunications or to the Secretary of State.

(3) The references have effect--

- (a) as references to the Director General of Telecommunications to the extent that the provision is brought into force for the purpose of enabling specified networks and services functions to be carried out; and
- (b) as references to the Secretary of State, to the extent that the provision is brought into force for the purpose of enabling specified spectrum functions to be carried out.

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Paras 13-36: repealed by the Wireless Telegraphy Act 2006, ss 123, 125(1), Sch 7, paras 25, 36, Sch 9, Pt 1.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2); for transitional provisions and savings see s 124, Sch 8, Pt 1, paras 1-8, 24 thereto.

Paras 37-46: inserted by the Wireless Telegraphy Act 2006, s 123, Sch 7, paras 25, 36.

Date in force: 8 February 2007: see the Wireless Telegraphy Act 2006, s 126(2).

See Further

See further, with modifications, the extension of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 104 (as amended by SI 2006/3325, art 4(1), Sch 2, Pt 1, para 3(b)(ii), (c)(i)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 101 (as amended by SI 2006/3324, art 4(1), Sch 2, Pt 1, paras 2 (b), 3(a)); for specific commencement and extent information see SI 2003/3197, arts 1(3)-(5), 2.

See further, with modifications, the extension of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 67 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 9 Arrangements about Carrying on of C4C's Activities

SCHEDULE 9

ARRANGEMENTS ABOUT CARRYING ON OF C4C'S ACTIVITIES

Section 199

Notification of requirement to submit proposals

1

(1) It shall be the duty of OFCOM to give a notification under this paragraph to C4C--

(a) as soon as practicable after the commencement of this Schedule,

[(aa) as soon as practicable after the day on which section 198A comes into force,] and

(b) as soon as practicable in the last twelve months preceding each date on which the replacement licence granted in accordance with section 231 would expire if not renewed.

(2) A notification under this paragraph is one requiring C4C to submit proposals to OFCOM in accordance with this Schedule for the relevant licence period.

(3) A notification under this paragraph must specify the period within which C4C must submit their proposals.

(4) The period specified under sub-paragraph (3) must be a period ending not less than three months after the day of the giving of the notification.

Submission of proposed arrangements

2

- (1) This paragraph applies where C4C have received a notification under paragraph 1.
- (2) C4C must, within the period set out in the notification, submit proposals to OFCOM for the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are--
 - (a) identified;
 - (b) evaluated; and
 - (c) properly managed.
- (3) The proposals must include proposals for the arrangements that C4C consider appropriate for securing the transparency objectives during the relevant licence period.
- (4) For the purposes of this Schedule the transparency objectives are--
 - (a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
 - (b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.
- (5) The matters to which the proposals submitted under this paragraph may relate include, in particular, the procedures and other practices to be followed by C4C in the case of--
 - (a) the initiation and management of new ventures;
 - (b) the exercise of particular powers;
 - (c) the assessment of risks;
 - (d) the imposition of charges; and
 - (e) the keeping of records.
- (6) The determination of what is appropriate for the purposes of sub-paragraphs (3) and (4) is not to be confined to a determination of what is appropriate for securing the matters mentioned in sub-paragraph (2).
- (7) The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed in accordance with that provision.
- (8) That person must be a person other than the person for the time being holding an appointment for the purposes of paragraph 12(2) of Schedule 3 to the 1990 Act (C4C's auditor).

Consideration and approval of proposals

3

- (1) OFCOM must consider every proposal or revised proposal submitted to them by C4C under paragraph 2 or this paragraph and may do one of the following--
 - (a) approve the proposed arrangements;
 - (b) approve them with such modifications as they may notify to C4C;

- (c) require C4C to submit revised proposals in accordance with directions given by OFCOM.
- (2) Before--
- (a) making modifications of proposed arrangements for the purpose of approving them, or
 - (b) requiring the submission of revised proposals,

OFCOM must consult C4C.

Duration of approval and modification of arrangements

4

- (1) Arrangements approved under this Schedule are to remain in force (subject to the following provisions of this paragraph) throughout the licence period to which they relate.
- (2) The arrangements for the time being approved under this Schedule for any licence period may be modified, by agreement between OFCOM and C4C, at any time during the licence period for which they apply.
- (3) OFCOM may carry out a review of the arrangements for the time being approved under this Schedule.
- (4) The reviews that may be carried out under this paragraph in any one licence period are confined to either--
- (a) one review relating to all the arrangements; or
 - (b) two reviews carried out at separate times as follows--
 - (i) one (whether the first or second) relating to the arrangements for securing the transparency objectives; and
 - (ii) the other relating to other matters.
- (5) On a review under this paragraph, OFCOM may require C4C to submit proposals for modifying the arrangements for the time being approved under this Schedule so far as they relate to the matters under review.
- (6) Paragraph 3 applies where proposals are submitted to OFCOM under sub-paragraph (5) as it applies where they are submitted under paragraph 2.

Publication of approved arrangements

5

- (1) OFCOM must publish all arrangements approved by them under this Schedule.
- (2) The publication of anything under this paragraph must be in such manner as OFCOM consider appropriate for bringing it to the attention of members of the public.

Duty of C4C to act in accordance with the approved arrangements

6

It shall be the duty of C4C to act in accordance with the arrangements for the time being in force under this

Schedule.

Enforcement of duties

7

- (1) This paragraph applies to--
 - (a) every duty of C4C under this Schedule to submit proposals to OFCOM; and
 - (b) the duty imposed on C4C by paragraph 6.
- (2) Each of those duties shall be enforceable in civil proceedings by OFCOM--
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c 36); or
 - (c) for any other appropriate remedy or relief.

Penalty for contravention of the arrangements

8

- (1) OFCOM may impose a penalty on C4C if C4C have contravened--
 - (a) a requirement of this Schedule to submit proposals to OFCOM;
 - (b) a requirement of arrangements for the time being approved under this Schedule.
- (2) The amount of the penalty must not exceed 3 per cent of C4C's qualifying revenue for their last complete accounting period before the contravention.
- (3) Before imposing a penalty on C4C under this paragraph OFCOM must give C4C a reasonable opportunity of making representations to OFCOM about their proposal to impose the penalty.
- (4) Where OFCOM impose a penalty on C4C under this paragraph, they shall--
 - (a) notify C4C; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (5) In the case of a continuing contravention--
 - (a) separate penalties may be imposed in respect of different periods during which the contravention continues;
 - (b) the notification of the penalty must specify the period in respect of which the penalty is imposed; and
 - (c) the reference in sub-paragraph (2) to the last complete accounting period before the contravention is a reference to the last complete accounting period before the end of the period in respect of which the penalty is imposed.
- (6) A penalty imposed under this paragraph must be paid to OFCOM within the period fixed by them.
- (7) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, have effect in relation to C4C for the purposes of this

paragraph as they have effect in relation to the holder of a Channel 3 licence for the purposes of Part 1 of that Act.

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

9

In exercising their powers under this Schedule OFCOM must have regard, in particular, to the need to secure, so far as practicable, that all significant risks that C4C's other activities will have an adverse effect on the carrying out of their primary functions are--

- (a) identified;
- (b) evaluated; and
- (c) properly managed.

Interpretation of Schedule

10

In this Schedule--

"arrangements" means arrangements about the procedures and other practices to be followed by C4C and about other matters connected with the carrying on by them of any of their activities;

"licence period" means--

- (a) the period for which the replacement licence is granted to C4C in accordance with section 231; or
- (b) any subsequent period for which it is renewed;

"primary functions" is to be construed in accordance with section 199(2);

"relevant licence period"--

- (a) in relation to the first notification to be given under paragraph 1, the licence period mentioned in paragraph (a) of the definition of that period;
- [(aa) in relation to the notification under paragraph 1(1)(aa), the period beginning on the day on which section 198A comes into force and ending on the last day of the first licence period to expire after that day;] and
- (b) in relation to [any other notification under paragraph 1], the first licence period to begin after the giving of the notification;

"transparency objectives" is to be construed in accordance with paragraph 2(4).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Para 1: sub-para (1)(aa) inserted by the Digital Economy Act 2010, s 22(3)(a).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Para 10: in definition "relevant licence period" para (aa) inserted by the Digital Economy Act 2010, s 22(3)(b).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

Para 10: in definition "relevant licence period" in para (b) words "any other notification under paragraph 1" in square brackets substituted by the Digital Economy Act 2010, s 22(3)(c).

Date in force: 8 June 2010: see the Digital Economy Act 2010, s 47(1).

See Further

See further, with modifications, the extension of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

See further, with modifications, the extension of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 105; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 102; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 10 Licensing the Public Teletext Service/Part 1 Applications for and Award of Licence

SCHEDULE 10

LICENSING THE PUBLIC TELETEXT SERVICE

Section 219

Part 1

Applications for and Award of Licence

Notice of proposal to grant licence

1

(1) Where OFCOM propose to grant a licence to provide the public teletext service they must publish a notice stating that they are proposing to do so.

(2) The notice must--

(a) specify the digital capacity which is available for the public teletext service on television multiplex services;

(b) specify whether the licence will require the public teletext service to comprise a service to be provided for broadcasting in analogue form;

- (c) invite applications for the licence;
 - (d) specify the closing date for applications;
 - (e) specify the fee payable on the making of an application for the licence; and
 - (f) specify the percentage of qualifying revenue for each accounting period of the licence holder which OFCOM have determined to be the percentage of that revenue that will have to be paid to them.
- (3) Where the licence is to comprise an analogue teletext service the notice must specify--
- (a) the television broadcasting service or services on whose frequency or frequencies the services are to be provided; and
 - (b) the extent and nature of the spare capacity which is to be allocated by the licence.
- (4) For the purposes of sub-paragraph (2)(f)--
- (a) different percentages may be determined and specified for different accounting periods; and
 - (b) the percentages that may be determined and specified for an accounting period include a nil percentage.
- (5) A notice under this paragraph is to be published in such manner as OFCOM consider appropriate.

Guidance as to applications

2

- (1) When publishing a notice under paragraph 1, OFCOM must publish with it some general guidance to applicants about what is likely to make proposals relating to the matters mentioned in paragraph 3(1)(c) to (e) acceptable to them.
- (2) Guidance published under this paragraph must include examples.

Applications for the licence

3

- (1) An application made in response to a notice under paragraph 1 must be accompanied by--
 - (a) the fee specified in the notice as payable on the making of the application;
 - (b) a technical plan complying with sub-paragraph (2);
 - (c) the applicant's proposals for providing, or securing the provision of, a service that fulfils the public service remit for the public teletext service;
 - (d) the applicant's proposals for including news items in the service and for securing that the news items included in the service are up to date and regularly revised;
 - (e) the applicant's proposals for the inclusion in the service of material that is of particular interest to persons living in different parts of the United Kingdom;
 - (f) the applicant's cash bid in respect of the licence; and
 - (g) such information as OFCOM may reasonably require about the matters mentioned in sub-paragraph (3).

- (2) The technical plan must indicate--
- (a) the nature of the public teletext service which the applicant is proposing to provide; and
 - (b) the nature of any services the provision of which, in accordance with proposals made by another person, would be secured by the applicant in accordance with provision made under section 220.
- (3) The matters about which OFCOM may require information under sub-paragraph (1)(g) are--
- (a) the applicant's present financial position; and
 - (b) his projected financial position during the period for which the licence would be in force.
- (4) At any time after receiving an application under this Schedule and before disposing of it, OFCOM may require the applicant to furnish additional information about any one or more of the following--
- (a) the matters that must be indicated in the technical plan;
 - (b) the applicant's proposals with respect to the matters mentioned in sub-paragraph (1)(c) to (e); and
 - (c) the matters mentioned in sub-paragraph (3).
- (5) Any information to be furnished to OFCOM under this paragraph must be in such form, and must be verified, in such manner as they may require.

Notice inviting public representations

4

- (1) As soon as reasonably practicable after the date specified in a notice under paragraph 1 as the closing date for applications, OFCOM must publish--
- (a) the name of every person who has made an application to them in response to their notice;
 - (b) particulars of the technical plan submitted by each applicant;
 - (c) the proposals submitted by each applicant with respect to the matters mentioned in paragraph 3(1)(c) to (e);
 - (d) such other information connected with each application as OFCOM consider appropriate; and
 - (e) a notice under sub-paragraph (2).
- (2) The notice required by this paragraph is one that--
- (a) invites representations to be made to OFCOM with respect to the other matters published under this paragraph; and
 - (b) specifies the manner in which, and the time by which, such representations have to be made.
- (3) Publication of any information or notice under this paragraph is to be in such manner as OFCOM consider appropriate.

Determination of applications

5

- (1) This paragraph applies where, in response to a notice under paragraph 1, a person has made an application for a licence to provide the public teletext service.

(2) OFCOM must not proceed to consider whether to award the applicant the licence in accordance with the following provisions of this paragraph unless it appears to them--

- (a) that the applicant's technical plan, in so far as it involves the use of an electronic communications network, contains proposals that are acceptable to them;
- (b) that the applicant's proposals with respect to the matters mentioned in paragraph 3(1)(c) to (e) are acceptable to them; and
- (c) that the services proposed to be provided under the licence would be capable of being maintained throughout the period for which the licence would be in force.

(3) In determining whether it appears to them as mentioned in sub-paragraph (2), OFCOM must take account of any representations made to them in response to the invitation published under paragraph 4.

(4) Sections 17 and 17A of the 1990 Act (award of licence to highest cash bidder and financial conditions) apply in relation to a licence to provide the public teletext service as they apply in relation to a Channel 3 licence, but with the modifications set out in sub-paragraphs (5) and (6).

(5) In the application of section 17 of the 1990 Act in accordance with sub-paragraph (4)--

- (a) any reference to an applicant is to be construed as a reference to an applicant in whose case it appears to OFCOM as mentioned in sub-paragraph (2);
- (b) the provisions of subsection (4) down to the end of paragraph (b) are to be omitted;
- (c) in subsection (7)(a), the reference to section 19(1) of the 1990 Act is to be construed as a reference to paragraph 7 of this Schedule;
- (d) subsection (12) shall have effect with the substitution of the following paragraph for paragraph (b)--

 "(b) the name of every other applicant in whose case it appeared to OFCOM as mentioned in paragraph 5(2) of Schedule 10 to the Communications Act 2003;"
- (e) in subsection (14), the references to a notice under section 15(1) of the 1990 Act and a notice under Part 1 of that Act shall each have effect as a reference to a notice under paragraph 1 of this Schedule.

(6) In the application of section 17A of the 1990 Act in accordance with sub-paragraph (4)--

- (a) the reference in subsection (1)(b) to section 15(3)(g) of the 1990 Act shall have effect as a reference to paragraph 3(1)(g) of this Schedule; and
- (b) the reference in subsection (3) to a notice under section 15(1) of the 1990 Act shall have effect as a reference to a notice under paragraph 1 of this Schedule.

Revocation of award

6

(1) This paragraph applies if, at any time after a licence to provide the public teletext service has been awarded to a person, but before it has come into force--

- (a) that person indicates to OFCOM that he does not intend to provide, or secure the provision of, the licensed service; or
- (b) OFCOM have, for any other reason, reasonable grounds for believing that the licensed service will not be provided once the licence has come into force.

- (2) OFCOM must revoke the licence by serving a notice of revocation on the person to whom it was awarded.
- (3) OFCOM may then award the licence again in accordance with section 17 of the 1990 Act (as applied by paragraph 5 of this Schedule) as if the person whose licence is revoked had not made an application.
- (4) Sub-paragraph (3) has effect subject to subsection (14) of section 17 of the 1990 Act (as so applied) (re-publication of invitation to make applications) as if the reference in that subsection to the following provisions of Part 1 of that Act included a reference to that sub-paragraph.
- (5) Before acting under sub-paragraphs (2) and (3) in a case falling within sub-paragraph (1)(b), OFCOM must serve a notice on the person awarded the licence stating their grounds for believing that the licensed service will not be provided once the licence has come into force.
- (6) Where such a notice is required to be given, OFCOM must not revoke the licence unless they have given the person to whom it was awarded a reasonable opportunity of making representations to them about the matters by reference to which they are proposing to revoke it.
- (7) In the case of a licence to provide a service that must comprise both--
- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,

the references in sub-paragraphs (1) and (5) to the licensed service are references to one or both of those services.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing licence (as referred to in s 221(1) hereof) see art 8(1) thereof.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, para 1; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 68 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 10 Licensing the Public Teletext Service/Part 2 Conditions and Enforcement of Licence

Part 2

Conditions and Enforcement of Licence

Payments to be made in respect of the public teletext service

- (1) A licence to provide the public teletext service must include conditions requiring the licence holder to pay the following amounts to OFCOM (in addition to any fees required to be so paid by virtue of section 4 (1)(b) of the 1990 Act)--
- (a) a specified amount in respect of the first complete calendar year falling within the licence period;
 - (b) in respect of each subsequent year falling wholly or partly within the licence period, that amount increased by the appropriate percentage;
 - (c) in respect of each accounting period of his falling within the licence period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (2) The amount specified for the purposes of sub-paragraph (1)(a) must be--
- (a) in the case of the replacement licence under section 221, the amount proposed in accordance with subsection (5)(a) of that section;
 - (b) in the case of a licence renewed under section 222, the amount determined under section 223(1)(a); and
 - (c) in any other case, the amount specified in the licence holder's cash bid.
- (3) The percentage specified for the purposes of sub-paragraph (1)(c) in respect of an accounting period must be--
- (a) in the case of the replacement licence under section 221, nil;
 - (b) in the case of a licence renewed under section 222, the percentage determined under section 223(1)(b); and
 - (c) in any other case, the percentage determined and specified for the purposes of paragraph 1(2)(f) of this Schedule.
- (4) A licence to provide the public teletext service may also include conditions--
- (a) enabling OFCOM to estimate before the beginning of an accounting period the amount due for that period by virtue of any condition imposed under this paragraph; and
 - (b) requiring the licence holder to pay the estimated amount by monthly instalments throughout that period.
- (5) Such a licence may, in particular, include conditions--
- (a) authorising OFCOM to revise an estimate on one or more occasions;
 - (b) requiring them to alter the amounts of the instalments payable by the licence holder to take account of the revised estimate;
 - (c) providing for the adjustment of an overpayment or underpayment.
- (6) This paragraph has effect subject to sections 225 and 226 and to the requirement in section 221(5)(b).
- (7) In this paragraph "the appropriate percentage" has the same meaning as in section 19 of the 1990 Act.

Corrections and statements of findings by the public teletext provider

- (1) Section 40 of the 1990 Act (power to direct correction or a statement of findings) shall have effect in relation to the public teletext service as it has effect in relation to a Channel 3 service but as if the references in subsection (4) to a programme were references to an item.
- (2) OFCOM's powers by virtue of this paragraph in relation to any matter are not affected by any prior exercise by them in relation to that matter of their powers under either or both of paragraphs 9 and 10.

Enforcement of the licence for the public teletext service

9

- (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has--
 - (a) contravened a condition of the licence, or
 - (b) failed to comply with a direction given to him by OFCOM under or by virtue of a provision of the 1990 Act, the 1996 Act or Part 3 of this Act,

they may serve on him a notice requiring him to pay a specified financial penalty to them.

- (2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is 5 per cent of the qualifying revenue for his last complete accounting period.
- (3) Where an accounting period by reference to which the maximum amount of a penalty falls to be calculated has not ended when the penalty is imposed, the amount taken into account in respect of that period is to be the amount estimated by OFCOM.
- (4) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters complained of.
- (5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

Power to shorten licence period

10

- (1) If OFCOM are satisfied that the holder of the licence to provide the public teletext service has--
 - (a) contravened a condition of the licence, or
 - (b) failed to comply with a direction given to him by OFCOM under or by virtue of any provision of the 1990 Act, the 1996 Act or Part 3 of this Act,

they may serve on him a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

- (2) OFCOM are not to serve a notice under this paragraph on any person unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (3) Where a licence is due to expire on a particular date by virtue of a notice served on a person under this paragraph, OFCOM may, on the application of that person, revoke that notice by a further notice served on him at any time before that date.
- (4) OFCOM may exercise their power under sub-paragraph (3) only if they are satisfied that, since the date of the earlier notice, the conduct of the licence holder in relation to the operation of the licensed service has been such as to justify the revocation of that notice.

Revocation for contravention of condition or direction

11

Section 42 of the 1990 Act (revocation for contravention) shall apply in relation to the licence to provide the public teletext service as it applies in relation to a licence to provide a Channel 3 service.

Penalty on revocation

12

(1) Where OFCOM revoke the licence to provide the public teletext service (whether under paragraph 6 or a provision of the 1990 Act or 1996 Act), they must serve on the licence holder a notice requiring him to pay a specified financial penalty to them.

(2) The maximum amount which a person may be required to pay by way of a penalty under this paragraph is the maximum given by sub-paragraphs (3) and (4).

(3) In a case where the licence is revoked under paragraph 6 or the penalty is imposed before the end of the first complete accounting period of the licence holder to begin in the licence period, the maximum penalty is whichever is the greater of--

(a) £500,000; and

(b) 7 per cent of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(4) In any other case, the maximum penalty is whichever is the greater of--

(a) £500,000; and

(b) 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period.

(5) A notice requiring a person to pay a penalty under this paragraph must specify the period within which it is to be paid.

(6) A financial penalty that must be paid by virtue of this paragraph by a body of any description shall also be recoverable--

(a) as a debt due to OFCOM from the person who controls the body; or

(b) if two or more persons control it, as a debt due jointly and severally from them all.

(7) Sub-paragraph (6) is in addition to the provision for the recovery of penalties contained in section 346, but the amount recovered in respect of any one penalty must not exceed the full amount of that penalty.

(8) References in this paragraph to a person controlling a body are references to his controlling it within the meaning of Schedule 2 to the 1990 Act.

Power to modify penalties in paragraph 12

13

(1) The Secretary of State may by order substitute a different sum for the sum for the time being specified in paragraph 12(3)(a) or (4)(a).

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing licence (as referred to in s 221(1) hereof) see art 8(1) thereof.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 2, 106; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, paras 1, 103; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 10 Licensing the Public Teletext Service/Part 3 Interpretation of Schedule

Part 3

Interpretation of Schedule

14

In this Schedule "licence period", in relation to a licence, means the period for which the licence is in force.

15

(1) For the purposes of this Schedule the qualifying revenue for an accounting period of the holder of a licence to provide the public teletext service consists of the aggregate of all the following amounts--

(a) the amounts received or to be received by a person mentioned in sub-paragraph (2) in consideration of the inclusion in the licensed service in that period of advertisements or other items; and

(b) the amounts received or to be received by such a person in respect of the provision of the service from--

(i) a person authorised by the licence holder to provide the whole or a part of the licensed service; or

(ii) a person who is a connected person in relation to a person so authorised.

(2) Those persons are--

(a) the licence holder; or

to exclude from the publication, so far as practicable, the matters which are confidential in accordance with sub-paragraphs (2) and (3).

(2) A matter is confidential under this sub-paragraph if--

- (a) it relates specifically to the affairs of a particular body; and
- (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.

(3) A matter is confidential under this sub-paragraph if--

- (a) it relates to the private affairs of an individual; and
- (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.

(4) For the purposes of the law of defamation absolute privilege attaches to every report prepared under paragraph 4 or 5.

Interpretation of Schedule

15

In this Schedule--

"competition test" is to be construed in accordance with paragraph 6;

"the Tribunal" means the Competition Appeal Tribunal; and

"Tribunal rules" means rules made under section 15 of the Enterprise Act 2002 (c 40).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 104; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/[SCHEDULE 11A Restrictions on Product Placement]

[SCHEDULE 11A

RESTRICTIONS ON PRODUCT PLACEMENT]

NOTES**Amendment**

Inserted by SI 2010/831, reg 9.

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

[Introductory**1**

(1) In this Part "product placement", in relation to a programme included in a television programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion--

- (a) is for a commercial purpose;
- (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and
- (c) is not prop placement.

(2) "Prop placement", in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where--

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

2

The product placement requirements are--

- (a) that the product placement does not fall within any of paragraphs 3 to 6;
- (b) that all of the conditions in paragraph 7 are met; and
- (c) that, where paragraph 8 applies, the condition in that paragraph is also met.

Prohibitions of product placement**3**

(1) Product placement falls within this paragraph if it is in a children's programme.

(2) In sub-paragraph (1) "children's programme" means a programme made--

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen.

4

Product placement falls within this paragraph if it is--

- (a) of cigarettes or other tobacco products;
- (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- (c) of prescription-only medicines.

5

Product placement of alcoholic drinks falls within this paragraph if--

- (a) it is aimed specifically at persons under the age of eighteen; or
- (b) it encourages immoderate consumption of such drinks.

6

(1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and--

- (a) the programme is a religious, consumer affairs or current affairs programme;
- (b) the product placement is of anything within sub-paragraph (2); or
- (c) the product placement is otherwise unsuitable.

(2) The following are within this sub-paragraph--

- (a) electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking;
- (b) medicinal products;
- (c) alcoholic drinks;
- (d) infant formulae or follow-on formulae;
- (e) a food or drink high in fat, salt or sugar;
- (f) gambling services.

(3) This paragraph applies to--

- (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
- (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

Conditions applying to product placement

7

- (1) These are the conditions referred to in paragraph 2(b).
- (2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is--

- (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
- (3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.
- (4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not--
- (a) prejudice respect for human dignity;
 - (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.

8

- (1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.
- (2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than--
- (a) at the start and end of such a programme; and
 - (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Minor definitions

9

In this Schedule--

"connected" has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

"film made for cinema" means a film made with a view to its being shown to the general public first in a cinema;

"follow-on formulae" has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

"infant formulae" has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

"medicinal product" has the meaning given in section 130 of the Medicines Act 1968;

"prescription-only medicine" means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

"producer", in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

"programme" does not include an advertisement;

"relevant provider", in relation to a programme, means--

- (a) the provider of the television programme service in which the programme is included; and
- (b) the producer of the programme;

"residual value" means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

"significant value" means a residual value that is more than trivial;

"tobacco product" has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;

"trade mark", in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.]

NOTES

Amendment

Inserted by SI 2010/831, reg 9.

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 12 Corresponding Obligations of the BBC and Welsh Authority/Part 1 The BBC

SCHEDULE 12

CORRESPONDING OBLIGATIONS OF THE BBC AND WELSH AUTHORITY

Section 338

Part 1

The BBC

Quotas for independent productions

1

(1) It shall be the duty of the BBC to secure that, in each year, not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in the television broadcasting services provided by the BBC is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this paragraph--

(a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this paragraph;

(b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this paragraph; and

(c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph.

(4) The Secretary of State may also by order provide for the BBC to have the duty set out in sub-paragraph (5), either instead of or as well as the one set out in sub-paragraph (1).

(5) That duty is a duty to secure that, in each year, not less than the percentage specified in the order of the programming budget for that year for the television broadcasting services provided by the BBC is applied in the acquisition of independent productions.

(6) The power to make an order under sub-paragraph (4) includes power to provide that the BBC are again to be subject to a duty to which they have previously ceased to be subject by virtue of such an order, in addition to or instead of the duty to which they are subject (apart from the exercise of that power) by virtue of this paragraph.

(7) The Secretary of State is not to make an order for the BBC to be or to cease to be subject to the duty mentioned in sub-paragraph (1) or (5) unless--

(a) OFCOM have made a recommendation to him that the BBC should be subject to that duty, or should cease to be subject to it; and

(b) the order gives effect to that recommendation.

(8) Where television broadcasting services are designated by or under the BBC Charter and Agreement--

(a) as services that must be treated separately for the purposes of the duty imposed by sub-paragraph (1) or a duty imposed under sub-paragraph (4), or

(b) as services that must be included in a group of services that must be taken together for the purposes of such a duty,

that duty is to have effect in accordance with sub-paragraph (9).

(9) A duty having effect in accordance with this sub-paragraph is to have effect as if (instead of applying to all the television broadcasting services provided by the BBC, taken together) it applied separately--

(a) in relation to each service that is required to be treated separately; and

(b) in relation to each group of services that are required to be taken together.

(10) The BBC must comply with directions given to them by OFCOM for the purpose of--

(a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of sub-paragraph (1) or (4); and

(b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.

(11) For the purposes of this paragraph--

(a) the amount of the programming budget for a year, and

(b) the means of determining the amount of that budget that is applied for any purpose,

are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(12) Before making an order under this paragraph the Secretary of State must consult OFCOM and the BBC.

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

(14) In this paragraph--

"acquisition", in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast; and

"programming budget" means the budget for the production and acquisition of qualifying programmes.

Duty to publicise complaints procedures etc

2

(1) It shall be the duty of the BBC to make arrangements for securing that the matters mentioned in sub-paragraph (2) are brought to the attention of the public (whether by means of broadcasts or otherwise).

(2) Those matters are--

(a) OFCOM's functions under Part 5 of the 1996 Act in relation to services provided by the BBC; and

(b) any procedures established by OFCOM or the BBC for the handling and resolution of complaints about the observance by the BBC of standards set under section 319 [or about compliance by the BBC with the requirements imposed by section 368D].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Para 2: in sub-para (2)(b) words "or about compliance by the BBC with the requirements imposed by section 368D" in square brackets inserted by SI 2009/2979, reg 3(2).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 108; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 105; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 12 Corresponding Obligations of the BBC and Welsh Authority/Part 2 The Welsh Authority

Part 2

The Welsh Authority

Public service remits of the Welsh Authority services

3

(1) It shall be the duty of the Welsh Authority to secure that the public service remits for each of their public television services is fulfilled.

(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--

(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

(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.

(4) The public service remit for a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 is the remit set out in the order approving the provision of the service.

(5) The Secretary of State may by order modify sub-paragraphs (2) and (3).

(6) Before making an order specifying or modifying the public service remit for any of the Welsh Authority's public television services, the Secretary of State must consult--

(a) the Authority; and

(b) where the order relates to the inclusion in any service of programmes that are not in Welsh, C4C.

(7) An order modifying the public service remit for S4C or S4C Digital must not contain provision

inconsistent with a requirement that each service must--

- (a) represent a public service for the dissemination of information, education and entertainment; and
- (b) include programmes a substantial proportion of which consists of programmes in Welsh.

(8) No order is to be made containing provision authorised by sub-paragraph (5) 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
- (b) to monitor their own performance in the carrying out of the proposals contained in statements 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--

- (a) the public service remit for each of their public television services to be provided during that year 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 the Welsh Authority in the carrying out during the period since the previous statement of the proposals contained in that previous statement.

(4) When preparing such a statement, the Welsh Authority must consider--

- (a) any guidance by OFCOM that is in force for the purposes of section 266; and
- (b) any reports previously published by OFCOM under section 264 or 358.

(5) Every such statement must be published by the Welsh Authority as soon as practicable after its preparation is complete.

(6) 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.

(7) A direction under sub-paragraph (6) 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.

Must-offer obligations in relation to networks and satellite services

5

(1) It shall be the duty of the Welsh Authority to ensure that each of their public digital services is at all

times offered as available (subject to the need to agree terms)--

- (a) to be broadcast or distributed by means of every appropriate network; and
 - (b) to be broadcast by means of every satellite television service that is available for reception by members of the public in Wales.
- (2) It shall be the duty of the Welsh Authority to do their best to secure that arrangements are entered into, and kept in force, that ensure--
- (a) that each of their public digital services is broadcast or distributed on appropriate networks; and
 - (b) that the broadcasting and distribution of each of their public digital services, in accordance with those arrangements, result in the service being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.
- (3) It shall be the duty of the Welsh Authority to do their best to secure that arrangements are entered into, and kept in force, that ensure--
- (a) that each of their public digital services is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in Wales; and
 - (b) that the broadcasting, in accordance with those arrangements, of each of the Authority's public digital services by means of satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.
- (4) The Welsh Authority must secure that the arrangements entered into and kept in force for the purposes of sub-paragraphs (2) and (3) prohibit the imposition, for or in connection with the provision of an appropriate network or a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive each of the Authority's public digital services in an intelligible form by means of that network or service.
- (5) OFCOM may, by a direction to the Welsh Authority, require arrangements made or kept in force for the purposes of sub-paragraphs (2) or (3) to apply in the case of every service which is an ancillary service by reference to one of their public digital services as they apply to the service itself.
- (6) For the purposes of this paragraph a public digital service of the Welsh Authority is to be treated, in relation to particular appropriate networks and satellite television services, as constituting such services comprised in or provided with that public digital service--
- (a) as may be determined by agreement between the Welsh Authority and OFCOM; or
 - (b) in default of agreement, as may be directed by OFCOM.
- (7) This paragraph--
- (a) so far as it relates to the broadcasting or distribution of any of the Welsh Authority's public digital services by means of appropriate networks, applies only in relation to times when that service is included in the list of must-carry services in section 64; and
 - (b) so far as it relates to the broadcasting of such a public digital service by means of a satellite television service, applies only in relation to times when that service is included in the list of must-provide services in section 275.
- (8) In this paragraph--

"appropriate network" means an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users in Wales as their principal means of receiving television programmes;

"intended audience", in relation to a public digital service of the Welsh Authority, means--

- (a) if the service is one provided only for a particular area or locality of Wales, members of the public in that area or locality;
- (b) if the service is one provided for members of a particular community, members of that community; and
- (c) in any other case, members of the public in Wales;

"public digital service", in relation to the Welsh Authority, means any of their public television services so far as it is provided in digital form; and

"satellite television service" means a service which--

- (a) consists in or involves the broadcasting of television programme services from a satellite; and
- (b) is used by a significant number of the persons by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.

(9) For the purposes of this paragraph an electronic communications network is not an appropriate network in relation to so much of a channel or other service as is provided only for a particular area or locality of Wales unless it is a network by means of which electronic communications services are provided to persons in that area or locality

(10) In sub-paragraph (8) "public electronic communications service" and "end-user" each has the same meaning as in Chapter 1 of Part 2.

(11) An order under section 411 must not appoint a day for provisions of this paragraph to come into force that falls less than six months after the day on which the order is made.

Supply of services by satellite in certain areas

6

It shall be the duty of the Welsh Authority--

- (a) to join with the providers of other must-provide services in entering into and maintaining arrangements satisfying the requirements of section 274; and
- (b) to comply with the requirements of any arrangements imposed by OFCOM for the purposes of conditions under subsection (2) of that section.

Programming quotas for independent productions

7

(1) It shall be the duty of the Welsh Authority 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 their designated public services (taken together) is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this paragraph--

- (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this paragraph;
- (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent

productions for the purposes of this paragraph; and

(c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend sub-paragraph (1) by substituting a different percentage for the percentage for the time being specified in that sub-paragraph.

(4) The Secretary of State may also by order provide for the Welsh Authority to have the duty set out in sub-paragraph (5), either instead of or as well as the one set out in sub-paragraph (1).

(5) That duty is a duty to secure that, in each year, not less than the percentage specified in the order of the programming budget for that year for the designated public services (taken together) is applied in the acquisition of independent productions.

(6) The power to make an order under sub-paragraph (4) includes power to provide that the Welsh Authority are again to be subject to a duty to which they have previously ceased to be subject by virtue of such an order, in addition to or instead of the duty to which they are subject (apart from the exercise of that power) by virtue of this paragraph.

(7) The Secretary of State is not to make an order for the Welsh Authority to be or to cease to be subject to the duty mentioned in sub-paragraph (1) or (5) unless--

(a) OFCOM have made a recommendation to him that the Authority should be subject to that duty, or should cease to be subject to it; and

(b) the order gives effect to that recommendation.

(8) The Welsh Authority must comply with directions given to them by OFCOM for the purpose of--

(a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of sub-paragraph (1) or (4); and

(b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.

(9) For the purposes of this paragraph--

(a) the amount of the programming budget for a year, and

(b) the means of determining the amount of that budget that is applied for any purpose,

are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(10) Before making an order under this paragraph the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

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

(12) The services that are designated public services for the purposes of this paragraph are--

(a) S4C;

(b) S4C Digital; and

(c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.

(13) In this paragraph--

"acquisition", in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast;

"programme" does not include an advertisement; and

"programming budget" means the budget for the production and acquisition of qualifying programmes.

Programme quotas for original productions

8

(1) It shall be the duty of the Welsh Authority, in relation to their designated public services (taken together) to secure--

(a) that the time allocated, in each year, to the broadcasting of original productions included in those services is no less than the proportion fixed under sub-paragraph (2) of the total amount of time allocated to the broadcasting of all the programmes included in those services; and

(b) that the time allocated to the broadcasting of original productions is split in the manner so fixed between peak viewing times and other times.

(2) The fixing for the purposes of sub-paragraph (1) of a proportion or manner of splitting allocated time is to be--

(a) by agreement between the Welsh Authority and OFCOM; or

(b) in default of agreement, by a direction given by OFCOM to the Authority fixing the proportion or manner according to whatever OFCOM consider appropriate for ensuring that the service is consistently of a high quality.

(3) The agreement or direction may, for the purposes of sub-paragraph (1)(b), fix a proportion for the purposes of sub-paragraph (1)(a) in terms of the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(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.

(5) It may also provide that, in determining whether a programme is of a description of programmes excluded by an agreement or direction by virtue of sub-paragraph (4), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(6) References in this paragraph, in relation to the designated public services of the Welsh Authority, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this paragraph.

(7) The power to specify descriptions of programmes by order under sub-paragraph (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.

(8) Before making an order under this paragraph the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

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

(10) The services that are designated public services for the purposes of this paragraph are--

(a) S4C;

(b) S4C Digital; and

(c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.

(11) In this paragraph--

"peak viewing time", in relation to the designated public services of the Welsh Authority, means a time that is determined in accordance with sub-paragraph (12) to be a peak viewing time for one or more of those services; and

"programme" does not include an advertisement.

(12) The determination for the purposes of this paragraph of peak viewing times is to be--

- (a) by agreement between the Welsh Authority and OFCOM; or
- (b) in default of agreement, by a direction given by OFCOM to the Authority determining those times.

News and current affairs programmes

9

(1) It shall be the duty of the Welsh Authority, in relation to their designated public services, to secure--

- (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 deal with both national and international matters; and
- (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the service is provided.

(2) It shall be the duty of the Welsh Authority, in relation to each of their designated public services, to ensure that the news programmes and current affairs programmes included in each service are of high quality.

(3) It shall also be the duty of the Welsh Authority, in relation to each of their designated public services, to secure that in each year--

- (a) the time allocated to the broadcasting of news programmes included in the service, and
- (b) the time allocated to the broadcasting of current affairs programmes so included,

each constitutes no less than the proportion fixed under sub-paragraph (5) of the time allocated to the broadcasting of all the programmes included in the service.

(4) It is the further duty of the Welsh Authority, in relation to each of their designated public services, to secure that the time allocated--

- (a) to the broadcasting of news programmes included in the service, and
- (b) to the broadcasting of current affairs programmes so included,

is, in each case, split, in the manner fixed under sub-paragraph (5), between peak viewing times and other times.

(5) The fixing for the purposes of sub-paragraph (3) or (4) of a proportion or manner of splitting allocated time is to be--

- (a) by agreement between the Welsh Authority and OFCOM; or

- (b) in default of agreement, by a direction given by OFCOM to the Authority fixing the proportion or manner according to whatever OFCOM consider appropriate.
- (6) The agreement or direction may, for the purposes of sub-paragraph (4), fix a proportion for the purposes of sub-paragraph (3) in terms of the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.
- (7) The services that are designated public services for the purposes of this paragraph are--
- (a) S4C;
 - (b) S4C Digital; and
 - (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.
- (8) In this paragraph "peak viewing time", in relation to a service, means a time that is determined in accordance with sub-paragraph (9) to be a peak viewing time for that service.
- (9) The determination for the purposes of this paragraph of a peak viewing time is to be--
- (a) by agreement between the Welsh Authority and OFCOM; or
 - (b) in default of agreement, by a direction given by OFCOM to the Authority determining that time.

Code relating to programme commissioning

10

- (1) It shall be the duty of the Welsh Authority to draw up and from time to time revise a code of practice setting out the principles that are to be applied when they or an S4C company are for a relevant purpose agreeing terms for the commissioning of independent productions.
- (2) A relevant purpose is a purpose connected with the provision by the Welsh Authority or an S4C company of a programme service.
- (3) It shall also be the duty of the Welsh Authority--
- (a) at all times to comply with the code of practice which is for the time being in force under this paragraph;
 - (b) to take all reasonable steps for securing that the code is complied with by S4C companies;
 - (c) to exercise their power to revise that code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this paragraph; and
 - (d) to comply with such directions as may be given to the Authority by OFCOM for securing that they properly perform their duties under paragraphs (a) and (b).
- (4) The code for the time being in force under this paragraph must be such as to secure, in the manner described in guidance issued by OFCOM--
- (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - (b) that there is sufficient clarity when an independent production is commissioned about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
 - (c) that there is sufficient transparency about the amounts to be paid in respect of each category of rights;

- (d) that satisfactory arrangements are made about the duration and exclusivity of those rights;
 - (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
 - (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
 - (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.
- (5) The Welsh Authority must also ensure that the drawing up or revision of a code by virtue of this paragraph is in accordance with guidance issued by OFCOM as to--
- (a) the times when the code is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before a code is drawn up or revised;
 - (c) the publication of every code or revised code.
- (6) The Welsh Authority must submit to OFCOM for approval a draft of--
- (a) every code that is required to be drawn up under this paragraph; and
 - (b) every revision made by that Authority of such a code.
- (7) A code drawn up by the Welsh Authority or a revision of such a code--
- (a) is to have effect for the purposes of this paragraph only if approved by OFCOM; and
 - (b) if approved by OFCOM subject to modifications, is to have effect with those modifications.
- (8) OFCOM--
- (a) must issue and may from time to time revise guidance for the purposes of this paragraph;
 - (b) must ensure that there is always guidance for those purposes in force;
 - (c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and
 - (d) must publish their guidance or revised guidance in such manner as they think appropriate.
- (9) Guidance issued by OFCOM for the purposes of this paragraph must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.
- (10) OFCOM may by a direction to the Welsh Authority specify that a code which--
- (a) was drawn up by the Authority before the commencement of this paragraph, and
 - (b) is identified in the direction,
- is to be treated as drawn up in pursuance of this paragraph and approved by OFCOM.
- (11) In this paragraph "independent production" has the same meaning as in paragraph 7.

Co-operation with the public teletext provider

- (1) The Welsh Authority must grant access to the public teletext provider to the facilities that are reasonably required by him for the purposes of, or in connection with, the provision of the public teletext service.
- (2) The Welsh Authority may require the public teletext provider to pay a reasonable charge in respect of facilities access to which is granted under this paragraph.
- (3) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

Programme standards

12

It shall be the duty of the Welsh Authority in relation to their public television services to observe the standards set under section 319.

13

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 the Authority of standards set under section 319.

14

(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 sub-paragraph (2).

(2) Those matters are--

- (a) the exclusion from any of the Authority's public television services of a particular advertisement, or its exclusion in particular circumstances;
- (b) the descriptions of advertisements and methods of advertising to be excluded from the services so provided (whether generally or in particular circumstances); . . .
- (c) the methods of sponsorship to be excluded from those services (whether generally or in particular circumstances); and
- (d) the forms and methods of product placement to be excluded from those services (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances)].

15

(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 12 to 14 [or 23A, or under section 368D] [except the requirement imposed by section 368D(1) so far as it relates to advertising, and the requirement imposed by section 368D(3)(za)]; and
- (b) that the failure can be appropriately remedied by the inclusion in any or all of the Authority's public television services [or on-demand programme services] of a correction or a statement of findings.

(2) OFCOM may direct the Welsh Authority to include a correction or a statement of findings (or both) in any one or more of their public television services [or on-demand programme services].

(3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.

(4) OFCOM are not to give a 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) Where the Welsh Authority include a correction or a statement of findings in any of their public television services [or on-demand programme services] in pursuance of a direction under this paragraph, the Authority may announce that they are doing so in pursuance of such a direction.

(6) For the purposes of this paragraph a statement of findings, in relation to a case in which OFCOM are satisfied that the Welsh Authority have failed to perform a duty [mentioned in sub-paragraph (1)(a)], is a statement of OFCOM's findings in relation to that failure.

Directions with respect to advertising

16

(1) The Welsh Authority must 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;
- (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.

(3) Directions under this paragraph--

- (a) may be either general or specific;
- (b) may be qualified or unqualified; and
- (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

(4) In giving a direction under this 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.

Fairness standards

17

It shall be the duty of the Welsh Authority to secure the observance--

- (a) in connection with the provision of their public television services, and
- (b) in relation to the programmes included in those services,

of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

Party political broadcasts

18

(1) It shall be the duty of the Welsh Authority to include--

- (a) party political broadcasts, and
- (b) referendum campaign broadcasts,

in every designated public service of theirs.

(2) The Welsh Authority must prepare, publish and from time to time review and revise their policy with respect to--

- (a) party political broadcasts and referendum campaign broadcasts; and
- (b) the manner in which they propose to perform their duty under sub-paragraph (1).

(3) The Welsh Authority's policy may, in particular, include provision for determining--

- (a) the political parties on whose behalf party political broadcasts may be made;
- (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
- (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.

(4) That policy is to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c 41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).

(5) In preparing or revising their policy with respect to the inclusion of party political broadcasts or referendum campaign broadcasts in their designated public services, the Welsh Authority must have regard to--

- (a) any views expressed for the purposes of this paragraph by the Electoral Commission; and
- (b) any rules made by OFCOM under section 333.

(6) The services that are designated public services for the purposes of this paragraph are--

- (a) S4C;
- (b) S4C Digital; and
- (c) any of the Welsh Authority's other public television services which is designated for the purposes of this paragraph by the order under section 205 approving its provision.

(7) In this paragraph--

"designated organisation", in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the Political Parties, Elections and Referendums Act 2000 in respect of that referendum; and

"referendum campaign broadcast" has the meaning given by section 127 of that Act.

Duty to publicise complaints procedures etc

19

(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--

(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 the Authority for the handling and resolution of complaints about the observance by the Authority of standards set under section 319 [or about compliance by the Authority with the requirements imposed by section 368D and section 368Q(3), except the [requirements mentioned in sub-paragraph (3)]]].

[(3) The requirements mentioned in this sub-paragraph are the requirement imposed by section 368D(1) so far as it relates to advertising and the requirement imposed by section 368D(3)(za).]

Monitoring of programmes

20

(1) It shall be the duty of the Welsh Authority--

(a) in respect of every programme included in any of their public television services, to retain a recording of the programme in the form, and for the period, specified by OFCOM;

(b) to comply with any request to produce such recordings to OFCOM for examination or reproduction; and

(c) to comply, to the extent that they are able to do so, with any request to produce to OFCOM a script or transcript of a programme included in any of their public television services.

(2) The period specified for the purposes of sub-paragraph (1)(a) must be a period not exceeding ninety days.

Compliance with international obligations

21

(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 the Authority to comply with a direction under this paragraph.

(3) Before giving a direction under this paragraph, OFCOM must consult the 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.

Services for the deaf and visually impaired

22

It shall be the duty of the Welsh Authority to observe the code for the time being in force under section 303 in the provision of--

(a) S4C Digital; and

(b) so much of any of the Welsh Authority's other public television services as is provided in digital form.

Equality of opportunity

23

- (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 the Authority, equality of opportunity--
- (a) between men and women; and
 - (b) between persons of different racial groups.
- (2) It shall be the duty of the Welsh Authority to make arrangements for promoting, in relation to employment with the Authority, the equalisation of opportunities for disabled persons.
- (3) The Welsh Authority shall also make such arrangements as they consider appropriate for the training and retraining of persons whom they employ in or in connection with--
- (a) the provision of one or more of their public services; or
 - (b) the making of programmes to be included in one or more of those services.
- (4) The Welsh Authority--
- (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.
- (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.
- (6) In this paragraph--
- "disabled" has the same meaning as in [the Equality Act 2010 or, in Northern Ireland,] the Disability Discrimination Act 1995 (c 50);
- "racial group" has the same meaning as in [the Equality Act 2010] or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (NI 6)).
- (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.
- (8) No order is to be made containing provision authorised by sub-paragraph (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

[On-demand programme services

23A

- (1) It is the duty of the Welsh Authority to comply with a direction given to them by OFCOM in relation to the establishment of procedures for the handling and resolution of complaints about compliance by the Authority with the requirements imposed by section 368D or section 368Q(3).
- (2) But OFCOM must not give any such direction in relation to the handling and resolution of complaints about compliance with the requirement imposed by section 368D(1) so far as it relates to advertising [or with the requirement imposed by section 368D(3)(za)].

Meaning of Welsh Authority's public services

24

(1) In this Part of this Schedule, references to the Welsh Authority's public services are references to the following--

- (a) S4C;
- (b) S4C Digital; and
- (c) the services the provision of which by the Authority is authorised by or under section 205.

(2) References in this Schedule to a public television service of the Welsh Authority are references to any public service of the Authority which is a television programme service.

NOTES**Initial Commencement**

To be appointed

To be appointed: see s 411(2).

Appointment

Paras 3, 4, 7, 9-24: Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Para 8: Appointment: 1 July 2004: see SI 2003/3142, art 4(4)(c) (as inserted by SI 2004/545, art 2(1), (2)).

Amendment

Para 14: in sub-para (2)(b) word omitted repealed by SI 2010/831, reg 10(3)(a).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Para 14: sub-para (2)(d) and word "; and" immediately preceding it inserted by SI 2010/831, reg 10(3)(b).

Date in force: 16 April 2010: see SI 2010/831, reg 1(1).

Para 15: in sub-para (1)(a) words "or 23A, or under section 368D" in square brackets inserted by SI 2009/2979, reg 4(1), (2)(a).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 15: in sub-para (1)(a) words from "except the requirement" to "by section 368D(3)(za)" in square brackets inserted by SI 2010/419, reg 14(1), (2).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Para 15: in sub-para (1)(b) words "or on-demand programme services" in square brackets inserted by SI 2009/2979, reg 4(1), (2)(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 15: in sub-para (2) words "or on-demand programme services" in square brackets inserted by SI 2009/2979, reg 4(1), (2)(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 15: in sub-para (5) words "or on-demand programme services" in square brackets inserted by SI 2009/2979, reg 4(1), (2)(b).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 15: in sub-para (6) words "mentioned in sub-paragraph (1)(a)" in square brackets substituted by SI 2010/419, reg 14(1), (3).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Para 19: in sub-para (2)(b) words in square brackets beginning with the words "or about compliance" inserted by SI 2009/2979, reg 4(1), (3).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 19: in sub-para (2)(b) words "requirements mentioned in sub-paragraph (3)" substituted by SI 2010/419, reg 14(1), (4).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Para 19: sub-para (3) inserted by SI 2010/419, reg 14(1), (5).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

Para 23: in sub-para (6) in definition "disability" words "the Equality Act 2010 or, in Northern Ireland," in square brackets inserted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 56(a) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

Para 23: in sub-para (6) in definition "racial group" words "the Equality Act 2010" in square brackets substituted by the Equality Act 2010, s 211(1), Sch 26, Pt 1, paras 53, 56(b) (as inserted by SI 2010/2279, arts 2, 12, Sch 1, para 5).

Date in force: 1 October 2010: see SI 2010/2317, art 2(1), (15)(b), (e)(ii); for savings see art 15 thereof.

Para 23A: inserted by SI 2009/2979, reg 4(1), (4).

Date in force: 19 December 2009: see SI 2009/2979, reg 1(1).

Para 23A: in sub-para (2) words "or with the requirement imposed by section 368D(3)(za)" in square brackets inserted by SI 2010/419, reg 14(1), (6).

Date in force: 18 March 2010: see SI 2010/419, reg 1(1).

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 108; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 105; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

Subordinate Legislation

Broadcasting (Original Productions) Order 2004, SI 2004/1652 (made under para 8(6), (7)).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 13 Financial Penalties under the Broadcasting Acts/Part 1 Broadcasting Act 1990

SCHEDULE 13

FINANCIAL PENALTIES UNDER THE BROADCASTING ACTS

Section 345

Part 1

Broadcasting Act 1990

Preliminary

1

The 1990 Act shall be amended as follows.

Revocation of television services licence

2

(1) In subsection (3) of section 18 (penalty on revocation of television services licence), for "a financial penalty of the prescribed amount" there shall be substituted "a specified financial penalty".

(2) For subsection (4) of that section (amount of penalty) there shall be substituted--

"(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of--

(a) £500,000; and

(b) 7 per cent of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of--

(a) £500,000; and

(b) 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(3D) Section 19(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above."

(3) 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 served after the commencement of this paragraph.

Licences for Channel 3 services and for Channels 4 and 5

3

(1) For subsection (2) of section 41 (penalties for failure by holder of licence for Channel 3 services, Channel 4 or Channel 5 to comply with licence conditions or directions) there shall be substituted--

"(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1)(a) shall not exceed 5 per cent of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above."

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Restricted services licences

4

(1) In subsection (2) of section 42B (application of sections 40 to 42 to licensing of restricted services), for "subsections (3) and (4)" there shall be substituted "subsections (3) to (3C)".

(2) In subsection (3) of that section--

(a) for "subsection (2)" there shall be substituted "subsections (1A) to (1C)"; and

(b) for the words from "shall not exceed whichever is the greater" onwards there shall be substituted "is the maximum penalty given by subsection (3A)."

(3) For subsection (4) of that section (penalties for failure to comply with conditions or directions) there shall be substituted--

"(3A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the qualifying revenue for the licence holder's last complete accounting period falling

within the period for which his licence has been in force ("the relevant period").

(3B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3A)(b) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(3C) Section 19(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (3A) or (3B) above."

(4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Additional television services licences

5

(1) For subsection (2) of section 55 (penalties for failure by holder of licence for additional television service to comply with licence conditions or directions) there shall be substituted--

"(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 52(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above."

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Revocation of national sound broadcasting licence

6

(1) In subsection (3) of section 101 (penalty on revocation of national sound broadcasting licence), for "a financial penalty of the prescribed amount" there shall be substituted "a specified financial penalty".

(2) For subsection (4) of that section (amount of penalty) there shall be substituted--

"(3A) The maximum amount which a person may be required to pay by way of a penalty under subsection (3) is the maximum penalty given by subsections (3B) and (3C).

(3B) In a case where the licence is revoked under this section or the penalty is imposed before the end of the first complete accounting period of the licence holder to fall within the period for which the licence is in force, the maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 7 per cent of the amount which OFCOM estimate would have been the qualifying revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

(3C) In any other case, the maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder

falling within the period for which the licence is in force.

(3D) Section 102(2) to (6) applies for estimating or determining qualifying revenue for the purposes of subsection (3B) or (3C) above."

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

- (a) the notice required by section 101(2) of the 1990 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Licences for analogue sound services

7

(1) For subsection (2) of section 110 (penalties for failure by holder of national sound broadcasting licence to comply with licence conditions or directions) there shall be substituted--

"(1A) The maximum amount which the holder of a national licence may be required to pay by way of a financial penalty imposed in pursuance of subsection (1)(a) is the maximum penalty given by subsection (1B).

(1B) The maximum penalty is whichever is the greater of--

- (a) £250,000; and
- (b) 5 per cent of the qualifying revenue for his last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(1C) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1B)(b) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1D) Section 102(2) to (6) applies for determining or estimating qualifying revenue for the purposes of subsection (1B) or (1C) above."

(2) In subsection (3) of that section (maximum penalty for failure by holder of a sound broadcasting licence that is not a national licence to comply with licence conditions or directions), for "£50,000" there shall be substituted "£250,000".

(3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Additional radio services licences

8

(1) For subsection (2) of section 120 (penalties for failure by holder of additional radio services licence to comply with licence conditions or directions) there shall be substituted--

"(1A) The amount of a financial penalty imposed on a person in pursuance of subsection (1) shall not exceed 5 per cent of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(1B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (1A) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the qualifying revenue for that accounting period.

(1C) Section 118(2) applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B) above."

(2) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend penalties under the 1990 Act

9

(1) The Secretary of State may by order amend any of the provisions of the 1990 Act specified in subparagraph (2) by substituting a different sum for the sum for the time being specified in that provision.

(2) Those provisions are--

- (a) section 18(3B)(a) and (3C)(a);
- (b) section 42B(3A)(a);
- (c) section 101(3B)(a) and (3C)(a);
- (d) section 110(1B)(a) and (3).

(3) No order is to be made under this paragraph unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 109; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 106 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (l)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 69 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 13 Financial Penalties under the Broadcasting Acts/Part 2 Broadcasting Act 1996

Part 2

Broadcasting Act 1996

Preliminary

10

The 1996 Act shall be amended as follows.

Revocation of television multiplex licences

11

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

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

"(5A) The maximum amount which a person may be required to pay by way of a penalty under subsection (5) is the maximum penalty given by subsections (5B) and (5C).

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

(a) £500,000; and

(b) 7 per cent of the amount which OFCOM estimate would have been the multiplex revenue for the first complete accounting period of the licence holder falling within the period for which the licence would have been in force.

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

(a) £500,000; and

(b) 7 per cent of the multiplex revenue for the last complete accounting period of the licence holder falling within the period for which the licence is in force.

(5D) Section 14 applies for estimating or determining multiplex revenue for the purposes of subsection (5B) or (5C) above."

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

(a) the notice required by section 11(2) of the 1996 Act, or

(b) the notice revoking the licence,

is served after the commencement of this paragraph.

Attribution of television multiplex revenue

12

(1) In subsection (1) of section 15 (attribution of multiplex revenue for the purposes of section 17(3)), for "17(3)" there shall be substituted "17(2A) and (2B)".

(2) In subsection (2) of that section (attribution for the purposes of sections 23(3) and 27(3)), for "section 23(3) or section 27(3)" there shall be substituted "sections 23(2A) to (5) and 27(2A) to (5)".

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

Multiplex licences

13

(1) In subsection (2) of section 17 (penalty for failure by holder of television multiplex licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the share of multiplex revenue attributable to the licence holder for his last complete accounting period falling within the period for which his licence has been in force ("the relevant period").

(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

(2C) Section 15(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above."

(3) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital television programme licences

14

(1) In subsection (2) of section 23 (penalty for failure by holder of digital television programme licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods."

(3) In subsection (4) of that section (meaning of "relevant accounting period"), for "subsection (3)(a)" there shall be substituted "subsection (2A)".

(4) In subsection (5) of that section, for "not yet ended, then for the purposes of subsection (3)" there shall be substituted "not ended when the penalty is imposed, then for the purposes of this section".

(5) Before subsection (6) of that section there shall be inserted--

"(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above."

(6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital additional television services licences

15

(1) In subsection (2) of section 27 (penalty for failure by holder of digital additional services licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the aggregate amount of the shares of multiplex revenue attributable to him in relation to television multiplex services and general multiplex services in respect of relevant accounting periods."

(3) In subsection (4) of that section (meaning of "relevant accounting period"), for "subsection (3)(a)" there shall be substituted "subsection (2A)".

(4) In subsection (5) of that section, for "not yet ended, then for the purposes of subsection (3)" there shall be substituted "not ended when the penalty is imposed, then for the purposes of this section".

(5) Before subsection (6) of that section there shall be inserted--

"(5B) Section 15(2) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (5) above."

(6) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend digital television penalties

16

For section 36(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted--

"(2) The provisions referred to in subsection (1) are--

(a) section 11(5B)(a) and (5C)(a);

(b) section 17(2A)(a);

(c) section 23(2A)(a); and

(d) section 27(2A)(a).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House."

Revocation of radio multiplex licences

17

(1) In section 53(5) (maximum penalty on revocation of radio multiplex licence), for "£50,000", in both places, there shall be substituted "£250,000".

(2) This paragraph applies only in a case of a revocation in relation to which--

- (a) the notice required by section 53(2) of the 1996 Act, or
- (b) the notice revoking the licence,

is served after the commencement of this paragraph.

Attribution of radio multiplex revenue

18

(1) In subsection (1) of section 57 (attribution of multiplex revenue for the purposes of sections 59(3)), for "59(3)" there shall be substituted "59(2A) and (2B)".

(2) In subsection (2) of that section, (attribution for the purposes of sections 62(3) and 66(3)), for "section 62(3) or section 66(3)" there shall be substituted "sections 62(2A) to (5) and 66(2A) to (5)".

(3) This paragraph has effect in relation only to cases in which section 59, 62 or 66 applies as amended by this Schedule.

Contraventions of conditions of radio multiplex licences

19

(1) In subsection (2) of section 59 (penalty for failure by holder of radio multiplex licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

- (a) £250,000; and
- (b) 5 per cent of the aggregate amount of the share of multiplex revenue attributable to him for his last complete accounting period falling within a period for which his licence has been in force ("the relevant period").

(2B) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (2A)(b) is to be construed as referring to 5 per cent of the amount which OFCOM estimate to be the share of multiplex revenue attributable to him for that accounting period.

(2C) Section 57(1) and (3) applies for determining or estimating the share of multiplex revenue attributable to a person for the purposes of subsection (2A) or (2B) above."

(3) In subsection (4) of that section (maximum penalty to be imposed on holder of local radio multiplex licences for failure to comply with conditions or directions), for "£50,000" there shall be substituted "£250,000".

(4) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Digital sound programme licences

20

(1) In subsection (2) of section 62 (penalty for failure by holder of digital sound programme licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods."

(3) In subsection (4) of that section (meaning of "relevant accounting period"), for "subsection (3)" there shall be substituted "subsection (2A)".

(4) In subsection (5) of that section, for "not yet ended, then for the purposes of subsection (3)" there shall be substituted "not ended when the penalty is imposed, then for the purposes of this section".

(5) After that subsection there shall be inserted--

"(5A) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).

(5B) A determination or estimate for the purposes of subsection (2A) or (5) above of the share of multiplex revenue attributable to a person in relation to television multiplex services or general multiplex services is to be in accordance with section 15(2) and (3)."

(6) In subsection (6) of that section (maximum penalty where licence is a local digital sound programme licence), for "£50,000" there shall be substituted "£250,000".

(7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Licences for digital additional sound services

21

(1) In subsection (2) of section 66 (penalty for failure by holder of digital additional sound services licence to comply with licence conditions or directions), for the words from "whichever is the greater" onwards there shall be substituted "the maximum penalty given by subsection (2A)."

(2) For subsection (3) of that section (maximum penalties) there shall be substituted--

"(2A) The maximum penalty is whichever is the greater of--

(a) £250,000; and

(b) 5 per cent of the aggregate amount of the shares of multiplex revenue attributable to him in relation to relevant multiplex services in respect of relevant accounting periods."

(3) In subsection (4) of that section (maximum penalty where licence is a local digital sound programme licence), for "£50,000" there shall be substituted "£250,000".

(4) In subsection (5) of that section (meaning of "relevant accounting period") for "subsection (3)" there shall be substituted "subsection (2A)".

(5) In subsection (6) of that section, for "not yet ended, then for the purposes of subsection (3)" there shall be substituted "not ended when the penalty is imposed, then for the purposes of this section".

(6) After that subsection there shall be inserted--

"(6A) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to national radio multiplex services is to be in accordance with section 57(2) and (3).

(6B) A determination or estimate for the purposes of subsection (2A) or (6) above of the share of multiplex revenue attributable to a person in relation to general multiplex services is to be in accordance with section 15(2) and (3)."

(7) This paragraph applies in relation to a failure to comply with a condition or direction only if it is one occurring after the commencement of this paragraph.

Power to amend digital television penalties

22

For section 69(2) and (3) (provisions that may be amended and negative resolution procedure) there shall be substituted--

"(2) The provisions referred to in subsection (1) are--

- (a) section 53(5)(a) and (b)(i);
- (b) section 59(2A)(a) and (4);
- (c) section 62(2A)(a) and (6); and
- (d) section 66(2A)(a) and (4).

(3) No order is to be made under subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House."

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 109; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 106 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (l)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt

1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 14 Media Ownership Rules/Part 1 Channel 3 Services

SCHEDULE 14

MEDIA OWNERSHIP RULES

Section 350

Part 1

Channel 3 Services

Ban on newspaper proprietors holding Channel 3 licences

1

- (1) A person is not to hold a licence to provide a Channel 3 service if--
- (a) he runs a national newspaper which for the time being has a national market share of 20 per cent or more; or
 - (b) he runs national newspapers which for the time being together have a national market share of 20 per cent or more.
- (2) ...
- (3) For the purposes of this paragraph, where there is a licence to provide a Channel 3 service, each of the following shall be treated as holding that licence--
- (a) the actual licence holder; and
 - (b) every person connected with the actual licence holder.

Restrictions on participation

2

- (1) A person who is--
- (a) the proprietor of a national newspaper which for the time being has a national market share of 20 per cent or more, or
 - (b) the proprietor of national newspapers which for the time being together have a national market share of 20 per cent or more,

is not to be a participant with more than a 20 per cent interest in a body corporate which is the holder of a licence to provide a Channel 3 service.

(2) A person who is the holder of a licence to provide a Channel 3 service is not to be a participant with more than a 20 per cent interest in a body corporate which is a relevant national newspaper proprietor.

(3) A body corporate is not to be a participant with more than a 20 per cent interest in a body corporate which holds a licence to provide a Channel 3 service if the first body corporate is one in which a relevant national newspaper proprietor is a participant with more than a 20 per cent interest.

(4) A restriction imposed by this paragraph on participation in a body corporate which is the holder of a Channel 3 licence applies equally to participation in a body corporate which controls the holder of such a

licence.

(5) Any restriction on participation imposed by this paragraph--

- (a) on the proprietor of a newspaper, or
- (b) on the holder of a licence,

is to apply as if he and every person connected with him were one person.

(6) In this paragraph "a relevant national newspaper proprietor" means a person who runs--

- (a) a national newspaper which for the time being has a national market share of 20 per cent or more; or
- (b) national newspapers which for the time being together have a national market share of 20 per cent or more.

National and local newspapers and their respective national and local market shares

3

(1) In this Part of this Schedule references to a national or local newspaper are references to a national or local newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(2) Where a newspaper is published in different regional editions on the same day, OFCOM have the power to determine whether those regional editions should be treated for the purposes of this Part of this Schedule as constituting--

- (a) one national newspaper;
- (b) two or more local newspapers; or
- (c) one national newspaper and one or more local newspapers.

(3) In the case of a newspaper which would otherwise be neither a national nor a local newspaper for the purposes of this Part of this Schedule, OFCOM have the power to determine, if they consider it appropriate to do so in the light of--

- (a) its circulation and influence in the United Kingdom, or
- (b) its circulation or influence in a part of the United Kingdom,

that the newspaper is to be treated as a national or as a local newspaper for such of those purposes as they may determine.

(4) For the purposes of this Part of this Schedule, the national market share of a national newspaper at any time is the percentage of the total number of copies of all national newspapers sold in the United Kingdom in the relevant six months which is represented by the total number of copies of that newspaper sold in the United Kingdom in that six months.

(5) ...

(6) In [sub-paragraph (4)] "the relevant six months" means the six months ending with the last whole calendar month to end before the time in question.

(7) For the purposes of [sub-paragraph (4)], the number of copies of a newspaper sold in the United Kingdom. . . during any period may be taken to be such number as is estimated by OFCOM--

- (a) in such manner, or
- (b) by reference to such statistics prepared by any other person,

as they think fit.

(8) In relation to a newspaper which is distributed free of charge (rather than sold), references in this paragraph to the number of copies sold include references to the number of copies distributed.

Construction of references to running a newspaper

4

For the purposes of this Part of this Schedule a person runs a . . . newspaper if--

- (a) he is the proprietor of the newspaper; or
- (b) he controls a body which is the proprietor of the newspaper.

...

5

...

Power to amend Part 1 of Schedule

6

The Secretary of State may by order repeal or otherwise modify any of the restrictions imposed by this Part of this Schedule.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Para 1: sub-para (2) repealed by SI 2011/1503, art 3.

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 3: sub-para (5) repealed by SI 2011/1503, arts 5, 6(1), (2).

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 3: in sub-para (6) words "sub-paragraph (4)" in square brackets substituted by SI 2011/1503, arts 5, 6 (1), (3).

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 3: in sub-para (7) words "sub-paragraph (4)" in square brackets substituted by SI 2011/1503, arts 5, 6 (1), (4)(a).

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 3: in sub-para (7) words omitted repealed by SI 2011/1503, arts 5, 6(1), (4)(b).

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 4: words omitted repealed by SI 2011/1503, arts 5, 7.

Date in force: 15 June 2011: see SI 2011/1503, art 1.

Para 5: repealed by SI 2011/1503, arts 5, 8.

Date in force: 15 June 2011: see SI 2011/1503, art 1.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 110; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 70 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Media Ownership (Radio and Cross-media) Order 2011, SI 2011/1503 (made under para 6).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 14 Media Ownership Rules/Part 2 Radio Multiplex Services

Part 2

Radio Multiplex Services

Restriction on holding of national radio multiplex licences

7

A person is not to hold more than one national radio multiplex licence at the same time.

Restriction on holding of local radio multiplex licences

8

(1) A person is not to hold any two local radio multiplex licences at the same time where the [protected area] of one of the licensed services overlaps with the [protected area] of the other in a way that means that the potential audience for one of them is or includes at least half the potential audience of the other.

(2) ...

(3) Where a person is in contravention of this paragraph in respect of the holding by him of local radio multiplex licences, that contravention is to be disregarded in relation to any time if--

(a) he held those licences immediately before the commencement of this paragraph;

(b) his holding of those licences immediately before the commencement of this paragraph was not in contravention of paragraph 11(4) of Part 3 of Schedule 2 to the 1990 Act; and

(c) there has not been a relevant change of circumstances between the commencement of this paragraph and that time.

(4) There is a relevant change of circumstances in the case of the person in contravention if another person becomes the holder of the two pre-commencement licences in relation to which the contravention arises.

(5) In sub-paragraph (4) "pre-commencement licence", in relation to a person and a time, means a local radio multiplex licence held by him immediately before the commencement of this paragraph and still held by him at that time.

[(6) In this paragraph, in relation to a local radio multiplex service--

"potential audience" means the persons who have attained the age of 15 years and reside within the protected area for that multiplex service; and

"the protected area" means--

(a) subject to paragraph (b), the area or locality specified in a notice published under section 50(1) of the 1996 Act as that in which that multiplex service is to be available; or

(b) if different from that area or locality, the area or locality specified in the relevant licence as that in which that multiplex service is to be available.

(7) In sub-paragraph (6), "the relevant licence" means the local radio multiplex licence under which the multiplex service concerned is authorised to be provided.]

Connected persons rules etc

9

For the purposes of this Part of this Schedule, where there is a licence to provide a radio multiplex service, each of the following shall be treated as holding that licence--

(a) the actual licence holder; and

(b) every person connected with the actual licence holder.

Power to amend Part 2 of Schedule

10

The Secretary of State may by order repeal or otherwise modify any of the restrictions imposed by this Part of this Schedule.

NOTES

Initial Commencement*To be appointed*

To be appointed: see s 411(2).

Appointment

Paras 7-9: Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Para 10: Appointment: 12 December 2003: see SI 2003/3142, art 2.

Amendment

Para 8: in sub-para (1) words "protected area" in square brackets in both places they occur substituted by SI 2003/3299, art 14(1), (2).

Date in force: 29 December 2003: see SI 2003/3299, art 1(2).

Para 8: sub-para (2) repealed by SI 2003/3299, art 14(1), (3).

Date in force: 29 December 2003: see SI 2003/3299, art 1(2).

Para 8: sub-para (6), (7) inserted by SI 2003/3299, art 14(1), (4).

Date in force: 29 December 2003: see SI 2003/3299, art 1(2).

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 110; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 70 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Media Ownership (Local Radio and Appointed News Provider) Order 2003, SI 2003/3299 (made under para 10).

Media Ownership (Radio and Cross-media) Order 2011, SI 2011/1503 (made under para 10).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 14 Media Ownership Rules/Part 3 Local Sound Programme Services

Part 3**Local Sound Programme Services*****Restriction on holding of local sound broadcasting licences***

11

(1) The Secretary of State may by order impose--

(a) requirements prohibiting the holding at the same time by the same person, in the circumstances

described in the order, of more than the number of local sound broadcasting licences that is determined in the manner set out in the order;

(b) requirements prohibiting a person from holding even one local sound broadcasting licence in the circumstances described in the order.

(2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from holding a local sound broadcasting licence, and the factors that may be used for determining the number of such licences that he may hold, include, in particular--

(a) whether and to what extent the coverage areas of different services provided by that person under different local sound broadcasting licences would overlap;

(b) the sizes of the potential audiences for those services and the times when those services would be made available;

(c) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for services provided under local sound broadcasting licences held by other persons;

(d) in a case in which members of potential audiences for services so provided by that person would also be members of the potential audiences for services so provided by other persons--

(i) the number of those other persons;

(ii) the coverage areas of their services;

(iii) the sizes of the potential audiences for their services; and

(iv) the times when their services are or will be made available;

(e) whether that person runs one or more national newspapers, and their national market share;

(f) whether and to what extent the whole or a part of the coverage area for a service for which that person would hold a local sound broadcasting licence is or includes an area in which one or more local newspapers run by him is circulating, and the newspapers' local market share;

(g) whether and to what extent the whole or a part the coverage area for which that person would hold a local sound broadcasting licence is or is included in the coverage area of a regional Channel 3 service for which he also holds a licence.

(3) For the purposes of this paragraph the coverage area for a service provided under a local sound broadcasting licence or a Channel 3 licence is the area in the United Kingdom within which that service is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.

Restriction applying to local digital sound programme services

12

(1) The Secretary of State may by order impose requirements, on persons holding local digital sound programme licences, prohibiting the provision by the same person, in the circumstances described in the order, of more than the number of local digital sound programme services that is determined in the manner set out in the order.

(2) The circumstances by reference to which a person may be prohibited under sub-paragraph (1) from providing a local digital sound programme service, and the factors that may be used for determining the number of such services that he may provide, include, in particular--

(a) whether and to what extent the coverage areas of different local digital sound programme services provided by that person would overlap;

- (b) the capacity used by those services on the relevant multiplexes;
- (c) the sizes of the potential audiences for those services and the times when those services would be made available;
- (d) whether and to what extent members of the potential audiences for those services would also be members of the potential audiences for local digital sound programme services provided by other persons;
- (e) in a case in which members of the potential audiences for the services provided by that person would also be members of the potential audiences for local digital sound programme services provided by other persons--
 - (i) the number of those other persons;
 - (ii) the coverage areas of their services;
 - (iii) the capacity used by their services on the relevant multiplexes;
 - (iv) the sizes of the potential audiences for their services; and
 - (v) the times when their services are or will be made available.

(3) For the purposes of this paragraph the coverage area for a service provided under a local digital sound programme licence is the area in the United Kingdom within which the relevant multiplex is capable of being received at a level satisfying such technical standards as may have been laid down by OFCOM for the purposes of the provisions of an order under this paragraph.

(4) In this paragraph "the relevant multiplex", in relation to a service provided under a local digital sound programme licence, means the local radio multiplex service in which the service provided under that licence is or is to be included.

(5) For the purposes of this paragraph a person who holds a licence to provide local digital sound programme services provides such a service if, and only if--

- (a) the service is one provided by him and is included in a local radio multiplex service for which he holds a local radio multiplex licence; or
- (b) under a contract between that person and a person who holds a licence to provide a local radio multiplex service, the person holding the licence to provide the radio multiplex service is required to include that local digital sound programme service in that multiplex service.

Powers supplemental to powers under paragraphs 11 and 12

13

(1) An order under paragraph 11 or 12 may make provision for treating--

- (a) persons who are connected with a person who holds a licence,
- (b) persons who are associates of a person who holds a licence or of a person who is connected with a person who holds a licence, and
- (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body which holds a licence or is treated as doing so by virtue of paragraph (a) or (b),

as if each of them were also a holder of the licence for the purposes of a requirement imposed under that paragraph.

(2) An order under paragraph 12 may make provision for treating--

- (a) persons who are connected with a person who provides a local digital sound programme service,
- (b) persons who are associates of a person who provides such a service or of a person who is connected with a person who provides such a service, and
- (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body who provides such a service or is treated as doing so by virtue of paragraph (a) or (b),

as if each of them were also a person providing the service for the purposes of a requirement imposed under that paragraph.

(3) An order under paragraph 11 or 12 may also make provision for treating--

- (a) persons who are connected with each other,
- (b) persons who are associates of each other, and
- (c) persons who (whether alone or together with such persons as may be described in the order) participate in a body,

as if they and such other persons who are connected with, associates of or participators in any of them as may be described in the order were the same person for the purposes of a requirement imposed under that paragraph.

(4) An order under paragraph 11 may make provision--

- (a) as to the circumstances in which a newspaper is to be treated as a national newspaper or a local newspaper for the purposes of a requirement imposed under that paragraph;
- (b) as to the person or persons who are to be treated for any such purposes as running a newspaper;
- (c) as to the determination for any such purposes of the area within which a local newspaper is circulating; and
- (d) as to what is to constitute the national market share or local market share of any newspaper or of a number of newspapers taken together;

and provision made by virtue of this paragraph may apply, with or without modifications, any of the provisions of paragraph 3 or 4 of this Schedule [or section 5(6AA) to (6AD) of the Broadcasting Act 1990].

(5) Power to make provision with respect to any matter by any order under paragraph 11 or 12 includes power--

- (a) to make provision with respect to that matter by reference to the making or giving by OFCOM, in accordance with the order, of any determination, approval or consent; and
- (b) to confer such other discretions on OFCOM as the Secretary of State thinks fit.

(6) Sub-paragraph (5) of paragraph 12 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Transitional provision for orders under paragraphs 11 and 12

14

(1) This paragraph applies where--

- (a) immediately after the coming into force of an order under paragraph 11 or 12, a person ("the person in contravention") is in contravention, in any respect, of a requirement imposed under that paragraph; and

- (b) immediately before the coming into force of the order, that person--
- (i) held one or more relevant licences; but
 - (ii) was not, in that respect, in contravention of a requirement imposed under that paragraph.
- (2) This paragraph does not apply in the case of the first order to be made under paragraph 11 or 12 if the person in contravention was, immediately before the coming into force of the order, in contravention, in relation to one or more of the relevant licences, of a requirement imposed under Part 3 or 4 of Schedule 2 to the 1990 Act.
- (3) In sub-paragraphs (1) and (2) the reference to a relevant licence is--
- (a) in relation to the coming into force of an order under paragraph 11, a local sound broadcasting licence; and
 - (b) in relation to the coming into force of an order under paragraph 12, a local digital sound programme licence.
- (4) The contravention mentioned in sub-paragraph (1)(a), to the extent that it arises by reason of the coming into force of the order, is to be disregarded (in the case of the person in contravention) in relation to any time which falls--
- (a) after the coming into force of the order; and
 - (b) before there is a relevant change of circumstances.
- (5) Where the contravention is one arising under paragraph 11 in the case of a person who held one or more local sound broadcasting licences immediately before the coming into force of the order, there is a relevant change of circumstances if--
- (a) another person becomes the holder of any of those licences, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
 - (b) the person in contravention becomes the holder of another local sound broadcasting licence.
- (6) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (5) (b) unless the licence of which the person in contravention becomes the holder is one the holding of which, with the holding of licences already held by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 11.
- (7) Where the contravention is one arising under paragraph 12 in the case of a person who, under a local digital sound programme licence, was providing one or more local digital sound programme services immediately before the coming into force of the order, there is a relevant change of circumstances if--
- (a) another person becomes the holder of that licence, otherwise than in consequence of a transaction under which the person in contravention ceases to be a holder of the licence; or
 - (b) the person in contravention becomes the provider of another local digital sound programme service provided under that licence.
- (8) A change of circumstances is not a relevant change of circumstances by virtue of sub-paragraph (7) (b) unless the service of which the person in contravention becomes the provider is one the provision of which, with the services already provided by him, would (apart from sub-paragraph (4)) constitute a contravention of a requirement imposed under paragraph 12.
- (9) For the purposes of this paragraph, in its application in relation to a contravention of a requirement imposed under paragraph 11 or 12--
- (a) references to holding a licence or providing a local digital sound programme service are to be construed in accordance with the provision having effect for the purposes of that requirement; and

(b) the persons who are taken to be holding a local digital sound programme licence immediately before the coming into force of the order include every person who at that time would, in accordance with that provision, be treated as providing local digital sound programme services that were being provided at that time under that licence.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Para 13: in sub-para (4) words "or section 5(6AA) to (6AD) of the Broadcasting Act 1990" in square brackets inserted by SI 2011/1503, arts 5, 9.

Date in force: 15 June 2011: see SI 2011/1503, art 1.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 110; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 70 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

Subordinate Legislation

Media Ownership (Local Radio and Appointed News Provider) Order 2003, SI 2003/3299 (made under paras 11-13).

Community Radio Order 2004, SI 2004/1944 (made under paras 11, 13).

Media Ownership (Radio and Cross-media) Order 2011, SI 2011/1503 (made under paras 11-13).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 14 Media Ownership Rules/Part 4 Religious Bodies Etc

Part 4

Religious Bodies Etc

Approval required for religious bodies etc to hold licences

15

(1) A person mentioned in paragraph 2(1) of Part 2 of Schedule 2 to the 1990 Act (religious bodies etc) is not to hold a Broadcasting Act licence not mentioned in paragraph 2(1A) of that Part unless--

(a) OFCOM have made a determination in his case as respects a description of licences applicable to

that licence; and

(b) that determination remains in force.

(2) OFCOM are to make a determination under this paragraph in a person's case and as respects a particular description of licence if, and only if, they are satisfied that it is appropriate for that person to hold a licence of that description.

(3) OFCOM are not to make a determination under this paragraph except on an application made to them for the purpose.

(4) OFCOM must publish guidance for persons making applications to them under this paragraph as to the principles that they will apply when determining for the purposes of sub-paragraph (2) what is appropriate.

(5) OFCOM must have regard to guidance for the time being in force under sub-paragraph (4) when making determinations under this paragraph.

(6) OFCOM may revise any guidance under sub-paragraph (4) by publishing their revisions of it.

(7) The publication of guidance under sub-paragraph (4), or of any revisions of it, is to be in whatever manner OFCOM consider appropriate.

Power to amend Part 4 of Schedule

16

The Secretary of State may by order repeal or otherwise modify the restriction imposed by this Part of this Schedule.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2; for transitional provisions see art 5 thereof.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 110; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 14 Media Ownership Rules/Part 5 Supplemental Provisions of Schedule

Part 5

Supplemental Provisions of Schedule***Procedure for orders*****17**

- (1) Before making an order under any provision of this Schedule (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.
- (2) No order is to be made containing provision authorised by any provision of this Schedule unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Interpretation of Schedule**18**

- (1) Part 1 of Schedule 2 to the 1990 Act applies for construing this Schedule as it applies for construing Part 2 of that Schedule.
- (2) References in this paragraph to an area overlapping another include references to its being the same as, or lying wholly inside, the other area.

NOTES**Initial Commencement*****To be appointed***

To be appointed: see s 411(2).

Appointment

Para 17: Appointment (for the purposes of Sch 14, para 16 hereto): 18 September 2003: see SI 2003/1900, art 2(2), Sch 2; for transitional provisions see art 5 thereof.

Para 17: Appointment (for remaining purposes): 12 December 2003: see SI 2003/3142, art 2.

Para 18: Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 110; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 107; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 15 Amendments of Broadcasting Acts/Part 1 Amendments of the 1990 Act

SCHEDULE 15**AMENDMENTS OF BROADCASTING ACTS**

Section 360

Part 1

Amendments of the 1990 Act

Licences under Part 1

1

- (1) Section 3 of the 1990 Act (licensing under Part 1) shall be amended as follows.
 - (2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".
 - (3) In subsection (1), for "Chapter II, III, IV or V of this Part" there shall be substituted "Chapter 2 or 5 of this Part or section 235 of the Communications Act 2003".
 - (4) For subsection (8) (saving for telecommunications licences) there shall be substituted--
- "(8) The holding by a person of a licence under this Part shall not relieve him of--
- (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
 - (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services)."

General licence conditions

2

- (1) Section 4 of the 1990 Act (general licence conditions) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), in each of paragraphs (a) and (c), after "this Act" there shall be inserted ", the Broadcasting Act 1996 or the Communications Act 2003".
- (4) In subsection (3) (fixing of fees), the words from "and the amount" onwards shall be omitted.
- (5) In subsection (5) (provision of false information to be breach of condition)--
 - (a) for "imposed under this Part" there shall be substituted "contained in the licence"; and
 - (b) after "and 42" there shall be inserted "or (as the case may be) sections 237 and 238 of the Communications Act 2003 (enforcement of television licensable content service licences)".

Restrictions on licence holding

3

- (1) Section 5 of the 1990 Act (restrictions on licence holding) shall be amended as follows.
- (2) For "The Commission" and "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be

inserted--

"(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting--

(i) shareholdings in the body; or

(ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining--

(i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or

(ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;".

(4) In subsection (6)--

(a) in paragraph (a), for "complained of" there shall be substituted "constituting their grounds for revoking the licence"; and

(b) in paragraph (b)(i), for "Parts III and IV of Schedule 2" there shall be substituted "the requirements imposed by or under Schedule 14 to the Communications Act 2003,".

(5) In subsection (6A)--

(a) paragraph (a) shall cease to have effect; and

(b) in paragraph (b), for "Part IV of that Schedule" there shall be substituted "Part 1 of Schedule 14 to the Communications Act 2003".

(6) Subsection (6B) shall cease to have effect.

(7) In subsection (7), for the words from "a failure" to the end of paragraph (c) there shall be substituted "a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003".

Repeal of previous regulatory regime

4

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

Prohibition on providing television services without a licence

5

(1) Section 13 of the 1990 Act (prohibition on providing television services without a licence) shall be amended as follows.

(2) In subsection (1) (offence of providing such service without a licence), for "service falling within section 2(1)(a), (aa), (b), (c), (cc) or (d)" there shall be substituted "relevant regulated television service".

(3) After that subsection there shall be inserted--

"(1A) In subsection (1) "relevant regulated television service" means a service falling, in pursuance of section 211(1) of the Communications Act 2003, to be regulated by OFCOM, other than a television multiplex service."

(4) In subsection (2) (exemption orders made after consulting the ITC), for "the Commission" there shall be substituted "OFCOM".

Television broadcasting on Channel 3

6

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

Applications for Channel 3 licences

7

(1) Section 15 of the 1990 Act (applications for Channel 3 licences) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2), for "specified in section 16(2) or (3) (as the case may be)" there shall be substituted

"that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to--

- (a) the public service remit for that service,
- (b) programming quotas,
- (c) news and current affairs programmes, and
- (d) programme production and regional programming."

(4) In subsection (3)--

- (a) in paragraph (b), for "specified in section 16(2) or (3) (as the case may be)" there shall be substituted

"that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to--

- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) programme production and regional programming";

- (b) paragraphs (c) to (e) shall be omitted.

- (5) After subsection (3) there shall be inserted--
- "(3A) For the purposes of subsection (1)(d)(ii)--
- (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage."
- (6) In subsection (4), for "paragraphs (b) to (e)" there shall be substituted "paragraphs (b)".

Procedure on consideration of applications for Channel 3 licences

8

- (1) Section 16 of the 1990 Act (consideration of applications for Channel 3 licences) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), for "specified in subsection (2) or (3) below (as the case may be)" there shall be substituted
- "that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to--
- (i) the public service remit for that service,
 - (ii) programming quotas,
 - (iii) news and current affairs programmes, and
 - (iv) programme production and regional programming".
- (4) Subsections (2) and (3) of that section shall cease to have effect.
- (5) In subsection (4) of that section--
- (a) for "specified in subsection (2) or (3) (as the case may be)," there shall be substituted

- "that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to--
- (a) the public service remit for that service,
 - (b) programming quotas,
 - (c) news and current affairs programmes, and
 - (d) programme production and regional programming,";
- (b) the words from "and in applying" onwards shall be omitted.
- (6) Subsections (5) to (8) shall cease to have effect.

Television broadcasting on Channel 3

9

(1) Section 17 of the 1990 Act (award of licences to person submitting highest bid) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (12)(b), for "specified in section 16(2) or (3) (as the case may be)" there shall be substituted

"that have to be imposed under Chapter 4 of Part 3 of the Communications Act 2003 by conditions relating to--

- (i) the public service remit for that service,
- (ii) programming quotas,
- (iii) news and current affairs programmes, and
- (iv) programme production and regional programming".

Financial conditions of licence and failures to begin a service

10

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

Changes of control in period after award of licence

11

(1) Section 21 of the 1990 Act (changes of control in period immediately after award of licence) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2), in the definition of "associated programme provider", for the words from "appears" to "inclusion" there shall be substituted "is or is likely to be involved, to a substantial extent, in the provision of the programmes included".

Temporary provision of Channel 3 service for an additional area

12

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

Appointment of members of C4 Corporation

13

In section 23 of the 1990 Act (appointment of C4C members), for "the Commission", wherever occurring,

there shall be substituted "OFCOM".

Channel 4 licence

14

In section 24(3) of the 1990 Act (Channel 4 licence), for "the Commission" there shall be substituted "OFCOM".

Channel 5

15

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

16

(1) In section 29 of the 1990 Act (application to Channel 5 of Channel 3 provisions)--

- (a) subsection (2)(b) and the word "and" immediately preceding it, and
- (b) subsection (3),

shall cease to have effect.

(2) In subsection (2)(a) of that section, for "the Commission" there shall be substituted "OFCOM".

Announcement of programme Schedules

17

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

Enforcement of conditions of Channel 3, Channel 4 and Channel 5 licences

18

(1) In sections 40 to 42 of the 1990 Act (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 provisions relating to the enforcement of directions under Part 1 of that Act), after "this Part", in each place, there shall be inserted ", Part 5 of the Broadcasting Act 1996 or Part 3 of the Communications Act 2003".

Restricted services

19

In section 42B(1) of the 1990 Act (licensing of restricted services), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

Additional television services

20

(1) Section 48 of the 1990 Act (additional services) shall be further amended as follows.

(2) In subsection (1)--

(a) for "telecommunication" there shall be substituted "electronic"; and

(b) for paragraphs (a) and (b) there shall be substituted "on a relevant frequency".

(3) In subsection (2), for paragraphs (a) and (b) there shall be substituted

"any part of the signals which--

(a) is not required for the purposes of the television broadcasting service for the purposes of which the frequency has been made available; and

(b) is determined by OFCOM to be available for the provision of additional services;".

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

"(2A) For the purposes of this Part, if they consider it appropriate to do so, OFCOM may, while an additional services licence is in force, from time to time modify the determination made under subsection (2)(b) for the purposes of that licence in any manner that does not reduce the amount of spare capacity made available for the licensed services; and when so modified any such licence shall have effect accordingly."

(5) In subsection (3)--

(a) for "The Commission" there shall be substituted "OFCOM"; and

(b) for "(2)(a)" there shall be substituted "(2)(b)"; and

(c) for paragraphs (a) to (c) there shall be substituted--

"(a) to the obligations contained in any code under section 303 of the Communications Act 2003 by virtue of subsection (5) of that section; and

(aa) to any need of the person providing the television broadcasting service in question to be able to use part of the signals carrying it for providing services (in addition to those provided for satisfying those obligations) which--

(i) are ancillary to programmes included in the service and directly related to their contents; or

(ii) relate to the promotion or listing of such programmes."

(6) In subsection (4), for paragraphs (a) and (b) there shall be substituted--

"(a) to provide services for the satisfaction in his case of obligations mentioned in subsection (3)(a); and

(b) to provide in relation to his television broadcasting service any such services as are mentioned in subsection (3)(aa)."

(7) For subsection (6) there shall be substituted--

"(6) In this section--

"electronic signals" means signals within the meaning of section 32 of the Communications Act 2003;

"relevant frequency" means a frequency made available by OFCOM for the purposes of a television broadcasting service."

(8) This paragraph does not affect the validity of a licence granted or last renewed before the television transfer date, or the services licensed by any such licence.

Licensing of additional television services

21

(1) Section 49 of the 1990 Act (licensing of additional television services) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1), for the words from "of the following" to "48(1)(b)" there shall be substituted "relevant frequency".

(4) For subsections (2) and (3) there shall be substituted--

"(1A) An additional services licence is not required for an additional service that is comprised in the public teletext service (within the meaning of Part 3 of the Communications Act 2003)."

(5) In subsection (10), at the end there shall be inserted "and "relevant frequency" has the same meaning as in section 48."

Applications for additional services licences

22

(1) Section 50 of the 1990 Act (applications for additional services licences) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)(b)(ii), the words "(subject to the approval of the Secretary of State)" shall be omitted.

(4) Subsection (7) shall cease to have effect.

Procedure on application etc for additional television services licences

23

(1) Section 51 of the 1990 Act (consideration of applications for licences for additional television services) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted--

"(a) that the technical plan submitted under section 50(3)(b), in so far as it involves the use of an

electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and".

- (4) Subsections (2) and (7) shall cease to have effect.

Additional payments in respect of additional television services licences

24

In section 52 of the 1990 Act (additional payments in respect of additional television services licences), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

Duration of additional television services licences

25

(1) Section 53 of the 1990 Act (duration and renewal of additional television services licences) shall be amended as follows.

(2) In subsection (1), for the words before paragraph (a) there shall be substituted--

"(1) A licence to provide additional services on a frequency which is a relevant frequency for the purposes of section 48 or (in the case of a licence granted before the television transfer date) was assigned under section 65--".

(3) In subsection (2), after "not later than" there shall be inserted "the day falling three months before".

(4) In subsections (4) to (11), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

(5) In subsection (8), for the words from "payable" onwards there shall be substituted "the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 50(3)."

(6) After that subsection there shall be inserted--

"(8A) For the purposes of subsection (7)(b)--

- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage."

(7) After subsection (11) there shall be inserted--

"(12) A determination for the purposes of subsection (11)--

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question.

(13) In this section "the television transfer date" has the same meaning as in the Communications Act 2003."

Additional television services not to interfere with other transmissions

26

(1) Section 54 of the 1990 Act (additional television services not to interfere with other transmissions)

shall be amended as follows.

- (2) In subsection (1), for "the Commission" there shall be substituted "OFCOM".
- (3) Subsection (2) shall cease to have effect.

Enforcement of additional television services licences

27

- (1) Section 55 of the 1990 Act (further provision in relation to additional television services licences) shall be amended as follows.
- (2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (4) at the end there shall be inserted "and, in the case of a licence renewed under section 53 as if the reference in section 42(4) to the end of the period for which the licence is to continue in force were a reference to the end of the period for which it has been renewed."

The Welsh Authority

28

- (1) Section 58 of the 1990 Act (sources of programmes for S4C) shall be amended as follows.
- (2) In subsection (1), for "comply with their duty under section 57(2)(b)" there shall be substituted "fulfil so much of their public service remit in relation to S4C under paragraph 3 of Schedule 12 to the Communications Act 2003 as is contained in sub-paragraph (2)(a) and (b) of that paragraph".
- (3) In subsection (2)(a), for "comply with section 57(3)" there shall be substituted "fulfil so much of their public service remit in relation to S4C under paragraph 3 of Schedule 12 to the Communications Act 2003 as is contained in sub-paragraph (2)(c) of that paragraph".
- (4) After subsection (5) there shall be inserted--
- "(6) In this section "programme" does not include an advertisement."

Distribution of licensed public service channels

29

- (1) Section 66 of the 1990 Act (requirements relating to transmission and distribution of services) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsections (1) and (2), for "for general reception" there shall be substituted "so as to be available for reception by members of the public".
- (4) After subsection (2) there shall be inserted--
- "(2A) In subsections (1) and (2) "available for reception by members of the public" shall be construed in accordance with section 361 of the Communications Act 2003".

Enforcement of licences held by BBC companies

30

In section 66A of the 1990 Act (enforcement of licences held by BBC companies), for "the Commission",

wherever occurring, there shall be substituted "OFCOM".

Interpretation of Part 1

31

- (1) Section 71 of the 1990 Act (interpretation) shall be amended as follows.
- (2) For the definitions of "S4C" and "on S4C" there shall be substituted--
 ""S4C" has the same meaning as in Part 3 of the Communications Act 2003;".
- (3) For the definitions of "television broadcasting service" and "television programme service" there shall be substituted--
 ""television broadcasting service", "television licensable content service" and "television programme service" each has the same meaning as in Part 3 of the Communications Act 2003;".

Licensing functions of OFCOM

32

- (1) Section 85 of the 1990 Act (licensing of independent radio services) shall be amended as follows.
- (2) In subsections (1) and (2), for "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), for "such licences to provide independent radio services as they may determine" there shall be substituted "licences to provide relevant independent radio services".
- (4) Subsections (3) and (4) (duty to secure the meeting of a variety of tastes and interests and to ensure fair and effective competition) shall cease to have effect.
- (5) After subsection (7) there shall be inserted--
 "(8) In this section "relevant independent radio services" means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003--
 (a) sound broadcasting services;
 (b) radio licensable content services;
 (c) additional radio services."

Licences under Part 3 of the 1990 Act

33

- (1) Section 86 of the 1990 Act (licences under Part 3) shall be amended as follows.
- (2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) For subsection (9) of that section there shall be substituted--
 "(9) The holding of a licence by a person shall not relieve him of--
 (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or

(b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services)."

General licence conditions

34

- (1) Section 87 of the 1990 Act (general licence conditions) shall be amended as follows.
- (2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), in each of paragraphs (a) and (d), after "this Act" there shall be inserted ", the Broadcasting Act 1996 or the Communications Act 2003".
- (4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word "or" immediately preceding it shall be omitted.
- (5) In subsection (3) (fixing of fees), the words from "and the amount" onwards shall be omitted.

Restrictions on holding licences

35

- (1) Section 88 of the 1990 Act (restrictions on the holding of licences) shall be amended as follows.
- (2) For "The Authority" and "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted--

"(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting--

- (i) shareholdings in the body; or
- (ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining--

- (i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2; or
- (ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;".

- (4) In subsection (6)--
 - (a) in paragraph (a), for "complained of" there shall be substituted "constituting their grounds for revoking the licence"; and
 - (b) in paragraph (b)(i), for "Parts III and IV of Schedule 2" there shall be substituted "the requirements imposed by or under Schedule 14 to the Communications Act 2003".
- (5) In subsection (6A)--

- (a) paragraph (a) shall cease to have effect; and
 - (b) in paragraph (b), for "Part IV of that Schedule" there shall be substituted "Part 1 of Schedule 14 to the Communications Act 2003".
- (6) Subsection (6B) shall cease to have effect.
- (7) In subsection (7), for the words from "a failure" to the end of paragraph (c) there shall be substituted "a disqualification under Part 2 of Schedule 2 to this Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,".

Disqualification of persons convicted of transmission offences

36

- (1) Section 89 of the 1990 Act (offences giving rise to disqualification) shall be amended as follows.
- (2) In subsection (1), for paragraph (a) there shall be substituted--
- "(a) an offence under section 1(1) of the Wireless Telegraphy Act 1949 ("the 1949 Act") consisting in the establishment or use of a station for wireless telegraphy, or the installation or use of wireless telegraphy apparatus, for the purpose of making a broadcast (within the meaning of section 9 of the Marine, &c., Broadcasting (Offences) Act 1967);
 - (aa) an offence under section 1A of the 1949 Act (keeping wireless telegraphy station or apparatus available for unauthorised use) where the relevant contravention of section 1 would constitute an offence falling within paragraph (a);
 - (ab) an offence under section 1B or 1C of the 1949 Act (unlawful broadcasting offences);".
- (3) In subsection (3), for the words from "concerned" onwards there shall be substituted "concerned in--
- (a) the provision of the licensed service or the making of programmes included in it; or
 - (b) the operation of a station for wireless telegraphy used for broadcasting the service."
- (4) This paragraph does not impose a disqualification in respect of any offence committed before the commencement of this paragraph.

Offence of providing regulated radio services

37

- (1) Section 97 of the 1990 Act (prohibition on providing services without a licence) shall be amended as follows.
- (2) In subsection (1), for the words from "independent" to "84(1)(d), (e) or (f)" there shall be substituted "relevant regulated radio service".
- (3) After that subsection there shall be inserted--
- "(1A) In subsection (1) "relevant regulated radio service" means a service falling to be regulated by OFCOM under section 245 of the Communications Act 2003, other than a radio multiplex service."
- (4) In subsection (2) (exemption orders made after consulting the Radio Authority), for "the Authority"

there shall be substituted "OFCOM".

Applications for national licences

38

- (1) Section 98 of the 1990 Act (applications for national licences) shall be amended as follows.
- (2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (3)(a) (proposals to accompany application)--
 - (a) the word "both", and
 - (b) sub-paragraph (ii) and the word "and" immediately preceding it,
 shall be omitted.
- (4) After subsection (3) there shall be inserted--

"(3A) For the purposes of subsection (1)(d)(ii)--

 - (a) different percentages may be specified for different accounting periods; and
 - (b) the percentages that may be specified for an accounting period include a nil percentage."
- (5) In subsection (4) (provision of further information), after "paragraphs (a)," there shall be inserted "(aa),".
- (6) In subsection (6)(b) (publication of details of successful applicant), after "subsection (3)(a)" there shall be inserted "and (aa)".

Consideration of applications for a national licence

39

- (1) Section 99 of the 1990 Act (consideration of applications for national licence) shall be amended as follows.
- (2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In paragraph (a) of subsection (1) (proposals to accompany application)--
 - (a) the word "both", and
 - (b) sub-paragraph (ii) and the word "and" immediately preceding it,
 shall be omitted.
- (4) In paragraph (b) of that subsection, after "maintain that service" there shall be inserted "and any proposed simulcast radio service corresponding to that service".

Award of national licences

40

In section 100 of the 1990 Act (award of national licences to person submitting highest cash bid), for "the

Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

Failure to begin providing licensed service

41

(1) Section 101 of the 1990 Act (failure to begin providing licensed service) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)--

(a) in paragraph (a) for "the service in question" there shall be substituted "the licensed national service or that he does not intend to provide a corresponding simulcast radio service that he is required to provide by a condition imposed under section 100A"; and

(b) in paragraph (b), for "that service" there shall be substituted "the licensed national service or any such simulcast radio service".

(4) In subsection (2), for "the service in question" there shall be substituted "the licensed national service or the simulcast radio service".

Additional payments in respect of national licences

42

In section 102 of the 1990 Act (additional payments in respect of national licences), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Restrictions affecting change in control of holder of national licence

43

(1) Section 103 of the 1990 Act (restrictions on change of control of national licence) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2) (interpretation)--

(a) in the definition of "associated programme provider", for the words from "appears" to "inclusion" there shall be substituted "is or is likely to be involved, to a substantial extent, in the provision of the programmes included"; and

(b) in the words after the definition of "the relevant period", for the words from "as if" onwards there shall be substituted "as it has effect for the purposes of that Schedule."

Renewal of national licences

44

(1) Section 103A of the 1990 Act (renewal of national licences) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1), for "eight" there shall be substituted "twelve".

(4) In subsection (2), after "not later than" there shall be inserted "the day falling three months before".

(5) In subsection (3), paragraph (a) and in paragraph (b) the words "in any other case" shall cease to have effect.

(6) In subsection (4), for paragraph (b) there shall be substituted--

"(b) the applicant gave notice to OFCOM, within the period of one month beginning with the commencement of section 42 of the Broadcasting Act 1996, of his intention to provide a simulcast radio service, and".

(7) For subsection (7) there shall be substituted--

"(7) The amount determined under subsection (6)(b) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 98.

(7A) For the purposes of subsection (6)(c)--

- (a) different percentages may be specified for different accounting periods; and
- (b) the percentages that may be specified for an accounting period include a nil percentage."

(8) After subsection (10) there shall be inserted--

"(10A) In the case of a pre-transfer national licence (including one for a period extended under section 253 of the Communications Act 2003)--

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a national licence granted by OFCOM under this Part after the radio transfer date."

(9) After subsection (11) there shall be inserted--

"(12) A determination for the purposes of subsection (11)--

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question."

Applications for local licences

45

(1) Section 104 of the 1990 Act (application for local licences) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (6), for the words from the beginning to "shall be made" there shall be substituted "An application for a licence to provide a restricted service shall be made".

Renewal of local licences

46

- (1) Section 104A of the 1990 Act (renewal of local licences) shall be amended as follows.
- (2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), for "eight" there shall be substituted "twelve".
- (4) In subsection (3), after "not later than" there shall be inserted "the day falling three months before".
- (5) After subsection (12) there shall be inserted--

"(12A) In the case of a pre-transfer local licence (including one for a period extended under section 253 of the Communications Act 2003)--

- (a) the licence is not to be capable of being renewed under this section if it has already been renewed under this section before the radio transfer date; and
- (b) on the renewal of the licence, it shall be the duty of OFCOM to secure that the renewed licence contains only such provision as would be included in a local licence granted by OFCOM under this Part after the radio transfer date."

(6) In subsection (13)(d), for "paragraph 3A of Part I of Schedule 2" there shall be substituted "paragraph 8(2) of Schedule 14 to the Communications Act 2003".

(7) After subsection (13) there shall be inserted--

"(14) A determination for the purposes of subsection (13)(c)--

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question."

Special procedure for applications for local licences

47

- (1) Section 104B of the 1990 Act (special procedure for applications for local licences) shall be amended as follows.
- (2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) After subsection (1) there shall be inserted--

"(1A) In subsection (1)(c) the reference to the service in question, in relation to a case in which it is a pre-transfer local licence that is due to expire, is a reference to the equivalent local service for which a licence is capable of being granted at times on or after the radio transfer date."

Special requirements relating to grant of local licences

48

- (1) Section 105 of the 1990 Act (special requirements relating to grant of local licences) shall be amended as follows.
- (2) For "the Authority" there shall be substituted "OFCOM".
- (3) For paragraph (d) (duty to have regard to the extent to which proposed service supported by persons living in the area) there shall be substituted--

"(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service."

Requirements as to character and coverage of services

49

In subsections (1) to (4) and (6) of section 106 of the 1990 Act (requirements as to character and coverage of services), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Enforcement of licences

50

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

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

51

(1) Section 111B of the 1990 Act (power to suspend licence to provide satellite service) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)--

(a) in paragraph (a), for "satellite service" there shall be substituted "radio licensable content service";

(b) in paragraph (b), for the words from "included in the licence" to the end of the paragraph there shall be substituted "which in compliance with section 263 of the Communications Act 2003 is included in the licence for the purpose of securing the objective mentioned in section 319(2)(b) of that Act, and".

Additional radio services

52

(1) Section 114 of the 1990 Act (additional radio services) shall be amended as follows.

(2) In subsection (1)--

(a) for "telecommunication" there shall be substituted "electronic"; and

(b) for paragraphs (a) and (b) there shall be substituted "on a relevant frequency".

(3) In subsection (2), for paragraphs (a) and (b) there shall be substituted

"any part of the signals which--

(a) is not required for the purposes of the sound broadcasting service for the purposes of which the frequency has been made available; and

(b) is determined by OFCOM to be available for the provision of additional services;"

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

"(2A) At any time while an additional services licence is in force, OFCOM may, if they consider it appropriate to do so, modify or further modify the determination made for the purposes of that licence under subsection (2)(b); and where there has been such a modification or further modification, the licence shall have effect accordingly.

(2B) A modification or further modification under subsection (2A) must not reduce the amount of spare capacity made available for the licensed services."

(5) In subsection (3), for the words from the beginning to "subsection (2)(a)" there shall be substituted "OFCOM shall, when determining under subsection (2)".

(6) For subsection (6) there shall be substituted--

"(6) In this section "electronic signal" means a signal within the meaning of section 32 of the Communications Act 2003.

(7) In this section and section 115 "relevant frequency" means a frequency made available by OFCOM for the purposes of a sound broadcasting service."

(7) This paragraph does not affect the validity of a licence granted or last renewed before the radio transfer date, or the services licensed by any such licence.

Licensing of additional radio services

53

(1) Section 115 of the 1990 Act (licensing of additional radio services) shall be amended as follows.

(2) For "The Authority" and "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1), for the words from "of the following" to "114(1)(b)" there shall be substituted "relevant frequency".

(4) In subsection (4), at the end there shall be inserted "and who would not be in contravention of the requirements imposed by or under Schedule 14 to the Communications Act 2003 if he held such a licence".

(5) In subsection (8), for "local, restricted or satellite service" there shall be substituted "local or restricted service or to provide a radio licensable content service".

Applications for additional radio services licences

54

(1) Section 116 of the 1990 Act (applications for additional radio services licences) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)(b)(iii), the words "(subject to the approval of the Secretary of State)" shall be omitted.

Procedure for awarding additional radio services licences

55

(1) Section 117 of the 1990 Act (procedure for awarding additional radio services licences) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1), for paragraph (a) (requirement of approval of technical plans) there shall be substituted--

"(a) that the technical plan submitted under section 116(3)(b), in so far as it involves the use of an electronic communications network (within the meaning of the Communications Act 2003), contains proposals that are acceptable to them; and".

(4) Subsections (2) and (7) shall cease to have effect.

Additional payments in respect of additional radio services licences

56

In section 118 of the 1990 Act (additional payments in respect of additional radio services licences), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Additional radio services not to interfere with other transmissions

57

(1) Section 119 of the 1990 Act (additional radio services not to interfere with other transmissions) shall be amended as follows.

(2) In subsection (1), for "the Authority" there shall be substituted "OFCOM".

(3) Subsection (2) shall cease to have effect.

Enforcement of additional radio services licences

58

In section 120 of the 1990 Act (enforcement of additional radio services licences), for "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

Interpretation

59

In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3)--

(a) for the definition of "independent radio service" there shall be substituted--

""independent radio service" means a service falling to be regulated under section 245 of the Communications Act 2003;";

(b) for the definitions of "local service", "national service", "restricted service" and "satellite service" there shall be substituted--

"local service", "national service" and "restricted service" each has the same meaning as in section 245 of the Communications Act 2003;

"pre-transfer local licence" and "pre-transfer national licence" each has the same meaning as in section 253 of that Act;

"radio licensable content service" has the same meaning as in Part 3 of that Act;

"radio transfer date" has the same meaning as in that Act;";

(c) in the definition of "sound broadcasting service" for the words from "(as defined" to the end there shall be substituted "(within the meaning of Part 3 of the Communications Act 2003);".

Duty to provide advance information about programmes

60

In column 1 of the Table in section 176(7) of the 1990 Act (persons who are the providers of services for the purposes of the obligations to give advance information about programmes)--

(a) for "regulation by the Independent Television Commission" there shall be substituted "regulation by OFCOM";

(b) for "The television broadcasting service provided by the Welsh Authority and the service referred to in section 57(1A)(a)" there shall be substituted "The public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003);

(c) for "section 84(2)(a)(i)" there shall be substituted "section 126(1)";

(d) for "the Radio Authority", in both places, there shall be substituted "OFCOM".

Proscription of foreign satellite services

61

(1) Section 177 of the 1990 Act (proscription of foreign satellite stations) shall be amended as follows.

(2) In subsection (2), for "the Independent Television Commission or the Radio Authority consider that the quality of any relevant" there shall be substituted "OFCOM consider that the quality of any".

(3) In subsection (3), for the words from the beginning to "Authority" there shall be substituted "OFCOM".

(4) In subsection (6), the definition of "relevant foreign satellite service" shall be omitted.

Financing of Gaelic Broadcasting

62

(1) Section 183 of the 1990 Act (financing of Gaelic Broadcasting) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2), for "by them under this section to be" there shall be substituted "by the Independent Television Commission under this section and".

(4) This paragraph--

- (a) so far as it relates to subsection (1) of section 183 has effect in relation only to financial years beginning after the television transfer date; and
- (b) so far as it relates to subsection (2) of that section does not apply to amounts paid for earlier financial years.

Gaelic Broadcasting in Scotland

63

- (1) *Section 184 of the 1990 Act (broadcasting of programmes in Gaelic on Channel 3 in Scotland) shall be amended as follows.*
- (2) *In subsection (1), for the words "subsection (2)" there shall be substituted "subsection (1)(a)".*
- (3) *In subsection (3), for the words from "The conditions" to "the purpose of" there shall be substituted "The regulatory regime for a service to which this section applies includes the conditions that OFCOM consider appropriate for".*
- (4) *After that subsection there shall be inserted--*
"(3A) Section 263 of the Communications Act 2003 (regulatory regime) applies in relation to conditions included by virtue of subsection (3) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act."
- (5) *In subsection (4)(b), for "the Commission" there shall be substituted "OFCOM".*

Maintenance of the national television archive

64

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

Modification of networking arrangements

65

- (1) *Section 193 of the 1990 Act (modification of networking arrangements in consequence of competition legislation) shall be amended as follows.*
- (2) *In subsection (1), for the words from "the Office of Fair Trading" to "relevant authority)" there shall be substituted "the relevant authority".*
- (3) *After subsection (2) there shall be inserted--*
"(2A) In subsection (1), "relevant authority" means--
 - (a) *in relation to a relevant order falling within subsection (2)(a), the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State;*

(b) in relation to a relevant order falling within subsection (2)(b), the Office of Fair Trading, the Competition Commission, the Secretary of State or (as the case may be) OFCOM."

(4) In subsection (4), for "section 39(1) above" there shall be substituted "section 290(4) of the Communications Act 2003".

Search warrants

66

(1) Section 196 of the 1990 Act (grant of search warrant to person authorised by the Independent Television Commission or the Radio Authority) shall be amended as follows.

(2) In subsection (1), for "the relevant authority" there shall be substituted "OFCOM".

(3) Subsection (2) (definition of "relevant authority") shall be omitted.

Notices

67

In section 199(5) of the 1990 Act (publication of notices), for paragraphs (a) and (b) there shall be substituted "by OFCOM under section 21, 41, 42, 55, 103, 109, 110, 111 or 120".

Interpretation

68

(1) Section 202 of the 1990 Act (general interpretation) shall be amended as follows.

(2) In subsection (1), after the definition of "modifications" there shall be inserted--

""OFCOM" means the Office of Communications;".

(3) After subsection (6) there shall be inserted--

"(6A) Subsections (2) and (3) of section 362 of the Communications Act 2003 (persons by whom services provided) are to apply for the purposes of this Act as they apply for the purposes of Part 3 of that Act."

Disqualified persons

69

(1) Schedule 2 to the 1990 Act (restrictions on the holding of licences) shall be amended as follows.

(2) In paragraph 1(1) of Part 1, after the definition of "associate" there shall be inserted--

""Broadcasting Act licence" means a licence under Part 1 or 3 of this Act or Part 1 or 2 of the Broadcasting Act 1996;".

(3) In paragraph 1(6) of Part 1 (meaning of "more than a 20 per cent interest"), for "20 per cent", wherever occurring, there shall be substituted "5 per cent".

- (4) In Part 2 (disqualified persons), for "a licence granted by the Commission or the Authority", wherever occurring, there shall be substituted "a Broadcasting Act licence".
- (5) In paragraph 1(1)(i) of Part 2 (bodies controlled by persons falling within paragraphs (a) to (g)), for "(a)" there shall be substituted "(c)".
- (6) In paragraph 3(1) of Part 2, for "by the Authority" there shall be substituted "under Part 3 of this Act or Part 2 of the Broadcasting Act 1996".
- (7) In paragraph 4(1) of Part 2, for "that body" there shall be substituted "OFCOM".
- (8) In paragraph 4(2) of Part 2--
- (a) in paragraph (a), for "by the Commission, means a body" there shall be substituted "under Part 1 of this Act or Part 1 of the Broadcasting Act 1996, means a person"; and
- (b) in paragraph (b), for "by the Authority, means a body" there shall be substituted "under Part 3 of this Act or Part 2 of the Broadcasting Act 1996, means a person".
- (9) In paragraph 5A of Part 2--
- (a) in sub-paragraph (1)(a), the words "granted by the Commission",
- (b) sub-paragraph (1)(b) and the word "and" immediately preceding it,
- (c) in sub-paragraph (2), the words "granted by the Authority",
- shall be omitted.

C4C

70

- (1) Schedule 3 to the 1990 Act (provision about constitution and management of C4C) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In paragraph 2(1) (persons disqualified from membership of the Corporation), for paragraphs (b) to (d) there shall be substituted
- "or
- (b) a member or employee of OFCOM."

The Welsh Authority

71

- (1) Schedule 6 to the 1990 Act (provision about constitution and management of the Welsh Authority) shall be amended as follows.
- (2) In paragraph 2 (persons disqualified from membership of the Authority)--
- (a) sub-paragraph (1) shall be omitted; and
- (b) in sub-paragraph (2)(b), for "the Commission" there shall be substituted "OFCOM".
- (3) In paragraph 12(1A), for the words from "the general fund" onwards there shall be substituted "the

assets of the Authority that are not comprised in that fund; and accordingly, the statement must deal with liabilities separately according to whether they fall to be met from that fund or from those assets."

Computation of qualifying revenue

72

- (1) Schedule 7 to the 1990 Act (computation of "qualifying revenue") shall be amended as follows.
- (2) In Part 1, for "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In Part 2, for "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

The Gaelic Television Committee

73

- (1) Schedule 19 to the 1990 Act (Gaelic Television Committee) shall be amended as follows.
- (2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) For "Committee", wherever occurring, there shall be substituted "Service".
- (4) In paragraph 8(c), the words "and (where the expenses relate to the Commission's functions in connection with sound programmes) the Radio Authority" shall be omitted.
- (5) In paragraph 11(4), the words "or the Radio Authority" and "or (as the case may be) the Authority" shall be omitted.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Paras 1-19, 20(2)(b), (3)-(8), 21(1)-(3), (5), 22-51, 52(2)(b), (3)-(7), 53(2), (3), (5), 54-73: Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Paras 20(1), (2)(a), 52(1), (2)(a): Appointment: 25 July 2003: see SI 2003/1900, art 2(1), Sch 1.

Para 21(4): Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the existing service (as defined in s 221(11) hereof) see art 8(2) thereof.

Para 53(1), (4): Appointment: 18 September 2003: see SI 2003/1900, art 2(2), Sch 2.

Amendment

Para 63: repealed by the Digital Economy Act 2010, s 45, Sch 2.

Date in force: to be appointed: see the Digital Economy Act 2010, s 47(3)(b)-(d).

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 111; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 108; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 71 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 15 Amendments of Broadcasting Acts/Part 2 Amendments of the 1996 Act

Part 2

Amendments of the 1996 Act

Multiplex services and digital programme services

74

(1) Section 1 of the 1996 Act (interpretation) shall be amended as follows.

(2) For subsection (1) there shall be substituted--

"(1) In this Part "multiplex service" means (except where the context otherwise requires) a television multiplex service."

(3) In subsection (4), for "for general reception" there shall be substituted "so as to be available for reception by members of the public".

(4) For subsection (4A) there shall be substituted--

"(4A) In subsection (4), "available for reception by members of the public" means available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003) in the United Kingdom or another EEA State, or in an area of the United Kingdom or of such a State."

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

"(7) In this section "broadcast" means broadcast otherwise than from a satellite."

Meaning of qualifying service

75

In section 2 of the 1996 Act (meaning of "qualifying service" etc), for subsections (2) to (6) there shall be substituted--

"(2) In this Part "qualifying service" means any of the following, so far as they are provided with a view to their being broadcast in digital form--

(a) a television broadcasting service included in Channel 3;

(b) Channel 4;

(c) Channel 5;

(d) S4C Digital;

(e) a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 of the Communications Act 2003;

- (f) the digital public teletext service."

Licences under Part 1

76

- (1) Section 3 of the 1996 Act (licences under Part 1 of that Act) shall be amended as follows.
- (2) In subsection (1), for "the Independent Television Commission (in this Part referred to as the "the Commission")" there shall be substituted "OFCOM".
- (3) In subsections (3) to (7), for "The Commission" and "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (4) For subsection (8) there shall be substituted--
- "(8) The holding by a person of a licence under this Part shall not relieve him of--
- (a) any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
- (b) any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services)."

Licence conditions

77

- (1) Section 4 of the 1996 Act (general licence conditions) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1), in each of paragraphs (a) and (c), for "the 1990 Act or this Act" there shall be substituted "this Act, the 1990 Act or the Communications Act 2003".
- (4) In subsection (3) (fixing fees), the words from "and the amount" onwards shall be omitted.

Restrictions on digital licence holding

78

- (1) Section 5 of the 1996 Act (restrictions on holding licences) shall be amended as follows.
- (2) For "The Commission" and "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted--
- "(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting--
- (i) shareholdings in the body; or
- (ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining--

(i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or

(ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;".

(4) In subsection (6)--

(a) in paragraph (a), for "complained of" there shall be substituted "constituting their grounds for revoking the licence".

(b) in paragraph (b)(i), for "Parts III and IV of Schedule 2 to the 1990 Act" there shall be substituted "the requirements imposed by or under Schedule 14 to the Communications Act 2003".

(5) In subsection (7)--

(a) paragraph (a) shall cease to have effect; and

(b) in paragraph (b), for "Part IV of that Schedule" there shall be substituted "Part 1 of Schedule 14 to the Communications Act 2003".

(6) In subsection (8), for the words from "a failure" to the end of paragraph (c) there shall be substituted "a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,".

Multiplex licences

79

(1) Section 7 of the 1996 Act (multiplex licences) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (4)--

(a) after paragraph (c) there shall be inserted--

"(ca) the applicant's proposals as to the number (if any) of digital sound programmes services which are to be broadcast, as to the characteristics of each of those services and as to the areas in which they would be provided;"

(b) in paragraph (d) for "those services" there shall be substituted "the services mentioned in paragraphs (c) and (ca)".

Award of multiplex licences

80

(1) Section 8 of the 1996 Act (award of multiplex licences) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2)(f), after "digital programme service" there shall be inserted ", digital sound programme service".

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

81

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

Award of multiplex licences subject to conditions

82

(1) Section 10 of the 1996 Act (award of multiplex licences subject to conditions) shall be amended as follows.

(2) For "The Commission" and "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)(a), for "the 1990 Act or this Act" there shall be substituted "this Act, the 1990 Act or Part 3 of the Communications Act 2003".

Failure to provide licensed service and revocation

83

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

Conditions attached to multiplex licences

84

In section 12 of the 1996 Act (conditions attached to multiplex licences), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

Additional payments in respect of multiplex licences

85

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

Multiplex revenue

86

(1) Section 14 of the 1996 Act (multiplex revenue) shall be amended as follows.

(2) In subsection (1)--

(a) for "section 13(1)" there shall be substituted "this Part";

(b) for "the holder of a multiplex licence" there shall be substituted "the person who is the multiplex provider in relation to any television multiplex service or any general multiplex service";

(c) in paragraph (a), for "the multiplex service to which the licence relates" there shall be substituted "the relevant multiplex";

(d) in paragraph (b) for "of any qualifying service by means of the multiplex service" there shall be substituted "by means of the multiplex service of any service which is a qualifying service or which (without being a qualifying service) is provided by the BBC";

(e) in paragraphs (c) and (d), for "the holder of the multiplex licence" and "the multiplex service", in each place where they occur there shall be substituted, respectively, "the multiplex provider" and "the relevant multiplex".

(3) In subsections (2) to (8)--

(a) for the words "the holder of the multiplex licence" and "the licence holder", wherever occurring, there shall be substituted, in each case, "the multiplex provider"; and

(b) for "the Commission", wherever occurring, there shall be substituted "OFCOM".

(4) In subsection (9)--

(a) for "a multiplex licence", in each place, there shall be substituted "a television multiplex service or a general multiplex service";

(b) for "the multiplex service to which the licence relates", in each place, there shall be substituted "that multiplex service";

(c) after the definition of "additional services provider" there shall be inserted--

""multiplex provider"--

(a) in relation to a television multiplex service for which a person holds a licence under this Part, means the licence holder; and

(b) in relation to a television multiplex service which is not licensed under this Part or a general multiplex service, means the person who provides that service;"

(d) after the definition of "programme provider" there shall be inserted--

""the relevant multiplex"--

(a) in relation to a multiplex provider falling within paragraph (a) of the definition of that expression, means the television multiplex service to which his licence relates; and

(b) in relation to any other multiplex provider, means the television multiplex service or general multiplex service which is provided by him;

and this section and section 15 shall have effect as if references in this section to digital programme services included references to digital sound programme services and references to digital additional services included references to digital additional services within the meaning of Part 2."

Attribution of multiplex revenue to multiplex providers

- (1) Section 15 of the 1996 Act (attribution of multiplex revenue to licence holder) shall be amended as follows.
- (2) In subsection (1)--
- (a) for "the holder of a multiplex licence" there shall be substituted "the person who is the multiplex provider in relation to any television multiplex service";
- (b) for "of multiplex services in that period," there shall be substituted "in that period of television multiplex services,";
- (c) for "the holder of the multiplex licence" there shall be substituted, "the multiplex provider".
- (3) In subsection (2)--
- (a) for "a multiplex service" there shall be substituted "a television multiplex service or a general multiplex service";
- (b) for "the holder of the multiplex licence", wherever occurring, there shall be substituted "the multiplex provider".
- (4) In subsection (3)--
- (a) for "the Commission" there shall be substituted "OFCOM"; and
- (b) for "the holder of the multiplex licence" there shall be substituted "the multiplex provider".
- (5) In subsection (4)--
- (a) after "additional services provider" there shall be inserted ", 'multiplex provider'"; and
- (b) for "a multiplex licence" there shall be substituted "a television multiplex service or a general multiplex service".

Duration of multiplex licences

88

- (1) Section 16 of the 1996 Act (duration and renewal of multiplex licences) shall be amended as follows.
- (2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (3), after "not later than" there shall be inserted "the day falling three months before".
- (4) After subsection (12), there shall be inserted--
- "(12A) A determination for the purposes of subsection (12)--
- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question."

Enforcement of multiplex licences

89

In section 17 of the 1996 Act (enforcement of multiplex licences), for "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

Licensing of digital programme services

90

- (1) Section 18 of the 1996 Act (licensing of digital programme services) shall be amended as follows.
- (2) In subsections (1) to (4), for "the Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) Subsections (5) and (6) (application of sections 6 to 12 of the 1990 Act) shall cease to have effect.

Conditions of licences for digital programme services

91

- (1) Section 19 of the 1996 Act (conditions of licences for digital programme services) shall be amended as follows.
- (2) In subsection (3)--
 - (a) for "the Commission", wherever occurring, there shall be substituted "OFCOM";
 - (b) in paragraphs (a) and (c), for "the holder of a multiplex licence" there shall be substituted, in each case, "the provider of a television multiplex service or general multiplex service";
 - (c) in paragraph (a), for "by means of a multiplex service" there shall be substituted "by means of that provider's service"; and
 - (d) in paragraph (a)(i), for "the identity of the multiplex service" there shall be substituted "the identity of the service by means of which it will be broadcast".
- (3) Subsections (2) and (4) to (10) of that section shall cease to have effect.

Duration and enforcement of multiplex licenses

92

- (1) Section 23 of the 1996 Act (enforcement of digital programme licences) shall be amended as follows.
- (2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (4), for the words from "multiplex service" onwards there shall be substituted "television multiplex service or general multiplex service, means the last accounting period of the multiplex provider".
- (4) In subsection (5), for "multiplex service, the first accounting period of the holder of the multiplex licence" there shall be substituted "television multiplex service or general multiplex service, the first accounting period of the multiplex provider".
- (5) After that subsection there shall be inserted--

"(5A) In subsections (4) and (5) "multiplex provider" has the same meaning as in section 14."
- (6) In subsection (8) for "apology" there shall be substituted "statement of findings".

Digital additional services

93

(1) Section 24 of the 1996 Act (digital additional services) shall be amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) there shall be substituted--

"(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;

(b) is so provided with a view either--

(i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or

(ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom, or in an area of such a State;

and

(c) is not a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service."

(3) In subsection (2) (meaning of ancillary service)--

(a) for "an independent analogue broadcaster" there shall be substituted "a relevant public service broadcaster"; and

(b) for paragraphs (a) and (b) there shall be substituted--

"(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;

(b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or

(c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents."

(4) In subsection (3)(a), after "digital programme services" there shall be inserted ", digital sound programme services".

(5) After subsection (3) there shall be inserted--

"(3A) In this section--

"assistance for disabled people" has the same meaning as in Part 3 of the Communications Act 2003;

"available for reception by members of the public" shall be construed in accordance with section 361 of that Act;

"public television service of the Welsh Authority" means--

(a) S4C Digital; or

(b) any television programme service the provision of which by the Authority is authorised by or under section 205 of that Act and which is provided in digital form;

"relevant public service broadcaster" means any of the following--

- (a) a person licensed under Part 1 of the 1990 Act to provide a Channel 3 service;
- (b) the Channel 4 Corporation;
- (c) a person licensed under Part 1 of the 1990 Act to provide Channel 5;
- (d) the BBC;
- (e) the Welsh Authority;
- (f) the public teletext provider."

Licensing of digital additional services

94

(1) Section 25 of the 1996 Act (licensing of digital additional services) shall be amended as follows.

(2) In subsections (1) to (4), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) After subsection (4) there shall be inserted--

"(4A) A digital additional services licence is not required for a service that is or is comprised in a qualifying service."

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

Conditions of digital additional services licence

95

(1) Section 26 of the 1996 Act (conditions of licences for digital additional services) shall be amended as follows.

(2) In subsection (2)--

(a) for "the Commission", wherever occurring, there shall be substituted "OFCOM";

(b) in paragraphs (a) and (c), for "the holder of a multiplex licence" there shall be substituted, in each case, "the provider of a television multiplex service or general multiplex service";

(c) in paragraph (a), for "by means of a multiplex service" there shall be substituted "by means of that provider's service"; and

(d) in paragraph (a)(i), for "the identity of the multiplex service" there shall be substituted "the identity of the service by means of which it will be broadcast".

Enforcement of digital additional television services licences

96

(1) Section 27 of the 1996 Act (enforcement of digital additional television services licences) shall be amended as follows.

(2) For "the Commission" and "The Commission", wherever occurring, there shall be substituted

"OFCOM".

(3) In subsection (4), for the words from "multiplex service" onwards there shall be substituted "television multiplex service or general multiplex service, means the last accounting period of the multiplex provider".

(4) In subsection (5), for "multiplex service, the first accounting period of the holder of the multiplex licence" there shall be substituted "television multiplex service or general multiplex service, the first accounting period of the multiplex provider".

(5) After that subsection there shall be inserted--

"(5A) In subsections (4) and (5) "multiplex provider" has the same meaning as in section 14."

Digital broadcasting of Gaelic programmes

97

(1) Section 32 of the 1996 Act (digital broadcasting of Gaelic programmes) shall be amended as follows.

(2) In subsection (1), for "the Commission to include in any multiplex licence granted in respect of one frequency to which section 28 applies" there shall be substituted "OFCOM to include in no more than one relevant multiplex licence".

(3) In subsection (7), for "Comataidh Craolaidh Gàidhlig" there shall be substituted "Seirbheis nam Meadhanan Gàidhlig".

(4) For subsection (9) there shall be substituted--

"(9) In this section--

"Gaelic" means the Gaelic language as spoken in Scotland;

"relevant multiplex licence" means a multiplex licence in respect of which the Secretary of State has made an order under section 243(3) of the Communications Act 2003;

"television broadcasting service" has the same meaning as in Part 3 of the Communications Act 2003."

Review of digital television broadcasting

98

(1) Section 33 of the 1996 Act (review of digital television broadcasting) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)(a)(ii), for the words "services specified in section 2(3), S4C Digital, the qualifying teletext service" there shall be substituted "following services, namely, Channel 3 services, Channel 4, Channel 5, the public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003), the digital public teletext service".

Enforcement of licences held by BBC companies

99

In section 35 of the 1996 Act (enforcement of licences held by BBC companies), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

Interpretation of Part 1

100

In section 39(1) (interpretation of Part 1)--

(a) after the definition of "digital programme service" there shall be inserted--

""digital public teletext service" has the same meaning as in Part 3 of the Communications Act 2003;

"digital sound programme service" has the same meaning as in Part 2 of this Act;

"general multiplex service" has the same meaning as in that Part;".

(b) for the definition of "public teletext provider" there shall be substituted--

""public teletext provider" means the person for the time being licensed under Part 1 of the 1990 Act to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);"

(c) for the definitions of "S4C" and "on S4C" and of "S4C Digital" and "on S4C Digital" there shall be substituted--

""S4C" and "S4C Digital" each has the same meaning as in Part 3 of the Communications Act 2003;".

(d) after the definition of "technical service" there shall be inserted--

""television multiplex service" has the meaning given by section 241 of the Communications Act 2003."

Radio multiplex services

101

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

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

"(1) In this Part "radio multiplex service" means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003."

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

(4) In subsection (5), for "for general reception" there shall be substituted "so as to be available for reception by members of the public".

(5) For subsection (8) of that section there shall be substituted--

"(8) In this section--

"available for reception by members of the public" shall be construed in accordance with section 361 of the Communications Act 2003;

"broadcast" means broadcast otherwise than from a satellite."

Licences under Part 2 of the 1996 Act

102

- (1) Section 42 of the 1996 Act (licences under Part 2) shall be amended as follows.
- (2) In subsection (1), for "the Radio Authority (in this Part referred to as "the Authority")" there shall be substituted "OFCOM".
- (3) In subsections (2), (5) and (6), for "The Authority" and "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (4) For subsection (3) (variation of licences) there shall be substituted--
- "(3) OFCOM may vary a licence by a notice served on the licence holder.
- (3A) OFCOM shall not vary--
- (a) the period for which a licence having effect for a specified period is to continue in force, or
- (b) increase the total amount of digital capacity specified in a national radio multiplex licence for the purposes of section 48(1A),
- unless the licence holder consents.
- (3B) OFCOM shall not make any other variation of a licence unless the licence holder has been given a reasonable opportunity of making representations to OFCOM about the variation."
- (5) In subsection (4) (exceptions from power to vary licences), for "Paragraph (a) of subsection (3)" there shall be substituted "Paragraph (a) of subsection (3A)".
- (6) For subsection (7) there shall be substituted--
- "(7) The holding of a licence by a person shall not relieve him--
- (a) of any liability in respect of a failure to hold a licence under section 1 of the Wireless Telegraphy Act 1949; or
- (b) of any obligation to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (electronic communications networks and electronic communications services)."

General licence conditions

103

- (1) Section 43 of the 1996 Act (general licence conditions) shall be amended as follows.
- (2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (1) (conditions may include conditions to give effect to duties imposed by or under 1990 Act or 1996 Act)--
- (a) in paragraph (a), for "the 1990 Act or this Act" there shall be substituted "this Act, the 1990 Act or the Communications Act 2003"; and
- (b) in paragraph (d), after "this Act" there shall be inserted ", the 1990 Act or the Communications Act 2003".
- (4) In subsection (2), sub-paragraph (ii) of paragraph (b) and the word "or" immediately preceding it

shall be omitted.

- (5) In subsection (3) (fixing of fees), the words from "and the amount" onwards shall be omitted.

Restrictions on holding licences

104

- (1) Section 44 of the 1996 Act (restrictions on the holding of licences) shall be amended as follows.
- (2) For "The Authority" and "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (2) (incidental requirements to provide information), after paragraph (d) there shall be inserted--

"(da) impose conditions in a licence requiring the licence holder, if a body corporate, to give OFCOM notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting--

(i) shareholdings in the body; or

(ii) the directors of the body;

(db) impose conditions in a licence enabling OFCOM to require the licence holder to provide them with such information as they may reasonably require for determining--

(i) whether the licence holder is a disqualified person in relation to that licence by virtue of Part 2 of Schedule 2 to the 1990 Act; or

(ii) whether any such requirements as are mentioned in subsection (1)(b) have been and are being complied with by or in relation to the licence holder;".

- (4) In subsection (6)--

(a) in paragraph (a), for "complained of" there shall be substituted "constituting their grounds for revoking the licence"; and

(b) in paragraph (b)(i), for "Parts III and IV of Schedule 2 to the 1990 Act" there shall be substituted "the requirements imposed by or under Schedule 14 to the Communications Act 2003".

- (5) In subsection (7)--

(a) paragraph (a) shall cease to have effect; and

(b) in paragraph (b), for "Part IV of that Schedule" there shall be substituted "Part 1 of Schedule 14 to the Communications Act 2003".

- (6) In subsection (8), for the words from "a failure" to the end of paragraph (c) there shall be substituted "a disqualification under Part 2 of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act 2003,".

National radio multiplex licences

105

- (1) Section 46 of the 1996 Act (national radio multiplex licences) shall be amended as follows.
- (2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

- (3) In subsection (1)(d), for "a direction" there shall be substituted "a condition".

Award of national radio multiplex licences

106

In section 47 of the 1996 Act (award of national radio multiplex licences), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Reservation of capacity for independent national broadcasters

107

(1) Section 48 of the 1996 Act (reservation of digital capacity for independent broadcasters) shall be amended as follows.

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

"(1A) OFCOM must ensure that the conditions included in national radio multiplex licences (taken together) secure that an amount of digital capacity on the multiplex frequencies is reserved for every independent national broadcaster for the broadcasting of a simulcast radio service provided by that broadcaster.

(1B) Where the conditions of a licence for a national radio multiplex service reserve capacity on the frequency made available for that service for the broadcasting of a simulcast radio service provided by an independent national broadcaster, those conditions must also include the condition specified in subsection (1C).

(1C) That condition is the condition that OFCOM consider appropriate for securing that, in consideration of the making by the independent national broadcaster of the payments which--

- (a) are agreed from time to time between him and the licence holder, or
- (b) in default of agreement, are determined under this section,

the licence holder uses, for the broadcasting of a simulcast radio service provided by that broadcaster, such of the reserved digital capacity as may be requested, from time to time, by that broadcaster.

(1D) Where conditions are included under this section in a national radio multiplex licence reserving capacity for an independent national broadcaster, OFCOM may include conditions relating to the broadcasting of the simulcast radio service in the licence for the national service provided by that broadcaster."

(3) In subsections (4) to (6), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

(4) In subsection (4), for "subsection (3)(a)" there shall be substituted "subsection (1C)".

(5) After subsection (6) there shall be inserted--

"(7) In this section "the multiplex frequencies" means the frequencies made available for the purposes of licensed national radio multiplex services."

Reservation of digital capacity for BBC

108

(1) Section 49 of the 1996 Act (reservation of digital capacity for BBC) shall be amended as follows.

(2) In subsections (1) to (3) and (6), for "the Authority", wherever occurring, there shall be substituted

"OFCOM".

(3) In subsection (4) (determination of capacity to be reserved), for the words from "If the BBC" to "the Secretary of State, who may" there shall be substituted "If the BBC do not give their consent to the proposals within such period as OFCOM may specify in their notice under subsection (3), OFCOM shall".

(4) In subsection (5), for words from "the Secretary of State" onwards there shall be substituted "OFCOM shall give the BBC an opportunity of making representations to them about their proposals."

(5) In subsection (6), after "and the BBC" there shall be inserted "or (in default of agreement) determined under this section".

(6) After that subsection there shall be inserted--

"(7) Where the holder of the licence and the BBC fail to agree--

(a) the payments to be made under a condition included in the licence in accordance with subsection (6), or

(b) the other terms that are to apply in relation to the use of digital capacity in accordance with such a condition,

either of them may refer the matter to OFCOM for determination.

(8) Before making a determination under subsection (7), OFCOM must give the licence holder and the BBC an opportunity of making representations to them about the matter.

(9) In making any determination under subsection (7), OFCOM shall have regard to--

(a) the expenses incurred, or likely to be incurred, by the licence holder in providing the local radio multiplex service in question, and

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

Local radio multiplex licences

109

(1) Section 50 of the 1996 Act (local radio multiplex licences) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (1)(b), for "the Secretary of State has" there shall be substituted "OFCOM have".

(4) In subsection (2)(d), for "direction under section 49" substitute "determination under section 49(4)".

Award of local multiplex licences

110

(1) Section 51 of the 1996 Act (award of local multiplex licences) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (2), for paragraph (f) there shall be substituted--

"(f) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service; and".

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

111

In section 52 of the 1996 Act (power to require two or more local radio multiplex licences to be granted to one person), for "The Authority" and "the Authority" there shall be substituted "OFCOM".

Failure to begin to provide licensed service

112

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

Conditions which may be attached to radio multiplex licences

113

In section 54 of the 1996 Act (conditions which may be attached to a radio multiplex licence), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

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

114

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

Multiplex revenue

115

- (1) Section 56 of the 1996 Act (multiplex revenue) shall be amended as follows.
- (2) In subsection (1)--
 - (a) for "section 55(1)" there shall be substituted "this Part";
 - (b) for "the holder of a national radio multiplex licence" there shall be substituted "the person who is the multiplex provider in relation to a national radio multiplex service";
 - (c) in paragraph (a)(i), "to which the licence relates" shall be omitted;
 - (d) in paragraphs (c) and (d), for "the holder of the radio multiplex licence" there shall be substituted "the multiplex provider".
- (3) In subsections (2) to (8)--
 - (a) for "the holder of the radio multiplex licence", "the licence holder" and "the holder of the multiplex licence", wherever occurring, there shall be substituted, in each case, "the multiplex provider"; and
 - (b) for "the Authority", wherever occurring, there shall be substituted "OFCOM".
- (4) In subsection (9)--
 - (a) for "a national radio multiplex licence", in each place, there shall be substituted "a national radio

multiplex service";

(b) for "the radio multiplex service to which the licence relates", in each place, there shall be substituted "that radio multiplex service";

(c) after the definition of "additional services provider" there shall be inserted--

"multiplex provider"--

(a) in relation to a national radio multiplex service for which a person holds a licence under this Part, means the licence holder; and

(b) in relation to a national radio multiplex service which is not licensed under this Part, means the person who provides that service."

Attribution of radio multiplex revenue

116

(1) Section 57 of the 1996 Act (attribution of radio multiplex revenue) shall be amended as follows.

(2) In subsection (1)--

(a) for "the holder of a national radio multiplex licence" there shall be substituted "the person who is the multiplex provider in relation to a national radio multiplex service"; and

(b) for "the holder of the national radio multiplex licence" there shall be substituted "the multiplex provider".

(3) In subsection (2), for "the holder of the radio multiplex licence", wherever occurring, there shall be substituted "the multiplex provider".

(4) In subsection (3)--

(a) for "the Authority" there shall be substituted "OFCOM"; and

(b) for "the holder of the national radio multiplex licence" there shall be substituted "the multiplex provider".

(5) In subsection (4)--

(a) after "additional services provider" there shall be inserted ", multiplex provider"; and

(b) for "a national radio multiplex licence" there shall be substituted "a national radio multiplex service".

Duration and renewal of radio multiplex licences

117

(1) Section 58 of the 1996 Act (duration and renewal of radio multiplex licences) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (3), after "not later than" there shall be inserted "the day falling three months before".

(4) Subsection (5) (consent of the Secretary of State for exercise of certain powers in connection with renewal) shall cease to have effect.

(5) After subsection (12) there shall be inserted--

"(12A) A determination for the purposes of subsection (12)--

- (a) must be made at least one year before the date determined; and
- (b) must be notified by OFCOM to the person who holds the licence in question."

Enforcement of radio multiplex licences

118

In section 59 of the 1996 Act (enforcement of radio multiplex licences), for "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

Digital sound programme licensing

119

(1) Section 60 of the 1996 Act (digital sound programme licensing) shall be amended as follows.

(2) For "the Authority", wherever occurring, there shall be substituted "OFCOM".

(3) After subsection (6), there shall be inserted--

"(6A) Section 89 of the 1990 Act (disqualification from being licence holder or concerned with the provision of a programme service if convicted of a transmitting offence) shall apply in relation to a licence under this section as it applies to a licence under Part 3 of that Act, but with the omission of paragraph (b) of subsection (3) of that section and of the word "or" immediately before that paragraph."

(4) Sub-paragraph (3) does not impose a disqualification in respect of any offence committed before the commencement of that sub-paragraph.

Conditions of digital sound programme licences

120

(1) Section 61 of the 1996 Act (conditions of licences for digital sound programme services) shall be amended as follows.

(2) In subsection (2)--

(a) for "the Authority", wherever occurring, there shall be substituted "OFCOM";

(b) in paragraphs (a) and (c), for "the holder of a radio multiplex licence", there shall be substituted, in each case, "the provider of a radio multiplex service, of a television multiplex service or of a general multiplex service";

(c) in paragraph (a) for "by means of a radio multiplex service" there shall be substituted "by means of the multiplex service"; and

(d) in paragraph (a)(i) for "radio multiplex service" there shall be substituted "multiplex service".

Enforcement of digital sound programme licences

121

- (1) Section 62 of the 1996 Act (enforcement of digital sound programme licences) shall be amended as follows.
- (2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".
- (3) In subsection (4), for the words from "national radio multiplex service" onwards there shall be substituted "relevant multiplex service, means the last accounting period of the multiplex provider".
- (4) In subsection (5)--
- (a) for "national radio multiplex service" there shall be substituted "relevant multiplex service";
 - (b) for "holder of the national radio multiplex licence" there shall be substituted "multiplex provider"; and
 - (c) for "the radio multiplex service" and "that radio multiplex service" there shall be substituted "that relevant multiplex service".
- (5) After subsection (5A) (inserted by Schedule 13) there shall be inserted--
- "(5B) For the purposes of this section, a service is a relevant multiplex service if it is--
- (a) a national radio multiplex service;
 - (b) a television multiplex service; or
 - (c) a general multiplex service.
- (5C) In this section, "multiplex provider"--
- (a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and
 - (b) in relation to a television multiplex service or a general multiplex service, means the multiplex provider within the meaning of section 14."

(6) In subsection (10) for "apology" there shall be substituted "statement of findings".

Digital additional sound services

122

In section 64 of the 1996 Act (licensing of digital additional sound services), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Conditions of digital additional sound service

123

- (1) Section 65 of the 1996 Act (conditions of licences for digital additional sound services) shall be amended as follows.
- (2) In subsection (2)--
- (a) for "the Authority", wherever occurring, there shall be substituted "OFCOM";
 - (b) in paragraphs (a) and (c), for "the holder of a radio multiplex licence", there shall be substituted, in each case, "the provider of a radio multiplex service or of a general multiplex service";

(c) in paragraph (a) for "by means of a radio multiplex service" there shall be substituted "by means of the multiplex service"; and

(d) in paragraph (a)(i) for "radio multiplex service" there shall be substituted "multiplex service".

Enforcement of digital additional sound services licences

124

(1) Section 66 of the 1996 Act (enforcement of digital additional services licences) shall be amended as follows.

(2) For "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (4), for "national radio multiplex service" there shall be substituted "relevant multiplex service".

(4) In subsection (5), for the words from "national radio multiplex service" onwards there shall be substituted "relevant multiplex service, means the last accounting period of the multiplex provider".

(5) In subsection (6)--

(a) for "national radio multiplex service" there shall be substituted "relevant multiplex service";

(b) for "holder of the national radio multiplex licence" there shall be substituted "multiplex provider"; and

(c) for "the radio multiplex service" and "that radio multiplex service" there shall be substituted "that relevant multiplex service".

(6) After subsection (6A) (inserted by Schedule 13) there shall be inserted--

"(6B) For the purposes of this section, a service is a relevant multiplex service if it is--

(a) a national radio multiplex service; or

(b) a general multiplex service.

(6C) In this section, "multiplex provider"--

(a) in relation to a national radio multiplex service, means the multiplex provider within the meaning of section 56; and

(b) in relation to a general multiplex service, means the multiplex provider within the meaning of section 14."

(7) In subsection (10) for "apology" there shall be substituted "statement of findings".

Review of digital radio broadcasting

125

In section 67 of the 1996 Act (review of digital radio broadcasting), for "the Authority", wherever occurring, there shall be substituted "OFCOM".

Interpretation

126

In section 72(1) of the 1996 Act (interpretation), for the definition of "radio multiplex service" there shall be substituted--

"radio multiplex service" means a radio multiplex service within the meaning of Part 3 of the Communications Act 2003;

"the radio transfer date" has the same meaning as in the Communications Act 2003;".

Listed events

127

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

(2) In subsection (3), for the words from "television" onwards there shall be substituted "licence for the purposes of section 363 of the Communications Act 2003".

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

(4) In subsection (6), for "transmission for general reception of television programmes by satellite" there shall be substituted "broadcasting of television programmes from a satellite so as to be available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003)".

128

In sections 101, 101B, 102 and 103 of the 1996 Act (restrictions on, and penalties for, televising listed and designated events), for "The Commission" and "the Commission", wherever occurring, there shall be substituted "OFCOM".

129

(1) Section 104 of the 1996 Act (code of guidance) shall be amended as follows.

(2) For "the Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In subsection (4)(d), the words "by the Commission" and "by them" shall be omitted.

130

In section 104A of the 1996 Act (provision of information about listed and designated events), for "the Commission", wherever occurring, there shall be substituted "OFCOM".

131

In section 105(1) of the 1996 Act (interpretation of Part 4 etc), the definition of "the Commission" shall be omitted.

Broadcasting standards

132

(1) Part 5 of the 1996 Act (the Broadcasting Standards Commission) shall be amended as follows.

(2) For "the BSC" and "The BSC", wherever occurring in any of sections 107, 110, 111, 114, 115, 118 to 121 there shall be substituted "OFCOM".

133

In section 107(5)(b) of the 1996 Act (code relating to avoidance of unjust or unfair treatment etc), for "the service referred to in section 57(1A)(a) of the 1990 Act" there shall be substituted "any public service of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)".

134

In section 115 of the 1996 Act (consideration of fairness complaints)

- (a) in subsection (2)(d), for "to (c)" there shall be substituted "or (b)"; and
- (b) in subsection (8), for "they shall send a statement of" there shall be substituted "OFCOM shall send a copy of".

135

In section 117 of the 1996 Act (duty of broadcasting body to retain recordings of programmes), for "sections 115 and 116" there shall be substituted "section 115".

136

(1) For subsections (1) and (2) of section 119 of the 1996 Act there shall be substituted--

"(1) Where OFCOM have considered and adjudicated upon a fairness complaint, they may direct the relevant person to publish the matters mentioned in subsection (3) in such manner, and within such period, as may be specified in the directions."

(2) In that section--

- (a) in subsection (4), for "subsection (2)" there shall be substituted "subsection (1)";
- (b) in subsection (5), for "(3)(a), (b) or (c)" there shall be substituted "(3)(a) or (b)";
- (c) in subsection (6), for "broadcasting or regulatory body" there shall be substituted "relevant person" and for "them" there shall be substituted "him";
- (d) in subsection (8), the words "or standards complaint" and in paragraph (c) the words ", a regulatory body" shall be omitted;
- (e) in subsection (10), for paragraphs (a) and (b) there shall be substituted "a relevant person"; and
- (f) subsection (12) shall cease to have effect.

(3) After subsection (11) of that section there shall be inserted--

"(11A) In this section "relevant person" means--

- (a) in a case where the relevant programme was broadcast by a broadcasting body, that body; and
- (b) in a case where the relevant programme was included in a licensed service, the licence holder providing that service."

137

In section 130(1) of the 1996 Act (interpretation of Part 5), for paragraphs (b) and (c) of the definition of "licensed service" there shall be substituted--

- "(aa) the public teletext service,

- (b) any relevant independent radio service (within the meaning of section 85 of the 1990 Act),
- (c) any additional service (within the meaning of Part 1 of the 1990 Act) which is licensed under that Part,".

Disqualification on grounds related to political objects

138

- (1) Section 143 of the 1996 Act (disqualification on grounds related to political objects) shall be amended as follows.
- (2) In each of subsections (1) and (2)--
 - (a) for "the Independent Television Commission" and "the Commission" there shall be substituted "OFCOM"; and
 - (b) for "section 5(1) of the 1990 Act, or as the case may be section 5(1) of this Act" there shall be substituted "section 5(1) or 88(1) of the 1990 Act or section 5(1) or 44(1) of this Act".
- (3) In subsection (1), for "Part I or II of the 1990 Act or Part I of this Act" there shall be substituted "Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,".
- (4) In subsection (2), for "Parts I or II of the 1990 Act or Part I of this Act" there shall be substituted "Part 1 or 3 of the 1990 Act or Part 1 or 2 of this Act,".
- (5) Subsections (3) and (4) shall cease to have effect.
- (6) In subsection (5), for "to (4)" there shall be substituted "and (2)".
- (7) In subsection (6), for paragraphs (a) and (b) there shall be substituted "the duties imposed on OFCOM by sections 5(1) and 88(1) of the 1990 Act and sections 5(1) and 44(1) of this Act."

Offence of providing false information

139

- (1) Section 144 of the 1996 Act (offence of providing false information) shall be amended as follows.
- (2) In subsection (1), for "to the relevant authority a statement", in each place, there shall be substituted "a statement to OFCOM".
- (3) In subsection (2), for "the relevant authority" there shall be substituted "OFCOM".
- (4) Subsection (5) shall cease to have effect.

Disqualification for supplying false information

140

- (1) Section 145 of the 1996 Act (disqualification for offence of supplying false information) shall be amended as follows.
- (2) In subsection (5), for "the relevant authority" there shall be substituted "OFCOM".
- (3) In subsection (7)--
 - (a) for "5(1)(a) and 88(1)(a)" there shall be substituted "5(1)(a) and (2)(db), 32(12) and 88(1)(a) and

(2)(db)"; and

(b) for "5(1)(a) and 44(1)(a)" there shall be substituted "5(1)(a) and (2)(db) and 44(1)(a) and (2)(db)".

(4) In subsection (8) of that section, for the definition of "licence" there shall be substituted--

"licence" means a licence under Part 1 or 3 of the 1990 Act or under Part 1 or 2 of this Act;".

Interpretation

141

In section 147(1) of the 1996 Act (general interpretation), after the definition of "the BBC" there shall be inserted--

"OFCOM" means the Office of Communications;".

Computation of qualifying revenue

142

(1) Schedule 1 to the 1996 Act (computation of "multiplex revenue" etc) shall be amended as follows.

(2) In Part 1, for "the Commission" and "The Commission", wherever occurring, there shall be substituted "OFCOM".

(3) In Part 2, for "the Authority" and "The Authority", wherever occurring, there shall be substituted "OFCOM".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1; for transitional provisions in relation to the functions of the Broadcasting Standards Commission under the Broadcasting Act 1996, Pt 5 before that date see art 11 thereof.

See Further

See further, with modifications, the extension of this Part of this Schedule to Guernsey: the Communications (Bailiwick of Guernsey) Order 2003, SI 2003/3195, art 6, Sch 2, paras 1, 111; for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to Jersey: the Communications (Jersey) Order 2003, SI 2003/3197, arts 6, 7, Sch 2, para 108 (as amended by the Broadcasting and Communications (Jersey) Order 2004, SI 2004/308, art 6(3), Sch 2, Pt 3, para (m)); for specific commencement and extent information see arts 1(3)-(5), 2 thereof.

See further, with modifications, the extension of this Part of this Schedule to the Isle of Man: the Communications (Isle of Man) Order 2003, SI 2003/3198, art 6, Sch 2, para 71 (as amended by SI 2007/278, Sch 2, Pt 1); for specific commencement and extent information see arts 1(3), (4), 2 thereof.

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 16 Further Amendments in Connection with Media Mergers

SCHEDULE 16

FURTHER AMENDMENTS IN CONNECTION WITH MEDIA MERGERS

Section 389

Competition Act 1980 (c 21)

1

In section 11C(1) of the Competition Act 1980 (application of section 117 of the Enterprise Act 2002 (c 40)) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

Gas Act 1986 (c 44)

2

In section 41EB(4) of the Gas Act 1986 (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

Electricity Act 1989 (c 29)

3

In section 56CB(4) of the Electricity Act 1989 (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

Railways Act 1993 (c 43)

4

(1) The Railways Act 1993 shall be amended as follows.

(2) In section 13B(4) of that Act (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

(3) In section 15C(2G) of that Act (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

(4) In Schedule 4A to that Act, in paragraphs 10A(4) and 15(2G) (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall, in both places, be substituted "the OFT, OFCOM,".

Financial Services and Markets Act 2000 (c 8)

5

In Schedule 14 to the Financial Services and Markets Act 2000, in paragraph 2A(4) (application of section 117 of the Enterprise Act 2002), for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

Postal Services Act 2000 (c 26)

6

- (1) *The Postal Services Act 2000 shall be amended as follows.*
- (2) *In section 15B(4) (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".*
- (3) *In section 19A(9) (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".*

Transport Act 2000 (c 38)

7

- (1) The Transport Act 2000 shall be amended as follows.
- (2) In section 12B(4) (application of section 117 of the Enterprise Act 2002 (c 40)) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".
- (3) In section 18(9) (application of section 117 of the Enterprise Act 2002) for the words "the OFT," there shall be substituted "the OFT, OFCOM,".

Enterprise Act 2002 (c 40)

8

- (1) Section 43 of the Enterprise Act 2002 (intervention notices under section 42) shall be amended as follows.
- (2) In subsection (4)(a) (final determination of matters to which intervention notice relates)--
- (a) after the word "OFT" there shall be inserted "or (if relevant) OFCOM"; and
- (b) after the word "44" there shall be inserted "or (as the case may be) 44A".
- (3) After subsection (5) there shall be inserted--
- "(6) In this Part "OFCOM" means the Office of Communications."

9

In section 45(1)(b) of that Act (circumstances in which the Secretary of State may make a public interest reference to the Competition Commission) after the words "section 44" there shall be inserted ", and any report of OFCOM which is required by virtue of section 44A,".

10

After section 50(2) of that Act (reports on references in public interest cases) there shall be inserted--

"(2A) Where the report relates to a reference under section 45 which has been made after a report of OFCOM under section 44A, the Commission shall give a copy of its report (whether or not published) to OFCOM."

11

In section 57(2) of that Act (duty to bring representations to attention of Secretary of State) after the words "the OFT", in both places where they occur, there shall be inserted ", OFCOM".

12

In section 58(4)(b) of that Act (retrospective effect of orders modifying specified considerations) after the

word "OFT," there shall be inserted "OFCOM,".

13

In section 60(4)(a) of that Act (final determination of matters to which special intervention notice relates)--

- (a) after the word "OFT" there shall be inserted "or (if relevant) OFCOM"; and
- (b) after the word "61" there shall be inserted "or (as the case may be) 61A".

14

In section 62(1)(b) of that Act (circumstances in which the Secretary of State may make a special public interest reference to the Competition Commission) after the words "section 61" there shall be inserted ", and any report of OFCOM which is required by virtue of section 61A,".

15

After section 65(2) of that Act (reports on references in special public interest cases) there shall be inserted--

"(2A) Where the report relates to a reference under section 62 which has been made after a report of OFCOM under section 61A, the Commission shall give a copy of its report (whether or not published) to OFCOM."

16

In section 67(1)(b) of that Act (intervention to protect legitimate interests)--

- (a) the words from "which" to "or 33" shall cease to have effect;
- (b) for the words "that section" there shall be substituted "section 22 or 33"; and
- (c) after the word "concerned" there shall be inserted "(whether or not there would otherwise have been a duty to make such a reference)".

17

In section 68(2)(c) of that Act (scheme for protecting legitimate interests)--

- (a) the words from "which", where it occurs for the second time, to "or 33" shall cease to have effect; and
- (b) for the words "that section" there shall be substituted "section 22 or 33 (whether or not there would otherwise have been a duty to make such a reference)".

18

(1) Section 107 of that Act (further publicity requirements) shall be amended as follows.

(2) In subsection (3) (duties of the Secretary of State to publish), after paragraph (b), there shall be inserted--

"(ba) any report of OFCOM under section 44A or 61A which has been received by him;".

(3) In subsection (9)(a) (publication of reports of OFT in public interest cases) after the words "section 44" there shall be inserted ", and any report of OFCOM under section 44A,".

(4) In subsection (10)(a) (publication of reports of OFT in special public interest cases) after the words "section 61" there shall be inserted ", and any report of OFCOM under section 61A,".

19

In section 108 of that Act (defamation) after the words "the OFT," there shall be inserted "OFCOM,".

20

(1) Section 117 of that Act (false or misleading information) shall be amended as follows.

(2) In subsection (1)(a) (offence of supplying false or misleading information to the OFT etc) after the word "OFT," there shall be inserted "OFCOM,".

(3) In subsection (2) (offence of supplying false or misleading information to another person for use by OFT etc) after the word "OFT," there shall be inserted "OFCOM,".

21

In section 118(1) of that Act (excisions from reports) before the word "or" at the end of paragraph (a) there shall be inserted--

"(aa) a report of OFCOM under section 44A or 61A;".

22

In section 120(1) of that Act (review of decisions under Part 3) after the word "OFT," there shall be inserted "OFCOM,".

23

(1) Section 121 of that Act (fees) shall be amended as follows.

(2) In subsection (1)--

(a) after the words "the OFT", where they occur for the second time, there shall be inserted ", OFCOM"; and

(b) the words ", Part V of the Fair Trading Act 1973 (c 41)" shall cease to have effect.

(3) In subsection (2)--

(a) at the end of paragraph (a) there shall be inserted the word "or"; and

(b) paragraph (b), and the word "or" at the end of the paragraph, shall cease to have effect.

(4) In subsection (4)(c)--

(a) sub-paragraph (i);

(b) the word "and" at the end of the sub-paragraph; and

(c) in sub-paragraph (ii), the words "in any other case,";

shall cease to have effect.

(5) In subsection (8)--

(a) after the words "the OFT", where they occur for the second time, there shall be inserted ", OFCOM"; and

(b) the words ", Part V of the Act of 1973" shall cease to have effect.

(6) Subsection (10) shall cease to have effect.

24

(1) Section 124 of that Act (orders and regulations under Part 3) shall be amended as follows.

(2) In subsection (3) after the word "34" there shall be inserted ", 59(6A)".

(3) In subsection (4) after the word "40(8)," there shall be inserted "44(11),".

(4) In subsection (6) after the word "34," there shall be inserted "44(11), 59(6A),".

25

(1) Section 130 of that Act (index of defined expressions) shall be amended as follows.

(2) After the entry relating to "Anti-competitive outcome" there shall be inserted--

"Broadcasting	Section 44(9)".
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(3) After the entry relating to "Market in the United Kingdom" there shall be inserted--

"Media public interest consideration	Section 44(8)".
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(4) After the entry for "Modify" there shall be inserted--

"Newspaper	Section 44(10)
Newspaper enterprise	Section 58A(3)".

(5) After the entry for "Notified arrangements" there shall be inserted--

"OFCOM	Section 43(6)".
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26

In section 180(2) of that Act (application of section 117 of that Act for the purposes of Part 4 of that Act) after the word "alone" there shall be inserted "and as if the references to OFCOM were omitted".

NOTES

Initial Commencement

To be appointed

To be appointed: see s 411(2).

Appointment

Appointment: 29 December 2003: see SI 2003/3142, art 3(1), Sch 1.

Amendment

Para 6: repealed by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 2, paras 56, 69.

Date in force: to be appointed: see the Postal Services Act 2011, s 93(3).

UK Parliament Acts/C/CO-CT/Communications Act 2003 (2003 c 21)/SCHEDULE 17 Minor and Consequential Amendments

SCHEDULE 17**MINOR AND CONSEQUENTIAL AMENDMENTS****Section 406*****Interpretation*****1**

(1) In any Act or instrument amended by this Schedule--

"communications service" means any of the following services--

- (a) an electronic communications service;
- (b) the provision of directory information by means of an electronic communications network for the purpose of facilitating the use of an electronic communications service provided by means of that network;
- (c) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to an electronic communications network;

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of this Act;

"electronic communications code network" means--

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106;

"electronic communications network" and "electronic communications service" each has the same meaning as in this Act;

"former PTO" means a person--

- (a) who is a provider of a public electronic communications network or a public electronic