

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Television and Radio Services

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

Section 198: Functions of OFCOM in relation to the BBC

425. This section provides for OFCOM to have the function of regulating the BBC's services to the extent that there is provision for them to do so in the BBC Charter and Agreement (as defined by section 362(1)), in this Act and in Part 5 of the Broadcasting Act 1996 (that is, in relation to unfairness and unwarranted infringement of privacy). For the purposes of that regulatory function, OFCOM may, where authorised by the Charter and Agreement, act on behalf of the Secretary of State.
426. The existing Agreement between the Secretary of State and the BBC supplements the Royal Charter in setting out in more detail the provision and content of the BBC's services. It is intended that the Agreement will be amended to give effect to the new regulatory obligations placed on the BBC and to provide for OFCOM to impose financial penalties in the event of the BBC failing to comply with them. Under *subsection (3)* of this section, the BBC are required to pay to OFCOM any penalties which OFCOM impose for contraventions of provision made by or under Part 3 of the Act or the Charter and Agreement. The maximum penalty that OFCOM may impose under such a power is £250,000, but the Secretary of State will be able to change this figure by order: *subsections (5) to (7)*. The BBC must also pay to OFCOM such sums in respect of the carrying out of OFCOM's functions in relation to the BBC as may be agreed between the BBC and OFCOM (or, in the absence of agreement, set by the Secretary of State): *subsection (4)*.

Section 199: Functions of C4C

427. The Channel Four Television Corporation are able to engage in activities which appear to them to be appropriate to carry on in association with their primary functions and to be connected (other than merely in financial terms) with activities undertaken by them for the carrying out of those functions. Those functions are securing the continued provision of Channel 4 and the fulfilment of the Channel's public service remit set out in section 265(3), as described in the notes to that section below. The Corporation may also do such things and enter into such transactions as appear to them incidental or conducive to the carrying out of their statutory functions.
428. Under *subsection (3)* the Corporation will cease to have powers to establish or acquire interests in "qualifying companies" under section 24(5)(b) and (6) of the Broadcasting Act 1990.
429. **Schedule 9** provides a framework for the approval and enforcement of arrangements about the carrying out of the Corporation's activities.

430. **Paragraph 1** requires OFCOM to notify the Corporation that, within a period specified in the notification, the Corporation must submit to OFCOM proposals for arrangements that will apply to the relevant licence period. OFCOM must do this as soon as practicable after the commencement of this Schedule and as soon as practicable in the last twelve months preceding each date on which the Channel 4 licence would expire if not renewed.
431. Where the Corporation have received a notification, they must submit proposals to OFCOM setting out 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 of their primary functions (i.e. the provision of Channel 4 and the fulfilment of its public service remit) are identified, evaluated and properly managed. The proposals must include the arrangements that the Corporation consider appropriate for securing the transparency objectives set out in paragraph 2(4). They may relate in particular to the list of matters specified in paragraph 2(5), e.g. the management of new ventures, the assessment of risks.
432. OFCOM must consider the proposed arrangements and approve them, approve them with modifications, or require the Corporation to submit revised proposals. OFCOM may review the arrangements once during each licence period, either as a single review of all of the arrangements or two separate reviews, one relating to the arrangements to secure the transparency objectives and one relating to other matters. OFCOM must also publish the arrangements.
433. The Corporation must act in accordance with the approved arrangements. OFCOM have powers to enforce the arrangements and may impose a penalty, which may not exceed 3 per cent. of the Corporation's qualifying revenue, if they are contravened.
- **Qualifying revenue* has the same meaning as in section 19(2) to (6) of and Part 1 of Schedule 7 to the Broadcasting Act 1990 with any necessary modifications.
434. In carrying out their functions under Schedule 9, OFCOM must have regard to the need to secure, so far as reasonably practicable, that all significant risks that the Corporation's other activities will have an adverse effect on the provision of Channel 4 or its public service remit are identified, evaluated and properly managed.

Section 200: Removal of members of C4C

435. This section gives OFCOM the power, after consulting the Secretary of State, to remove members of the Channel Four Television Corporation appointed by them.

Section 201: Deficits and surpluses of C4C

436. This section repeals sections 26 and 27 of the Broadcasting Act 1990 (revenue deficits and excesses of Channel Four Television Corporation to be met or distributed to providers of Channel 3 services) in respect of any year ending after the commencement of this section.

Section 202: Borrowing limit for C4C

437. The Secretary of State may by order limit the amount of money that the Channel Four Television Corporation are permitted to borrow. Before making an order under this section, the Secretary of State must consult the Corporation and obtain the consent of the Treasury. The Corporation must not borrow money in excess of any limit set by the Secretary of State. The effect of this will be only to circumscribe new borrowing – the setting of a limit at a figure below that of the Corporation's actual outstanding borrowing would not require the Corporation to take positive steps to reduce their outstanding borrowing to a level which did not exceed the limit.

Section 203: Function of OFCOM in relation to the Welsh Authority

438. OFCOM are to regulate the services provided by the Welsh Authority to the extent provided by Part 5 of the Broadcasting Act 1996 and the present Act.

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

439. The Welsh Authority, as currently constituted, shall continue to exist. However, their functions as described under section 57 of the Broadcasting Act 1990, will be replaced with the function in *subsection (2)*, namely of providing high quality television programmes for reception in Wales. The Welsh Authority must continue to provide S4C and may continue to provide S4C Digital. However, under *subsections (8) and (9)*, the Secretary of State may by order require the Welsh Authority to provide S4C in digital rather than analogue form, to merge S4C and S4C Digital and/or to provide the whole or part of the merged service in both analogue and digital form for a period specified in the order.
440. *Subsection (5)* imposes a duty on the Welsh Authority to ensure that S4C and S4C Digital are public services used for the dissemination of information, education and entertainment. The Welsh Authority may provide programming subtitles and other ancillary services for their S4C programmes. They may also provide assistance for disabled people and other ancillary services for their S4C Digital services.

Section 205: Powers to provide other services

441. This section confers on the Welsh Authority the power to provide certain services in addition to S4C and S4C Digital. *Subsection (1)* prohibits the Welsh Authority from providing any television programme service (other than S4C and S4C Digital) unless its provision is approved by an order made by the Secretary of State and it is a public service of high quality used for the dissemination of information, education or entertainment wholly or mainly to the Welsh public. Any television programme services provided under this section must broaden the existing range of public television programme services in Wales.

*The meaning of a television programme service is given in section 362(1).

442. *Subsection (2)* allows the Welsh Authority to provide services other than television programme services or sound services, provided they are public services of high quality used for the dissemination of information, education or entertainment which will be made available wholly or mainly to the Welsh public, or for use in Wales, and have been approved by the Secretary of State. Examples of the types of service that the Welsh Authority may provide under this subsection include (but are not limited to) an interactive service delivered via the Internet. Paragraph 27(1) of Schedule 18 stipulates that the Welsh Authority are not required to obtain the Secretary of State's approval for the continued provision of any service that they are providing before section 205 comes into effect.
443. In the course of providing a service approved by the Secretary of State under section 205, the Welsh Authority may under *subsection (7)* also provide: assistance for disabled people in relation to programmes included in the service, services ancillary to programmes included in the service and related to their content, and other types of ancillary services offered in a digital format.
444. Any programme service approved by the Secretary of State under this section must contain a substantial proportion of programmes in the Welsh language.

Section 206: Other activities of Welsh Authority

445. This section enables the Welsh Authority to carry on activities appearing to them to be activities which it is appropriate for them to carry on in association with the function of providing S4C, S4C Digital and any other service approved by the Secretary of State

under section 205, or to be connected (other than merely in financial terms) with that function. Prior to carrying out such activities, the Welsh Authority must obtain the approval of the Secretary of State under *subsection (2)*. The types of activities that may be approved by her under *subsection (2)* include those needed to secure, and those provided in connection with, the provision of licensable services by an S4C company (e.g. a company controlled by the Authority: see section 362(1)), such as the formation of a company to provide a programme service, but do not include the provision of a licensable service. *Subsection (6)* amends the provisions in the Broadcasting Act 1990 which govern the power of the Welsh Authority to do things incidental or conducive to the carrying out of their functions. Paragraph 27(2) and (3) of Schedule 18 provides that the Secretary of State's approval is not required for the continuation of activities undertaken by the Welsh Authority or an S4C company before this section comes into effect.

*A *licensable service* is defined in *subsection (7)* as an independent television or independent radio service that would be regulated under section 211 or 245 if provided by an S4C company.

Section 207: Welsh Authority finances

446. It is unlawful under *subsection (2)* for the Welsh Authority to charge people in Wales for the reception or use of any of their public services, any assistance provided to disabled persons for programmes included in their public services or any of the ancillary services that they provide in a digital format.

*Under *subsection (9)*, the Welsh Authority's public services are S4C, S4C Digital and other services approved by the Secretary of State under section 205.

447. *Subsection (3)* states that the power of the Welsh Authority to do anything that is conducive or incidental to the carrying out of their functions includes the power to borrow money. However, they may not do so without the approval of the Secretary of State and the consent of the Treasury. The Welsh Authority must also pay such fees towards the carrying out of OFCOM's functions as may be agreed between the Authority and OFCOM (or, in the absence of agreement, as are set by the Secretary of State).

448. *Subsection (7)* amends section 61 of the Broadcasting Act 1990 so that the Secretary of State may increase the annual grant paid to the Welsh Authority if she is satisfied that additional funding is appropriate in light of the costs they incur in providing their public services and broadcasting or distributing such services.

449. *Subsection (8)* amends section 61A of the Broadcasting Act 1990 so that the Welsh Authority must use the money in their public service fund only for the provision of television programme services that are "public services" as defined by *subsection (9)*. *Subsection (8)* also amends section 61A of the Broadcasting Act 1990 so that the first broadcast of any programme funded from the public service fund must be on one of the Authority's public television services.

Section 208: The Gaelic Media Service

450. This section renames the Gaelic Broadcasting Committee (Comataidh Craolaidh Gàidhlig), originally the Gaelic Television Committee (Comataidh Telebhisein Gàidhlig) established under section 183 of the Broadcasting Act 1990, as the Gaelic Media Service (Seirbheis nam Meadhanan Gàidhlig). It also inserts new subsections (3B), (4), (4A) and (4B) into section 183. These set out the functions and powers of the Gaelic Media Service who must secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available for reception in Scotland.

451. The Gaelic Media Service may apply the Gaelic Broadcasting Fund for the purpose of, or any purpose connected with, the carrying out of their functions: new subsection (4). In carrying out their functions, the Gaelic Media Service may finance, or engage in, the making of television and sound programmes in Gaelic to be broadcast or transmitted so as to be available for reception in Scotland, provide or arrange training in relation to programme-making and carry out research to discover the types of television and sound programmes that the Gaelic-speaking community would like to be broadcast. The Gaelic Media Service may not provide any of the services specified in subsection (4B).
452. [Paragraph 28](#) of Schedule 18 provides for transitional provisions in respect of the membership of the Comataidh Craolaidh Gàidhlig. [Paragraph 29](#) of that Schedule provides for the continuation of the Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 1996 ([S.I. 1996/2758](#)).

Section 209: Membership of the Service

453. This section inserts a new section 183A into the Broadcasting Act 1990 that deals with the composition of the Gaelic Media Service. The Service must consist of no more than 12 members, each of whom must be appointed by OFCOM, having regard to the matters listed in *subsection (6)* of section 183A, and must be approved by the Secretary of State for Scotland. OFCOM must appoint one member as chairman. One member must be nominated, respectively, by the BBC, Highlands and Islands Enterprise and the Bòrd Gàidhlig na h-Alba (Gaelic Development Agency).
454. OFCOM must also secure that the members of the Services are able adequately to represent the interests of (i) providers of regional Channel 3 services for areas wholly in Scotland or such other areas as are determined by OFCOM under section 184(4) (b) of the Broadcasting Act 1990; (ii) the independent radio and television production industries in Scotland; and (iii) other persons and bodies concerned with the promotion and use of the Gaelic language.
455. Schedule 19 to the Broadcasting Act 1990 (Gaelic Broadcasting Committee: supplementary provisions) (as amended by section 210 and paragraph 73 of Schedule 15) also applies to the Gaelic Media Service.

Section 210: Supplementary provisions about the Service

456. This section amends Schedule 19 (supplementary provisions) to the Broadcasting Act 1990.