

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Television and Radio Services

Chapter 4: Regulatory Provisions

Section 263: Application of regulatory regimes

571. OFCOM must use their Broadcasting Act powers, and their powers under this Act, to implement and enforce the regulatory regime for each licensed service. The Secretary of State has the power to remove any condition from the regulatory regime.

Section 264: OFCOM reports on the fulfilment of the public service remit

572. OFCOM are to prepare - twelve months after commencement of this section, and thereafter no less frequently than every five years - a report on the current state of public service television broadcasting, documenting the extent to which broadcasters have together satisfied the requirements of the public service television broadcasting remit set out in this section. In essence, the remit involves the provision of a balanced diversity of high-quality programming, which meets the needs and interests of different audiences (*subsection (4)*).
573. OFCOM are also to have regard to the more detailed obligations listed in *subsection (6)*. These include obligations relating to culture, news and current affairs, sport, education, entertainment, religion and other beliefs, science, social issues, matters of international significance, programming for children, and local programming. OFCOM are also required to have regard to the number of programmes within the services which are made outside the M25 area. In addition, OFCOM must consider the costs to the broadcasters of fulfilling their public service television remit and their available resources.

*the *public service broadcasters* listed in *subsection (12)* are the BBC, the Welsh Authority, the public teletext provider and the providers of licensed public service channels, namely the providers of Channel 3 services, Channel 4 or Channel 5 (see section 362).

Section 265: Public service remits of licensed providers

574. A public service remit applies to each licensed public service channel. For Channel 3 services, and Channel 5, the remit is to provide a range of high quality and diverse programming. For Channel 4, the remit specifically includes the need for programming to be innovative, creative and distinctive, for it to take account of cultural diversity and to make a significant contribution to meeting the need for licensed public service channels to include educational programmes. For the public teletext service (transmitted in both analogue and digital form) the remit is to provide a range of high quality and diverse text material. Licences relating to each of these must include a condition requiring that the public service remit be satisfied.

Section 266: Statements of programme policy

575. The provider of a licensed public service channel must publish an annual statement of programme policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the broadcaster will satisfy its public service remit, as well as those more specific programming obligations under sections 277 to 296 of the Act, and report on how successful it was in doing so in the previous year.
576. *Subsection (4)* provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. *Subsection (7)* states that licences for public service channels may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, *subsection (9)* provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.
577. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in *subsection (8)*.

Section 267: Changes of programme policy

578. The statement described in the notes to section 266 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the channel, unless OFCOM have been consulted and the provider of the channel has taken account of OFCOM's views. If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM. In determining what constitutes a material change, regard is to be had to OFCOM's guidance and to the time over which the change (and any related change) will take effect. OFCOM are obliged to review their guidance from time to time and amend it as appropriate.

Section 268: Statements of service policy by the public teletext provider

579. This section sets out similar requirements to section 266. The provider of the public teletext service must publish an annual statement of policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the provider will satisfy its public service remit and report on how successful it was in doing so in the previous year. The statement must also address, where relevant, both analogue and digital teletext services.
580. *Subsection (5)* provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. *Subsection (8)* states that licences for the public teletext provider may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, *subsection (10)* provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.
581. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in *subsection (9)*.

Section 269: Changes of service policy

582. This section mirrors section 267. The statement described in the notes on section 268 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the service unless OFCOM have been consulted and the service provider has taken account of OFCOM's views.

If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM.

Section 270: Enforcement of public service remits

583. This section provides for the case where OFCOM conclude that a provider of a licensed public service channel or the public teletext provider has failed to fulfil its public service remit, or has not contributed adequately to the general requirements for public service broadcasting. If OFCOM are of the opinion that this failure is serious, and cannot be excused by reference to economic or market conditions, OFCOM may exercise their powers under this section. Before doing so, OFCOM must also consider the factors set out in *subsection (3)* regarding the provider's remit and more general performance.
584. OFCOM may have recourse to a number of powers. *Subsection (4)* provides that OFCOM may direct that the provider amend his policy statement as directed, and may direct that the provider remedy its failure to fulfil satisfactorily its public service obligations. Such directions are to be accompanied by a reasonable timetable for compliance and guidance as to how OFCOM will decide whether the failure has been remedied and whether they will exercise their powers under *subsection (6)*.
585. If OFCOM are satisfied that their directions have not been complied with, that the provider is still failing its public service remit, and that this reasonably merits variation of the provider's licence, they may replace the self-regulatory regime described in the notes above with more detailed regulation (*subsection (6)*). In other words, the conditions set under sections 265 to 269 would be replaced by specific conditions set by OFCOM in order to ensure that the provider fulfils its public service remit.
586. One of the general objectives of the Act is that OFCOM be required to review continually the need for regulation in the sector, ensuring that unnecessary regulatory burdens are neither imposed nor maintained. In accordance with this de-regulatory approach, *subsection (8)* gives OFCOM the power, having previously exercised their powers in accordance with *subsection (6)*, to vary again a provider's licence in order to reinstate the conditions imposed under sections 265 to 269, and to remove or amend any specific conditions that were inserted in their place.
587. Before giving any direction, or exercising any of their powers, under this section, OFCOM shall consult the provider affected.

Section 271: Power to amend public service remits

588. This section provides the Secretary of State with the power to make an order amending the public service remits under section 261 for any licensed public service channel or the public teletext service, the list of public service television broadcasting purposes set out at section 264(4), and the list of more detailed matters set out at subsections (5) and (6) of section 264. No such order may be made unless OFCOM have recommended it in a report under section 229 or 264, unless *subsection (3)* applies. Before recommending the making of an order under this provision OFCOM will be under an obligation to consult members of the public, such public service broadcasters (including the public teletext service provider if appropriate) as are likely to be affected by the proposed change and other providers of television and radio services as appropriate. Before making an order the Secretary of State must consult OFCOM, the public service broadcasters likely to be affected and other relevant providers. Any order made by the Secretary of State will be subject to the affirmative resolution procedure.

Section 272: Must-offer obligations in relation to networks

589. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-carry services under section 64 conditions which they consider appropriate for securing the three following objectives:

*These notes refer to the Communications Act 2003 (c.21)
which received Royal Assent on 17 July 2003*

- that digital channels or services on the list of must-carry services under section 64 are offered for broadcasting and distribution over every appropriate network;
- that each provider of those channels or services enters into arrangements which ensure that their digital channels or services and any ancillary services are broadcast or distributed on appropriate networks so that those channels and services are made available for reception by as many members of the intended audience (as defined in *subsection (7)*) for a given service as possible; and
- that such arrangements prohibit the provider of the network from charging for reception of the channels or services.

*An “*appropriate network*” is defined in *subsection (7)* as a network used to provide public electronic communications services to a significant number of end-users as their principal means of receiving television programmes.

Section 273: Must-offer obligations in relation to satellite services

590. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every other licensed television service specified by the Secretary of State conditions which they consider appropriate for securing the following three objectives:

- that digital channels or services to which this section applies are offered as available for broadcast by means of every satellite television service available for reception in the whole or a part of the United Kingdom;
- that each provider of those channels or services enters into arrangements which ensure that its digital channels or services and any related ancillary services are broadcast by means of satellite television services, such that they are available for reception by as many members of the intended audience (as defined in *subsection (7)*) for a given service as possible; and
- that such arrangements prohibit a charge being imposed for the reception of the channel or service.

*A “*satellite television service*” is defined in *subsection (7)* as a service which consists of broadcasting television programme services from a satellite and is used by a significant number of persons as their principal means of receiving television programmes.

591. These objectives apply to a service or channel only whilst its digital form is included in the list of “must-provide” services for the purpose of section 274 (see below).

Section 274: Securing reception of must-provide services in certain areas

592. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-provide services under section 275 conditions which secure the reception of those services. Such conditions may provide that where persons required to provide must-provide services fail to enter into or maintain arrangements that meet the requirements of *subsection (3)*, OFCOM may impose such arrangements. Before doing so, OFCOM must consult all persons who provide must-provide services. The arrangements that may be entered into by, or imposed upon, providers of must-provide services must secure that, where necessary, any member of the intended audience (as defined in *subsection (10)*) for a given service, who has bought the relevant equipment (for instance a dish and a digital satellite decoder), has available to them a facility for receiving the must-provide services (including any that are broadcast by satellite) and that this is made available free of charge. This applies only where that person could not otherwise (e.g. by digital terrestrial broadcasting) receive the service to an

acceptable technical standard. The effect of the arrangements currently, for example, would be to require the relevant broadcasters to supply “smart” cards for the operation of receiving equipment that will permit reception of the free-to-view services (“solus cards”). The broadcasters must share the costs involved. They must also establish complaints procedures and ensure that these procedures are publicised in accordance with OFCOM’s guidance. Any such arrangements will only take effect if approved by OFCOM.

593. *Subsections (6) and (7)* clarify when reception of a service is to be regarded as being free of charge. *Subsection (8)* provides that OFCOM shall determine the quality of reception required before someone can be treated for the purpose of this section as receiving a service in an intelligible form.

Section 275: Must-provide services for the purposes of s.274

594. This section provides that the list of must-provide services for the purposes of section 274 includes the following: every service of digital television programmes provided by the BBC and in relation to which OFCOM have functions; the Channel 3 services, Channel 4 and Channel 5 services, so far as any of them are provided in digital form; S4C Digital; and the digital public teletext service. The Secretary of State may by order amend the list of must-provide services. In exercising this power, she must have regard to the public benefit to be secured by the modification, the likely financial effects of the proposed modification on the affected parties and the proportionality of these effects when set against the public benefit secured.

Section 276: Co-operation with the public teletext provider

595. OFCOM are to include, in each licence to provide a Channel 3 service or Channel 4, conditions that secure that the public teletext provider and any person authorised by him under section 220 have access to such of the facilities of the relevant provider as are needed in order to provide the public teletext service. A provider of a Channel 3 service or Channel 4 may require the public teletext provider and authorised persons to pay a reasonable charge for such access. Similar provisions apply to the Welsh Authority: see paragraph 11 of Schedule 12.

Section 277: Programming quotas for independent productions

596. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that at least 25 per cent (or such other figure as is substituted by the Secretary of State by order) of the time allocated to the broadcasting of qualifying programmes on that channel is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions.

*“*qualifying programmes*” are defined in *subsection (2)(a)* as programmes of such a description as the Secretary of State may by order specify as qualifying programmes. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of qualifying programmes shall continue to be effective after the commencement of sections 277 and 309 of the Act and paragraphs 1 and 7 of Schedule 12 to the Act.

*“*independent productions*” are defined in *subsection (2)(b)* as programmes of such a description as the Secretary of State may by order specify as independent productions. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of independent productions shall continue to be effective after the commencement of the Act as specified above.

*“*licensed public service channels*” are defined in section 362 as meaning any of the following services (whether provided for broadcasting in digital or in analogue form): any Channel 3 service, Channel 4 and Channel 5.

597. OFCOM may give directions to the providers of the licensed public service channels for the purpose of carrying over to one or more subsequent years any shortfall for any year in meeting the independent productions quota.
598. The Secretary of State may also provide, by order, that OFCOM include conditions in the licences of the licensed public service channels in order to secure that, in each year, not less than a specified percentage of the programming budget for that channel is applied in the acquisition of independent productions. These conditions may apply as well as, or instead of, the requirement to allocate 25% of airtime to independent productions.

*“*programming budget*” is defined in *subsection (13)* as the budget for the production and acquisition of qualifying programmes.

Section 278: Programming quotas for original productions

599. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that an appropriate amount of airtime is allocated to original productions and that the time allocated is divided as may be appropriate between peak viewing times and other times. OFCOM may also include conditions excluding specified descriptions of programmes from the calculation of the necessary proportion of original productions. Before including such a condition, OFCOM must consult the licence holder on whom it is to be imposed.

*References to original productions in section 278 are to programmes of such description as the Secretary of State may by order specify as original productions. The Secretary of State may confer such discretions on OFCOM as she sees fit for the purposes of the order. The Secretary of State must consult OFCOM, the BBC and the Welsh Authority before making any order under this section.

*“*Peak viewing time*” is defined in *subsection (10)* as such time as appears to OFCOM to be – actually or potentially - a peak viewing time for any given public service channel.

Section 279: News and current affairs programmes

600. OFCOM are to include conditions in the licences of all public service channels in order to secure that the programmes included on those channels include news and current affairs programmes and that the time allocated to the broadcasting of news and current affairs programmes is an appropriate proportion of the total time allocated to the broadcasting of all other programmes. Such programmes are to be of a high standard, and are to cover both national and international matters. News programmes should be broadcast at intervals throughout the day, and the times at which both news and current affairs programmes are to be broadcast should include an appropriate amount of peak viewing times. OFCOM must consult with the channel provider before determining the proportion of broadcasting time to be allocated to news and current affairs programmes and what constitutes a peak viewing time.

*“*peak viewing time*” is defined in *subsection (5)* as such time as appears to OFCOM to be – actually or potentially – a peak viewing time for that channel.

Section 280: Appointed news providers for Channel 3

601. OFCOM are to include in every regional Channel 3 licence conditions to secure nationwide broadcasting of news programmes that are able to compete with other television news programmes broadcast nationwide in the United Kingdom. Such conditions must require that all holders of regional Channel 3 licences maintain arrangements for the appointment of a single body corporate as the appointed news provider and that at all times when a licensee is providing a regional Channel 3 service there is a news provider appointed under those arrangements.

602. *Subsection (3)* provides that OFCOM must approve the terms of appointment, to ensure that the finances of the appointed person are adequate to meet news obligations throughout the period of appointment. Holders of the regional Channel 3 licences and the body which is the appointed news provider are required to provide OFCOM with all such information as they may need to ensure that the necessary arrangements are in place and working effectively.
603. *Subsection (5)* provides that news programmes must always be provided by the person who is the appointed news provider, and must be broadcast simultaneously with the broadcasting of news programmes included in other regional Channel 3 services.

Section 281: Disqualification from appointment as news provider

604. OFCOM may impose conditions to ensure that a body does not become or remain the appointed news provider (i) if it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence (such as a local authority, a political body, the BBC, the Welsh Authority or a Channel 4 company) or (ii) if there would be a contravention of Part 1 of Schedule 14 to this Act if that body held a licence to provide a Channel 3 service, (e.g. because the body has interests in national or local newspapers).

Section 282: Power to repeal or modify Channel 3 news provider provisions

605. This section allows the Secretary of State, by an affirmative procedure order, to repeal or modify the provisions of section 280 or 281. Unless simply giving effect to recommendations made by OFCOM, the Secretary of State must consult OFCOM before making an order under this section.

Section 283: News providers for Channel 5

606. The Secretary of State may by order impose requirements for the provision of Channel 5 news programmes that correspond to the news provider provisions for Channel 3 services, with such modifications as the Secretary of State sees fit. An order may only be made on OFCOM's recommendation or after consulting OFCOM. Before the Channel 5 licence is varied, the licence-holder must be given an opportunity to make representations to OFCOM.
607. The Secretary of State is prohibited from imposing new obligations in relation to Channel 5 unless she is satisfied that Channel 5's share of the audience is broadly equivalent to that for the services comprising Channel 3.

Section 284: News provision on the public teletext service

608. OFCOM are to include in the licence of the public teletext provider conditions that secure that news items are included in public teletext services, and that they are up-to-date and regularly revised.

Section 285: Code relating to programme commissioning

609. OFCOM are to include conditions in the licences of every licensed public service channel in order to secure that the channel provider draws up, from time to time revises and complies with a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions. The code must be submitted to OFCOM for approval and will have effect only if approved by OFCOM.
610. OFCOM must issue general guidance setting out the procedure for drawing up and revising the code and the matters to be covered. OFCOM's guidance may not however specify particular terms to be included in agreements to which the guidance relates. OFCOM must ensure that there is always published guidance for the purposes of this section in force and must consult the providers of the licensed public service channels, persons who make independent productions (or persons appearing to OFCOM

to represent them), the BBC and the Welsh Authority before issuing or revising the guidance.

*an “*independent production*” has the same meaning as in section 277.

Section 286: Regional programme-making for Channels 3 and 5

611. OFCOM may include in every licence for a Channel 3 service conditions to secure that, where Channel 3 programmes are broadcast in more than one Channel 3 area, a suitable proportion of those programmes that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should make up a suitable range of programmes. An associated requirement is that Channel 3 providers invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. None of these requirements need be included as a licence condition for a national Channel 3 service, unless OFCOM consider this to be appropriate having regard to the nature of the service. OFCOM must consult the licence holder on whom conditions under this section are to be imposed before imposing the conditions.

*a “*national Channel 3 service*” is defined in section 362 as a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided.

612. OFCOM are also to include conditions in the licence for Channel 5 in order to ensure that a suitable proportion of Channel 5 programmes that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel 5 provider must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25.

Section 287: Regional programmes on Channel 3

613. OFCOM are to include in national, regional and local Channel 3 licences conditions to secure that the areas served by the licensee are provided with programmes appropriate to the area concerned. In relation to regional and national services, the objectives to be secured are set out in *subsections (1) and (4)*, respectively, and include ensuring that a sufficient amount of time is given in the service to regional programmes, including news programmes, which are of high quality, that a suitable proportion of regional programmes included in the service consists of programmes made in the relevant regional area and that a sufficient proportion of such programmes are broadcast at or around peak time.

*“*regional programme*” is defined in *subsection (8)* as - in relation to a regional Channel 3 service – a programme included in that service as being of particular interest to persons within the area covered by the service or - in relation to a national Channel 3 service – as being of particular interest to persons within a particular area of the United Kingdom.

614. In this section, a Channel 3 service is a local service if it is required to provide programmes for specific areas or specific communities within that region (*subsection (7)*). In the case of a local service, OFCOM may include conditions requiring that a sufficient amount of time is given in the service to an appropriate range of local programmes, including news programmes, which are of high quality; that a sufficient proportion of such programmes are broadcast at or around peak time; and that an adequate proportion of such programmes have been produced in the relevant locality.

*“*local programme*” is defined in *subsection (7)* as a programme included in a regional Channel 3 service for part of an area, or for a particular community.

615. Before including a licence condition in this respect OFCOM must consult the licence holder on whom it is to be imposed.

Section 288: Regional programme-making for Channel 4

616. OFCOM are to include in the Channel 4 licence conditions providing that a suitable proportion of the programmes to be broadcast on Channel 4 that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel Four Television Corporation must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. Before imposing a condition under this section, OFCOM must consult the Corporation.

Section 289: Regional matters in the public teletext service

617. OFCOM must include, in the public teletext service licence, conditions which ensure that an appropriate proportion of material reflecting the interests of the different regions of the United Kingdom is included in the analogue and digital teletext services.

Section 290: Proposals for arrangements

618. Any application for a regional Channel 3 licence must include the applicant's proposals for participating in networking arrangements. OFCOM may publish guidance for applicants on the kinds of proposals which they are likely to consider satisfactory.

*For the purposes of Part 3, arrangements are networking arrangements if they: (1) apply to all holders of regional Channel 3 licences; (2) allow programmes made, commissioned or acquired by a Channel 3 licensee to be made available to all other regional Channel 3 licensees for broadcasting; and (3) enable regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom.

Section 291: Obligation as to making and continuance of approved arrangements

619. OFCOM are to include in every regional Channel 3 licence conditions to secure that, where no arrangements imposed by OFCOM under section 292 are in force, the licensee has entered into and given effect to networking arrangements (including any modification thereto) that are approved by OFCOM in accordance with Schedule 11. The Chapter I prohibition of the Competition Act 1998 does not apply to any networking arrangements that have been approved by OFCOM in accordance with any licence condition imposed by them under this section or that have been considered and approved under Schedule 4 to the Broadcasting Act 1990 (*subsection (3)*).
620. Under paragraph 36 of Schedule 18, networking arrangements that are in force immediately before the commencement of this section and have been approved under section 39 of the Broadcasting Act 1990 will be treated as if approved by OFCOM under this section.

Section 292: OFCOM's power to impose arrangements

621. Any notice published by OFCOM stating that they propose to award one or more regional Channel 3 licences must specify a date by which networking arrangements must be entered into if they are to be effective before the new Channel 3 licensees start to provide their licensed services. If suitable networking arrangements do not exist by that date or subsequently cease to apply, OFCOM may impose appropriate networking arrangements on all regional Channel 3 providers, including the new licensee. *Subsection (7)* allows OFCOM to set licence conditions appropriate for securing that regional Channel 3 providers comply with networking arrangements imposed under this section. The imposed networking arrangements will cease to have effect if the licence holders bound by those arrangements enter into alternative networking arrangements which are approved by OFCOM.

Section 293: Review of approved networking arrangements etc.

622. This section imposes a duty on OFCOM to carry out general reviews of the networking arrangements approved under section 291 or imposed under section 292. The first review must be carried out no more than six months after the last closure date for an offer of a replacement regional Channel 3 licence, made under section 215. Reviews must be undertaken yearly thereafter. OFCOM may also, at any other time, carry out a review of whether the networking arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11 (approval, imposition and modification of networking arrangements).

*The first competition test is that the networking arrangements do not have the object or effect of preventing, restricting or distorting competition within the United Kingdom. The second competition test is that the networking arrangements do have such an object or effect but would satisfy the criteria set out in section 9 of the Competition Act 1998 (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress).

623. Where, following a review, OFCOM are satisfied that modifications to the networking arrangements are required, they may require regional Channel 3 licensees to give effect to those modifications or, in the case of arrangements imposed under section 292, make those modifications themselves. OFCOM may not require modifications to be made to approved networking arrangements already in force without conducting a review under section 293 unless they have the consent of the Channel 3 licensees affected by the modification.

624. *Subsection (7)* allows OFCOM to set licence conditions that secure that Channel 3 licensees give effect to any modifications of the networking arrangements proposed by OFCOM.

Section 294: Supplemental provision about networking arrangements

625. *Schedule 11* sets out the procedures to be followed by OFCOM when approving, imposing or modifying networking arrangements under sections 291 to 293.

626. Where networking arrangements (and modifications thereto) are submitted to OFCOM for their approval, OFCOM must publish a description of those arrangements and allow third parties a reasonable period of time to comment on them. OFCOM may then approve, or conditionally approve, or reject the arrangements (or modifications to them). Before deciding to give a conditional approval requiring changes to the arrangements, OFCOM must consult each holder of a regional Channel 3 licence about the changes. OFCOM must then, subject to confidentiality, publish their decision and their reasons for it. Once arrangements have been approved by OFCOM they are not to be modified without OFCOM's approval.

627. *Paragraph 5* requires OFCOM to publish, subject to confidentiality, reports explaining any networking arrangements that they impose under section 292 and the outcome of any reviews carried out under section 293.

628. Under paragraphs 6 and 7, OFCOM must not approve, impose or modify any networking arrangements under sections 291 to 293 unless:

- they are satisfied that the arrangements satisfy the first or second competition tests (as described in the note to section 293 above); and
- they consider that the networking arrangements represent a satisfactory means of achieving the purpose of enabling regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom. OFCOM must also take into consideration the likely effect of the arrangements on the ability of regional Channel 3 licensees to maintain the quality and range of their regional programmes and the regional character of their services.

629. Under paragraph 8, OFCOM may not approve, impose or modify any networking arrangements where it appears to them that they are likely to prejudice the ability of regional Channel 3 licensees to comply with their public service remits or conditions imposed under sections 286, 287 or 352.
630. **Paragraph 9** confers a right of appeal against OFCOM's decisions concerning the competition aspects of networking arrangements. The right of appeal extends to any holder of a regional Channel 3 licence. An appeal may be brought only by sending a notice of appeal to the Competition Appeal Tribunal (CAT) and on the grounds listed in sub-paragraph (4). A Channel 3 licensee is not required to comply with OFCOM's decision, pending the outcome of the appeal.
631. The CAT is to decide the appeal on the merits. The CAT is to decide whether OFCOM's decision was appropriate and may confirm OFCOM's decision or issue any directions it considers are necessary to give effect to its decision. OFCOM must comply with any such directions. A decision of the CAT may be appealed under paragraph 11 on a point of law to the Court of Appeal or, in Scotland, to the Court of Session. Such an appeal may, with the permission of the CAT or the appellate court, be brought by a party to the original CAT proceedings.
632. **Paragraph 12** allows OFCOM to require any person to provide them with information necessary to enable OFCOM to carry out their functions under section 293 or Schedule 11. *Sub-paragraph (4)* limits the types of document that OFCOM may demand. The High Court, the Court of Session or, in Northern Ireland, the High Court or a judge of the High Court may, on an application made by OFCOM, enquire into whether a person has refused or otherwise failed (without reasonable excuse) to comply with a request from OFCOM. If the court is satisfied that that is the case, the person concerned may be punished as if he had been held in contempt of court (paragraph 13).
633. A person is guilty of an offence under paragraph 13 if he:
- intentionally alters, suppresses or destroys a document requested by OFCOM; or
 - knowingly or recklessly provides OFCOM with false or misleading information himself or knowingly or recklessly provides false or misleading information to a third person which he knows will be provided to OFCOM.
634. The penalties to which any person found guilty of committing an offence will be liable are set out in sub-paragraph (11).

Section 295: Involvement of C4 Corporation in programme-making

635. OFCOM are to include in the Channel 4 licence a condition prohibiting the Channel Four Television Corporation from being involved in making programmes to be aired on Channel 4, except as permitted by OFCOM.

Section 296: Schools programmes on Channel 4

636. OFCOM are to include in the Channel 4 licence any conditions necessary to ensure that Channel 4 broadcasts a sufficient proportion of schools programmes. This may be achieved by setting a minimum number of hours (in term time or within normal school hours) that must be dedicated to schools programming. The Corporation may also be required to finance the production of schools programmes, to acquire such programmes from others and/or to produce any materials that may be necessary to ensure the effective use of such programmes. The programming should be of a high standard and, in producing their schools programmes, the Corporation should consult such persons concerned with schools or schools programmes as OFCOM direct. OFCOM must consult the Corporation before imposing any conditions under this section.

**schools programmes* are defined in *subsection (12)* as programmes which are intended for use in schools.

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which received Royal Assent on 17 July 2003*

637. *Subsection (11)* provides that the requirement in section 34 of the Broadcasting Act 1990, that a suitable proportion of the programmes which are included in Channel 3 services and Channel 4 and 5 (taken as a whole) are schools programmes, shall no longer apply.

Section 297: Channel 4 contribution towards national television archive

638. This section amends section 185 of the Broadcasting Act 1990 to allow OFCOM to determine the amount of money that the holder of the Channel 4 licence must contribute after the television transfer date towards the expenses of maintaining a television archive for the United Kingdom.
639. **Section 185** already requires such contributions from holders of Channel 3 and 5 licences and similar arrangements apply to the BBC under the BBC Agreement.

Section 298: Conditions prohibiting interference with other services

640. OFCOM must include in the licence for the public teletext service conditions that prohibit the public teletext service provider from causing interference with any television broadcasting service on whose frequency it is provided or any other wireless telegraphy transmissions.

Section 299: Categorisation of listed events

641. This section amends section 97 of the Broadcasting Act 1996 to provide for the existing concept of 'listed events' to be divided into two categories, called 'group A' and 'group B'. Listed events are sporting or other events of national interest, which the Secretary of State has listed for the purpose of attracting the legal consequences provided for by Part 4 of the 1996 Act. The amendment requires all listed events to be allocated to one of these groups. When an event is listed, the Secretary of State will allocate it to a group, and she may decide to move a listed event from one group to another, subject to the same consultation requirements that already apply to a decision to list an event. The existing requirement to consult the ITC is replaced by one to consult OFCOM.

Section 300: Effects of categorisation of listed events

642. *Subsection (1)* amends section 99(1) of the Broadcasting Act 1996 so that it applies only to Group A listed events. Section 99(1) makes a contract void if it purports to grant exclusive rights to televise a listed event live for reception in the UK. It will, therefore, become possible for valid contracts to be made granting such exclusive rights in relation to group B events.
643. *Subsection (2)* amends section 101 of the Broadcasting Act 1996. That section currently prohibits a television service provider who provides, for reception in the UK, a service falling within either of the categories set out in section 98(1) of the 1996 Act from including in that service live coverage of the whole or any part of a listed event unless either the live rights have also been acquired by another person providing a service in the other of those two categories, or the ITC has given its consent. As well as replacing references to the ITC with references to OFCOM, the amendment introduces a new ground on which live coverage can be included without satisfying either of those existing grounds. The new ground applies only to group B events, and requires that rights to provide adequate alternative coverage have been acquired by one or more persons, other than the person proposing to include the live coverage in his service, who satisfy the requirements of regulations made under section 104ZA of the 1996 Act (which is inserted by section 302 of this Act). The amendments also make minor drafting improvements.

Section 301: Code relating to listed events

644. This section amends section 104 of the Broadcasting Act 1996, which makes provision for an ITC Code for various purposes of Part 4 of that Act. The amendment transfers responsibility to OFCOM and repeals one of the Code's existing functions, that of specifying the circumstances in which the televising of listed events is, or is not, to be treated as live for various purposes of Part 4 (which becomes instead a function of regulations under section 104A, which is inserted by section 302 of this Act).
645. **Paragraph 51** of Schedule 18 provides that until OFCOM draw up a code under this clause, the code drawn up by the ITC under section 104 of the Broadcasting Act 1996 shall have effect.

Section 302: Regulations about coverage of listed events

646. This section inserts a new section 104ZA into the Broadcasting Act 1996 enabling OFCOM to make regulations for determining, for the purposes of Part IV of that Act, first, the circumstances in which the televising of listed events is, or is not, to be treated as live and, secondly, what is to be taken to represent the provision of adequate alternative coverage (the first function was formerly one of the Code drawn up under section 104, and the second is relevant to the amendment of section 101 made by section 300 of this Act).

Section 303: Code relating to provision for deaf and visually impaired

647. This section provides that OFCOM are to draw up, publish and maintain a code giving guidance as to the extent to which the services to which the section applies should promote their understanding and enjoyment by persons who are deaf or hard of hearing, persons who are blind or partially-sighted and persons with a dual sensory impairment. *Subsections (4) and (5)* set out obligations on the services set out at *subsection (12)* that must, from the fifth and tenth anniversaries respectively of the 'relevant date' (which is defined in section 305), be fulfilled. *Subsection (4)* sets out targets in respect of subtitling, and *subsection (5)* sets out targets in respect of subtitling, audio-description and sign language. The total of programmes from which that proportion is set shall exclude such programmes as OFCOM consider should be excluded under *subsection (7)* having regard to the factors set out in *subsection (8)*. OFCOM may also set interim targets and exclude different descriptions of programmes in relation to different services. Where OFCOM are satisfied that a service is a special case they may exclude all the programmes in that service.

Section 304: Procedure for issuing and revising code under s. 303

648. Before drawing up the code described in the notes to section 303 above, OFCOM shall, as they see fit, consult with representatives of the deaf or hard of hearing, blind or partially-sighted, and dual sensory impaired, as well as with those providing the relevant services. When the code is published it shall be in a form easily accessed by those who are deaf or hard of hearing, those who are blind or partially-sighted, and those with a dual sensory impairment.

Section 305: Meaning of "relevant date" in s. 303

649. This section defines "relevant date" for the purposes of section 303. The definition varies according to the service in question, and when provision of that service commenced.

Section 306: Power to modify targets in s. 303

650. The Secretary of State, following consultation with OFCOM, may by order increase the target percentages set out in *subsection (4)* of section 303, or substitute a different anniversary, where it appears that the obligation set out in that subsection has been or

is likely to be fulfilled before the specified anniversary. She may also substitute a later anniversary for the one specified in *subsection (5)* or substitute a higher percentage.

Section 307: Observance of code under s. 303

651. OFCOM are to include in the licence for every service to which this section applies (namely, any of the services listed in section 303(12)) conditions requiring that the code provided for in section 303 is observed.

Section 308: Assistance for the visually impaired with the public teletext service

652. OFCOM are to include in the licence for the public teletext service conditions to secure, so far as is reasonable and practicable, that the service includes features enabling persons with disabilities affecting their sight to use the service.

Section 309: Quotas for independent programmes

653. OFCOM are to include in every licence for a digital television programme service that is not comprised in a licensed public service channel conditions to secure that at least 10 per cent of the time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions. The Secretary of State may, by order, and having consulted OFCOM, vary this percentage and determine what are to be considered “qualifying programmes” and “independent productions”.

Section 310: Code of practice for electronic programme guides

654. OFCOM must draft and maintain a code of practice for the provision of electronic programme guides (EPGs). This must ensure that EPG providers give the listing and/or promotion of the programmes on public service channels an appropriate degree of prominence, as determined by OFCOM. This obligation also applies to the means of selecting and accessing the programmes on these channels from an EPG.
655. These obligations are expressed by reference to “intended audience” (defined in *subsection (7)*). This has the effect that, where the provider of a public service channel provides the channel in regional versions, in any given region the channel’s most prominent EPG listing will be occupied by the programmes provided for that region. Programmes on the other regional versions of that channel will usually be found listed further down the EPG.

*an “*electronic programme guide*” is defined, for the purposes of this section, in *subsection (8)* as a service which comprises (i) the listing and/or 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 so far as it is promoted or listed in the guide. As at the date of Royal Assent, the only EPGs available are principally visual services. However, the Act has been drafted to provide for EPGs whether their features are wholly visual, or a combination of sound and vision, or even (if they are developed) EPGs that operate wholly in sound.

656. The code must also ensure that providers of guides comply with any decision of OFCOM that specified features should be incorporated in the guides in order to (i) help people who have disabilities affecting their sight and/or hearing to use the guides for the same purposes as they are used by those without such disabilities and (ii) ensure that such people are informed about and are able to use any assistance provided for them in relation to the programmes listed and/or promoted.
657. For the purposes of these provisions the public service channels are the BBC’s television services in digital form, any Channel 3 service in digital form, Channel 4

*These notes refer to the Communications Act 2003 (c.21)
which received Royal Assent on 17 July 2003*

in digital form, Channel 5 in digital form, S4C Digital, and the digital public teletext service. *Subsection (5)* provides the Secretary of State with a power to amend this list by order, though she must not do so without consulting OFCOM (*subsection (6)*).

Section 311: Conditions to comply with code under s. 310

658. OFCOM are to include in every licence for a service which comprises or includes the provision of an electronic programme guide conditions to secure the observation of the code provided for in section 310.

Section 312: Character and coverage of sound broadcasting services

659. This section amends section 106 of the Broadcasting Act 1990 dealing with the character and coverage of radio services. Broadly, OFCOM are to set such conditions as are necessary for maintaining the character of the service. The character of the service includes the music and spoken material selected for inclusion in that service. The conditions may provide that OFCOM may only consent to a departure from the original character if such a departure would not substantially change that character, if the departure would not narrow the range of relevant independent radio services available in the area covered by the service, if, in the case of local licences, there is user demand for the changes that the departure would effect or if the departure would be in the interests of competition.

*“*Relevant independent radio services*” consist of sound broadcasting services, radio licensable content services and additional radio services that fall within the scope of OFCOM’s regulatory functions under section 245.

660. OFCOM may allow a local licence holder to extend the area to which he broadcasts, but only if such an extension is not significant and is justified by exceptional circumstances.

Section 313: Consultation about change of character of local service

661. This section adds a new section 106A to the Broadcasting Act 1990. It requires OFCOM, before agreeing to a substantial departure from the character of a local or national analogue service, to publish a notice specifying the proposed departure and the period within which representations may be made to OFCOM (normally not less than 28 days). The notice must be published in a manner in which appears to OFCOM appropriate for bringing it to the attention of those likely to be affected by such a departure. OFCOM do not have to consult if they are satisfied that the departure would not substantially alter the character of the service.
662. OFCOM also do not have to consult, or can shorten the consultation period, if they consider that to do so would result in a delay which would be likely prejudicially to affect the licence holder (for example, where they might go out of business). OFCOM are not required to publish confidential material.

Section 314: Local content and character of local sound broadcasting services

663. *Subsection (1)* imposes a duty on OFCOM to ensure that local sound broadcasting services contain local material, to the extent (if any) that OFCOM consider appropriate in that case, and include locally-made programmes. OFCOM are required to draft, publish and maintain guidance setting out when local sound broadcasting services satisfy the requirements of *subsection (1)* and to have regard to that guidance when carrying out their functions in relation to local sound broadcasting services. OFCOM’s guidance may extend to such issues as providing descriptions of local material and locally-made programmes. *Subsection (5)* requires OFCOM to consult with persons having an interest in local sound broadcasting services before drafting or revising the guidance. OFCOM’s duties under this section do not extend to local advertising.

Section 315: Variations of radio multiplex licences affecting service characteristics

664. This section replaces subsection (6) of section 54 of the Broadcasting Act 1996 with subsections (6) to (6B). Upon the request of a radio multiplex licensee to vary a licence condition implementing a proposal submitted in his original application under section 46(4) or 50(4) of the Broadcasting Act 1996 relating to the number of digital sound programme services and the characteristics of each service to be broadcast, the timetable for the launch for those services, the broadcasting of digital additional services or the promotion of the acquisition of digital receivers by the listening public, OFCOM must vary the licence as requested, subject to the tests set out in subsections (6A) and (6B).
665. **Section 54(6A)** provides that OFCOM may not vary a national radio multiplex licence where it appears that, if the requested amendment were made, 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.
666. **Section 54(6B)** stipulates that OFCOM may vary a local radio multiplex licence only where they are satisfied that:
- the variation would not unacceptably narrow the range of programmes available to people living in the areas where the multiplex service is provided;
 - the variation is in the interests of competition; or
 - there is user demand for the changes to the services.

Section 316: Conditions relating to competition matters

667. **Section 316** makes specific provision for OFCOM to have powers, in addition to concurrent powers under the Competition Act, to use licence conditions to ensure fair and effective competition in the provision of licensed services and connected services. This gives OFCOM competition powers specific to the broadcasting sector. **Subsection (3)** provides that, in order to ensure fair and effective competition between licence holders, OFCOM can require licence holders to comply with a code approved by OFCOM on the specifics of how they should comply with the licence conditions and that they can also issue directions to individual licensees for that purpose.

**licensed service means a service licensed by a Broadcasting Act licence.>*

Section 317: Exercise of Broadcasting Act powers for a competition purpose

668. This section applies to OFCOM's Broadcasting Act powers, as defined in **subsection (1)**. The effect of **subsections (2) and (3)** is that OFCOM are not to use Broadcasting Act powers for a competition purpose (as defined in **subsection (9)**), where they consider that a more appropriate way of proceeding would be through the use of their general competition powers under the Competition Act 1998.

**OFCOM's Broadcasting Act powers are their powers under Part 3 of this Act and under the Broadcasting Acts to impose or vary licence conditions, their powers to give approvals or directions for the purposes of such conditions and their powers to enforce such conditions.*

669. **Subsections (4) and (5)** require that where OFCOM decide to exercise their Broadcasting Act powers for a competition purpose, they must notify that decision to persons likely to be affected by it, and the notification must include a description of the rights of appeal that apply. **Subsection (6)** provides that where OFCOM have considered that the exercise of their Broadcasting Act powers for a competition purpose is the more appropriate way to proceed, the route of appeal for any person affected by any decisions under these powers shall be to the Competition Appeal Tribunal. **Subsection (8)** limits the jurisdiction of the Tribunal in any such appeal, so as to exclude questions

as to whether OFCOM have complied with subsections (2) and (3): those questions can, though, be challenged by way of judicial review. *Subsection (10)* provides that this section does not apply to the exercise by OFCOM of their powers in relation to Channel 3 networking arrangements under sections 290 to 294 and Schedule 11.

Section 318: Review of powers exercised for competition purposes

670. This section provides for OFCOM periodically to review any guidance or codes or directions that they issue in respect of their Broadcasting Act powers and which has effect for a competition purpose. OFCOM must consult on any changes they propose to make.

Section 319: OFCOM's standards code

671. *Subsection (1)* places OFCOM under a duty to set standards for the content of television and radio services, which shall be contained in a code or codes.
672. These codes must secure the objectives set out in *subsection (2)*. Those objectives relate to the protection of minors; the prohibition of material likely to encourage crime or disorder; the impartiality of television and radio services; the accuracy of the news; the content of religious programmes; the protection of the public from offensive and harmful material; the exclusion of advertising which contravenes the ban on political advertising set out in section 321(2); the prevention of misleading, harmful or offensive advertising and unsuitable sponsorship; compliance with the United Kingdom's international obligations with respect to advertising; the prevention of undue discrimination between advertisers; and the prohibition of broadcasts of subliminal material.
673. A particular standards objective relates to responsible religious broadcasting. *Subsection (6)* expands upon this to safeguard against the improper exploitation of any susceptibilities of the audience or the abusive treatment of the religious views and beliefs of those belonging to a particular religion or denomination.
674. *Subsection (5)* makes clear that, while minimum standards will be of general application, OFCOM are also under a duty to set standards for particular types of programme or service (for example, children's programmes) where OFCOM consider that such standards are appropriate to achieve the objectives contained in *subsection (2)*.
675. In setting the standards, OFCOM are under a duty to have regard to the factors set out in *subsection (4)* so far as they are relevant. These concern the degree of harm or offence likely to be caused by the content of programmes; the probable size and composition of the audience; the expectation of the audience as to the nature of a programme's content and the extent to which it can be brought to their attention; the danger of accidental exposure of a person to content, the nature of which they were unaware; the desirability of indicating when there is a change affecting the nature of the service being watched or listened to; and the desirability of maintaining independent editorial control over the content of a programme.
676. [Paragraph 43](#) of Schedule 18 provides that any code drawn up under section 6, 7, 9, 90, 91 or 93 of the Broadcasting Act 1990 or section 108 of the Broadcasting Act 1996 shall have effect as if it were a code issued by OFCOM for the purpose of this section. However, codes drawn up under the Broadcasting Act 1990 shall only apply to services authorised by licences under that Act and, in the case of codes under section 6, 7 and 9 of that Act, S4C. As regards codes drawn up under section 108 of the Broadcasting Act 1996, these will only have effect for services provided by the BBC or the Welsh Authority and then only to the extent that the codes contain provisions applying to those services and, in the case of the Welsh Authority, which relate to matters other than advertising and impartiality.

Section 320: Special impartiality requirements

677. The standards objectives referred to in section 319 include the objective that the impartiality requirements set out in this section are observed. This section specifies particular requirements, some of which are to be further expanded upon by rules in OFCOM's standards code, placed upon service providers to ensure that programme services are free from undue bias. The matters to which the requirements apply are matters of political or industrial controversy, and matters relating to current public policy. The requirements are:
- the service provider must not air its own views on such matters (unless they concern the provision of television or radio programme services); as in the 1990 Act, this restriction does not apply to providers of radio restricted services.
 - as regards every television programme service, teletext service, national radio service and national digital sound programme service, the service provider must preserve due impartiality about such matters. The relevant rules in OFCOM's standards code must particularly take account of the need to preserve impartiality for major matters of political or industrial controversy or relating to current public policy. Fulfilment of this requirement need not necessarily be measured programme by programme, but on balance over all programmes included in the relevant service; and
 - as regards local radio services, local digital sound programme services, and radio licensable content services, the service provider must ensure that undue prominence is not given to any particular viewpoint about such matters. This need be satisfied only by considering the entire service, rather than programme by programme, or even series by series.

Section 321: Objectives for advertisements and sponsorship

678. This section specifies standards objectives which must include general provisions about the required standards in advertising and sponsorship and permits OFCOM to prohibit advertisements and methods of advertising and sponsorship.
679. *Subsection (2)* imposes on OFCOM a duty to secure in the broadcast media a general prohibition on political advertising and advertising related to industrial disputes. This reproduces the duty imposed under the Broadcasting Act 1990 on the ITC and the Radio Authority to secure a similar prohibition. *Subsection (7)* specifies that an advertisement of a public service nature which is inserted by or on behalf of a government department, and a party political or referendum campaign broadcast required by a condition imposed under section 333 or by paragraph 18 of Schedule 12, may nonetheless be broadcast. The Act sets out in *subsection (3)* the matters which are included in the reference in *subsection (2)* to "objects of a political nature" and "political ends", so as to make clear the scope of the prohibition. These include each of the following: influencing the outcome of elections or referendums in the UK or elsewhere; bringing about changes in the law or otherwise influencing the legislative process in the UK or elsewhere; influencing the policies or decisions of local, regional or national governments in the UK or elsewhere; influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the UK or of a country or territory outside the UK; influencing the policy or decisions of persons on whom functions are conferred by or under international agreements; influencing public opinion on a matter which in the UK is a matter of public controversy; and promoting the interests of a party or other group of persons organised in the UK or elsewhere for political ends.
680. It is because of the ban that this section (in conjunction with section 319(2)(g)) would impose on political advertising that, in the light of the decision of the European Court of Human Rights in the case of *Vgt Verein gegen Tierfabriken v Switzerland*, the Minister in charge of the Bill was unable to make a statement of compatibility under section 19(1) (a) of the Human Rights Act 1998. The fact that the Minister made a statement under

section 19(1)(b) of that Act does not, however, mean that the Government believes the ban would necessarily be found to be incompatible if the ban were to be challenged in the United Kingdom courts or to be considered by the European Court of Human Rights.

681. More generally, *subsections (5) and (6)* provide for consultation by OFCOM with the Secretary of State regarding the descriptions of advertisements that should not be included in programme services; and the forms and methods of advertising and sponsorship that should not be used. In addition, the Secretary of State has a power to issue directions (with which OFCOM must comply) on any of those matters.

Section 322: Supplementary powers relating to advertising

682. This section requires all licences related to the provision of programme services, the public teletext service and other teletext services (either additional television services or digital additional television services) to include a condition that the licence holder must comply with OFCOM's directions on the maximum time to be given to advertisements in any given time period, the minimum interval that must elapse between two periods of advertisements, the number of advertisement slots that are allowed in any programme or hour or day, and the exclusion of any advertisement from a specified part of a service.

Section 323: Modification of matters to be taken into account under s. 319

683. This section provides that the Secretary of State, following consultation with OFCOM, may by order modify the factors set out in section 319(4) to be considered by OFCOM when setting or amending standards codes.

Section 324: Setting and publication of standards

684. This section concerns the procedures for setting the codes containing the standards for the content of television, radio and teletext services. *Subsections (1) to (5)* deal with the consultation process that OFCOM must enter into prior to setting or revising these standards. Different provision is made regarding the persons to be consulted depending on the relevance of the code to their interests.
685. Following this process, OFCOM may modify their proposed standards code as they see fit in light of the consultation, and must then publish the code. If new standards are being set, or old standards being revised, OFCOM must bring them to the attention of those whom the standards are likely to affect and send a copy to the Secretary of State, the BBC (unless it is a code containing only standards for advertising or sponsorship) and, if the code relates to television programme services, the Welsh Authority.

Section 325: Observance of standards code

686. OFCOM are to include in every Broadcasting Act licence for a programme service such conditions as they deem to be suitable in order to safeguard the standards listed in section 319. OFCOM must also implement procedures for hearing complaints in connection with the non-observance of such standards. OFCOM may report to the Secretary of State periodically regarding issues relating to OFCOM's standards code that appear to raise questions of general broadcasting policy.
687. Regarding advertising and sponsorship, OFCOM must include a further licence condition obliging the licence holder for a programme service to comply with any direction from OFCOM on the matters set out in *subsection (5)*, all of which relate to the exclusion of certain advertisements or sponsorship.

Section 326: Duty to observe fairness code

688. This section requires OFCOM to include in each Broadcasting Act licence for a programme service such conditions as they consider appropriate for securing observance, in connection with the provision of that service and in relation to

programmes included in that service, of the fairness code for the time being in force under section 107 of the Broadcasting Act 1996.

Section 327: Standards with respect to fairness

689. This section relates to the exercise by OFCOM of functions relating to the consideration of complaints regarding fairness and privacy which were formerly exercised by the Broadcasting Standards Commission under Part 5 of the Broadcasting Act 1996.

690. A standards complaint under Part 5 of that Act may not be made after the commencement of this section. This section amends the provisions in sections 115, 119 and 120 of the 1996 Act relating to the consideration of fairness complaints.

**a standards complaint* is defined in section 110(4) of the Broadcasting Act 1996 as a complaint made to the Broadcasting Standards Commission which relates to the portrayal of violence or sexual conduct or to standards of taste and decency.

Section 328: Duty to publicise OFCOM's functions in relation to complaints

691. OFCOM are to include in a licence for every service to which this section applies conditions to ensure that procedures for handling and resolving complaints about observance of standards, including OFCOM's functions under Part 5 of the Broadcasting Act 1996, are publicised. This section applies to every programme service licensed by a Broadcasting Act licence

Section 329: Proscription orders

692. Where OFCOM have notified the Secretary of State that a foreign television or sound service repeatedly contains programmes with content that offends taste or decency, is likely to incite crime or disorder or is likely to be offensive to public feeling, she may issue a proscription order where she is satisfied that to do so is in the public interest and compatible with the international obligations of the United Kingdom. *Subsection (6)* sets out the services to which this section applies.

**The meaning of a foreign service* is given in *subsection (7)* and broadly encompasses those services which do not need to be licensed under the Broadcasting Acts 1990 and 1996 but would be if they were provided in the United Kingdom or the provider fell within the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive.

Section 330: Effect of proscription order

693. No service proscribed by the Secretary of State in an order made under section 329 can be included in any multiplex service or any cable package service (as defined in *subsections (3) and (4)* respectively). The effect of *subsection (5)* is that the provision of radio and/or television (or similar) services via the Internet will not constitute the provision of a cable package service.

Section 331: Notification for enforcing proscription

694. Where OFCOM have reasonable grounds to believe that a service proscribed by an order made under section 329 is included in a multiplex service or cable package, they may notify the multiplex service provider or cable packager accordingly and require that person to cease including the proscribed service. OFCOM must give the notified provider 7 days to comply with their request, although he must cease to include the service in less than 7 days if reasonably practicable. A notified provider has a statutory duty to comply with OFCOM's request, failure to comply with which is enforceable in civil proceedings by OFCOM.

Section 332: Penalties for contravention of notification under s.331

695. OFCOM may impose a penalty on any multiplex service provider or cable packager who contravenes a requirement notified by OFCOM under section 331. Before imposing a penalty, OFCOM must give a multiplex service provider or cable packager a reasonable opportunity to make representations. Any penalty imposed must be appropriate and proportionate to the contravention, and in any case may not exceed £5,000 per day for each day (or part thereof) that a multiplex service provider or cable packager includes a proscribed service in contravention of a notification made under section 331. The Secretary of State may, by order, amend the maximum penalty set out in *subsection (3)*.

Section 333: Party political broadcasts

696. OFCOM must include in the licence for every licensed public service channel and every national radio service conditions requiring the licensee to broadcast party political broadcasts and referendum campaign broadcasts and to observe associated rules set by OFCOM. These rules may include provision for determining which political parties and designated organisations may make broadcasts, and how long and frequent these broadcasts may be. OFCOM are subject in this respect to the [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#) and shall have regard to the views of the Electoral Commission. Paragraph 38 of Schedule 18 provides that any rules made by the ITC under section 38 of the Broadcasting Act 1990 or by the Radio Authority under section 107 of that Act, which are in force immediately before the commencement of this section, shall have effect as rules made by OFCOM under this section.

Section 334: Retention and production of recordings

697. OFCOM are to include in the licence for every programme service licensed under the Broadcasting Acts conditions requiring the licensee to record every programme that they broadcast, and to keep each recording for a specified period (which for radio programmes shall be no longer than 42 days and for television programmes shall be no longer than 90 days) and, at OFCOM's request, to provide them with any such recording as well as any script or transcript of the relevant programme that the licensee is able to produce. Under *subsection (3)*, OFCOM may themselves make and use recordings of programmes for the purposes of supervision. However, *subsection (4)* makes it clear that they are not required to vet programmes in advance of their being broadcast.

Section 335: Conditions securing compliance with international obligations

698. OFCOM are to include in the licence for every service of the types listed in *subsection (3)* conditions to secure compliance with such of the United Kingdom's international obligations as have been notified to OFCOM by the Secretary of State.

Section 336: Government requirements for licensed services

699. The Secretary of State, or any other Minister of the Crown, has the power by notice to require OFCOM to issue a direction to licence holders to include a particular announcement in their service at specified times. The Secretary of State alone may require OFCOM to direct licence holders to refrain from including any particular matter in their services.

**Subsection (9) makes clear that Minister of the Crown includes the Treasury.*

700. Where a licence holder is obliged to make a particular announcement, they may make clear in their service that this is being carried out further to a direction given by OFCOM. Similarly, where a licence holder has been obliged to refrain from including a particular matter in their service, the licence holder may announce in the service that this is the case, and may also announce when that obligation has come to an end.

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which received Royal Assent on 17 July 2003*

701. The purpose of these provisions is principally to allow Ministers to address matters of national security or major public interest, and to do so in such a way that the affected broadcasters are not required to take editorial responsibility for the content of the announcements.

Section 337: Promotion of equal opportunities and training

702. OFCOM are to include in the licence for every service to which this section applies (as defined in *subsections (6) to (8)*) conditions to promote equality of opportunity in relation to employment with the licence holder. The conditions must promote equality between men and women and between different races. Licensees must also be required to promote the equalisation of opportunities for disabled persons.
703. OFCOM must also impose on licensees any conditions necessary to ensure that licensees make such arrangements for the training and retraining of their employees (employed both in the provision of the service and in the making of programmes to be included in the service) as OFCOM consider appropriate.
704. The conditions imposed by OFCOM must require licensees to ensure that the arrangements put in place by the licensees to meet equal opportunities and training requirements are notified to those affected by them. Also the licensee must review the arrangements from time to time and publish annually his observations on their operation.
705. Those licensees that employ no more than 20 people, or broadcast for no more than 31 days per year, are not covered by these provisions, though OFCOM are able to aggregate the numbers of staff employed across a group of companies or a range of services under the provisions in *subsections (7) and (10)* and the definition of “licensed service” in *subsection (9)*.

Section 338: Corresponding rules for the BBC and the Welsh Authority

706. This section provides that Schedule 12 shall have effect. Schedule 12 provides for the imposition on the BBC and the Welsh Authority of obligations that correspond to those described above in the regulatory regime for licensed providers and it is explained in more detail below.

Section 339: Review of fulfilment by Welsh Authority of public service remits

707. The Welsh Authority is under a duty to ensure that S4C, S4C Digital and services approved by the Secretary of State under section 205 fulfil their public service remits. The Secretary of State may review the Welsh Authority’s performance in this regard, but not within five years of the passage of the Act. Any subsequent review must not be undertaken within a further five-year period. The Secretary of State must consult the National Assembly for Wales and the Welsh Authority on the matters under review, must have regard to their opinions when reaching her conclusions and must publish a report of those conclusions after each review.

Section 340: Directions to Welsh Authority to take remedial action

708. If the review described in the notes to section 339 above reveals that, without reasonable excuse, the Welsh Authority have not properly performed their duty to fulfil their public service remits, the Secretary of State may, having consulted the Welsh Authority, direct the Welsh Authority to take remedial action. Any such direction must first be approved, in draft, by both Houses of Parliament.

Section 341: Imposition of penalties on the Welsh Authority

709. This section gives OFCOM the power to fine the Welsh Authority where they are satisfied that a contravention of any requirement listed in *subsection (1)* has occurred.

Broadly, these include obligations relating to programme quotas, news and current affairs, programming standards, advertising or sponsorship, complaints procedure publicity, international obligations, assistance for disabled people and fairness. The maximum fine is £250,000. Under *subsection (6)*, the Secretary of State may vary the maximum penalty by order. *Subsection (4)* states that OFCOM may not fine the Welsh Authority without giving them a chance to make representations in its defence. *Subsection (5)* makes clear that the imposition of a fine would not prevent OFCOM from issuing a direction to the Welsh Authority, under paragraph 15 of Schedule 12, to broadcast a correction or a finding by OFCOM of a breach of the standards code issued under section 319.

Section 342: Contraventions recorded in Welsh Authority's annual report

710. This section amends Schedule 6 to the Broadcasting Act 1990 to ensure that any notifications given to the Welsh Authority by OFCOM about contraventions by the Authority of either the Broadcasting Acts or Part 3 of this Act are recorded in the Welsh Authority's annual report.

Section 343: Provision of information by Welsh Authority

711. This section imposes a duty on the Welsh Authority to provide such information as OFCOM reasonably request in order that OFCOM may fulfil their functions, under this Act and the Broadcasting Acts, as regards the Welsh Authority.

Section 344: Transmission of statement of findings

712. This section amends sections 40 and 109 of the Broadcasting Act 1990 (power to direct licensee to broadcast correction or apology). As amended, these sections provide that OFCOM may direct the broadcast of a correction or a statement of OFCOM's findings in relation to a contravention of licence conditions, for example a failure to comply with OFCOM's standards code. This change arises from a recommendation of the Joint Committee on Human Rights.

Section 345: Financial penalties imposable on licence holders

713. [Schedule 13](#), which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences, shall have effect. Further detail on this Schedule is set out below.

Section 346: Recovery of fees and penalties

714. Where a payment of a kind listed in *subsection (1)* is payable to OFCOM, it is recoverable by them as a debt due from the person who must pay it. Those payments include amounts paid under licences granted under the Broadcasting Acts 1990 and 1996 and penalties imposed by OFCOM under those Acts.

Section 347: Statement of charging principles

715. This section provides that OFCOM must not fix a tariff under section 4(3) or 87(3) of the Broadcasting Act 1990 or under section 4(3) or 43(3) of the Broadcasting Act 1996 unless at the time they do so there is in force a statement of the principles they propose to apply in fixing that tariff. Any tariff must be fixed in accordance with those principles.
716. The principles set out in any statement must be likely to secure, on the basis of such estimates of the likely costs as it is practicable for OFCOM to make, that the aggregate amount of the Broadcasting Act licence fees required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the annual costs of the carrying out during that year of their functions relating to the regulation of broadcasting; that tariffs are justifiable and proportionate to the matters in respect of

*These notes refer to the Communications Act 2003 (c.21)
which received Royal Assent on 17 July 2003*

which they are imposed; and that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

*“*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 Broadcasting Act 1990; or
- (b) section 4(1)(b) or 43(1)(c) of the Broadcasting Act 1996.

Financial year means a period of 12 months ending with 31st March.

- 717. *Subsection (3)* requires that, before making or revising a statement of principles, OFCOM must consult such persons as they consider likely to be affected by those principles as they think fit. Under *subsection (4)*, the making or revision of a statement of principles is by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate to bring it to the attention of those likely, in OFCOM’s opinion, to be affected by it.
- 718. Under *subsections (5) and (6)*, OFCOM must publish a statement as soon as practicable after the end of each financial year, setting out the aggregate amount of Broadcasting Act licence fees received by them which were required to be paid during that year; the aggregate amount of Broadcasting Act licence fees remaining outstanding and likely to be paid or recovered; and, the costs to OFCOM of carrying out their functions in relation to the regulation of broadcasting during that year. Any deficit or surplus must be carried forward by OFCOM and taken into account in determining the amount required in relation to the following year.
- 719. References to OFCOM’s functions in relation to the regulation of broadcasting do not include any of their functions in relation to the BBC or Welsh Authority.