



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES

CHAPTER 4

REGULATORY PROVISIONS

Application of regulatory regimes

263 Application of regulatory regimes

- (1) It shall be the duty of OFCOM, by exercising—
 - (a) their powers under the 1990 Act and the 1996 Act, and
 - (b) their powers under this Part,to secure that the holder of every Broadcasting Act licence at all times holds his licence on the conditions which are for the time being included, under this Chapter and Chapter 5 of this Part, in the regulatory regime for the licensed service.
- (2) It shall also be the duty of OFCOM to do all that they can to secure that the holder of every such licence complies, in relation to the licensed service, with the conditions so included in the regulatory regime for that service.
- (3) Where—
 - (a) the licence for a Channel 3 service, for Channel 4, for Channel 5 or for the public teletext service (“the main service”) authorises or requires a corresponding or additional service to be provided in analogue form, and
 - (b) the regulatory regime for the main service imposes obligations in relation to programmes and other items included in that service,those obligations are to apply equally to programmes that are included in the analogue service without being included in the main service.

Status: This is the original version (as it was originally enacted).

- (4) The Secretary of State may by order provide for conditions which are included by virtue of a provision of this Act in the regulatory regime for any service to cease to be so included.
- (5) No order is to be made containing provision authorised by subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) This section does not restrict OFCOM's powers and duties apart from this section to impose obligations by means of the inclusion of conditions in a Broadcasting Act licence.

The public service remit for television

264 OFCOM reports on the fulfilment of the public service remit

- (1) It shall be the duty of OFCOM—
 - (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of each such subsequent period as may be selected by OFCOM for the purposes of this section,
 to satisfy, for that period, the review and reporting obligations of subsection (3).
- (2) The period selected by OFCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OFCOM have satisfied those review and reporting obligations.
- (3) The review and reporting obligations for a period are—
 - (a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom; and
 - (b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom, to prepare a report on the matters found on the review.
- (4) The purposes of public service television broadcasting in the United Kingdom are—
 - (a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
 - (b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
 - (c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
 - (d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to—
 - (i) the contents of the programmes;

Status: This is the original version (as it was originally enacted).

- (ii) the quality of the programme making; and
- (iii) the professional skill and editorial integrity applied in the making of the programmes.

(5) When—

- (a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom are fulfilled, and
- (b) reviewing and reporting on that matter,

OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).

(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures—

- (a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;
- (b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;
- (c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;
- (d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;
- (e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;
- (f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
- (g) that the programmes included in those services that deal with religion and other beliefs include—
 - (i) programmes providing news and other information about different religions and other beliefs;
 - (ii) programmes about the history of different religions and other beliefs; and
 - (iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);
- (h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;
- (i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;

Status: This is the original version (as it was originally enacted).

- (j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.
- (7) In carrying out a review under this section OFCOM must consider—
 - (a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and
 - (b) the sources of income available to each of them for meeting those costs.
- (8) Every report under this section must—
 - (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television broadcasting in the United Kingdom have been satisfied;
 - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;
 - (c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and
 - (d) set out OFCOM's conclusions on the current state of public service television broadcasting in the United Kingdom.
- (9) In performing their duties under this section, OFCOM must have regard, in particular, to—
 - (a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;
 - (b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and
 - (c) such matters arising at times before the coming into force of this section as OFCOM consider material.
- (10) Every report prepared by OFCOM under this section must be published by them—
 - (a) as soon as practicable after its preparation is complete; and
 - (b) in such manner as they consider appropriate.
- (11) The following are relevant television services for the purposes of this section—
 - (a) the television broadcasting services provided by the BBC;
 - (b) the television programme services that are public services of the Welsh Authority (within the meaning of section 207);
 - (c) every Channel 3 service;
 - (d) Channel 4;
 - (e) Channel 5;
 - (f) the public teletext service.
- (12) The following are public service broadcasters for the purposes of this section—
 - (a) the BBC;
 - (b) the Welsh Authority;
 - (c) the providers of the licensed public service channels; and

Status: This is the original version (as it was originally enacted).

(d) the public teletext provider.

(13) In this section—

“belief” means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines; and

“drama” includes contemporary and other drama in a variety of different formats.

265 Public service remits of licensed providers

(1) The regulatory regime for every licensed public service channel, and for the public teletext service, includes a condition requiring the provider of the channel or service to fulfil the public service remit for that channel or service.

(2) The public service remit—

(a) for every Channel 3 service, and

(b) for Channel 5,

is the provision of a range of high quality and diverse programming.

(3) The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular—

(a) demonstrates innovation, experiment and creativity in the form and content of programmes;

(b) appeals to the tastes and interests of a culturally diverse society;

(c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and

(d) exhibits a distinctive character.

(4) The public service remit for the public teletext service is the provision of a range of high quality and diverse text material.

(5) For so long as the public teletext service comprises both—

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,

the conditions imposed under this section must require the public service remit of the public teletext service to be fulfilled separately in the case of each of those services.

266 Statements of programme policy

(1) The regulatory regime for every licensed public service channel includes a condition requiring the provider of the channel—

(a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of programme policy; and

(b) to monitor his own performance in the carrying out of the proposals contained in the statements made in pursuance of the condition.

(2) The condition must require every statement of programme policy prepared in accordance with the condition to set out the proposals of the provider of the channel for securing that, during the following year—

Status: This is the original version (as it was originally enacted).

- (a) the public service remit for the channel will be fulfilled; and
 - (b) the duties imposed on the provider by virtue of sections 277 to 296 will be performed.
- (3) The condition must also require every such statement to contain a report on the performance of the provider of the channel in the carrying out, during the period since the previous statement, of the proposals contained in that statement.
- (4) The condition must also provide that every such statement—
 - (a) must be prepared having regard to guidance given by OFCOM;
 - (b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;
 - (c) must take special account of the most recent such reports;
 - (d) must be published by the provider of the channel in question as soon as practicable after its preparation is complete; and
 - (e) must be published in such manner as, having regard to any guidance given by OFCOM, the provider considers appropriate.
- (5) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of programme policy.
- (6) It shall be the duty of OFCOM—
 - (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.
- (7) The conditions of a licence to provide a licensed public service channel may provide that a previous statement of policy made by the provider of the channel is to be treated for the purposes of this Part—
 - (a) as if it were a statement made in relation to such period as may be so specified; and
 - (b) were a statement of programme policy for the purposes of a condition imposed under this section.
- (8) The reference in subsection (7) to a previous statement of policy is a reference to any statement made by the provider of the channel—
 - (a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the channel; or
 - (b) at any time before the commencement of this section, for any other purpose.
- (9) A condition under subsection (7) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of programme policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

267 Changes of programme policy

- (1) The regulatory regime for every licensed public service channel includes a condition requiring compliance with subsection (2) in the case of a statement of programme policy containing proposals for a significant change.

- (2) This subsection requires the provider of the channel—
 - (a) to consult OFCOM before preparing the statement; and
 - (b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the channel by OFCOM.
- (3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of programme policy has been prepared by the provider of the channel in contravention of a condition imposed under subsection (1), the provider is—
 - (a) to revise that statement in accordance with any directions given to him by OFCOM; and
 - (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.
- (4) A change is a significant change for the purposes of this section if it is a change as a result of which the channel would in any year be materially different in character from in previous years.
- (5) In determining for the purposes of any condition under this section whether a change is a significant change—
 - (a) regard must be had to any guidance issued by OFCOM;
 - (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years; and
 - (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur.
- (6) It shall be the duty of OFCOM—
 - (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.

268 Statements of service policy by the public teletext provider

- (1) The regulatory regime for the public teletext service includes a condition requiring the public teletext provider—
 - (a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of service policy; and
 - (b) to monitor his own performance in the carrying out of the proposals contained in statements made in pursuance of the condition.
- (2) The condition must require every statement of service policy prepared in accordance with the condition to set out the proposals of the public teletext provider for securing that, during the following year, the public service remit for the public teletext service will be fulfilled.
- (3) The condition must also require every such statement to contain a report on the performance of the public teletext provider in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

Status: This is the original version (as it was originally enacted).

- (4) The condition must provide that the proposals or report for a period in the course of which the public teletext service will comprise or has comprised both—
 - (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
 must deal separately with each of those services.
- (5) The condition must also provide that every statement in pursuance of the condition—
 - (a) must be prepared having regard to guidance given by OFCOM;
 - (b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;
 - (c) must take special account of the most recent such reports;
 - (d) must be published by the public teletext provider as soon as practicable after its preparation is complete; and
 - (e) must be published in such manner as, having regard to any guidance given by OFCOM, that provider considers appropriate.
- (6) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of service policy by the public teletext provider.
- (7) It shall be the duty of OFCOM—
 - (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.
- (8) The conditions of the licence to provide the public teletext service may provide that a previous statement of policy made by the public teletext provider is to be treated for the purposes of this Part—
 - (a) as if it were a statement made in relation to such period as may be so specified; and
 - (b) were a statement of service policy for the purposes of a condition imposed under this section.
- (9) The reference in subsection (8) to a previous statement of policy is a reference to any statement made by the public teletext provider—
 - (a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the public teletext service or for the existing service (within the meaning of section 221); or
 - (b) at any time before the commencement of this section, for any other purpose.
- (10) A condition under subsection (8) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of service policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

269 Changes of service policy

- (1) The regulatory regime for the public teletext service includes a condition requiring compliance with subsection (2) in the case of a statement of service policy containing proposals for a significant change.

- (2) This subsection requires the provider of the service—
 - (a) to consult OFCOM before preparing the statement; and
 - (b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the service by OFCOM.
- (3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of service policy has been prepared by the public teletext provider in contravention of a condition imposed under subsection (1), that provider is—
 - (a) to revise that statement in accordance with any directions given to him by OFCOM; and
 - (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.
- (4) A change is a significant change for the purposes of this section if it is a change as a result of which the service would in any year be materially different in character from in previous years.
- (5) In determining for the purposes of any condition under this section whether a change is a significant change—
 - (a) regard must be had to any guidance issued by OFCOM;
 - (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years;
 - (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur; and
 - (d) any change that is a significant change in relation to so much of the public teletext service as is provided in digital form or in relation to so much of it as is provided in analogue form is to be regarded as a significant change in relation to the whole service.
- (6) It shall be the duty of OFCOM—
 - (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
 - (b) to make such revisions of that guidance as they think fit.

270 Enforcement of public service remits

- (1) This section applies if OFCOM are of the opinion that the provider of a licensed public service channel or the public teletext provider—
 - (a) has failed to fulfil the public service remit for that channel or the public teletext service; or
 - (b) has failed, in any respect, to make an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.
- (2) This section does not apply unless—
 - (a) OFCOM are of the opinion that the failure of the provider is serious and is not excused by economic or market conditions; and

Status: This is the original version (as it was originally enacted).

- (b) OFCOM determine that the situation requires the exercise of their powers under this section.
- (3) In making a determination under subsection (2)(b), OFCOM must have regard, in particular, to—
 - (a) the public service remit of that provider;
 - (b) the statements of programme policy or statements of service policy made (or treated as made) by the provider under section 266 or 268;
 - (c) the record generally of the provider in relation to the carrying out of obligations imposed by conditions of licences under the 1990 Act and the 1996 Act (including past obligations);
 - (d) the effectiveness and efficiency of the provider in monitoring his own performance; and
 - (e) general economic and market conditions affecting generally the providers of television programme services or the providers of television multiplex services, or both of them.
- (4) OFCOM shall have power to give directions to the provider to do one or both of the following—
 - (a) to revise the provider's latest statement of programme policy, or statement of service policy, in accordance with the directions; and
 - (b) to take such steps for remedying the provider's failure as OFCOM may specify in the direction as necessary for that purpose.
- (5) A direction given under this section must set out—
 - (a) a reasonable timetable for complying with it; and
 - (b) the factors that will be taken into account by OFCOM in determining—
 - (i) whether or not a failure of the provider has been remedied; and
 - (ii) whether or not to exercise their powers under subsection (6).
- (6) If OFCOM are satisfied—
 - (a) that the provider of a public service channel or the public teletext provider has failed to comply with a direction under this section,
 - (b) that that provider is still failing to fulfil the public service remit for that channel or service or adequately to contribute to the fulfilment of the purposes of public service television broadcasting in the United Kingdom, and
 - (c) that it would be both reasonable and proportionate to the seriousness of that failure to vary the provider's licence in accordance with this subsection,
 OFCOM may, by notice to the provider, vary that licence so as to replace self-regulation with detailed regulation.
- (7) For the purposes of subsection (6) a variation replacing self-regulation with detailed regulation is a variation which—
 - (a) omits the conditions imposed by virtue of sections 265 to 269; and
 - (b) replaces those conditions with such specific conditions as OFCOM consider appropriate for securing that the provider—
 - (i) fulfils the public service remit for his service; and
 - (ii) makes an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

- (8) If, at any time following a variation in accordance with subsection (6) of a provider's licence, OFCOM consider that detailed regulation is no longer necessary, they may again vary the licence so as, with effect from such time as they may determine—
- (a) to provide for the conditions required by virtue of sections 265 to 269 again to be included in the regulatory regime for the service provided by that provider; and
 - (b) to remove or modify some or all of the specific conditions inserted under that subsection.
- (9) Before giving a direction under this section to a provider or exercising their power under this section to vary a provider's licence, OFCOM must consult that provider.
- (10) In accordance with section 265(5), the reference in subsection (1) to a failure to fulfil the public service remit for the public teletext service includes a failure to fulfil that remit as respects only one of the services comprised in that service.

271 Power to amend public service remits

- (1) The Secretary of State may by order modify any one or more of the following—
- (a) the public service remit for any licensed public service channel or for the public teletext service;
 - (b) the purposes of public service television broadcasting in the United Kingdom (within the meaning given by subsection (4) of section 264);
 - (c) the matters to which OFCOM are to have regard under subsections (5) and (6) of that section.
- (2) The Secretary of State is not to make an order under this section except where—
- (a) OFCOM have made a recommendation for the making of such an order in their most recent report under section 229 or 264; or
 - (b) subsection (3) applies to the order.
- (3) This subsection applies to an order if—
- (a) it is made by the Secretary of State less than twelve months after the date on which he has received a report under section 229;
 - (b) he has considered that report; and
 - (c) he is satisfied that the making of the order is required, notwithstanding the absence of a recommendation by OFCOM, by circumstances or other matters which are dealt with in that report or which (in his opinion) should have been.
- (4) Before including a recommendation for the making of an order under this section in a report under section 229 or 264, OFCOM must consult—
- (a) members of the public in the United Kingdom;
 - (b) such public service broadcasters as they consider are likely to be affected if the Secretary of State gives effect to the recommendation they are proposing to make; and
 - (c) such of the other persons providing television and radio services as OFCOM consider appropriate.
- (5) Before making an order under this section, the Secretary of State must consult the persons mentioned in subsection (6) about its terms (even if the order is the one recommended by OFCOM).

Status: This is the original version (as it was originally enacted).

- (6) Those persons are—
 - (a) OFCOM;
 - (b) such public service broadcasters as they consider are likely to be affected by the order; and
 - (c) such of the other persons providing television and radio services as he considers appropriate.
- (7) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (8) In this section “public service broadcaster” means any of the persons who are public service broadcasters for the purposes of section 264.

Must-offer obligations etc. affecting public service television

272 Must-offer obligations in relation to networks

- (1) The regulatory regime for—
 - (a) every licensed public service channel,
 - (b) the public teletext service, and
 - (c) every licensed television service added by order under section 64 to the list of must-carry services,
 includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by provision made under section 243).
- (2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast or distributed by means of every appropriate network.
- (3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure—
 - (a) that the channel or other service, so far as it is provided in digital form, is broadcast or distributed on appropriate networks; and
 - (b) that the broadcasting and distribution of the channel or other service, in accordance with those arrangements, result in its being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.
- (4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of an appropriate network, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that network.
- (5) The three objectives apply only in relation to times when the channel or other service in its digital form is included in the list of must-carry services in section 64.
- (6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate—
 - (a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary

service by reference to the channel or other service in question as they apply to the channel or other service itself; and

- (b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular appropriate networks, as constituting such services comprised in or provided with that channel or other service as may be determined by OFCOM.

(7) In this section—

“appropriate network” means (subject to subsection (8)) an electronic communications network by means of which public electronic communications services are provided that are used by a significant number of end-users as their principal means of receiving television programmes;

“intended audience”, in relation to a channel or other service, means—

- (a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
- (b) if the channel or other service is one provided for members of a particular community, members of that community; and
- (c) in any other case, members of the public in the United Kingdom;

“licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act.

(8) For the purposes of this section an electronic communications network is not an appropriate network in relation to so much of a channel or other service as is provided only for a particular area or locality of the United Kingdom unless it is a network by means of which electronic communications services are provided to persons in that area or locality

(9) In subsection (7) “public electronic communications service” and “end-user” each has the same meaning as in Part 2.

(10) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

273 Must-offer obligations in relation to satellite services

(1) The regulatory regime for—

- (a) every licensed public service channel,
- (b) the public teletext service, and
- (c) every other licensed television service specified for the purposes of this section in an order made by the Secretary of State,

includes the conditions that OFCOM consider appropriate for securing the three objectives set out in this section (so far as they are not secured by conditions imposed under section 272).

(2) The first objective is that the channel or other service, so far as it is provided in digital form, is at all times offered as available (subject to the need to agree terms) to be broadcast by means of every satellite television service that is available for reception by members of the public in the whole or a part of the United Kingdom.

(3) The second objective is that the person providing the channel or other service does his best to secure that arrangements are entered into, and kept in force, that ensure—

Status: This is the original version (as it was originally enacted).

- (a) that the channel or other service, so far as it is provided in digital form, is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in the United Kingdom; and
 - (b) that the broadcasting, in accordance with those arrangements, of the channel or other service by means of those satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.
- (4) The third objective is that the arrangements entered into and kept in force for the purpose of securing the second objective prohibit the imposition, for or in connection with the provision of a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the channel or other service in question in an intelligible form by means of that service.
- (5) The three objectives apply only in relation to a time when the channel or service is included, in its digital form, in the list of services that are must-provide services for the purposes of section 274.
- (6) Conditions imposed under this section in relation to a channel or other service must, to such extent as OFCOM consider appropriate—
 - (a) require arrangements made or kept in force for the purpose of securing the second objective to apply in the case of every service which is an ancillary service by reference to the channel or other service in question as they apply to the channel or other service itself; and
 - (b) provide for the channel or other service to which the conditions apply to be treated, in relation to particular satellite television services, as constituting such services comprised in or provided with the channel or other service as may be determined by OFCOM.
- (7) In this section—
 - “intended audience”, in relation to a channel or other service, means—
 - (a) if the channel or other service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
 - (b) if the channel or other service is one provided for members of a particular community, members of that community; and
 - (c) in any other case, members of the public in the United Kingdom;
 - “licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act; and
 - “satellite television service” means a service which—
 - (a) consists in or involves the broadcasting of television programme services from a satellite; and
 - (b) is used by a significant number of the persons by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.
- (8) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

274 Securing reception of must-provide services in certain areas

- (1) The regulatory regime for—

Status: This is the original version (as it was originally enacted).

- (a) every licensed public service channel,
 - (b) the public teletext service, and
 - (c) every licensed television service added by order under section 275 to the list of must-provide services,includes the conditions that OFCOM consider appropriate for securing that arrangements satisfying the requirements of this section are entered into and maintained by all the persons who provide must-provide services.
- (2) The conditions imposed on a person under this section may include the conditions that OFCOM consider appropriate for securing, in a case where—
 - (a) the persons providing must-provide services fail to enter into or maintain arrangements satisfying the requirements of this section, and
 - (b) OFCOM make and impose arrangements of their own instead,that the person bound by the conditions is required to act in accordance with arrangements imposed by OFCOM.
- (3) The arrangements that are to be entered into, or may be imposed, are arrangements that secure—
 - (a) that a facility for receiving each must-provide service is made available to every member of the intended audience for that service who is unable, without the use of that facility, to receive it in an intelligible form and free of charge;
 - (b) that the facility is one under which every such member of the intended audience for a must-provide service is entitled, free of charge, to receive in an intelligible form so much of a service broadcast from a satellite as includes that must-provide service;
 - (c) that the cost of making that facility available is shared, in appropriate proportions, by all the persons providing must-provide services;
 - (d) that procedures are established and maintained for dealing with complaints from persons claiming to be entitled, in accordance with the arrangements, to receive a service free of charge, and for resolving disputes about the existence or extent of such an entitlement;
 - (e) that the availability of those procedures is adequately publicised in accordance with guidance given from time to time by OFCOM.
- (4) Arrangements entered into by the providers of must-provide services for the purposes of subsection (3), and any modifications of such arrangements made by the parties to them, are to have effect only if approved by OFCOM.
- (5) Before imposing any arrangements for the purposes of a condition under subsection (2), OFCOM must consult all the persons who provide must-provide services.
- (6) For the purposes of this section the reception of a service is not free of charge—
 - (a) if reception of the service is made conditional on the acceptance of an entitlement to receive another service in relation to which a charge is imposed (whether directly or indirectly);
 - (b) if a charge is made for or in connection with the provision of a service which is an ancillary service in relation to the service in question;
 - (c) if any consideration is required from the persons to whom it is made available for the provision of assistance for disabled people in respect of programmes included in the service; or

Status: This is the original version (as it was originally enacted).

- (d) if any other consideration is required to be given, by the person entitled to receive it, for or in connection with its provision or availability.
- (7) A service is not prevented from being free of charge by a requirement to pay sums in accordance with regulations under section 365.
- (8) The quality of reception that is required before someone is to be treated for the purposes of any conditions imposed under this section as able to receive a service in an intelligible form is to be determined by OFCOM.
- (9) References in this section to a facility for receiving a must-provide service include references to—
 - (a) software to be used in giving effect to the entitlement to receive a must-provide service in an intelligible form, and
 - (b) apparatus to be used in associating apparatus capable of being used for receiving such a service, or for putting it into an intelligible form, with a person having such an entitlement,
 but do not otherwise include references to apparatus.
- (10) In this section—
 - “intended audience”, in relation to a must-provide service, means—
 - (a) if the service is one provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
 - (b) if the service is one provided for members of a particular community, members of that community; and
 - (c) in any other case, members of the public in the United Kingdom;
 - “licensed television service” means a service falling to be licensed under Part 1 of the 1990 Act or Part 1 of the 1996 Act;
 - “must-provide service” means a service for the time being included in the list of must-provide services in section 275.
- (11) An order under section 411 must not appoint a day for provisions of this section to come into force that falls less than six months after the day on which the order is made.

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

- (1) For the purposes of section 274 the list of must-provide services is as follows—
 - (a) every service of television programmes provided by the BBC so far as it is provided in digital form and is a service in relation to which OFCOM have functions;
 - (b) the Channel 3 services so far as provided in digital form;
 - (c) Channel 4 so far as provided in digital form;
 - (d) Channel 5 so far as provided in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (2) The Secretary of State may by order modify the list of must-provide services in subsection (1).
- (3) In determining whether it is appropriate, by an order under subsection (2), to add a service to the list of must-provide services or to remove a service from that list, the Secretary of State must have regard, in particular, to—

- (a) the public benefit to be secured by the addition of the service to the list, or by its retention in the list;
- (b) the likely effect of the proposed modification as respects the costs to be borne, under arrangements entered into or imposed under section 274, by the persons who, after the coming into force of the modification, would have to be parties to those arrangements; and
- (c) the extent to which that effect is proportionate to the benefit mentioned in paragraph (a).

276 Co-operation with the public teletext provider

- (1) The regulatory regime for every Channel 3 service and for Channel 4 includes the conditions that OFCOM consider appropriate for securing that the provider of the service or channel grants access to the facilities mentioned in subsection (2)—
 - (a) to the public teletext provider; and
 - (b) to any person authorised by virtue of section 220 to provide the whole or a part of the public teletext service on his behalf.
- (2) Those facilities are the facilities that are reasonably required by the public teletext provider or the authorised person for the purposes of, or in connection with, the provision of the public teletext service.
- (3) A licence holder granting access to facilities in pursuance of a condition imposed under this section may require the public teletext provider or authorised person to pay a reasonable charge in respect of the facilities.
- (4) In the event of a dispute, the amount of the charge is to be determined by OFCOM.

Programming quotas for public service television

277 Programming quotas for independent productions

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In this section—
 - (a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this section;
 - (b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this section; and
 - (c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

Status: This is the original version (as it was originally enacted).

- (3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.
- (4) The Secretary of State may also by order provide for the regulatory regime for every licensed public service channel to include conditions falling within subsection (5), either instead of or as well as those falling within subsection (1).
- (5) The conditions falling within this subsection are those that OFCOM consider appropriate for securing that, in each year, not less than the percentage specified in the order of the programming budget for that year for that channel is applied in the acquisition of independent productions.
- (6) The power to make an order under subsection (4) includes power to provide that conditions that have previously ceased under such an order to be included in the regulatory regime for every licensed public service channel are again so included, in addition to or instead of the conditions already so included (apart from the exercise of that power) by virtue of this section.
- (7) The Secretary of State is not to make an order for the regulatory regime of every licensed public service channel to include or exclude conditions falling within subsection (1) or conditions falling within subsection (5) unless—
 - (a) OFCOM have made a recommendation to him for those conditions to be included or excluded; and
 - (b) the order gives effect to that recommendation.
- (8) The regulatory regime for every licensed public service channel also includes a condition requiring the provider of the channel to comply with directions given to him by OFCOM for the purpose of—
 - (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in his compliance with the requirements of conditions imposed by virtue of subsection (1) or (4); and
 - (b) thereby increasing the percentage applicable for the purposes of those conditions to the subsequent year or years.
- (9) For the purposes of conditions imposed by virtue of this section—
 - (a) the amount of the programming budget for a licensed public service channel for a year, and
 - (b) the means of determining the amount of that budget that is applied for any purpose,
 are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.
- (10) The powers of the Secretary of State to make orders under this section do not include—
 - (a) power to specify different percentages for the purposes of subsection (1), or of a condition falling within subsection (5), for different regional Channel 3 services or for different national Channel 3 services; or
 - (b) power to make different provision for different licensed public service channels as to whether conditions falling within subsection (1) or conditions falling within subsection (5), or both, are included in the regulatory regimes for those services.

- (11) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (12) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (13) In this section—
 - “acquisition”, in relation to a programme, includes commissioning and the acquisition of a right to include it in a service or to have it broadcast;
 - “programme” does not include an advertisement; and
 - “programming budget” means the budget for the production and acquisition of qualifying programmes.

278 Programming quotas for original productions

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—
 - (a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the channel; and
 - (b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.
- (2) The proportion determined by OFCOM for the purposes of subsection (1)—
 - (a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and
 - (b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.
- (3) A condition contained in a licence by virtue of this section may provide—
 - (a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;
 - (b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.
- (4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.

Status: This is the original version (as it was originally enacted).

- (7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.
- (8) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) In this section—
 - “peak viewing time”, in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and
 - “programme” does not include an advertisement.
- (11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.

News provision etc. on public service television

279 News and current affairs programmes

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—
 - (a) that the programmes included in the channel include news programmes and current affairs programmes;
 - (b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and
 - (c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.
- (2) That regime also includes the conditions that OFCOM consider appropriate for securing that, in each year—
 - (a) the time allocated to the broadcasting of news programmes included in the service, and
 - (b) the time allocated to the broadcasting of current affairs programmes so included,
 each constitutes no less than what appears to OFCOM to be an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the channel.
- (3) It further includes the conditions that OFCOM consider appropriate for securing that the time allocated—
 - (a) to the broadcasting of news programmes included in the service, and
 - (b) to the broadcasting of current affairs programmes so included,
 is, in each case, split in what appears to OFCOM to be an appropriate manner between peak viewing times and other times.
- (4) The proportion determined by OFCOM for the purposes of subsection (2) may, for the purposes of subsection (3), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

- (5) In this section “peak viewing time”, in relation to a licensed public service channel, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that channel.
- (6) Before determining for the purposes of this section—
 - (a) the proportion of time to be allocated to the broadcasting of news programmes or current affairs programmes; or
 - (b) what constitutes a peak viewing time for a channel,OFCOM must consult the provider of the channel or (as the case may be) the person who is proposing to provide it.
- (7) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

280 Appointed news providers for Channel 3

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing the nationwide broadcasting, on the regional Channel 3 services (taken together), of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.
- (2) The conditions imposed under this section must include a condition requiring the holder of a regional Channel 3 licence to do all that he can to ensure—
 - (a) that arrangements for the appointment of a single body corporate as the appointed news provider are maintained between all the holders of regional Channel 3 licences; and
 - (b) that, at all times while he is providing a regional Channel 3 service, there is in force an appointment made in accordance with those arrangements.
- (3) The arrangements that are required to be maintained by virtue of conditions imposed under subsection (2) must provide—
 - (a) for the terms on which a body is appointed as the appointed news provider to include the terms appearing to OFCOM to be appropriate for securing that the body’s finances are adequate, throughout the period of its appointment, to ensure that the Channel 3 news obligations are capable of being met; and
 - (b) for the approval of OFCOM to be required for the purposes of paragraph (a) to the terms on which an appointment is made.
- (4) The conditions imposed under this section must include the conditions that OFCOM consider appropriate for securing that arrangements maintained between—
 - (a) the holders of regional Channel 3 licences, and
 - (b) the body which is the appointed news provider,ensure that that body is subject to an obligation, enforceable by OFCOM, to provide OFCOM with all such information as they may require for the purpose of carrying out their functions.
- (5) The conditions imposed under this section must include a condition requiring the news programmes included in a regional Channel 3 service—
 - (a) to be programmes provided by the body which is for the time being the appointed news provider for the purposes of this section; and

Status: This is the original version (as it was originally enacted).

- (b) to be so included in that service as to be broadcast simultaneously with the broadcasting of news programmes included, in accordance with conditions imposed under this subsection, in other regional Channel 3 services.
- (6) Those conditions must also require the news programmes provided by the appointed news provider which, in accordance with a condition imposed under subsection (5), are included in a regional Channel 3 service to be programmes that are presented live.
- (7) OFCOM—
 - (a) may issue guidance as to the terms that will satisfy requirements imposed by virtue of subsection (3)(a); and
 - (b) must have regard to guidance for the time being in force under this subsection when considering whether to give an approval for the purposes of provision made by virtue of subsection (3)(b).
- (8) For the purposes of this section the Channel 3 news obligations are—
 - (a) the requirements of any conditions imposed in relation to regional Channel 3 services under section 279; and
 - (b) the nationwide broadcasting on the regional Channel 3 services (taken together) of news programmes that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.
- (9) Conditions imposed under this section are not to require arrangements to make provision falling within subsection (3)(a) or (b) or (4) in relation to appointments made before the commencement of this section.
- (10) Section 32 of the 1990 Act (nomination of bodies eligible for appointment as news providers) shall cease to have effect.

281 Disqualification from appointment as news provider

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—
 - (a) that a body is not appointed as the appointed news provider if it falls within subsection (2); and
 - (b) that the appointment of a body as the appointed news provider ceases to have effect if it becomes a body falling within that subsection.
- (2) A body falls within this subsection if—
 - (a) it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or
 - (b) there would be a contravention of Part 1 of Schedule 14 to this Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided.

282 Power to repeal or modify Channel 3 news provider provisions

- (1) If it appears to the Secretary of State appropriate to do so, he may by order repeal or otherwise modify any of the provisions of section 280 or 281.
- (2) Except in a case to which subsection (3) applies, the Secretary of State must consult OFCOM before making an order under this section.

- (3) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (4) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

283 News providers for Channel 5

- (1) If it appears to the Secretary of State appropriate to do so, he may by order make provision requiring news programmes included in Channel 5 to be provided by a person appointed as a news provider in accordance with the order.
- (2) An order under this section may make provision in relation to Channel 5 that corresponds, with such modifications as the Secretary of State thinks fit, to any provision made in relation to regional Channel 3 services by section 280 or 281.
- (3) Subsection (2) applies irrespective of any repeal or other modification by an order under this Act of section 280 or 281.
- (4) An order under this section may include provision for section 194A of the 1990 Act (application of Competition Act 1998 to Channel 3 news provision) to have effect (with such modifications as may be specified in the order) in relation to the appointment of a person as a news provider for Channel 5 as it has effect in relation to the appointment of a body as a news provider for Channel 3.
- (5) The Secretary of State is not to make an order under this section for the imposition of obligations in relation to Channel 5 unless he is satisfied that Channel 5's share of the audience for television broadcasting services is broadly equivalent to that of the services comprising Channel 3.
- (6) An order under this section must require a licence holder to have a reasonable opportunity of making representations to OFCOM before his licence is varied in pursuance of the order.
- (7) Except in a case to which subsection (8) applies, the Secretary of State must consult OFCOM before making an order under this section.
- (8) Consultation with OFCOM is not required if the order is confined to giving effect to recommendations by OFCOM that are contained in a report of a review under section 391.
- (9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

284 News provision on the public teletext service

- (1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing—
 - (a) that the service includes what appears to OFCOM to be a suitable quantity and variety of news items; and
 - (b) that the news items included in the service are up to date and regularly revised.
- (2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

Status: This is the original version (as it was originally enacted).

- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
- must apply to both services but may make different provision for each of them.

Independent and regional productions and programmes for public service television

285 Code relating to programme commissioning

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provider of the channel draws up and from time to time revises a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions.
- (2) That regime also includes the conditions that OFCOM consider appropriate for securing that the provider of every licensed public service channel—
 - (a) at all times complies with a code of practice which has been drawn up by him by virtue of this section and is for the time being in force; and
 - (b) exercises his power to revise his code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this section.
- (3) The conditions imposed under this section must ensure that the code for the time being in force in the case of every licensed public service channel secures, in the manner described in guidance issued by OFCOM—
 - (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - (b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
 - (c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;
 - (d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and exclusivity of those rights;
 - (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
 - (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
 - (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.
- (4) The conditions imposed under this section must also ensure that the drawing up or revision of a code by virtue of this section is in accordance with guidance issued by OFCOM as to—
 - (a) the times when the code is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before a code is drawn up or revised; and
 - (c) the publication of every code or revised code.
- (5) The provision that may be included in a condition imposed under this section includes—

- (a) provision requiring a draft of a code or of any revision of a code to be submitted to OFCOM for approval;
 - (b) provision for the code or revision to have effect only if approved by OFCOM; and
 - (c) provision for a code or revision that is approved by OFCOM subject to modifications to have effect with those modifications.
- (6) OFCOM—
- (a) must issue and may from time to time revise guidance for the purposes of this section;
 - (b) must ensure that there is always guidance for those purposes in force;
 - (c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and
 - (d) must publish their guidance or revised guidance in such manner as they think appropriate.
- (7) Guidance issued by OFCOM for the purposes of this section must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.
- (8) Conditions imposed under this section requiring a code to be drawn up or approved may include transitional provision for treating a code drawn up before the imposition of the condition —
- (a) as satisfying the requirements of that condition; and
 - (b) as a code approved by OFCOM for the purposes of conditions so imposed.
- (9) In this section “independent production” has the same meaning as in section 277.

286 Regional programme-making for Channels 3 and 5

- (1) The regulatory regime for every Channel 3 service includes the conditions (if any) that OFCOM consider appropriate in the case of that service for securing—
- (a) that what appears to OFCOM to be a suitable proportion of Channel 3 programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;
 - (b) that the Channel 3 programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
 - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the providers of Channel 3 services on Channel 3 programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area; and
 - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (2) In the case of a national Channel 3 service, subsection (1) requires the inclusion of conditions in the licence for the service only where OFCOM consider, having regard to the nature of the service, that it would be appropriate for conditions falling within that subsection to be so included.

Status: This is the original version (as it was originally enacted).

- (3) The regulatory regime for Channel 5 includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM to be a suitable proportion of the programmes made in the United Kingdom for viewing on that Channel are programmes made in the United Kingdom outside the M25 area;
 - (b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
 - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of the provider of Channel 5 on programmes made in the United Kingdom for viewing on that Channel is referable to programme production at different production centres outside the M25 area; and
 - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (6) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (7) In this section—
- “Channel 3 programmes” means programmes made for viewing on Channel 3 in more than one area for which regional Channel 3 services are provided, including any programme made for viewing on a national Channel 3 service other than a regional programme;
 - “expenditure”, in relation to a programme, means—
 - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
 - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;
 - “programme” does not include an advertisement; and
 - “regional programme” means a programme made with a view to its inclusion in a national Channel 3 service as a programme of particular interest to persons living within a particular area of the United Kingdom.

287 Regional programmes on Channel 3

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news

Status: This is the original version (as it was originally enacted).

- programmes) which are of particular interest to persons living within the area for which the service is provided;
 - (b) that the regional programmes included in the service are of high quality;
 - (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in that area;
 - (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
 - (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.
- (2) The regulatory regime for every local Channel 3 service includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of local programmes;
 - (b) that, in the case of each part of an area or each community for which the service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
 - (c) that the local programmes included in the service are of high quality;
 - (d) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the local programmes included in the service consists of programmes made in the area for which the service is provided;
 - (e) that the local news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
 - (f) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other local programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.
- (3) In the case of a local Channel 3 service, the conditions included in the regulatory regime for the service include conditions falling within subsection (1) to the extent only that it appears to OFCOM that the requirements of subsection (1) are not adequately met by conditions falling within subsection (2).
- (4) In the case of a national Channel 3 service in the case of which OFCOM consider that it would be appropriate to impose conditions under this subsection, the regulatory regime for the service includes the conditions that OFCOM consider appropriate for securing—
- (a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within particular areas of the United Kingdom;

Status: This is the original version (as it was originally enacted).

- (b) that the regional programmes included in the service are of high quality;
 - (c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in the area by reference to which they are regional programmes;
 - (d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;
 - (e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—
 - (i) at peak viewing times; and
 - (ii) at times immediately preceding or following those times.
- (5) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.
- (6) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (7) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes in question.
- (8) In this section—
- “local Channel 3 service” means a regional Channel 3 service the provision of which includes the provision (in pursuance of a determination under section 14(3) of the 1990 Act) of different programmes for different parts of an area or for different communities living within an area;
 - “local programme”, in relation to a service provided for different parts of an area or for different communities, means a programme included in that service for any of the parts of that area or for any of those communities, and “local news programme” is to be construed accordingly;
 - “peak viewing time”, in relation to a service, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that service;
 - “programme” does not include an advertisement;
 - “regional programme”—
 - (a) in relation to a regional Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within the area for which the service is provided;
 - (b) in relation to a national Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within a particular area of the United Kingdom;
- and “regional news programme” is to be construed accordingly.

288 Regional programme-making for Channel 4

- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing—

Status: This is the original version (as it was originally enacted).

- (a) that what appears to OFCOM to be a suitable proportion of programmes made in the United Kingdom for viewing on Channel 4 are programmes made in the United Kingdom outside the M25 area;
 - (b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;
 - (c) that what appears to OFCOM to be a suitable proportion of the expenditure of C4C on programmes made in the United Kingdom for viewing on Channel 4 is referable to programme production at different production centres outside the M25 area; and
 - (d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.
- (2) Before imposing a condition under this section, OFCOM must consult C4C.
- (3) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (4) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.
- (5) In this section—
- “expenditure”, in relation to a programme, means—
 - (a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or
 - (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast; and
 - “programme” does not include an advertisement.

289 Regional matters in the public teletext service

- (1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the service includes what appears to them to be an appropriate proportion of material that is of particular interest to persons living in different parts of the United Kingdom.
- (2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—
- (a) an analogue teletext service, and
 - (b) a teletext service provided in digital form,
- must apply to both services but may make different provision for each of them.

Status: This is the original version (as it was originally enacted).

Networking arrangements for Channel 3

290 Proposals for arrangements

- (1) An application for a regional Channel 3 licence, in addition to being accompanied by the proposals mentioned in section 15(3)(b) of the 1990 Act, must be accompanied by the applicant's proposals for participating in networking arrangements.
- (2) OFCOM may publish general guidance to applicants for regional Channel 3 licences as to the kinds of proposals which they are likely to consider satisfactory.
- (3) The publication of guidance under subsection (2) is to be in such manner as OFCOM consider appropriate.
- (4) Arrangements are networking arrangements for the purposes of this Part if they—
 - (a) apply to all the holders of regional Channel 3 licences;
 - (b) provide for programmes made, commissioned or acquired by or on behalf of one or more of the holders of such licences to be available for broadcasting in all regional Channel 3 services; and
 - (c) are made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of services which is able to compete effectively with other television programme services provided in the United Kingdom.

291 Obligation as to making and continuance of approved arrangements

- (1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that approved networking arrangements are in force whenever—
 - (a) the licence holder is providing the licensed service; and
 - (b) no networking arrangements imposed by OFCOM under section 292 are in force.
- (2) In this section “approved networking arrangements” means networking arrangements which are for the time being approved by OFCOM in accordance with Schedule 11.
- (3) In paragraph 5 of Schedule 2 to the Competition Act 1998 (c. 41) (exclusion of networking arrangements from Chapter I prohibition), for sub-paragraph (1) there shall be substituted—

“(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—

 - (a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or
 - (b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.”
- (4) For sub-paragraph (4) of that paragraph there shall be substituted—

“(4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.”

292 OFCOM’s power to impose arrangements

- (1) This section applies on each occasion on which OFCOM—
 - (a) are proposing to award one or more regional Channel 3 licences; and
 - (b) for that purpose publish a notice under section 15(1) of the 1990 Act.
- (2) OFCOM must—
 - (a) determine the date by which the holders of the licences awarded and all other regional Channel 3 providers (if any) must have entered into networking arrangements (the “networking date”); and
 - (b) set out that date in that notice.
- (3) The networking date must be the date by which, in OFCOM’s opinion, the networking arrangements must have been entered into if approved networking arrangements are to be fully in force before the persons awarded licences begin to provide their licensed services.
- (4) If—
 - (a) no suitable networking arrangements exist by the networking date, or
 - (b) the suitable networking arrangements that exist at that date cease to apply to all regional Channel 3 providers on or after that date,OFCOM may impose on all regional Channel 3 providers the networking arrangements that OFCOM consider appropriate.
- (5) For the purposes of subsection (4) arrangements are suitable networking arrangements if it appears to OFCOM that they—
 - (a) have been submitted to them for approval or have been approved by them; and
 - (b) will be in force as approved networking arrangements when the persons awarded licences begin to provide their licensed services.
- (6) Arrangements imposed under this section come into force on the date determined by OFCOM.
- (7) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with the provisions of any networking arrangements imposed under this section.
- (8) Where—
 - (a) networking arrangements are imposed under this section,
 - (b) other networking arrangements are entered into between the licence holders bound by the imposed arrangements, and
 - (c) the other arrangements entered into are approved by OFCOM,the imposed arrangements shall cease to have effect on the coming into force of the other arrangements as approved networking arrangements.
- (9) In this section—

“approved networking arrangements” has the same meaning as in section 291; and

Status: This is the original version (as it was originally enacted).

“regional Channel 3 providers” means persons who will be licensed to provide regional Channel 3 services and will be providing such services when the licences to be awarded come into force.

293 Review of approved networking arrangements etc.

- (1) It shall be the duty of OFCOM from time to time to carry out general reviews of the networking arrangements (whether approved or imposed by OFCOM) that are in force.
- (2) The first such review must be carried out no later than six months after the date on which the offers made under section 215(1) close or (if those offers close on different dates) the latest of those dates.
- (3) Every subsequent review must be carried out no more than one year after the previous one.
- (4) OFCOM may also, at any other time, carry out a review of whether those arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11.
- (5) If, on a review under this section, OFCOM are satisfied that modifications are required of the networking arrangements for the time being in force, they may—
 - (a) require the holders of regional Channel 3 licences to give effect to the modifications proposed by OFCOM; or
 - (b) in the case of arrangements imposed by OFCOM, make those modifications themselves.
- (6) OFCOM must not exercise any of their powers under this Act or the 1990 Act so as to modify the requirements imposed on the holder of a regional Channel 3 licence by approved networking arrangements that are already in force except—
 - (a) following a review under this section; or
 - (b) with the consent of the licence holder.
- (7) The regulatory regime for every Channel 3 service includes the conditions that OFCOM consider appropriate for securing that the licence holder does all that he can to ensure that modifications proposed by OFCOM under this section are given effect to.
- (8) In this section “approved networking arrangements” has the same meaning as in section 291.

294 Supplemental provision about networking arrangements

- (1) Schedule 11 (which makes provision about the approval of networking arrangements and the imposition or modification of such arrangements) shall have effect.
- (2) The obligations arising under conditions imposed in accordance with sections 291 to 293 are subject to the rights of appeal conferred by that Schedule.

Special obligations for Channel 4

295 Involvement of C4 Corporation in programme-making

- (1) The regulatory regime for Channel 4 includes a condition requiring C4C not to be involved, except to such extent as OFCOM may allow, in the making of programmes to be broadcast on Channel 4.
- (2) In this section “programme” does not include an advertisement.

296 Schools programmes on Channel 4

- (1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing that what appears to them to be a suitable proportion of the programmes which are included in Channel 4 are schools programmes.
- (2) A licence under the 1990 Act to provide Channel 4 may also include conditions authorised by the following provisions of this section.
- (3) The conditions authorised by this section include conditions requiring C4C—
 - (a) to finance the production of schools programmes; and
 - (b) to acquire schools programmes provided by other persons.
- (4) The conditions authorised by this section include conditions requiring C4C to ensure that schools programmes on Channel 4—
 - (a) are of high quality; and
 - (b) are suitable to meet the needs of schools throughout the United Kingdom.
- (5) The conditions authorised by this section include conditions specifying the minimum number of hours in term time, or within normal school hours, that are to be allocated to the broadcasting of schools programmes on Channel 4.
- (6) The conditions authorised by this section include conditions requiring C4C to provide such material for use in connection with the schools programmes broadcast by them as may be necessary to secure that effective use is made of those programmes in schools.
- (7) The conditions authorised by this section include conditions requiring C4C from time to time to consult such persons who—
 - (a) are concerned with schools or with the production of schools programmes, or
 - (b) have an interest in schools or in the production of schools programmes,as OFCOM think fit.
- (8) Before imposing a condition under this section, OFCOM must consult C4C.
- (9) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).
- (10) In determining for the purposes of subsection (1) what proportion of the programmes included in Channel 4 should be schools programmes, OFCOM must take into account services, facilities and materials which C4C provide to schools, or make available for schools, otherwise than by the inclusion of programmes in Channel 4.
- (11) Section 34 of the 1990 Act (requirement as to schools programmes in relation to all licensed public service channels taken together) shall cease to have effect.

Status: This is the original version (as it was originally enacted).

- (12) In this section “schools programmes” means programmes which are intended for use in schools.

297 Channel 4 contribution towards national television archive

- (1) Section 185 of the 1990 Act (contributions towards maintenance of the national television archive) shall be amended as follows.
- (2) In subsections (1) and (3), after “Channel 3” there shall be inserted “, Channel 4”.
- (3) In subsection (5), at the end there shall be inserted—
- ““Channel 4 licence” means—
- (a) the licence referred to in section 231(1)(b) of the Communications Act 2003; and
- (b) a licence renewing that licence on the first or any subsequent occasion.”
- (4) This section has effect in relation only to financial years beginning after the television transfer date.

Special obligation for the public teletext provider

298 Conditions prohibiting interference with other services

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the provision of so much of the public teletext service as is provided in analogue form does not cause interference with—

- (a) the television broadcasting service or services on whose frequency or frequencies it is provided; or
- (b) any other wireless telegraphy transmissions.

Sporting and other events of national interest

299 Categorisation of listed events

- (1) For subsections (1) and (2) of section 97 of the 1996 Act (listed events), there shall be substituted—
- “(1) The Secretary of State may, for the purposes of this Part, maintain a list of sporting and other events of national interest, and an event for the time being included in the list is referred to in this Part as a “listed event”.
- (1A) A list maintained under subsection (1) must be divided into two categories, and those categories are referred to in this Part as “Group A” and “Group B”.
- (1B) Each listed event must be allocated either to Group A or to Group B.
- (2) Before drawing up such a list, or revising or ceasing to maintain it, the Secretary of State must consult—
- (a) OFCOM,
 - (b) the BBC,

- (c) the Welsh Authority, and
 - (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired.
- (2A) For the purposes of subsection (2)(d), a relevant event is an event which the Secretary of State proposes—
 - (a) to include in a list maintained under subsection (1),
 - (b) to omit from such a list, or
 - (c) to move from one category in such a list to the other.”
- (2) In subsection (3)(b) of that section, the words “by the Commission” and “by them” shall be omitted.
- (3) In subsection (5) of that section—
 - (a) for the words “addition of any relevant event to” there shall be substituted “inclusion of any event in”; and
 - (b) in paragraph (a), for “addition” there shall be substituted “inclusion”.
- (4) After that subsection, there shall be inserted—
 - “(5A) The allocation or transfer of an event to group A does not affect the validity of a contract entered into before the day on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed allocation or transfer.
 - (5B) The Secretary of State may direct that, for the transitional purposes set out in the direction, the transfer of a Group B event to Group A is not to affect the application to that event of provisions of this Part relating to a Group B event.”

300 Effects of categorisation of listed events

- (1) In section 99(1) of the 1996 Act (avoidance of contracts for exclusive rights to televise listed events), for “listed event” there shall be substituted “Group A listed event”.
- (2) In section 101 of that Act (restriction on televising of listed events), for subsection (1) there shall be substituted—
 - “(1) A television programme provider who—
 - (a) is providing a service (“the first service”) falling within either category, and
 - (b) is providing it with a view to its being available (within the meaning of Part 3 of the Communications Act 2003) for reception by members of the public in the United Kingdom, or in any area of the United Kingdom,must not include live coverage of a listed event in that service unless it is authorised by subsection (1A), (1B) or (1C).
 - (1A) Live coverage of a listed event is authorised by this subsection if—
 - (a) a television programme provider (other than the provider of the first service) has acquired the right to include live coverage of the event in his service (“the second service”); and
 - (b) the second service—
 - (i) falls into a different category from the first service, and

Status: This is the original version (as it was originally enacted).

- (ii) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.
- (1B) Live coverage of a listed event is authorised by this subsection if OFCOM have consented in advance to inclusion of that coverage in the first service.
- (1C) Live coverage of a listed event is authorised by this subsection if—
 - (a) the listed event is a Group B event,
 - (b) rights to provide coverage of the event have been acquired by one or more persons in addition to the provider of the first service,
 - (c) that additional coverage constitutes adequate alternative coverage of the event, and
 - (d) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made under section 104ZA for the purposes of this paragraph.
- (1D) Subsections (1) to (1C) apply to the coverage of a part of a listed event as they apply to the coverage of the whole of that event.”
- (3) In subsection (2) of that section, for “under subsection (1)” there shall be substituted “for the purposes of subsection (1B).”
- (4) After subsection (4) of that section there shall be inserted—
 - “(5) References in this section to a category of service are references to a category of service set out in section 98(1).”
- (5) In section 102(2) of that Act (penalties), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.
- (6) In section 103(2) of that Act (reports to the Secretary of State), for “under subsection (1) of section 101” there shall be substituted “for the purposes of section 101(1B)”.

301 Code relating to listed events

- (1) For subsection (1) of section 104 of the 1996 Act (code in relation to listed events) there shall be substituted—
 - “(1) OFCOM shall draw up, and may from time to time revise, a code giving guidance—
 - (a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101(1B) or section 101B(1); and
 - (b) as to the matters which they will take into account in determining for the purposes of section 102(1) or 103(1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101(1) or section 101B(1).”
- (2) Where OFCOM are required to draw up a code by virtue of this section—
 - (a) they shall do so as soon as practicable after the commencement of this section; but

- (b) the code shall have no effect in relation to any time before the commencement of section 300 of this Act.

302 Regulations about coverage of listed events

- (1) After section 104 of the 1996 Act there shall be inserted—

“104ZA Regulations about coverage of listed events

- (1) OFCOM may make regulations for determining for the purposes of this Part—
 - (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is or is not to be treated as live;
 - (b) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage; and
 - (c) the requirements that must be satisfied for the purposes of section 101(1C)(d) by persons who have acquired rights to provide adequate alternative coverage.
 - (2) The power conferred by subsection (1)(a) does not include power to define “live” for the purposes of section 101B.
 - (3) Section 403 of the Communications Act 2003 (procedure for regulations and orders made by OFCOM) applies to the power of OFCOM to make regulations under this section.”
- (2) In section 105(1) (interpretation of Part 4), before the definition of “Channel 4” there shall be inserted—

““adequate alternative coverage” and “live” are to be construed in accordance with any regulations under section 104ZA;”.

Television services for the deaf and visually impaired

303 Code relating to provision for the deaf and visually impaired

- (1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to—
 - (a) the extent to which the services to which this section applies should promote the understanding and enjoyment by—
 - (i) persons who are deaf or hard of hearing,
 - (ii) persons who are blind or partially-sighted, and
 - (iii) persons with a dual sensory impairment,of the programmes to be included in such services; and
 - (b) the means by which such understanding and enjoyment should be promoted.
- (2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

Status: This is the original version (as it was originally enacted).

- (3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following—
 - (a) the twelve month period beginning with the anniversary in question; and
 - (b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.
- (4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which—
 - (a) is a service to which this section applies, and
 - (b) has a relevant date after the passing of this Act,as consists of programmes that are not excluded programmes must be accompanied by subtitling.
- (5) The obligations to be fulfilled from the tenth anniversary of the relevant date are—
 - (a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;
 - (b) that at least 80 per cent. of so much of every other service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by subtitling;
 - (c) that at least 10 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and
 - (d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated into, sign language.
- (6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.
- (7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.
- (8) In complying with subsection (7), OFCOM must have regard, in particular, to—
 - (a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;
 - (b) the size of the intended audience for the programmes;
 - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
 - (e) the technical difficulty of providing the assistance; and
 - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- (9) The exclusions that may be set out in the code under subsection (7)—

- (a) may include different descriptions of programmes in relation to different services to which this section applies; and
 - (b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in the service.
- (10) The requirements that may be imposed by the code include, in particular—
 - (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);
 - (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and
 - (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.
- (11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).
- (12) This section applies to the following services—
 - (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;
 - (b) any licensed public service channel;
 - (c) a digital television programme service but not an electronic programme guide;
 - (d) a television licensable content service but not an electronic programme guide;
 - (e) a restricted television service.
- (13) In this section—
 - “electronic programme guide” means a service which—
 - (a) is or is included in a television licensable content service or a digital television programme service; and
 - (b) consists of—
 - (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;
 - “programme” does not include an advertisement.

304 Procedure for issuing and revising code under s. 303

- (1) Before drawing up a code under section 303 or reviewing or revising it in pursuance of that section, OFCOM must consult—
 - (a) such persons appearing to them to represent the interests of persons falling within subsection (1)(a)(i), (ii) or (iii) of that section as OFCOM think fit; and
 - (b) such persons providing services to which that section applies as OFCOM think fit.

Status: This is the original version (as it was originally enacted).

- (2) OFCOM must publish the code drawn up under section 303, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—
- (a) persons who are deaf or hard of hearing,
 - (b) persons who are blind or partially sighted, and
 - (c) persons with a dual sensory impairment,
- they consider appropriate.

305 Meaning of “relevant date” in s. 303

- (1) In relation to a service, the relevant date for the purposes of section 303 is—
- (a) in a case to which any of subsections (2) to (4) applies, the date given by that subsection; and
 - (b) in any other case, the date (whether before or after the passing of this Act) when the provision of that service began or begins.
- (2) In the case of a service the provision of which began before the television transfer date but which is not—
- (a) a service provided by the Welsh Authority,
 - (b) a licensed public service channel, or
 - (c) a digital television programme service,
- the relevant date is the date of the coming into force of this section.
- (3) In the case of—
- (a) a Channel 3 service the provision of which began before the date of the passing of this Act, and
 - (b) Channel 4 and S4C Digital,
- the relevant date is 1st January 2000.
- (4) In the case of Channel 5, so far as it consists of a service the provision of which began before the date of the passing of this Act, the relevant date is 1st January 1998.
- (5) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 303 and this section as a continuation of a service previously provided by him.

306 Power to modify targets in s. 303

- (1) Where it appears to the Secretary of State, in the case of services of a particular description, that the obligation specified in section 303(4) has been or is likely to be fulfilled in their case before the anniversary so specified, he may by order modify section 303 so as to do one or both of the following—
- (a) increase the percentage so specified in relation to services of that description;
 - (b) substitute a different anniversary for the anniversary by which that obligation must be fulfilled in the case of such services.
- (2) The Secretary of State may by order modify section 303 so as to do one or both of the following—
- (a) substitute a later anniversary for the anniversary by which the obligations specified in subsection (5) of that section must be fulfilled;

- (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of that subsection.
- (3) The provision that may be made by an order under this section includes—
 - (a) modifications for requiring the code to set out additional obligations to be fulfilled once the obligations previously required to be set out in the code have been fulfilled; and
 - (b) savings for the obligations previously set out in the code.
- (4) Before making an order under this section the Secretary of State must consult OFCOM.
- (5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

307 Observance of code under s. 303

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the code maintained by them under section 303 is observed in the provision of those services.
- (2) This section applies to every service to which section 303 applies which is licensed by a Broadcasting Act licence.

308 Assistance for the visually impaired with the public teletext service

The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing, so far as it is reasonable and practicable, by the inclusion of features in that service, to do so, that persons with disabilities affecting their sight are able to make use of the service.

Programming quotas for digital television programme services

309 Quotas for independent programmes

- (1) The regulatory regime for every digital television programme service that is not comprised in a licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions.
- (2) In subsection (1)—
 - (a) the reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of that subsection;
 - (b) the reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of that subsection; and

Status: This is the original version (as it was originally enacted).

- (c) the reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.
- (3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.
- (4) Before making an order under this section the Secretary of State must consult OFCOM.
- (5) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) In this section “programme” does not include an advertisement.

Regulation of electronic programme guides

310 Code of practice for electronic programme guides

- (1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.
- (2) The practices required by the code must include the giving, in the manner provided for in the code, of such degree of prominence as OFCOM consider appropriate to—
 - (a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and
 - (b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.
- (3) The practices required by the code must also include the incorporation of such features in electronic programme guides as OFCOM consider appropriate for securing that persons with disabilities affecting their sight or hearing or both —
 - (a) are able, so far as practicable, to make use of such guides for all the same purposes as persons without such disabilities; and
 - (b) are informed about, and are able to make use of, whatever assistance for disabled people is provided in relation to the programmes listed or promoted.
- (4) Subject to subsection (5), in subsection (2) the reference to the public service channels is a reference to any of the following—
 - (a) any service of television programmes provided by the BBC in digital form so as to be available for reception by members of the public;
 - (b) any Channel 3 service in digital form;
 - (c) Channel 4 in digital form;
 - (d) Channel 5 in digital form;
 - (e) S4C Digital;
 - (f) the digital public teletext service.
- (5) The Secretary of State may by order—
 - (a) add any programme service to the services for the time being specified in subsection (4) as public service channels; or
 - (b) delete a service from that subsection.

- (6) Before making an order under subsection (5) the Secretary of State must consult OFCOM.
- (7) In this section “intended audience”, in relation to a service of any description, means—
 - (a) if the service is provided only for a particular area or locality of the United Kingdom, members of the public in that area or locality;
 - (b) if it is provided for members of a particular community, members of that community; and
 - (c) in any other case, members of the public in the United Kingdom.
- (8) In this section “electronic programme guide” means a service which consists of—
 - (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
 - (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

311 Conditions to comply with code under s. 310

- (1) The regulatory regime for every service consisting in or including an electronic programme guide includes whatever conditions (if any) OFCOM consider appropriate for securing that the code maintained by them under section 310 is observed in the provision of those services.
- (2) In this section “electronic programme guide” has the same meaning as in section 310.

Character and coverage of radio services

312 Character and coverage of sound broadcasting services

- (1) Section 106 of the 1990 Act (requirements as to character and coverage of local and national radio services) shall be amended as follows.
- (2) In subsection (1), the words from “except” onwards shall be omitted.
- (3) After subsection (1) (duty to ensure character preserved subject to departures that do not restrict service) there shall be inserted—
 - “(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—
 - (a) that the departure would not substantially alter the character of the service;
 - (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
 - (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or

Status: This is the original version (as it was originally enacted).

- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure.
- (1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.”
- (4) For subsection (5) (restriction on power to extend licence to new area or locality) there shall be substituted—
 - “(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them—
 - (a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or
 - (b) that the increase that would result is justifiable in the exceptional circumstances of the case.”
- (5) After subsection (6) of that section there shall be inserted—
 - “(7) In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003—
 - (a) sound broadcasting services;
 - (b) radio licensable content services;
 - (c) additional services;
 but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question.”

313 Consultation about change of character of local services

After section 106 of the 1990 Act there shall be inserted—

“106ZA Consultation about change of character of local services

- (1) Before deciding for the purposes of a condition imposed under subsection (1A) of section 106 whether to consent to a departure from the character of a service provided under a local licence on any of the grounds mentioned in paragraphs (b) to (d) of that subsection, OFCOM must publish a notice specifying—
 - (a) the proposed departure; and
 - (b) the period in which representations may be made to OFCOM about the proposal.
- (2) That period must end not less than 28 days after the date of publication of the notice.
- (3) The notice must be published in such manner as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the departure.

- (4) OFCOM—
 - (a) are not required to publish a notice under this section, and
 - (b) may specify a period of less than 28 days in such a notice as the period for representations,if they consider that the publication of the notice, or allowing a longer period for representations, would result in a delay that would be likely prejudicially to affect the interests of the licence holder.
- (5) OFCOM are not required under this section—
 - (a) to publish any matter that is confidential in accordance with subsection (6) or (7); or
 - (b) to publish anything that it would not be reasonably practicable to publish without disclosing such a matter.
- (6) A matter is confidential under this subsection if—
 - (a) it relates specifically to the affairs of a particular body; and
 - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (7) A matter is confidential under this subsection if—
 - (a) it relates specifically to the private affairs of an individual; and
 - (b) its publication would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.”

314 Local content and character of local sound broadcasting services

- (1) It shall be the duty of OFCOM to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure—
 - (a) that programmes consisting of or including local material are included in such services but, in the case of each such service, only if and to the extent (if any) that OFCOM consider appropriate in that case; and
 - (b) that, where such programmes are included in such a service, what appears to OFCOM to be a suitable proportion of them consists of locally-made programmes.
- (2) OFCOM must—
 - (a) draw up guidance as to how they consider the requirements of subsection (1) (a) and (b) should be satisfied; and
 - (b) have regard to that guidance in carrying out their functions in relation to local sound broadcasting services.
- (3) The guidance may be different for different descriptions of services.
- (4) OFCOM may revise the guidance from time to time.
- (5) Before drawing up or revising the guidance, OFCOM must consult—
 - (a) such persons as appear to them to represent the interests of persons for whom local sound broadcasting services are or would be provided;
 - (b) persons holding licences to provide local sound broadcasting services or persons appearing to represent such persons, or both; and
 - (c) such other persons as they consider appropriate.

Status: This is the original version (as it was originally enacted).

- (6) OFCOM must publish the guidance and every revision of it in such manner as they consider appropriate.
- (7) In this section—
- “local material”, in relation to a local sound broadcasting service, means material which is of particular interest—
 - (a) to persons living or working within the area or locality for which the service is provided;
 - (b) to persons living or working within a part of that area or locality; or
 - (c) to particular communities living or working within that area or locality or a part of it;
 - “locally-made”, in relation to programmes included in a local sound broadcasting service, means made wholly or partly at premises in the area or locality for which that service is provided;
 - “material” includes news, information and other spoken material and music; and
 - “programme” does not include an advertisement.
- (8) References in this section to persons living or working within an area or locality include references to persons undergoing education or training in that area or locality.

315 Variations of radio multiplex licences affecting service characteristics

For subsection (6) of section 54 of the 1996 Act (variations of radio multiplex licence affecting service characteristics) there shall be substituted—

- “(6) Where the licence holder applies to OFCOM for the variation of a condition which—
- (a) was imposed under subsection (1)(b), and
 - (b) relates to the characteristics of digital sound programme services to be broadcast under the licence,
- then (subject to subsections (6A) and (6B)) OFCOM must vary the condition in accordance with the application.
- (6A) OFCOM are not to vary a national radio multiplex licence in accordance with an application under subsection (6) if it appears to them that, if the application were granted, the capacity of the digital sound programme services broadcast under the licence to appeal to a variety of tastes and interests would be unacceptably diminished.
- (6B) OFCOM are to vary a local radio multiplex licence in accordance with such an application only if they are satisfied—
- (a) that the variation would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which the licensed multiplex service is provided;
 - (b) that the variation would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
 - (c) that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the variation.”

Competition between licensed providers etc.

316 Conditions relating to competition matters

- (1) The regulatory regime for every licensed service includes the conditions (if any) that OFCOM consider appropriate for ensuring fair and effective competition in the provision of licensed services or of connected services.
- (2) Those conditions must include the conditions (if any) that OFCOM consider appropriate for securing that the provider of the service does not—
 - (a) enter into or maintain any arrangements, or
 - (b) engage in any practice,which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (3) A condition imposed under this section may require a licence holder to comply with one or both of the following—
 - (a) a code for the time being approved by OFCOM for the purposes of the conditions; and
 - (b) directions given to him by OFCOM for those purposes.
- (4) In this section—

“connected services”, in relation to licensed services, means the provision of programmes for inclusion in licensed services and any other services provided for purposes connected with, or with the provision of, licensed services; and

“licensed service” means a service licensed by a Broadcasting Act licence.

317 Exercise of Broadcasting Act powers for a competition purpose

- (1) This section applies to the following powers of OFCOM (their “Broadcasting Act powers”)—
 - (a) their powers under this Part of this Act and under the 1990 Act and the 1996 Act to impose or vary the conditions of a Broadcasting Act licence;
 - (b) every power of theirs to give an approval for the purposes of provision contained in the conditions of such a licence;
 - (c) every power of theirs to give a direction to a person who is required to comply with it by the conditions of such a licence; and
 - (d) every power of theirs that is exercisable for the purpose of enforcing an obligation imposed by the conditions of such a licence.
- (2) Before exercising any of their Broadcasting Act powers for a competition purpose, OFCOM must consider whether a more appropriate way of proceeding in relation to some or all of the matters in question would be under the Competition Act [1998 \(c. 41\)](#).
- (3) If OFCOM decide that a more appropriate way of proceeding in relation to a matter would be under the Competition Act 1998, they are not, to the extent of that decision, to exercise their Broadcasting Act powers in relation to that matter.
- (4) If OFCOM have decided to exercise any of their Broadcasting Act powers for a competition purpose, they must, on or before doing so, give a notification of their decision.

Status: This is the original version (as it was originally enacted).

- (5) A notification under subsection (4) must—
 - (a) be given to such persons, or published in such manner, as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected by their decision; and
 - (b) must describe the rights conferred by subsection (6) on the persons affected by that decision.
- (6) A person affected by a decision by OFCOM to exercise any of their Broadcasting Act powers for a competition purpose may appeal to the Competition Appeal Tribunal against so much of that decision as relates to the exercise of that power for that purpose.
- (7) Sections 192(3) to (8), 195 and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).
- (8) The jurisdiction of the Competition Appeal Tribunal on an appeal under subsection (6) excludes—
 - (a) whether OFCOM have complied with subsection (2); and
 - (b) whether any of OFCOM's Broadcasting Act powers have been exercised in contravention of subsection (3);
 and, accordingly, those decisions by OFCOM on those matters fall to be questioned only in proceedings for judicial review.
- (9) For the purposes of this section a power is exercised by OFCOM for a competition purpose if the only or main reason for exercising it is to secure that the holder of a Broadcasting Act licence does not—
 - (a) enter into or maintain arrangements, or
 - (b) engage in a practice,
 which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (10) Nothing in this section applies to—
 - (a) the exercise by OFCOM of any of their powers under sections 290 to 294 or Schedule 11;
 - (b) the exercise by them of any power for the purposes of any provision of a condition included in a licence in accordance with any of those sections;
 - (c) the exercise by them of any power for the purpose of enforcing such a condition.
- (11) In subsection (9) “connected services” and “licensed service” each has the same meaning as in section 316.
- (12) References in this section to the exercise of a power include references to an exercise of a power in pursuance of a duty imposed on OFCOM by or under an enactment.

318 Review of powers exercised for competition purposes

- (1) It shall be the duty of OFCOM, at such intervals as they consider appropriate, to carry out a review of so much of each of the following as has effect for a competition purpose—
 - (a) every code made or approved by them under or for the purposes of a broadcasting provision;

Status: This is the original version (as it was originally enacted).

- (b) the guidance issued by them under or for the purposes of broadcasting provisions; and
 - (c) every direction given by them under or for the purposes of a broadcasting provision.
- (2) Before modifying or revoking, or withdrawing their approval from, anything which is subject to periodic review under this section, OFCOM must consult such persons as they consider appropriate.
- (3) Subsection (2) applies irrespective of whether the modification, revocation or withdrawal is in consequence of a review under this section.
- (4) For the purposes of this section a provision has effect for a competition purpose to the extent that its only or main purpose is to secure that the holder of a Broadcasting Act licence does not—
 - (a) enter into or maintain arrangements, or
 - (b) engage in a practice,which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (5) In this section “broadcasting provision” means—
 - (a) a provision of this Part of this Act, of the 1990 Act or of the 1996 Act, or
 - (b) any provision of a Broadcasting Act licence,other than provision contained in any of sections 290 to 294 of this Act or Schedule 11 to this Act.

Programme and fairness standards for television and radio

319 OFCOM’s standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are—
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
 - (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;

Status: This is the original version (as it was originally enacted).

- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
 - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
 - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
 - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters—
 - (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
 - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include—
 - (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve—
 - (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.
- (8) In this section “news” means news in whatever form it is included in a service.

320 Special impartiality requirements

- (1) The requirements of this section are—
 - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
 - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
 - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are—
 - (a) matters of political or industrial controversy; and
 - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require—
 - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
 - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section—
 - (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM’s standards code shall contain provision setting out the rules to be observed in connection with the following matters—
 - (a) the application of the requirement specified in subsection (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
 - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately)—
 - (a) matters of major political or industrial controversy, and

Status: This is the original version (as it was originally enacted).

(b) major matters relating to current public policy,
as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.

(7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

321 Objectives for advertisements and sponsorship

(1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j)—

- (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and
- (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).

(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—

- (a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
- (b) an advertisement which is directed towards a political end; or
- (c) an advertisement which has a connection with an industrial dispute.

(3) For the purposes of this section objects of a political nature and political ends include each of the following—

- (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
- (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
- (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;
- (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
- (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
- (f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
- (g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

(4) OFCOM—

- (a) shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and
- (b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM’s standards code.

- (5) OFCOM must, from time to time, consult the Secretary of State about—
 - (a) the descriptions of advertisements that should not be included in programme services; and
 - (b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services.
- (6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.
- (7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—
 - (a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or
 - (b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.
- (8) In this section “programme service” does not include a service provided by the BBC.

322 Supplementary powers relating to advertising

- (1) The regulatory regime for each of the following—
 - (a) every television programme service licensed by a Broadcasting Act licence,
 - (b) the public teletext service, and
 - (c) every other teletext service so licensed that consists in an additional television service or a digital additional television service,includes a condition requiring the person providing the service to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (2).
- (2) Those matters are—
 - (a) the maximum amount of time to be given to advertisements in any hour or other period;
 - (b) the minimum interval which must elapse between any two periods given over to advertisements;
 - (c) the number of such periods to be allowed in any programme or in any hour or day; and
 - (d) the exclusion of advertisements from a specified part of a licensed service.
- (3) Directions under this section—
 - (a) may be either general or specific;
 - (b) may be qualified or unqualified; and
 - (c) may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.
- (4) In giving a direction under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

Status: This is the original version (as it was originally enacted).

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

- (1) The Secretary of State may by order modify the list of matters in section 319(4) to which OFCOM are to have regard when setting or revising standards.
- (2) Before making an order under this section, the Secretary of State must consult OFCOM.
- (3) No order is to be made containing provision authorised by subsection (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

324 Setting and publication of standards

- (1) Before setting standards under section 319, OFCOM must publish, in such manner as they think fit, a draft of the proposed code containing those standards.
- (2) After publishing the draft code and before setting the standards, OFCOM must consult every person who holds a relevant licence and such of the following as they think fit—
 - (a) persons appearing to OFCOM to represent the interests of those who watch television programmes;
 - (b) persons appearing to OFCOM to represent the interests of those who make use of teletext services; and
 - (c) persons appearing to OFCOM to represent the interests of those who listen to sound programmes.
- (3) After publishing the draft code and before setting the standards, OFCOM must also consult—
 - (a) the Welsh Authority, about so much of the draft code as relates to television programme services;
 - (b) the BBC, about so much of the draft code as contains standards other than those for advertising or sponsorship; and
 - (c) such of the persons mentioned in subsection (4) as OFCOM think fit, about so much of the draft code as contains standards for advertising or sponsorship.
- (4) Those persons are—
 - (a) persons appearing to OFCOM to represent the interests of those who will have to take account of the contents of the proposed standards for advertising or sponsorship;
 - (b) bodies and associations appearing to OFCOM to be concerned with the application of standards of conduct in advertising; and
 - (c) professional organisations appearing to OFCOM to be qualified to give relevant advice in relation to the advertising of particular products.
- (5) If it appears to OFCOM that a body exists which represents the interests of a number of the persons who hold relevant licences, they may perform their duty under subsection (2) of consulting such persons, so far as it relates to the persons whose interests are so represented, by consulting that body.
- (6) OFCOM may set standards under section 319 either—
 - (a) in the terms proposed in a draft code published under subsection (1); or
 - (b) with such modifications as OFCOM consider appropriate in the light of the consultation carried out as a result of subsections (2) to (5).

- (7) Subsections (1) to (6) apply to a proposal by OFCOM to revise standards set under section 319 as they apply to a proposal to set such standards.
- (8) Where OFCOM set standards under section 319, they must publish the code containing the standards in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the standards.
- (9) Where OFCOM revise standards set under section 319, they shall so publish the code containing the standards as revised.
- (10) Where OFCOM publish a code under subsection (8) or (9), they shall send a copy of it—
 - (a) to the Secretary of State;
 - (b) except in the case of a code containing standards for advertising or sponsorship, to the BBC; and
 - (c) if the code relates to television programme services, to the Welsh Authority.
- (11) A code (or draft code) contains standards for advertising or sponsorship for the purposes of this section to the extent that it sets standards under section 319 for securing any of the objectives mentioned in any of paragraphs (g) to (k) of subsection (2) of that section.
- (12) In this section “relevant licence”, in relation to a draft code, means—
 - (a) to the extent that the draft code relates to
 - (i) television programme services,
 - (ii) the public teletext service, or
 - (iii) an additional television service,a licence under Part 1 of the 1990 Act (independent television services), under section 18 of the 1996 Act (digital television programme services) under section 25 of that Act (digital additional television services) or under section 219 of this Act; and
 - (b) to the extent that the draft code relates to radio programme services, any licence under Part 3 of the 1990 Act (independent radio services), under section 60 of the 1996 Act (digital sound programme service) or under section 64 of that Act (digital additional services).

325 Observance of standards code

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing—
 - (a) that standards set under section 319 are observed in the provision of that service; and
 - (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.
- (2) It shall be the duty of OFCOM themselves to establish procedures for the handling and resolution of complaints about the observance of standards set under section 319.
- (3) OFCOM may from time to time make a report to the Secretary of State on any issues with respect to OFCOM’s standards code which—
 - (a) have been identified by them in the course of carrying out their functions; and
 - (b) appear to them to raise questions of general broadcasting policy.

Status: This is the original version (as it was originally enacted).

- (4) The conditions of a licence which is granted by OFCOM for a programme service must, for the purpose of securing compliance—
- (a) with OFCOM's standards code, so far as it relates to advertising and the sponsorship of programmes, and
 - (b) with any such requirements as are mentioned in section 321(4) which relate to advertising and sponsorship but go beyond that code,
- include a condition requiring the licence holder to comply with every direction given to him by OFCOM with respect to any of the matters mentioned in subsection (5).
- (5) Those matters are—
- (a) the exclusion from the service of a particular advertisement, or its exclusion in particular circumstances;
 - (b) the descriptions of advertisements and methods of advertising to be excluded from the service (whether generally or in particular circumstances); and
 - (c) the forms and methods of sponsorship to be excluded from the service (whether generally or in particular circumstances).
- (6) OFCOM's powers and duties under this section are not to be construed as restricting any power of theirs, apart from this section—
- (a) to include conditions with respect to the content of programmes included in any service in the licence to provide that service; or
 - (b) to include conditions in a licence requiring the holder of a licence to comply with directions given by OFCOM or by any other person.

326 Duty to observe fairness code

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance—

- (a) in connection with the provision of that service, and
 - (b) in relation to the programmes included in that service,
- of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

327 Standards with respect to fairness

- (1) Part 5 of the 1996 Act (functions of the Broadcasting Standards Commission which are transferred to OFCOM so far as they relate to codes of practice and complaints with respect to fairness and privacy) shall be amended as follows.
- (2) No person shall be entitled to make a standards complaint under that Part at any time after the coming into force of this section, and no person shall be required to entertain any such complaint that is so made.
- (3) In section 115 (consideration of fairness complaint)—
- (a) in subsection (4) (matters to be provided in response to a fairness complaint), after paragraph (d) there shall be inserted—
 - “(da) to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the relevant person, as may be specified or described by OFCOM;”

Status: This is the original version (as it was originally enacted).

- (b) in subsection (7) (requests in relation to which the relevant person is required to secure the compliance of another), after paragraph (c) there shall be inserted—
 - “(ca) a request to provide OFCOM with such other things appearing to OFCOM to be relevant to their consideration of the complaint, and to be in the possession of the person requested, as may be specified or described by OFCOM;”.
- (4) For subsection (7) of section 119 (directions on determination of fairness complaint) there shall be substituted—
 - “(7) The regulatory regime for every licensed service includes the conditions that OFCOM consider appropriate for securing that the licence holder complies with every direction given to him under this section.
 - (7A) Section 263 of the Communications Act 2003 applies in relation to conditions included by virtue of subsection (7) in the regulatory regime for a licensed service as it applies in relation to conditions which are so included by virtue of a provision of Chapter 4 of Part 3 of that Act.
 - (7B) It is hereby declared that, where—
 - (a) OFCOM exercise their powers under this Part to adjudicate upon a fairness complaint or to give a direction under subsection (1), and
 - (b) it appears to them that the matters to which the complaint in question relates consist in or include a contravention of the conditions of the licence for a licensed service,the exercise by OFCOM of their powers under this Part is not to preclude the exercise by them of their powers under any other enactment in respect of the contravention.
 - (7C) Where OFCOM are proposing to exercise any of their powers in respect of a contravention of a licence condition in a case in which the contravention relates to matters that have been the subject-matter of a fairness complaint—
 - (a) OFCOM may have regard, in the exercise of those powers, to any matters considered or steps taken by them for the purpose of adjudicating upon that complaint and to any direction given by them under this section; but
 - (b) steps taken for the purposes of this Part do not satisfy a requirement to give the licence holder in relation to whom those powers are to be exercised a reasonable opportunity, before they are exercised, of making representations to OFCOM.”
- (5) For subsection (2) of section 120 of that Act (reports on supplementary action taken in response to findings on fairness complaint) there shall be substituted—
 - “(2) Where the relevant programme was included in a licensed service, the licence holder shall send to OFCOM a report of any supplementary action taken by him or by any other person responsible for the making or provision of the relevant programme.”

328 Duty to publicise OFCOM’s functions in relation to complaints

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing that—

Status: This is the original version (as it was originally enacted).

- (a) the procedures which, by virtue of section 325, are established and maintained for handling and resolving complaints about the observance of standards set under section 319, and
 - (b) their functions under Part 5 of the 1996 Act in relation to that service, are brought to the attention of the public (whether by means of broadcasts or otherwise).
- (2) Conditions included in a licence by virtue of subsection (1) may require the holder of the licence to comply with every direction given to him by OFCOM for the purpose mentioned in that subsection.

Power to proscribe unacceptable foreign television and radio services

329 Proscription orders

- (1) Where—
- (a) a foreign service to which this section applies comes to OFCOM's attention, and
 - (b) they consider that the service is unacceptable and should be the subject of an order under this section,
- they must send a notification to the Secretary of State giving details of the service and their reasons for considering that an order should be made.
- (2) A service is not to be considered unacceptable by OFCOM unless they are satisfied that—
- (a) programmes containing objectionable matter are included in the service; and
 - (b) that the inclusion of objectionable matter in programmes so included is occurring repeatedly.
- (3) Matter is objectionable for the purposes of subsection (2) only if—
- (a) it offends against taste or decency;
 - (b) it is likely to encourage or to incite the commission of crime;
 - (c) it is likely to lead to disorder; or
 - (d) it is likely to be offensive to public feeling.
- (4) Where the Secretary of State has received a notification under this section in the case of a service, he may make an order—
- (a) identifying the service in such manner as he thinks fit; and
 - (b) proscribing it.
- (5) The Secretary of State is not to make an order proscribing a service unless he is satisfied that the making of the order is—
- (a) in the public interest; and
 - (b) compatible with the international obligations of the United Kingdom.
- (6) The television and sound services to which this section applies are—
- (a) television licensable content services provided otherwise than by broadcasting from a satellite;
 - (b) digital television programme services;
 - (c) digital additional television services;

Status: This is the original version (as it was originally enacted).

- (d) radio licensable sound services provided otherwise than by being broadcast from a satellite;
 - (e) digital sound programme services; and
 - (f) digital additional sound services.
- (7) A service to which this section applies is a foreign service if it—
- (a) is a service capable of being received in the United Kingdom for the provision of which no Broadcasting Act licence is either in force or required to be in force; but
 - (b) is also a service for the provision of which such a licence would be required—
 - (i) in the case of a service falling within subsection (6)(a) to (c), if the person providing it were under the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive; and
 - (ii) in any other case, if the person providing it provided it from a place in the United Kingdom or were a person whose principal place of business is in the United Kingdom.

330 Effect of proscription order

- (1) This section applies where a service is for the time being proscribed by an order under section 329.
- (2) The proscribed service is not to be included in—
- (a) a multiplex service; or
 - (b) a cable package.
- (3) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.
- (4) In this section “cable package” means (subject to subsection (5)) a service by means of which programme services are packaged together with a view to their being distributed—
- (a) by means of an electronic communications service;
 - (b) so as to be available for reception by members of the public in the United Kingdom; and
 - (c) without the final delivery of the programme services to the persons to whom they are distributed being by wireless telegraphy.
- (5) Programme services distributed by means of an electronic communications service do not form part of a cable package if—
- (a) the distribution of those services forms only part of a service provided by means of that electronic communications service; and
 - (b) the purposes for which the service of which it forms a part is provided do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.

331 Notification for enforcing proscription

- (1) Where OFCOM determine that there are reasonable grounds for believing that there has been a contravention of section 330 in relation to a multiplex service or a cable package, they may give a notification under this section to—
- (a) the provider of that multiplex service; or

Status: This is the original version (as it was originally enacted).

- (b) the person providing the cable package.
- (2) A notification under this section is one which—
 - (a) sets out the determination made by OFCOM; and
 - (b) requires the person to whom it is given to secure that the proscribed service (so long as it remains proscribed) is not—
 - (i) included in the notified person’s multiplex service, or
 - (ii) distributed as part of his cable package,
 at any time more than seven days after the day of the giving of the notification.
- (3) If it is reasonably practicable for a person to whom a notification is given under this section to secure that the proscribed service ceases to be included in that person’s multiplex service, or to be distributed as part of his cable package, before the end of that seven days, then he must do so.
- (4) It shall be the duty of a person to whom a notification is given under this section to comply with the requirements imposed by the notification and by subsection (3).
- (5) That duty shall be enforceable in civil proceedings by OFCOM—
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
 - (c) for any other appropriate remedy or relief.
- (6) In this section “cable package” and “multiplex service” each has the same meaning as in section 330.

332 Penalties for contravention of notification under s. 331

- (1) OFCOM may impose a penalty on a person who contravenes a requirement imposed on him by or under section 331.
- (2) Before imposing a penalty on a person under this section OFCOM must give him a reasonable opportunity of making representations to them about their proposal to impose the penalty.
- (3) The amount of the penalty imposed on a person is to be such amount not exceeding £5,000 as OFCOM determine to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (4) In making that determination OFCOM must have regard to—
 - (a) any representations made to them by the person notified under section 331; and
 - (b) any steps taken by him for complying with the requirements imposed on him under that section.
- (5) Where OFCOM impose a penalty on a person under this section, they shall—
 - (a) notify the person penalised; and
 - (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

Status: This is the original version (as it was originally enacted).

- (6) A penalty imposed under this section must be paid to OFCOM within the period fixed by them.
- (7) The Secretary of State may by order amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (3).
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (9) For the purposes of this section there is a separate contravention in respect of every day on which the proscribed service is at any time included in a person's multiplex service or distributed as part of his cable package.
- (10) In this section "multiplex service" and "cable package" each has the same meaning as in section 330.

Party political broadcasts on television and radio

333 Party political broadcasts

- (1) The regulatory regime for every licensed public service channel, and the regulatory regime for every national radio service, includes—
 - (a) conditions requiring the inclusion in that channel or service of party political broadcasts and of referendum campaign broadcasts; and
 - (b) conditions requiring that licence holder to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by OFCOM.
- (2) The rules made by OFCOM for the purposes of this section may, in particular, include provision for determining—
 - (a) the political parties on whose behalf party political broadcasts may be made;
 - (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
 - (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.
- (3) Those rules are to have effect subject to sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (c. 41) (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts).
- (4) Rules made by OFCOM for the purposes of this section may make different provision for different cases.
- (5) Before making any rules for the purposes of this section, OFCOM must have regard to any views expressed by the Electoral Commission.
- (6) In this section—
 - "designated organisation", in relation to a referendum, means a person or body designated by the Electoral Commission under section 108 of the

Status: This is the original version (as it was originally enacted).

Political Parties, Elections and Referendums Act 2000 (c. 41) in respect of that referendum;

“national radio service” means a national service within the meaning of section 245 of this Act; and

“referendum campaign broadcast” has the meaning given by section 127 of that Act.

Monitoring of programmes

334 Retention and production of recordings

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions imposing on the provider of the service—
 - (a) a requirement in respect of every programme included in the service to retain a recording of the programme in a specified form and for a specified period after its inclusion;
 - (b) a requirement to comply with any request by OFCOM to produce to them for examination or reproduction a recording retained in pursuance of the conditions in the licence; and
 - (c) a requirement, if the provider is able to do so, to comply with any request by OFCOM to produce to them a script or transcript of a programme included in the programme service.
- (2) The period specified for the purposes of a condition under subsection (1)(a) must be—
 - (a) in the case of a programme included in a television programme service, a period not exceeding ninety days; and
 - (b) in the case of a programme included in a radio programme service, a period not exceeding forty-two days.
- (3) For the purpose of maintaining supervision of the programmes included in programme services, OFCOM may themselves make and use recordings of those programmes or any part of them.
- (4) Nothing in this Part is to be construed as requiring OFCOM, in the carrying out of their functions under this Part as respects programme services and the programmes included in them, to view or listen to programmes in advance of their being included in such services.

International obligations

335 Conditions securing compliance with international obligations

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for securing that the relevant international obligations of the United Kingdom are complied with.
- (2) In this section “relevant international obligations of the United Kingdom” means the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this section.
- (3) This section applies to the following services—
 - (a) any Channel 3 service;

- (b) Channel 4;
 - (c) Channel 5;
 - (d) the public teletext service;
 - (e) any television licensable content service;
 - (f) any digital television programme service;
 - (g) any additional television service;
 - (h) any digital additional television service;
 - (i) any restricted television service.
- (4) The conditions included in any licence in accordance with the other provisions of this Chapter are in addition to any conditions included in that licence in pursuance of this section and have effect subject to them.

Government requirements for licensed services

336 Government requirements for licensed services

- (1) If it appears to the Secretary of State or any other Minister of the Crown to be appropriate to do so in connection with any of his functions, the Secretary of State or that Minister may at any time by notice require OFCOM to give a direction under subsection (2).
- (2) A direction under this subsection is a direction to the holders of the Broadcasting Act licences specified in the notice under subsection (1) to include an announcement so specified in their licensed services.
- (3) The direction may specify the times at which the announcement is to be broadcast or otherwise transmitted.
- (4) Where the holder of a Broadcasting Act licence includes an announcement in his licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (5) The Secretary of State may, at any time, by notice require OFCOM to direct the holders of the Broadcasting Act licences specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice.
- (6) Where—
 - (a) OFCOM have given the holder of a Broadcasting Act licence a direction in accordance with a notice under subsection (5),
 - (b) in consequence of the revocation by the Secretary of State of such a notice, OFCOM have revoked such a direction, or
 - (c) such a notice has expired,the holder of the licence in question may include in the licensed service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (7) OFCOM must comply with every requirement contained in a notice under this section.
- (8) The powers conferred by this section are in addition to any powers specifically conferred on the Secretary of State by or under this Act or any other enactment.
- (9) In this section “Minister of the Crown” includes the Treasury.

Status: This is the original version (as it was originally enacted).

Equal opportunities and training

337 Promotion of equal opportunities and training

- (1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, equality of opportunity—
 - (a) between men and women; and
 - (b) between persons of different racial groups.
- (2) That regime includes conditions requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.
- (3) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for the training and retraining of persons whom he employs, in or in connection with—
 - (a) the provision of the licensed service; or
 - (b) the making of programmes to be included in that service.
- (4) The conditions imposed by virtue of subsections (1) to (3) must contain provision, in relation to the arrangements made in pursuance of those conditions, requiring the person providing the service in question—
 - (a) to take appropriate steps to make those affected by the arrangements aware of them (including such publication of the arrangements as may be required in accordance with the conditions);
 - (b) from time to time, to review the arrangements; and
 - (c) from time to time (and at least annually) to publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements.
- (5) The conditions imposed by virtue of this section may include provision for treating obligations to make the arrangements mentioned in subsections (1) to (3), or to do anything mentioned in subsection (4), as discharged where a member of a group of companies to which the licence holder belongs—
 - (a) has made the required arrangements in relation to employment with the licence holder; or
 - (b) has done anything required by subsection (4) in relation to those arrangements.
- (6) This section applies to a service if—
 - (a) it is a service the provision of which is authorised by a Broadcasting Act licence; and
 - (b) the requirements of both subsections (7) and (8) are satisfied in the case of that service.
- (7) The requirements of this subsection are satisfied in the case of a service provided by a person if—
 - (a) that person employs, or is likely to employ, more than the threshold number of individuals in connection with the provision of licensed services; or

- (b) the threshold number is exceeded by the aggregate number of individuals who are, or are likely to be, employed in that connection by members of a group of companies comprising that person and one or more other bodies corporate.
- (8) The requirements of this subsection are satisfied in the case of a service if the licence authorising the provision of that service authorises either that service or another service authorised by that licence to be provided on a number of days in any year which exceeds the threshold number of days (whether or not the service is in fact provided on those days).
- (9) In this section—
 - “disabled” has the same meaning as in the Disability Discrimination Act 1995 (c. 50);
 - “licensed service”, in relation to an employee or likely employee of a person, means a service the provision of which—
 - (a) by that person, or
 - (b) by a body corporate which is a member of the same group of companies as that person,is authorised by a Broadcasting Act licence;
 - “racial group” has the same meaning as in the Race Relations Act 1976 (c. 74) or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6));
 - “the threshold number” means—
 - (a) in relation to individuals, twenty; and
 - (b) in relation to days, thirty-one.
- (10) For the purposes of this section a person is a member of a group of companies to which a person licensed to provide a service belongs if, and only if, both of them are bodies corporate and either—
 - (a) one of them is controlled by the other; or
 - (b) both of them are controlled by the same person.
- (11) In subsection (10) “controlled” has the same meaning as in Part 1 of Schedule 2 to the 1990 Act.
- (12) The Secretary of State may, by order—
 - (a) amend subsection (1) by adding any other form of equality of opportunity that he considers appropriate;
 - (b) amend the definition of “the threshold number” in subsection (9).
- (13) No order is to be made containing provision authorised by subsection (12) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Corresponding rules for the BBC and Welsh Authority

338 Corresponding rules for the BBC and the Welsh Authority

Schedule 12 (which provides for the imposition on the BBC and the Welsh Authority of obligations corresponding to obligations included in the regulatory regime for licensed providers) shall have effect.

Status: This is the original version (as it was originally enacted).

Enforcement against the Welsh Authority

339 Review of fulfilment by Welsh Authority of public service remits

- (1) The Secretary of State may carry out a review of the performance by the Welsh Authority of their duty to secure that each of the following public service remits—
 - (a) that for S4C;
 - (b) that for S4C Digital; and
 - (c) that for each of the television programme services provided by them with the approval of the Secretary of State under section 205,
 is fulfilled in relation the services to which it applies.
- (2) The first review carried out under this section—
 - (a) shall be a review relating to the period since the passing of this Act; and
 - (b) must not be carried out before the end of the period of five years beginning with the day of the passing of this Act.
- (3) A subsequent review—
 - (a) shall be a review relating to the period since the end of the period to which the previous review related; and
 - (b) must not be carried out less than five years after the day of the publication of the report of the previous review.
- (4) On a review under this section the Secretary of State—
 - (a) shall consult the National Assembly for Wales and the Welsh Authority on the matters under review; and
 - (b) shall have regard to their opinions when reaching his conclusions.
- (5) The Secretary of State shall also consult such other persons as he considers are likely to be affected by whether, and in what manner, the Welsh Authority perform the duty mentioned in subsection (1).
- (6) As soon as practicable after the conclusion of a review under this section the Secretary of State must publish a report of his conclusions.

340 Directions to Welsh Authority to take remedial action

- (1) This section applies if the Secretary of State's conclusions on a review under section 339 include a finding—
 - (a) that the Welsh Authority has failed in any respect to perform their duty to secure that the public service remit for a service mentioned in that section is fulfilled; and
 - (b) that there is no reasonable excuse for the failure.
- (2) The Secretary of State may give the Welsh Authority general or specific directions requiring them to take the steps that he considers will ensure that the Authority perform their duty properly in future.
- (3) The Secretary of State is not to give a direction under this section unless a draft of the proposed direction has been laid before Parliament and approved by a resolution of each House.

- (4) Before laying a proposed direction before Parliament, the Secretary of State must consult the Welsh Authority.
- (5) It shall be the duty of the Welsh Authority to comply with every direction under this section.

341 Imposition of penalties on the Welsh Authority

- (1) This section applies to the following requirements so far as they are imposed on the Welsh Authority in relation to services provided by them—
 - (a) the requirements imposed by or under paragraphs 7 and 8 of Schedule 12 (programme quotas);
 - (b) the requirements imposed by paragraph 9(1) and (3) of that Schedule (news and current affairs);
 - (c) the requirements imposed by paragraph 10 of that Schedule (code relating to programme commissioning) or by a direction under sub-paragraph (3)(d) of that paragraph;
 - (d) the requirement imposed by virtue of paragraph 12 of that Schedule to comply with standards set under section 319, so far as that requirement relates to standards set otherwise than for the purpose of securing the objectives set out in subsection (2)(c) or (d) of that section;
 - (e) the requirements imposed by paragraphs 14 and 16 of that Schedule (advertising or sponsorship) to comply with a direction under those paragraphs;
 - (f) the requirement imposed by paragraph 17 of that Schedule (observance of the fairness code);
 - (g) the requirement imposed by paragraph 19 of that Schedule (publicising complaints procedure);
 - (h) the requirement imposed by paragraph 20 of that Schedule (monitoring of programmes);
 - (i) the requirement imposed by paragraph 21 of that Schedule (international obligations) to comply with a direction under that paragraph;
 - (j) the requirement under paragraph 22 of that Schedule (assistance for disabled people) to comply with the code for the time being in force under section 303;
 - (k) the requirement to comply with a direction under section 119(1) of the 1996 Act (directions in respect of fairness matters).
- (2) If OFCOM are satisfied that there has been a contravention of a requirement to which this section applies, they may serve on the Welsh Authority a notice requiring the Authority, within the specified period, to pay OFCOM a specified penalty.
- (3) The amount of the penalty must not exceed £250,000.
- (4) OFCOM are not to serve a notice on the Welsh Authority under this section unless they have given them a reasonable opportunity of making representations to OFCOM about the matters appearing to OFCOM to provide grounds for the service of the notice.
- (5) An exercise by OFCOM of their powers under this section does not preclude any exercise by them of their powers under paragraph 15 of Schedule 12 in respect of the same contravention.

Status: This is the original version (as it was originally enacted).

- (6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3).
- (7) No order is to be made containing provision authorised by subsection (6) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

342 Contraventions recorded in Welsh Authority’s annual report

In paragraph 13 of Schedule 6 to the 1990 Act (annual report of the Welsh Authority)—

- (a) in sub-paragraph (2), the words from “and shall include” onwards shall be omitted; and
- (b) after that sub-paragraph there shall be inserted—

“(3) The report shall also—

- (a) set out every contravention notification given by OFCOM to the Authority during the year; and
- (b) include such other information (including information relating to the Authority’s financial position) as the Secretary of State may from time to time direct.

(4) In sub-paragraph (3), “contravention notification” means a notification of a determination by OFCOM of a contravention by the Authority of any obligation imposed by or under this Act, the 1996 Act or Part 3 of the Communications Act 2003.”

343 Provision of information by Welsh Authority

- (1) It shall be the duty of the Welsh Authority to comply with every direction given to them by OFCOM to provide OFCOM with information falling within subsection (2).
- (2) The information that the Welsh Authority may be directed to provide is any information which OFCOM may reasonably require for the purposes of carrying out their functions in relation to the Welsh Authority under this Act, the 1990 Act or the 1996 Act.
- (3) Information that is required to be provided by a direction under this section must be provided in such manner and at such times as may be required by the direction.

Enforcement of licence conditions

344 Transmission of statement of findings

- (1) Sections 40 and 109 of the 1990 Act (power to direct licensee to broadcast correction or apology) shall be amended as follows.
- (2) For “apology”, wherever occurring, there shall be substituted “a statement of findings”.
- (3) After subsection (5), there shall be inserted—

“(6) For the purposes of this section a statement of findings, in relation to a case in which OFCOM are satisfied that the holder of a licence has contravened

Status: This is the original version (as it was originally enacted).

the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.”

345 Financial penalties imposable on licence holders

Schedule 13 (which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences) shall have effect.

346 Recovery of fees and penalties

- (1) This section applies to the following amounts—
 - (a) any amount payable to OFCOM under a Broadcasting Act licence;
 - (b) the amount of a penalty imposed by OFCOM under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part of this Act.
- (2) Every amount to which this section applies shall be recoverable by OFCOM as a debt due to them from the person obliged to pay it.
- (3) The following liabilities—
 - (a) a person's liability to have a penalty imposed on him under Part 1 or 3 of the 1990 Act, Part 1 or 2 of the 1996 Act or this Part in respect of acts or omissions of his occurring while he was the holder of a Broadcasting Act licence, and
 - (b) a liability of a person as the holder of such a licence to pay an amount to which this section applies,are not affected by that person's Broadcasting Act licence having ceased (for any reason) to be in force before the imposition of the penalty or the payment of that amount.

Broadcasting Act licence fees

347 Statement of charging principles

- (1) OFCOM are not to fix a tariff under section 4(3) or 87(3) of the 1990 Act or under section 4(3) or 43(3) of the 1996 Act (tariffs for fees payable under Broadcasting Act licences for recovering OFCOM's costs) unless—
 - (a) at the time they do so, there is in force a statement of the principles that OFCOM are proposing to apply in fixing that tariff; and
 - (b) the tariff is fixed in accordance with those principles.
- (2) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs that it is practicable for them to make—
 - (a) that the aggregate amount of the Broadcasting Act licence fees that are required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the cost to them of the carrying out during that year of their functions relating to the regulation of broadcasting;
 - (b) that the requirement imposed by virtue of paragraph (a) is satisfied by the application to such fees of tariffs that are justifiable and proportionate to the matters in respect of which they are imposed; and
 - (c) that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

Status: This is the original version (as it was originally enacted).

- (3) Before making or revising a statement of principles OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (4) The making or revision of a statement of principles for the purposes of this section has to be by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.
- (5) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement setting out, for that year—
 - (a) the aggregate amount received by them during that year in respect of Broadcasting Act licence fees required to be paid during that year;
 - (b) the aggregate amount outstanding and likely to be paid or recovered in respect of Broadcasting Act licence fees that are required to be so paid; and
 - (c) the cost to OFCOM of the carrying out during that year of their functions relating to the regulation of broadcasting.
- (6) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (5) shall be—
 - (a) carried forward; and
 - (b) taken into account in determining what is required to satisfy the requirement imposed by virtue of subsection (2)(a) in relation to the following year.
- (7) References in this section to OFCOM's functions relating to the regulation of broadcasting do not include references to any of their functions in relation to the BBC or the Welsh Authority.
- (8) In this section—
 - “Broadcasting Act licence fee” means a fee required to be paid to OFCOM in pursuance of conditions included in a Broadcasting Act licence under any of the following provisions—
 - (a) section 4(1)(b) or 87(1)(c) of the 1990 Act; or
 - (b) section 4(1)(b) or 43(1)(c) of the 1996 Act;
 - “financial year” means a period of twelve months ending with 31st March.