

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 4: Channel 4 Television Corporation

Background

106. The Channel 4 Television Corporation's ("C4C") existing primary functions currently relate only to the Channel 4 television channel. Taking into account the growth of digital media, the Act introduces provisions that extend the functions of C4C in relation to media content. The Act achieves this by introducing new C4C functions via a new section 198A of the Communications Act 2003 ("the 2003 Act").

Section 22: Functions of C4C in relation to media content

107. New section 198A requires C4C to participate in the making of a broad range of high-quality content that appeals to the tastes and interests of a culturally diverse society, and broadcast or distribute such content on a range of different delivery platforms. This content must include news and current affairs, content for older children and young adults and feature films. C4C will also be required to participate in the making of high quality films. To "participate" in this way includes investing in or otherwise procuring content. For the avoidance of doubt, these new duties on C4C to make content do not disapply the condition in Channel 4's regulatory regime, referred to in section 295 of the 2003 Act, 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.
108. The new section also makes provision as to the wider aims C4C must pursue in performing their duties, drawing on the core public purposes that C4C identified in their March 2008 report *Next on 4*¹. C4C must support new talent and innovation, support and stimulate well-informed debate (including by providing access to information and views from around the world), promote alternative views and perspectives and help to inspire change in people's lives.
109. New section 198A also requires C4C, in the performance of their duties, to have regard to the desirability of:
- Working with cultural organisations;
 - Encouraging innovation in methods of content delivery; and
 - Promoting access to and awareness of services provided in digital form.

Section 23: Monitoring and enforcing C4C's media content duties

110. This section contains provision for monitoring and enforcing the delivery of C4C's new functions, through new sections 198B, 198C and 198D of the 2003 Act. This complements, and is in part modelled on, the existing accountability framework for the

¹ Available at: http://www.channel4.com/about4/next_on4.html

*These notes refer to the Digital Economy Act 2010
(c.24) which received Royal Assent on 8 April 2010*

delivery of the public service remit of the Channel 4 licensed public service television channel, under section 266 of the 2003 Act.

111. New section 198B requires C4C to prepare, every year, a statement of media content policy, setting out how C4C propose to discharge their functions in the coming year. The statement must also report on their performance against the proposals contained in the previous year's statement.
112. In preparing this statement, C4C will be obliged to have regard to guidance issued by OFCOM and also to consult OFCOM. It will be open to C4C to produce the statement of media content policy either as a separate document or as part of a single document in combination with the statement of programme policy which it is required to provide in relation to the Channel 4 service.
113. OFCOM will be required to keep their guidance under review and revise it as they think fit.
114. New section 198C gives OFCOM a new obligation to review and report on the performance of C4C's new duties, which may well include the making and broadcasting of programmes on television, at the same time as their reviews of the fulfilment of the public service remit under section 264 of the 2003 Act.
115. New section 198D introduces enforcement powers for OFCOM in relation to the fulfilment by C4C of their new functions. It creates a new power of direction for OFCOM in the event that C4C fail to perform their new duties under new section 198A or to prepare or publish a statement of media content policy. The new section gives OFCOM the power to direct C4C to revise their latest statement of media content policy, to take such steps to remedy the failure as OFCOM may prescribe in the direction, or both. OFCOM must include in any direction a reasonable timetable for complying with it and state the factors OFCOM will take into account in determining whether or not a failure has been remedied. OFCOM must consult C4C before issuing such a direction. By virtue of sections 41(1) and (6) of the Broadcasting Act 1990, OFCOM have the power to impose a financial penalty on C4C for a failure to comply with a direction given by OFCOM under section 198D.
116. This section introduces, by means of a new section 271A of the 2003 Act, an additional power for OFCOM exercisable in the event that C4C fail to comply with a direction relating to a failure to perform one or more duties under section 198A. OFCOM must be satisfied that C4C are still failing to perform the relevant duty or duties and, if OFCOM are satisfied that it is reasonable and proportionate to the seriousness of the failure, they have the power to vary the licence under which the Channel 4 television service is licensed. OFCOM may vary the licence by making or adding such conditions to the licence as they consider appropriate to remedy C4C's failure to perform the relevant new duties under section 198A. If, subsequently, OFCOM conclude that any of the new conditions are no longer required, they may vary the licence again, from such time as they determine. OFCOM must consult C4C before exercising the power to make or add conditions to the Channel 4 licence.