

DIGITAL ECONOMY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Topic 5: Independent television services

Background

117. In the *Digital Britain: Final Report*, the government accepted OFCOM's analysis that the value of the existing commercially-owned public service broadcasting Channel 3 licences will decline further between now and the completion of digital switchover and that the regulatory obligations attached to the licences will therefore require further review over the period. Sections 24 to 30 make amendments to provisions contained in the Broadcasting Act 1990 ("the 1990 Act") and the Communications Act 2003 ("the 2003 Act") in order to introduce additional flexibility into the licence processes for the commercially funded public service television broadcasters.

Section 24: Determination of Channel 3 licence areas

118. Section 14(2) of the 1990 Act requires OFCOM to structure the Channel 3 licence map on a regional basis. However, section 14(7) of the 1990 Act provides a caveat preventing OFCOM from constructing a licence area from either the whole of England or the whole of Scotland.
119. This section repeals section 14(7) of the 1990 Act to remove that restriction. At the same time, it inserts new section 14(7A), which provides that there must always be at least one licence area wholly contained within Scotland. Section 287 of the 2003 Act will still allow OFCOM to insert conditions in a licence to require the holder of a nationwide licence to provide regional programmes.
120. This section also inserts a new section 216A in the 2003 Act, allowing OFCOM to renew Channel 3 licences for a larger or smaller area than the area to which they relate before renewal. However, this power can only be exercised with the consent of the existing licence holders for the areas concerned.
121. As a consequence of new section 216A, the section amends section 216 to give OFCOM the power not to renew a licence if the area to which it relates is or will be covered entirely by another Channel 3 licence or licences which OFCOM have renewed or propose to renew.

Section 25: Initial expiry date for Channel 3 and 5 and public teletext licences

122. Section 224(2) of the 2003 Act provides the Secretary of State with the power, by order, to postpone the initial expiry date of licences to provide Channel 3 services, the licence to provide Channel 5, and the licence to provide the public teletext service. This section amends section 224(2) to provide that different initial expiry dates may be set for those three different types of licence.

123. Section 224(3) of the 2003 Act currently prevents the Secretary of State from exercising the power to postpone the initial expiry date if digital switchover is set to occur before 1 July 2013. The section repeals section 224(3) and therefore gives the Secretary of State more flexibility to extend the duration of licences where appropriate.

Section 27: Report by OFCOM on public teletext service

124. Section 218(1) of the 2003 Act currently places a duty on OFCOM to do all they can to secure the provision of a national teletext service.
125. **Section 27** inserts a new section 218A into the 2003 Act that places a duty on OFCOM to prepare a report on the viability of the public teletext service. The section stipulates the assessments that OFCOM must include in the report. OFCOM must submit this report to the Secretary of State, and prepare and submit further reports when asked to do so by the Secretary of State. OFCOM must publish each report as soon as practicable after submitting it to the Secretary of State.

Section 28: Power to remove OFCOM's duty to secure provision of public teletext service

126. **Section 28** will remove OFCOM's duty to do all that they can to licence someone to provide the public teletext service and replace it with a power to do so.
127. This change will come into force on a day appointed by the Secretary of State by means of a statutory instrument, which must be approved by Parliament before it can take effect. The Secretary of State may only make this order if he is satisfied that it would be in the public interest, and that either condition A or B stipulated in section 28 has been met. Condition A is that the Secretary of State has laid before Parliament a report prepared by OFCOM under section 218A of the 2003 Act (inserted by section 27) on the viability of continuing the provision of the public teletext service. Condition B is that OFCOM, after inviting applications for the licence to provide the public teletext service, receives no applications by the closing date or considers that it could not award the licence to any of the applicants.

Section 29: Broadcasting of programmes in Gaelic

128. This section repeals section 184 of the 1990 Act, which contains requirements for certain Channel 3 licensees in Scotland (currently Grampian TV and Scottish TV, also known as Scottish Television or "STV") to show Gaelic language programmes.
129. The repeal of section 184 will be commenced by order (see section 47(3)). A fixed date for commencement has not been set because, at present, not all viewers are able to access Gaelic language television other than through STV. However, it is anticipated that, post switchover, more Gaelic television will be available to more viewers on other platforms. The effect of that development might be that it would no longer be necessary to impose Gaelic language broadcasting requirements on Channel 3 licence holders (although they may choose to broadcast in Gaelic).