



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 5

#### MEDIA OWNERSHIP AND CONTROL

#### *Changes of control*

#### **351 Changes of control of Channel 3 services**

- (1) The regulatory regime for every Channel 3 service provided by a body corporate includes—
  - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 352.
- (2) OFCOM must carry out a review where—
  - (a) they receive notification, in accordance with a condition of a Channel 3 licence, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) to (7), of—
  - (a) the change to which the proposals may give rise; or

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the change that has taken place.
- (4) The matters mentioned in this subsection are—
- (a) the extent to which time available for broadcasting programmes included in the service is allocated to programmes of each of the following descriptions—
    - (i) original productions;
    - (ii) news programmes; and
    - (iii) current affairs programmes;
  - (b) the extent to which programmes of each of those descriptions that are included in the service are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are—
- (a) the extent to which Channel 3 programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
  - (b) the range of Channel 3 programmes made in the United Kingdom outside that area that are included in the service;
  - (c) the extent to which the expenditure of the provider of the service on Channel 3 programmes is referable to programme production at different production centres outside the M25 area;
  - (d) the range of different such production centres to which that expenditure is referable.
- (6) The matters mentioned in this subsection are—
- (a) the quality and range of regional programmes included in the service;
  - (b) the quality and range of other programmes included in the service which contribute to the regional character of the service;
  - (c) the quality and range of the programmes made available by the licence holder for the purposes of inclusion in the nationwide system of services referred to in section 14(1) of the 1990 Act (nationwide Channel 3 service).
- (7) The matters mentioned in this subsection are—
- (a) the amount of time given, in the programmes included in the service—
    - (i) to regional programmes; and
    - (ii) to programmes included in the service which contribute to the regional character of the service;
  - (b) the proportion of regional programmes included in the service which are made within the area for which the service is provided;
  - (c) the extent of the use, in connection with the service, of the services of persons employed (whether by the licence holder or any other person) within that area;
  - (d) the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within that area.
- (8) In relation to a national Channel 3 service, subsections (3) to (7) have effect as if—
- (a) subsection (5) applied only where the service is subject to conditions imposed by virtue of a decision of OFCOM under section 286(2) or OFCOM otherwise consider, having regard to the nature of the service, that it is appropriate to consider the matters mentioned in that subsection;
  - (b) references to regional programmes were references to programmes which are regional programmes (within the meaning of section 287) in relation to that service and are included in it in accordance with a condition imposed under subsection (4)(a) of that section;

---

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

---

- (c) references to the regional character of the service were references to the regional character of parts of the service;
  - (d) subsection (6)(c) of this section were omitted; and
  - (e) references, in relation to programmes such as are mentioned in paragraph (b), to the area for which the service is provided were references to the part of that area where the people are living to whom those programmes are likely to be of particular interest.
- (9) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—
- (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 352.
- (10) In this section—
- “Channel 3 programmes” and “expenditure” each has the same meaning as in section 286;
  - “original production” has the same meaning as in section 278;
  - “peak viewing time”—
    - (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for the service in question; and
    - (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
  - “regional programme”, in relation to a Channel 3 service, means (subject to subsection (8)) a programme (including a news programme) which is of particular interest—
    - (a) to persons living within the area for which the service is provided;
    - (b) to persons living within a part of that area; or
    - (c) to particular communities living within that area;
  - “relevant change of control” means a change in the persons having control over—
    - (a) a body holding the licence to provide a Channel 3 service; or
    - (b) any body which—
      - (i) is connected with a body holding such a licence; and
      - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.
- (11) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

### **352 Action following review under s. 351**

- (1) If, on a review under subsection (2) of section 351, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) to (6) of that section, they shall vary the licence in accordance with subsection (2).
- (2) The variation—
- (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and

---

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

---

- (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) If it appears to OFCOM, having regard to the matters mentioned in subsection (7) of section 351—
  - (a) that the proposed change of control would be prejudicial to the regional character of the service or (as the case may be) of any parts of it, or
  - (b) that the actual change of control is so prejudicial,
 they may vary the licence so as to include in it such conditions relating to any of those matters as they consider appropriate.
- (4) Subject to subsection (5), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (5) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.
- (6) In subsection (5) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 351, of making representations to them about the variation.
- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.
- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either—
  - (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 351 have the same meanings in this section as in that.

### **353 Changes of control of Channel 5**

- (1) The regulatory regime for Channel 5 includes, in every case where it is provided by a body corporate—
  - (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to the body that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as

---

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

---

they consider necessary for the purposes of exercising their functions under this section and section 354.

- (2) OFCOM must carry out a review where—
  - (a) they receive notification, in accordance with a condition of the licence to provide Channel 5, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsections (4) and (5), of—
  - (a) the change to which the proposals may give rise; or
  - (b) the change that has taken place.
- (4) The matters mentioned in this subsection are—
  - (a) the extent to which time available for broadcasting programmes included in Channel 5 is allocated to programmes of each of the following descriptions—
    - (i) original productions;
    - (ii) news programmes; and
    - (iii) current affairs programmes;
  - (b) the extent to which programmes of each of those descriptions that are included in that Channel are broadcast at peak viewing times.
- (5) The matters mentioned in this subsection are—
  - (a) the extent to which programmes made in the United Kingdom that are included in the service are programmes made outside the M25 area;
  - (b) the range of programmes made in the United Kingdom outside that area that are included in Channel 5;
  - (c) the extent to which the expenditure of the provider of Channel 5 on programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area;
  - (d) the range of different such production centres to which that expenditure is referable.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—
  - (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 354.
- (7) 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;
  - “original production” has the same meaning as in section 278;
  - “peak viewing time”—

---

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

---

- (a) in relation to original productions, means a time determined by OFCOM for the purposes of section 278 to be a peak viewing time for Channel 5; and
  - (b) in relation to news programmes or current affairs programmes, means a time so determined for the purposes of section 279;
- “relevant change of control” means a change in the persons having control over—
- (a) a body holding a licence to provide Channel 5; or
  - (b) any body which—
    - (i) is connected with a body holding such a licence; and
    - (ii) is involved, to a substantial extent, in the provision of the programmes included in that channel, or is likely to become so involved.
- (8) Expressions used in this section and in Part 1 of Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Part.

### **354 Action following review under s. 353**

- (1) If, on a review under subsection (2) of section 353, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsections (4) and (5) of that section, they shall vary the licence in accordance with subsection (2).
- (2) The variation—
  - (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
  - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (4) A variation under this section must not provide for the inclusion of a new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout the twelve months immediately before the relevant date.
- (5) In subsection (4) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (6) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (7) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 353, of making representations to them about the variation.
- (8) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until the change takes place.

- (9) A condition included in a licence by a variation under this section may be further varied by OFCOM either—
- (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 3(4)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (10) Expressions used in this section and section 353 have the same meanings in this section as in that.

### **355 Variation of local licence following change of control**

- (1) The regulatory regime for every local sound broadcasting service provided by a body corporate includes—
- (a) a condition requiring the licence holder to give OFCOM advance notification of any proposals known to it that may give rise to a relevant change of control; and
  - (b) a condition requiring the licence holder to provide OFCOM, in such manner and at such times as they may reasonably require, with such information as they consider necessary for the purposes of exercising their functions under this section and section 356.
- (2) OFCOM must carry out a review where—
- (a) they receive notification, in accordance with a condition of a local sound broadcasting licence, of proposals that may give rise to a relevant change of control; or
  - (b) a relevant change of control takes place (whether or not that change has been previously notified to OFCOM).
- (3) The review shall be a review of the effects or likely effects, in relation to the matters mentioned in subsection (4), of—
- (a) the change to which the proposals may give rise; or
  - (b) the change that has taken place.
- (4) Those matters are—
- (a) the quality and range of programmes included in the service;
  - (b) the character of the service;
  - (c) the extent to which OFCOM’s duty under section 314 is performed in relation to the service.
- (5) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a local sound broadcasting service, include, in particular, the selection of spoken material and music in programmes included in the service.
- (6) Where OFCOM carry out a review under subsection (2), they must publish a report of that review—
- (a) setting out their conclusions; and
  - (b) specifying any steps which they propose to take under section 356.
- (7) In this section “relevant change of control” means a change in the persons having control over—
- (a) a body holding the licence to provide a local sound broadcasting service; or

---

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

---

- (b) any body which—
    - (i) is connected with a body holding such a licence; and
    - (ii) is involved, to a substantial extent, in the provision of the programmes included in the service provided under that licence, or is likely to become so involved.
- (8) Expressions used in this section and in Schedule 2 to the 1990 Act (restrictions on licence holders) have the same meanings in this section as in that Schedule.

### **356 Action following review under s. 355**

- (1) If, on a review under section 355, it appears to OFCOM that the relevant change of control is or would be prejudicial to one or more of the matters mentioned in subsection (4) of that section, they must vary the local licence in accordance with subsection (2).
- (2) The variation—
  - (a) must be made with a view to ensuring that the relevant change of control is not prejudicial to any of the matters so mentioned; and
  - (b) must be a variation for the inclusion in the licence of such conditions relating to any of those matters as they consider appropriate.
- (3) Subject to subsection (4), any new or varied condition imposed under this section in relation to any matter may be more onerous than the conditions relating to that matter having effect before the relevant change of control.
- (4) A variation under this section must not provide for the inclusion of any new or varied condition in a licence unless the new condition, or the condition as varied, is one which (with any necessary modifications) would have been satisfied by the licence holder throughout—
  - (a) the three months immediately before the relevant date; or
  - (b) such other three month period as has been notified under subsection (5).
- (5) If OFCOM consider that the performance of the licence holder during the three month period immediately preceding the relevant date is not typical of his performance during the twelve months before the relevant date they—
  - (a) may determine that subsection (4) is to apply by reference to such other three month period falling within those twelve months as they may determine; and
  - (b) must notify any determination under this subsection to the licence holder.
- (6) In subsection (4) “the relevant date” is the date of the relevant change of control or, if earlier, the date on which OFCOM exercise their powers under this section.
- (7) A variation of a licence under this section shall be effected by the service of a notice of the variation on the licence holder.
- (8) OFCOM are not to serve a notice of a variation under this section unless they have given the body on whom it is served a reasonable opportunity, after the publication of the report of the review under section 355, of making representations to them about the variation.
- (9) Where, in a case of a proposed change of control, a notice varying a licence under this section is served before the change to which it relates takes place, the variation is not to take effect until that change takes place.



---

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

---

- (10) A condition included in a licence by a variation under this section may be further varied by OFCOM either—
- (a) with the consent of the licence holder; or
  - (b) in any other case, after complying with the requirements of section 86(5)(b) of the 1990 Act (variation after giving opportunity for representations by the licence holder).
- (11) Expressions used in this section and section 355 have the same meanings in this section as in that.