



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

#### CHAPTER 1

##### THE BBC, C4C THE WELSH AUTHORITY AND THE GAELIC MEDIA SERVICE

##### *The BBC*

#### **198 Functions of OFCOM in relation to the BBC**

- (1) It shall be a function of OFCOM, to the extent that provision for them to do so is contained in—
  - (a) the BBC Charter and Agreement, and
  - (b) the provisions of this Act and of Part 5 of the 1996 Act,to regulate the provision of the BBC's services and the carrying on by the BBC of other activities for purposes connected with the provision of those services.
- (2) For the purposes of the carrying out of that function OFCOM—
  - (a) are to have such powers and duties as may be conferred on them by or under the BBC Charter and Agreement; and
  - (b) are entitled, to the extent that they are authorised to do so by the Secretary of State or under the terms of that Charter and Agreement, to act on his behalf in relation to that Charter and Agreement.
- (3) The BBC must pay OFCOM such penalties in respect of contraventions by the BBC of provision made by or under—
  - (a) this Part, or
  - (b) the BBC Charter and Agreement,

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as are imposed by OFCOM in exercise of powers conferred on them by that Charter and Agreement.

- (4) The BBC are also to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the BBC as may be—
  - (a) agreed from time to time between the BBC and OFCOM; or
  - (b) (in default of agreement) fixed by the Secretary of State.
- (5) The maximum penalty that may be imposed on the BBC on any occasion by OFCOM in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000.
- (6) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (5).
- (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.
- (8) It shall be the duty of OFCOM to have regard to their functions under this section when carrying out their functions under the 1990 Act, the 1996 Act and this Part in relation to services provided by persons other than the BBC.
- (9) In this section “the BBC’s services” means such of the services provided by the BBC (excluding the services comprised in the World Service) as are of a description of service which, if provided by a BBC company, would fall to be regulated by OFCOM by virtue of section 211 or 245.

## C4C

### 199 Functions of C4C

- (1) The activities that C4C are able to carry on include any activities which appear to them—
  - (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and
  - (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.
- (2) C4C’s primary functions are—
  - (a) securing the continued provision of Channel 4; and
  - (b) the fulfilment of the public service remit for that Channel under section 265.
- (3) Section 24(5)(b) and (6) of the 1990 Act (power of C4C to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.
- (4) For sub-paragraphs (3) and (4) of paragraph 1 of Schedule 3 to the 1990 Act (power of C4C to do things incidental or conducive to the carrying out of their functions) there shall be substituted—
  - “(3) The Corporation may do anything which appears to them to be incidental or conducive to the carrying out of their functions.

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- (4) The powers of the Corporation under sub-paragraph (3) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so—
- (a) to borrow money;
  - (b) to carry on activities (other than those comprised in their duty to carry out their primary functions) through Channel 4 companies; and
  - (c) to participate with others in the carrying on of any such activities.”
- (5) Schedule 9 (which makes provision for the approval by OFCOM, and for the enforcement, of arrangements made by C4C about the carrying on of their activities) shall have effect.

## **200 Removal of members of C4C**

- (1) In paragraph 3 of Schedule 3 to the 1990 Act (term of office of members of C4C), after sub-paragraph (2) there shall be inserted—
- “(2A) OFCOM may at any time, by notice to a member of the Corporation, terminate the appointment of that member.
- (2B) Before terminating a person’s appointment under sub-paragraph (2A), OFCOM must consult the Secretary of State.”
- (2) This section applies only to a member whose appointment was made, or last renewed, after the coming into force of this section.

## **201 Deficits and surpluses of C4C**

- (1) Sections 26 and 27 of the 1990 Act (revenue deficits of C4C to be funded by providers of Channel 3 services and application of excess revenues of C4C) shall cease to have effect.
- (2) This section has effect in relation to a deficit or excess for a year ending after the commencement of this section.

## **202 Borrowing limit for C4C**

- (1) The Secretary of State may by order provide for a limit on the borrowing that C4C is allowed to undertake.
- (2) The order may fix the limit either—
- (a) by specifying the sum which the outstanding borrowing of C4C must not at any time exceed; or
  - (b) by providing a method of determining the sum which that borrowing must not exceed.
- (3) C4C are not to borrow money if the effect of the borrowing would be to cause the amount of their outstanding borrowing to be, or to remain, in excess of the limit (if any) that is for the time being in force.
- (4) For the purposes of this section the amount of C4C’s outstanding borrowing at any time is the aggregate amount outstanding at that time in respect of the principal of

sums borrowed by them, but after allowing sums borrowed to repay existing loans to be applied for that purpose.

- (5) Before making an order under this section, the Secretary of State must consult C4C.
- (6) The consent of the Treasury is required for the making of an order under this section.

*The Welsh Authority*

**203 Function of OFCOM in relation to the Welsh Authority**

It shall be a function of OFCOM, to the extent that provision for them to do so is contained in this Act and Part 5 of the 1996 Act, to regulate the services provided by the Welsh Authority.

**204 Welsh Authority’s function of providing S4C and S4C Digital**

- (1) The Welsh Authority shall continue in existence with the substitution of the following function for their functions under section 57 of the 1990 Act.
- (2) The Welsh Authority shall have the function of providing television programme services of high quality with a view to their being available for reception wholly or mainly by members of the public in Wales.
- (3) The carrying out of that function—
  - (a) must include the continuing provision of the television broadcasting service known as Sianel Pedwar Cymru (“S4C”); and
  - (b) may include the continuing provision of the service provided in digital form and known as S4C Digital.
- (4) The power of the Welsh Authority to provide S4C Digital includes a power to secure that arrangements are made and remain in force for it to be broadcast in digital form.
- (5) It shall be the duty of the Welsh Authority to secure that S4C and S4C Digital each represents a public service for the dissemination of information, education and entertainment.
- (6) The Welsh Authority may use part of the signals carrying S4C to provide—
  - (a) subtitling in relation to programmes included in the service; and
  - (b) other services which are ancillary to programmes included in S4C and which are directly related to their contents.
- (7) In providing S4C Digital the Welsh Authority may also provide—
  - (a) assistance for disabled people in relation to programmes included in the service; and
  - (b) any other service (other than one mentioned in paragraph (a)) which is an ancillary service in relation to S4C Digital.
- (8) The Secretary of State may by order modify this Act and such other enactments as he thinks fit for the purpose of—
  - (a) replacing the requirement of the Welsh Authority to provide S4C with a requirement to provide a service in digital form;

- (b) requiring the Welsh Authority to secure that arrangements are made for that service and S4C Digital to be merged and provided as one service (also to be known as “S4C Digital”); and
  - (c) applying enactments relating to the provision of S4C or S4C Digital to the provision of the merged service.
- (9) An order under subsection (8) may require the Welsh Authority to ensure that, from the coming into force of a requirement to provide a merged service in digital form until a time determined in the manner described in the order, the whole or a part of the merged service is also to be provided for broadcasting in analogue form.
- (10) In this section “programme” does not include an advertisement.

## **205 Powers to provide other services**

- (1) The Welsh Authority are not, in the carrying out of their function under section 204, to provide any television programme service (apart from S4C and S4C Digital) unless—
- (a) the service appears to them to satisfy the requirements of subsection (3); and
  - (b) the provision by them of the service has been approved by an order made by the Secretary of State.
- (2) The functions of the Welsh Authority include the provision of services that are neither television programme services nor sound services but—
- (a) are provided with a view to being made available for reception wholly or mainly by members of the public in Wales or otherwise to be received or used by persons in Wales;
  - (b) are services appearing to them to satisfy the requirements of subsection (3); and
  - (c) are services the provision of which by the Authority has been approved by an order made by the Secretary of State.
- (3) A service provided under this section must be a public service of high quality for the dissemination of information, education or entertainment (or a combination of them) wholly or mainly to members of the public in Wales.
- (4) The Welsh Authority are not to provide a television programme service under this section unless it is one the provision of which by them broadens the range of television programme services available for reception by members of the public in Wales.
- (5) The Welsh Authority must ensure, in the case of every television programme service provided with the approval of the Secretary of State under this section, that a substantial proportion of the programmes included in the service consists of programmes in Welsh.
- (6) An order under this section approving the provision of a service must set out—
- (a) the nature and other characteristics of the service that is approved; and
  - (b) in the case of a service that is a television programme service, a public service remit for that service.
- (7) In providing a service approved under this section the Welsh Authority may also provide—
- (a) assistance for disabled people in relation to programmes included in the service;

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- (b) other services which are ancillary to programmes included in the service and which are directly related to their contents; and
  - (c) any other service (other than one mentioned in paragraph (a) or (b)) which is an ancillary service in relation to so much of the service as is provided in digital form.
- (8) A television programme service provided under this section in digital form is a qualifying service for the purposes of the 1996 Act.
- (9) In this section “sound service” means a service which would fall to be regulated under section 245 if provided by an S4C company.

## **206 Other activities of Welsh Authority**

- (1) The activities that the Welsh Authority are able to carry on include activities which appear to them—
- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their function of providing S4C, S4C Digital or a service the provision of which is approved under section 205; and
  - (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of that function.
- (2) The approval of the Secretary of State is required for the carrying on by the Welsh Authority of activities authorised only by subsection (1).
- (3) The approval of the Secretary of State—
- (a) must be contained in an order made by him; and
  - (b) may be a general approval in relation to a description of activities or a specific approval in relation to particular activities.
- (4) The activities capable of being authorised under subsection (1)—
- (a) do not include the provision of a licensable service; but
  - (b) do include activities for securing the provision of such a service by an S4C company and other activities connected with the provision of such a service by such a company.
- (5) The activities referred to in subsection (4)(b) include—
- (a) the formation of a company to provide a programme service;
  - (b) the taking of steps by means of which a company that is providing such a service becomes an S4C company.
- (6) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 6 to the 1990 Act (power of Welsh Authority to do things incidental or conducive to the carrying out of their functions) there shall be substituted—
- “(2) The Authority may do anything which appears to them to be incidental or conducive to the carrying out of their functions.
  - (3) The powers of the Authority under sub-paragraph (2) include power, to the extent that it appears to them incidental or conducive to the carrying out of their functions to do so—
    - (a) to carry on activities (other than those comprised in their duty to carry out their functions under section 204 of the Communications Act 2003) through S4C companies; and

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(b) to participate with others in the carrying on of any such activities.”

- (7) In this section “licensable service” means a service that would fall to be regulated under section 211 or 245 if provided by an S4C company.
- (8) Section 57(1A)(b) and (1B) of the 1990 Act (power of Welsh Authority to establish, acquire an interest in or assist a qualifying company) shall cease to have effect.

## **207 Welsh Authority finances**

- (1) The Welsh Authority must not, whether directly or indirectly, impose charges on persons—
- (a) in respect of their reception or use in Wales of any of the Authority’s public services;
  - (b) in respect of their reception in Wales of any service consisting in the provision of assistance for disabled people in relation to programmes included in any one or more of those services; or
  - (c) in respect of their reception in Wales of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to any of the Authority’s public services provided in digital form.
- (2) It shall be unlawful to impose a charge in contravention of subsection (1).
- (3) The power of the Welsh Authority to do anything that appears to them to be conducive or incidental to the carrying out of their functions includes power, subject to subsection (4), to borrow money.
- (4) The Welsh Authority are not to borrow money except with the approval of the Secretary of State.
- (5) The consent of the Treasury is to be required for the giving of an approval for the purposes of subsection (4).
- (6) The Welsh Authority are to be liable to pay OFCOM such sums in respect of the carrying out by OFCOM of their functions in relation to the Authority as may be—
- (a) agreed from time to time between the Authority and OFCOM; or
  - (b) (in default of agreement) fixed by the Secretary of State.
- (7) In section 61(4) of the 1990 Act (power of Secretary of State to increase amount of grant to the Welsh Authority), for “transmitting S4C and the service referred to in section 57(1A)(a), by order” there shall be substituted—
- “(a) providing services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003), and
  - (b) arranging for the broadcasting or distribution of those services,
- by order”.
- (8) In section 61A of the 1990 Act (the public service fund)—
- (a) in subsection (2) (application of fund), for “their functions under section 57(1) or (1A)(a)” there shall be substituted “their functions in relation to the provision of the services that are public services of the Authority (within the meaning of section 207 of the Communications Act 2003).”; and
  - (b) in subsection (4) (programmes to be broadcast first on S4C or S4C Digital), for the words from “on S4C” onwards there shall be substituted “on a television

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programme service that is one of their public services (within the meaning of section 207 of the Communications Act 2003)”.

- (9) In this section references to the Welsh Authority’s public services are references to the following—
- (a) S4C;
  - (b) S4C Digital; and
  - (c) the services the provision of which by the Authority is authorised by or under section 205.

### *The Gaelic Media Service*

## **208 The Gaelic Media Service**

- (1) The body established for the purposes of section 183 of the 1990 Act (financing of programmes in Gaelic out of the Gaelic Television Fund) is hereby renamed Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service).
- (2) References in any instrument or other document to Comataidh Craolaidh Gaidhlig or to the Gaelic Broadcasting Committee are to be construed accordingly.
- (3) For subsection (4) of that section there shall be substituted—
 

“(3B) The functions of the Service shall be to secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available to persons in Scotland.

  - (4) The Service may—
    - (a) make grants out of the Fund, or
    - (b) otherwise apply it,
 for any of the purposes of carrying out their functions or for any purpose connected with the carrying out of those functions.
  - (4A) In carrying out their functions, the Service may finance, or engage in, any of the following—
    - (a) the making of programmes in Gaelic with a view to those programmes being broadcast or otherwise transmitted so as to be available to persons in Scotland;
    - (b) the provision of training for persons employed, or to be employed, in connection with the making of programmes in Gaelic to be so broadcast or otherwise transmitted;
    - (c) research into the types of programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast or otherwise transmitted.
  - (4B) But the Service are not to be entitled, for the purpose of carrying out their functions, to provide—
    - (a) a Channel 3 service;
    - (b) Channel 4;
    - (c) Channel 5;
    - (d) a national sound broadcasting service;
    - (e) a national digital sound programme service; or



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(f) a television multiplex service or a radio multiplex service.”

(4) For subsection (9) of that section there shall be substituted—

“(9) In this section, section 183A and Schedule 19—

“Channel 3 service”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1;

“national digital sound programme service” has the same meaning as in Part 2 of the Broadcasting Act 1996;

“national sound broadcasting service” means a sound broadcasting service within the meaning of Part 3 which, under subsection (4)(a) of section 245 of the Communications Act 2003, is a national service for the purposes of that section;

“Gaelic” means the Gaelic language as spoken in Scotland;

“programme” includes any item included in a programme service;

“radio multiplex service” has the same meaning as in Part 2 of the Broadcasting Act 1996;

“the Service” means the body established under subsection (3) and known as Seirbheis nam Meadhanan Gàidhlig (the Gaelic Media Service);

“television multiplex service” has the meaning given by section 241(1) of the Communications Act 2003 to a multiplex service within the meaning of Part 1 of the Broadcasting Act 1996;

and a reference to being available to persons in Scotland includes a reference to being available both to persons in Scotland and to others.”

## 209 Membership of the Service

After section 183 of the 1990 Act there shall be inserted—

### “183A Membership of the Gaelic Media Service

- (1) The Service shall consist of not more than twelve members.
- (2) The members of the Service are to be appointed by OFCOM
- (3) OFCOM must appoint one of the members to be the chairman of the Service.
- (4) The approval of the Secretary of State is required for the appointment of a person as a member of the Service, and for the appointment of a member as their chairman.
- (5) The members of the Service must include—
  - (a) a member nominated by the BBC;
  - (b) a member nominated by Highlands and Islands Enterprise; and
  - (c) a member nominated by Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency).
- (6) When appointing members of the Service, OFCOM must have regard to—
  - (a) the desirability of having members of the Service who are proficient in written and spoken Gaelic; and

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- (b) any guidance issued by the Secretary of State for the purposes of this section.
- (7) OFCOM must secure, so far as practicable, that the membership of the Service is such that the interests of each of the following are adequately represented—
- (a) the holders of licences to provide regional Channel 3 services for areas wholly in Scotland;
  - (b) the holders of licences to provide regional Channel 3 services in respect of which determinations under section 184(4)(b) are for the time being in force;
  - (c) the independent television and radio production industries in Scotland;
  - (d) other persons and bodies concerned with the promotion and use of the Gaelic language, including those concerned with education in Gaelic and in Gaelic culture.
- (8) Schedule 19 to this Act shall have effect with respect to the Service.
- (9) In this section—
- “Bòrd Gàidhlig na h-Alba” means the body of that name formed under section 5 of the National Heritage (Scotland) Act 1985;
  - “regional Channel 3 service” has the same meaning as in Part 1.
- (10) The Secretary of State may by order amend the reference in subsection (5) to Bòrd Gàidhlig na h-Alba (the Gaelic Development Agency)—
- (a) by substituting a reference to another body formed under section 5 of the National Heritage (Scotland) Act 1985 with functions relating to the promotion of Gaelic; or
  - (b) for the purpose of giving effect to a change to the name of the body referred to in that subsection.
- (11) An order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## **210 Supplementary provisions about the Service**

- (1) Schedule 19 to the 1990 Act (supplementary provisions about the Gaelic Broadcasting Committee) shall be amended as follows.
- (2) In paragraph 2 (tenure of office and remuneration)—
- (a) in sub-paragraph (1), for “sub-paragraph (2)” there shall be substituted “sub-paragraphs (1A) and (2)”;
  - (b) after sub-paragraph (1) there shall be inserted—
- “(1A) A person is not to be appointed as a member of the Service for a term of more than four years (but a person so appointed shall be eligible for re-appointment at the end of his term of office).”
- (3) In paragraph 7 (employees of the Committee), after sub-paragraph (3) there shall be inserted—
- “(4) A person who is an employee of the Service is not to be eligible to be appointed as a member of the Service.”
- (4) After paragraph 8 (financial provision) there shall be inserted—

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- “8A (1) The Service must pay all their receipts to OFCOM.
- (2) OFCOM must hold amounts received by them under this paragraph to the credit of the Gaelic Broadcasting Fund (and, accordingly, those amounts are not to be regarded as forming part of OFCOM’s revenues).”
- (5) In paragraph 12 (annual reports), after sub-paragraph (1) there shall be inserted—
- “(1A) The report must include a statement of how the Service are proposing to carry out their functions during the next financial year.”

## CHAPTER 2

### REGULATORY STRUCTURE FOR INDEPENDENT TELEVISION SERVICES

#### *Preliminary*

#### **211 Regulation of independent television services**

- (1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act—
- (a) services falling within subsection (2) that are provided otherwise than by the BBC or the Welsh Authority; and
  - (b) services falling within subsection (3) that are provided otherwise than by the BBC.
- (2) The services referred to in subsection (1)(a) are—
- (a) television broadcasting services that are provided from places in the United Kingdom with a view to their being broadcast otherwise than only from a satellite;
  - (b) television licensable content services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive;
  - (c) digital television programme services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of that Directive;
  - (d) restricted television services that are provided from places in the United Kingdom; and
  - (e) additional television services that are provided from places in the United Kingdom.
- (3) The services referred to in subsection (1)(b) are—
- (a) television multiplex services that are provided from places in the United Kingdom; and
  - (b) digital additional television services that are provided by persons under the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive.

#### **212 Abolition of function of assigning television frequencies**

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies for the purposes of any of the following—

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- (a) services falling to be licensed under Part 1 of the 1990 Act;
- (b) S4C; or
- (c) television multiplex services falling to be licensed under Part 1 of the 1996 Act.

### **213 Abolition of licensing for local cable systems**

On and after the television transfer date no licence shall be required under Part 2 of the 1990 Act for the provision of a local delivery service.

*Channels 3 and 5*

### **214 Digital Channel 3 and Channel 5 licences**

- (1) This section applies to the grant by OFCOM, at any time on or after the television transfer date, of a licence under Part 1 of the 1990 Act to provide a Channel 3 service or to provide Channel 5.
- (2) The licence must—
  - (a) be a licence to provide the licensed service with a view to its being broadcast in digital form; and
  - (b) contain such condition (if any) requiring the provider of the service to ensure that the whole or a part of the service is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (3) The conditions included in a licence by virtue of subsection (2)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (4) Where the licence contains a condition falling within subsection (2)(b), it must also contain a condition that—
  - (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
  - (b) the times at which they are broadcast,
 are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.
- (5) The licence—
  - (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
  - (b) shall be renewable, on one or more occasions, under section 216.
- (6) For the purposes of subsection (5) a licensing period is—
  - (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (7) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.

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- (8) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of the licensed service;
  - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in the licensed service; and
  - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of the licensed service as is provided in digital form.
- (9) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (8).

## **215 Replacement of existing Channel 3 and Channel 5 licences**

- (1) It shall be the duty of OFCOM to make an offer under this section to every person who, when the offer is made, is the holder of a licence (an “existing licence”)—
- (a) to provide a Channel 3 service; or
  - (b) to provide Channel 5.
- (2) The offer made to a person under this section—
- (a) must be an offer to exchange his existing licence for a replacement licence; and
  - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence offered must be one granted in accordance with the provisions of—
- (a) Part 1 of the 1990 Act; and
  - (b) section 214 of this Act;
- but sections 15 to 17A of the 1990 Act (award of licences) are not to apply in the case of the replacement licence.
- (4) Subject to subsection (5), where OFCOM make an offer under this section to a person, the service which they are proposing to license by the replacement licence must be a service which—
- (a) is provided with a view to its being broadcast in digital form; but
  - (b) subject to that and to any requirements of section 214, appears to OFCOM to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence.
- (5) An offer under this section may, to such extent as OFCOM think fit, propose the grant of a licence to provide a service for an area or at times which, though substantially the same as in the case of the existing licence, are not identical.
- (6) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
- (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
  - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,

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as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.

- (7) That offer must also propose the conditions for allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (8) An offer under this section must set out—
- (a) the terms of the proposed replacement licence;
  - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
  - (c) the period for which the offer is open;
  - (d) the date on which the proposed replacement licence will be granted if the offer is accepted;
  - (e) the time as from which it is proposed that that licence will take effect if the offer is accepted; and
  - (f) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (9) The times set out under subsection (8) must—
- (a) in the case of the time set out under paragraph (e), be in the period of twelve months beginning with the television transfer date; and
  - (b) in the case of the time set out under paragraph (f), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (10) Where a person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
- (a) he is entitled, on the date set out in the offer, to be granted, in accordance with Part 1 of the 1990 Act and section 214 of this Act, a replacement licence under that Part in the terms, and on the conditions, so set out;
  - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct; and
  - (c) the service which he is authorised to provide by the replacement licence, so far as it is provided in digital form, shall be a qualifying service for the purposes of Part 1 of the 1996 Act.
- (11) Where the person to whom an offer has been made under this section—
- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
  - (b) rejects the offer before the end of that period,
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (8)(f).
- (12) In this section “qualifying revenue” has the same meaning as in section 19 of the 1990 Act.

## **216 Renewal of Channel 3 and 5 licences**

- (1) The holder of—

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

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- (a) a licence to provide a Channel 3 service, or
  - (b) a licence to provide Channel 5,may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
  - (a) begins four years before the end of the current licensing period; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
  - (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to every person who, at the time of the determination, holds a licence in respect of which there is right to apply for renewal under this section.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
  - (a) decide whether they will be renewing the licence;
  - (b) if they decide that they will be, determine in accordance with section 217 the financial terms on which the licence will be renewed; and
  - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if references to the award of a licence were references to its renewal.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
  - (a) the public service remit for the licensed service;
  - (b) programming quotas;
  - (c) news and current affairs programmes; and
  - (d) programme production and regional programming.
- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in—
  - (a) the area for which it would be provided; or
  - (b) the times of the day, or days of the week, between or on which it would be provided.
- (8) In all cases in which—
  - (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
  - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal,they must grant the renewal as soon as reasonably practicable.

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

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- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions, subject only to such modifications as are required to give effect, in accordance with the determination under subsection (4)(b), to the requirements imposed by section 217(4).
- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
  - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under section 15 of the 1990 Act.

## **217 Financial terms of licence renewed under s. 216**

- (1) The determination under section 216(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period; and
  - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which the holder of that licence will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with section 15 of the 1990 Act.
- (3) For the purposes of subsection (1)(b)—
- (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) The renewed licence is required, as renewed, to include conditions requiring the licence holder to pay to OFCOM—
- (a) in addition to any fees required to be paid by virtue of section 4(1)(b) of the 1990 Act, but
  - (b) instead of the amounts payable under the corresponding provision applicable under the conditions of the licence to the period before the renewal takes effect,
- the amounts specified in subsection (5).



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- (5) Those amounts are—
- (a) in respect of the first complete calendar year falling within the renewal period, the amount determined under subsection (1)(a);
  - (b) in respect of each subsequent year falling wholly or partly within the renewal period, that amount increased by the appropriate percentage; and
  - (c) in respect of each accounting period of the licence holder falling within the renewal period, an amount representing a specified percentage of qualifying revenue for that accounting period.
- (6) The percentage specified for the purposes of subsection (5)(c) in respect of an accounting period must be the amount determined for that period under subsection (1)(b).
- (7) In this section—
- “the appropriate percentage” and “qualifying revenue” each has the same meaning as in section 19 of the 1990 Act; and
  - “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.

#### *The public teletext service*

### **218 Duty to secure the provision of a public teletext service**

- (1) OFCOM must do all that they can to secure the provision, in accordance with this Chapter and Part 1 of the 1996 Act, of a teletext service that is available nationwide.
- (2) The service must consist of—
- (a) a single teletext service provided in digital form with a view to its being broadcast by means of a television multiplex service; and
  - (b) for so long as Channel 4, S4C and one or more Channel 3 services are broadcast in analogue form, an analogue teletext service.
- (3) The service, if licensed to do so in accordance with section 219, may continue to include an analogue teletext service after it is no longer required under subsection (2)(b) to include such a service.
- (4) The analogue teletext service that must be or may be comprised in the public teletext service is a single additional television service that uses the combined spare capacity available for the provision of additional television services on the frequencies on which Channel 3 services, Channel 4 and S4C (or any of them) are broadcast in analogue form.
- (5) For so long as the public teletext service must consist of both a teletext service provided in digital form and an analogue teletext service, OFCOM must secure that both services are provided by the same person.
- (6) But nothing in this section—
- (a) requires the contents of the two services comprised in the public teletext service to be the same;
  - (b) prevents the service from including different items for different parts of the United Kingdom or prevents the different items from being made available only in the parts of the United Kingdom for which they are included; or

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- (c) prevents the licence holder from making arrangements authorised by virtue of section 220 for the provision of the whole or a part of the public teletext service by another.

(7) OFCOM must exercise their powers—

- (a) to make frequencies available for the purposes of Channel 3 services, Channel 4 and S4C; and
- (b) to make determinations for the purposes of section 48(2)(b) of the 1990 Act (determinations of spare capacity),

in a manner that takes account of their duty under this section.

## **219 Licensing of the public teletext service**

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of the public teletext service is a licence under Part 1 of that Act complying with this section.
- (2) The licence—
  - (a) must be a licence which continues in force, from the time from which it takes effect, until the end of the licensing period beginning or current at that time; and
  - (b) shall be renewable, on one or more occasions, under section 222.
- (3) For the purposes of subsection (2) a licensing period is—
  - (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (4) The licence must contain the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (5) The conditions of the licence must also include conditions prohibiting the imposition, whether directly or indirectly, of any charges on persons in respect of their reception in the United Kingdom of the licensed service.
- (6) It shall be unlawful to impose a charge in contravention of a condition imposed under subsection (5).
- (7) The service authorised by a licence under this section, so far as it comprises a service provided in digital form, is a qualifying service for the purposes of Part 1 of the 1996 Act.
- (8) Schedule 10 (which makes further provision about the award and grant of the licence for the public teletext service and about the conditions and enforcement of that licence) shall have effect.

## **220 Delegation of provision of public teletext service**

- (1) The licence for the provision of the public teletext service may—
  - (a) include provision enabling the licence holder to authorise an eligible person to provide the whole or a part of the public teletext service on his behalf; and

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- (b) impose conditions subject to and in accordance with which the whole or a part of that service may be provided by a person authorised by the licence holder.
- (2) The conditions of the licence to provide the public teletext service apply in relation to its provision by a person authorised to do so on the licence holder's behalf as they apply to its provision by the licence holder.
- (3) A contravention of those conditions by a person so authorised shall be treated for the purposes of this Chapter and the 1990 Act as a contravention on the part of the licence holder.
- (4) In this section “eligible person” means a person who is not a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to the licence for the public teletext service.

## **221 Replacement of existing public teletext provider's licence**

- (1) It shall be the duty of OFCOM to make an offer under this section to the person who, when the offer is made, is the holder of the licence to provide the existing service (the “existing licence”).
- (2) The offer made to a person under this section—
  - (a) must be an offer to exchange his existing licence for a replacement licence; and
  - (b) must be made as soon as practicable after the television transfer date.
- (3) The replacement licence is to be one which is granted—
  - (a) for the purposes of section 218 of this Act; and
  - (b) in accordance with section 219 of this Act and the provisions of Part 1 of the 1990 Act;but Part 1 of Schedule 10 to this Act is not to apply in the case of the replacement licence.
- (4) Where OFCOM make an offer under this section, the service which they are proposing to license by or under the replacement licence must be a service which comprises both—
  - (a) a service that appears to OFCOM to be equivalent in all material respects to the existing service; and
  - (b) a service that appears to them to be equivalent in all material respects to the teletext service in digital form which that person is required to provide by virtue of section 30 of the 1996 Act.
- (5) The offer must propose the inclusion in the replacement licence of conditions as to the payment of amounts to OFCOM which require the payment of—
  - (a) the same amount in respect of each complete calendar year falling wholly or partly within the period for which the replacement licence is in force, and
  - (b) an amount equal to the same percentage of the qualifying revenue for each accounting period of the licence holder falling within that period,as would have been payable under the existing licence had that licence continued in force until the end of the period for which the replacement licence is granted.

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- (6) That offer must also propose conditions allowing amounts paid for a period under the existing licence to be set off against liabilities for the same period arising under the replacement licence.
- (7) An offer under this section must set out—
- (a) the terms of the proposed replacement licence;
  - (b) the conditions on which OFCOM are proposing to grant the replacement licence;
  - (c) the period for which the offer is open;
  - (d) the time as from which it is proposed the replacement licence will take effect if the offer is accepted; and
  - (e) the time from which the existing licence will cease to have effect if the offer is not accepted.
- (8) The times set out under subsection (7) must—
- (a) in the case of the time set out under paragraph (d), be in the period of twelve months beginning with the television transfer date; and
  - (b) in the case of the time set out under paragraph (e), be in the period of eighteen months after the end of the period set out under paragraph (c) of that subsection.
- (9) Where the person to whom an offer has been made under this section elects, by notification to OFCOM, to exchange his licence for the replacement licence offered to him—
- (a) he is entitled to be granted the replacement licence in the terms, and on the conditions, set out in the offer; and
  - (b) the replacement licence shall come into force, and the existing licence cease to have effect, at the time specified in the offer, or such later time as OFCOM may, with the consent of that person, direct.
- (10) Where the person to whom an offer has been made under this section—
- (a) does not elect, during the period for which the offer is open, to exchange the existing licence for the replacement licence, or
  - (b) rejects the offer before the end of that period,
- the existing licence shall have effect as if the period for which it is to continue in force ended with the time specified in the offer for the purposes of subsection (7)(e).
- (11) In this section “the existing service” means the teletext service which—
- (a) is being provided immediately before the television transfer date on the combined spare capacity available for the provision of additional television services on frequencies on which Channel 3 services and Channel 4 are provided; and
  - (b) is the service by reference to which the Independent Television Commission have discharged their duty under section 49(2) of the 1990 Act.
- (12) In this section “qualifying revenue” means the revenue which would be qualifying revenue (within the meaning of section 52 of the 1990 Act) in relation to the holder of a licence to provide the analogue teletext service comprised in the public teletext service.

## **222 Renewal of public teletext licence**

- (1) The holder of the licence to provide the public teletext service may apply to OFCOM for the renewal of his licence for a period of ten years from the end of the licensing period current at the time of the application.
- (2) An application for renewal may only be made in the period which—
  - (a) begins four years before the end of the current licensing period; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of that period.
- (3) A determination for the purposes of subsection (2)(b)—
  - (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the holder, at the time of the determination, of the licence to provide the public teletext service.
- (4) Where OFCOM receive an application under this section for the renewal of a licence, they must—
  - (a) decide whether they will be renewing the licence;
  - (b) if they decide that they will be, determine in accordance with section 223 the financial terms on which the licence will be renewed; and
  - (c) notify the applicant of their decision and determination.
- (5) Section 17(5) to (7) of the 1990 Act (suspect sources of funds) apply in relation to an applicant for a renewal under this section as they apply in relation to an applicant mentioned in section 17(5) of that Act, but as if—
  - (a) references to the award of a licence were references to its renewal; and
  - (b) the reference in subsection (7)(a) to section 19(1) of that Act were a reference to paragraph 7 of Schedule 10.
- (6) OFCOM may decide not to renew the licence if they are not satisfied that the applicant (if his licence were renewed) would provide a service complying with the requirements imposed under Chapter 4 of this Part by conditions relating to—
  - (a) the public service remit for the public teletext service;
  - (b) news; and
  - (c) regional matters.
- (7) OFCOM may also decide not to renew the licence if they propose to grant a fresh licence for the public teletext service which would differ in any material respect from the licensed service.
- (8) In all cases in which—
  - (a) the applicant notifies OFCOM that he accepts the terms notified to him under subsection (4)(c), and
  - (b) they are not required or allowed by subsections (5) to (7) to refuse a renewal, they must grant the renewal as soon as reasonably practicable.
- (9) But OFCOM must not grant a renewal under this section more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.
- (10) Where a licence is renewed under this section, it must be renewed on the same terms and conditions subject only to such modifications as are required to give effect,

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in accordance with the determination under subsection (4)(b), to paragraph 7 of Schedule 10.

- (11) Nothing in this section requires OFCOM, following the receipt of an application for the renewal of a licence—
- (a) to make a decision or determination, or
  - (b) to take any other step under this section,
- at any time after an order under section 230 has come into force preventing the renewal of the licence.
- (12) For the purposes of this section a licensing period is—
- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period.
- (13) In this section “tender notice” means a notice under paragraph 1 of Schedule 10.

## **223 Financial terms of licence renewed under s. 222**

- (1) The determination under section 222(4)(b) must comprise—
- (a) a determination of the amount which the holder of the renewed licence will be required by the conditions of that licence to pay to OFCOM in respect of the first complete calendar year falling within the renewal period;
  - (b) a determination of the percentage of qualifying revenue for each accounting period of the licence holder falling within the renewal period which he will be required by those conditions to pay to OFCOM.
- (2) The amount determined under subsection (1)(a) must be equal to the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being renewed) to be granted for the period of the renewal on an application made in accordance with Part 1 of Schedule 10.
- (3) For the purposes of subsection (1)(b)—
- (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (4) In this section “renewal period”, in relation to a licence, means the period for which the licence is in force by reason of its renewal.
- (5) Part 3 of Schedule 10 applies for construing this section as it applies for construing that Schedule.

### *Meaning of initial expiry date*

## **224 Meaning of “initial expiry date”**

- (1) Subject to any postponement under this section, the date which is the initial expiry date for the purposes of this Part is 31st December 2014.
- (2) The Secretary of State may (on one or more occasions) by order postpone the initial expiry date.

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- (3) The Secretary of State’s power to postpone the initial expiry date—
  - (a) is to be exercisable before 30th June 2013 only if he has fixed a date after 30th June 2013 as the date for digital switchover; and
  - (b) is not to be exercisable on or after 30th June 2013 if he has fixed 30th June 2013 or an earlier date as the date for digital switchover.
- (4) Where the Secretary of State makes an order under this section at a time after he has fixed a date for digital switchover, the date to which the initial expiry date is postponed must be a date not less than eighteen months after the date for digital switchover.
- (5) The Secretary of State must exercise his power to postpone the initial expiry date if it at any time appears to him that that date would otherwise fall within the period of eighteen months immediately following the date fixed for digital switchover.
- (6) Where an order under this section extends a licensing period for which a licence has been granted in accordance with section 214 or 219, the 1990 Act and this Part shall have effect (subject to subsection (7)) as if the licence had originally been granted for the extended period.
- (7) Where an order under this section extends the period for which a licence is to continue in force—
  - (a) that order shall not affect the earliest time at which an application for the renewal of that licence may be made in accordance with section 216(2)(a) or 222(2)(a);
  - (b) as soon as reasonably practicable after making the order, OFCOM must make such modification of any determination made by them in the case of that licence for the purposes of section 216(2)(b) or 222(2)(b) as they consider appropriate in consequence of the extension; and
  - (c) neither section 216(3)(a) nor section 222(3)(a) applies to the making of that modification.
- (8) In this section a reference to the date for digital switchover is a reference to the date fixed by the Secretary of State for the purposes of this section as the date which appears to him, in consequence of directions given by him for the purposes of the conditions of the licences for the relevant public broadcasting services, to be the date after which none of those services will be broadcast to any significant extent in analogue form.
- (9) In this section “the relevant public broadcasting service” means any of the following—
  - (a) the services comprised in Channel 3; and
  - (b) Channel 5.

*Reviews relating to licensing of Channels 3 & 5 and teletext*

## **225 Application for review of financial terms of replacement licences**

- (1) The holder of a replacement licence granted under section 215 or 221 may apply to OFCOM, at any time in the first or any subsequent review period, for a review of the financial terms on which that licence is held.
- (2) For the purposes of this section the first review period is the period which—
  - (a) begins four years before the first notional expiry date; and

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- (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from the first notional expiry date.
- (3) For the purposes of this section a subsequent review period in the case of a replacement licence is so much (if any) of the following period as falls before the end of the initial expiry date, namely, the period which—
- (a) begins four years before a subsequent notional expiry date; and
  - (b) ends with the day before the day that OFCOM have determined to be the one by which they would need to publish a tender notice if they were proposing to grant a fresh licence to take effect from that notional expiry date.
- (4) A determination for the purposes of subsection (2)(b) or (3)(b) in respect of a replacement licence—
- (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the person who, at the time of the determination, holds the licence in question.
- (5) No application under this section for a review of the financial terms on which a replacement licence is held is to be made—
- (a) at any time when an application under section 226 for a review of those terms is pending; or
  - (b) at any time in the period of twelve months following the day on which a determination by OFCOM on such an application is notified to the licence holder.
- (6) For the purposes of this section an application for a review under section 226 is pending from the time when the application is made until the end of the day on which OFCOM's determination on the review is notified to the licence holder.
- (7) In this section—
- “the first notional expiry date”, in relation to a replacement licence, means the date with which (apart from this Act) the existing licence would have expired if not renewed;
  - “subsequent notional expiry date”, in relation to a replacement licence, means—
    - (a) in a case in which an application by the licence holder for a review under this section was made during the review period beginning four years before the last notional expiry date, the tenth anniversary of the date on which OFCOM's determination on that review was notified to the licence holder; and
    - (b) in any other case, the tenth anniversary of the last notional expiry date;
  - “tender notice” means a notice under section 15(1) of the 1990 Act or (as the case may be) paragraph 1 of Schedule 10.
- (8) In subsection (7) “existing licence” has the same meaning as in section 215 or (as the case may be) 221.

## **226 Application for review of financial terms in consequence of new obligations**

- (1) This section applies where an order is made under section 411 that brings section 272, 273 or 274 (or any two or more of them) into force for the purpose of including conditions in the regulatory regime for—



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- (a) a Channel 3 service;
  - (b) Channel 5; or
  - (c) the public teletext service.
- (2) The holder of a licence in which conditions mentioned in section 272, 273 or 274 will fall to be included when the order comes into force may apply to OFCOM, at any time in the review period, for a review of the financial terms on which the licence is held.
- (3) For the purposes of this section the review period in the case of an order under section 411 is the period which—
- (a) begins with the day on which the order is made; and
  - (b) ends with the time at which, by virtue of the order, one or more of sections 272, 273 and 274 come into force in the case of the licence in question.
- (4) If in the case of the same order there is more than one time falling within subsection (3) (b), the review period ends with the later or latest of them.

## **227 Reviews under ss. 225 and 226**

- (1) This section applies where an application is made under section 225 or 226 for a review of the financial terms on which a licence is held.
- (2) As soon as reasonably practicable after receiving the application, OFCOM must—
- (a) determine the amount to be paid to them under the conditions of the licence for the first calendar year falling wholly or partly within the period under review to begin after the application date; and
  - (b) determine the percentage to be used for computing the payments to be made to them under those conditions in respect of each accounting period falling within the period under review to begin after that date.
- (3) The amount determined under subsection (2)(a) must be equal to the amount which, in OFCOM's opinion, would have been the cash bid of the licence holder were the licence being granted afresh on an application made in accordance with—
- (a) section 15 of the 1990 Act (licences for Channel 3 service or Channel 5); or
  - (b) paragraph 3 of Schedule 10 to this Act.
- (4) The determination required by subsection (2)(b) is a determination of the percentage of qualifying revenue for each accounting period that is to be paid to OFCOM.
- (5) For the purposes of subsection (2)(b)—
- (a) different percentages may be determined for different accounting periods; and
  - (b) the percentages that may be determined for an accounting period include a nil percentage.
- (6) In making their determinations on an application under section 226 OFCOM are to have regard, in particular, to any additional costs that are likely to be incurred by the licence holder in consequence of the commencement of so much of section 272, 273 or 274 (or any two or more of them) as is brought into force by the commencement order in question.
- (7) References in this section to qualifying revenue for an accounting period are to be construed—

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- (a) in the case of the holder of a licence to provide a Channel 3 service or Channel 5, in accordance with section 19 of and Part 1 of Schedule 7 to the 1990 Act; and
  - (b) in the case of the holder of the licence to provide the public teletext service, in accordance with Part 3 of Schedule 10 to this Act.
- (8) In this section—
- “the application date”, in relation to a review, means the date of the making under section 225 or 226 of the application for the review; and
  - “the period under review”, in relation to a review of the financial terms of a licence, means so much of the period for which the licence will (if not renewed) continue in force after the application date.

## **228 Giving effect to reviews under ss. 225 and 226**

- (1) As soon as reasonably practicable after making a determination under section 227 on an application under section 225 or 226, OFCOM must give a notification of their determination to the applicant.
- (2) The notification must set out—
  - (a) the determination made by OFCOM;
  - (b) the modifications of the applicant’s licence that are required to give effect to the determination;
  - (c) a date by which the applicant must notify OFCOM whether or not he accepts the determination and modifications; and
  - (d) a subsequent date by which the applicant’s licence will cease to have effect if he does not.
- (3) The modifications set out in accordance with subsection (2)(b) must secure that the amount falling to be paid under the conditions of the applicant’s licence for each calendar year subsequent to that for which an amount has been determined in accordance with section 227(2)(a) is the amount so determined as increased by the appropriate percentage.
- (4) In the case of a determination on an application under section 225, the date specified in accordance with subsection (2)(d) must not fall before whichever is the earlier of—
  - (a) the next notional expiry date after the application for the review; and
  - (b) the end of the licensing period in which that application was made.
- (5) Where the applicant notifies OFCOM that he accepts the determination—
  - (a) his licence is to have effect with the modifications set out in OFCOM’s notification; and
  - (b) all such adjustments by way of payment or repayment as may be necessary for giving effect to the modifications are to be made in respect of any payments already made for years or periods affected by the modifications.
- (6) Where the applicant does not, before the date specified in accordance with paragraph (c) of subsection (2), notify OFCOM that he accepts the determination, his licence shall have effect as if the period for which it is to continue in force ended with the time specified in accordance with paragraph (d) of that subsection.
- (7) Where the time at which a licence would cease to have effect in accordance with subsection (6) is the end of a licensing period, that subsection does not affect any

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rights of the licence holder with respect to the renewal of his licence from the end of that period.

(8) In this section—

“the appropriate percentage” has the same meaning as in section 19 of the 1990 Act;

“licensing period” means—

- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
- (b) any subsequent period of ten years beginning with the end of the previous licensing period;

“notional expiry date” means a first or subsequent notional expiry date within the meaning of section 225.

## **229 Report in anticipation of new licensing round**

(1) OFCOM must, in anticipation of the end of each licensing period—

- (a) prepare a report under this section; and
- (b) submit it to the Secretary of State no later than thirty months before the end of that period.

(2) A report under this section must set out OFCOM’s opinion on the effect of each of the matters mentioned in subsection (3) on the capacity of the holders of relevant licences to contribute, in the next licensing period, to the fulfilment of the purposes of public service television broadcasting in the United Kingdom at a cost to the licence holders that is commercially sustainable.

(3) Those matters are—

- (a) the arrangements that (but for an order under section 230) would allow for the renewal of relevant licences from the end of the current licensing period; and
- (b) the conditions included in the regulatory regimes for the services provided under relevant licences.

(4) A report under this section must also include the recommendations (if any) which OFCOM consider, in the light of the opinion set out in the report, should be made to the Secretary of State for the exercise by him of—

- (a) his power under section 230; or
- (b) any of the powers to make statutory instruments that are conferred on him by Chapter 4 of this Part.

(5) Where the Secretary of State makes an order under section 224 after receiving a report under this section in anticipation of the end of the licensing period that is extended by the order—

- (a) he may require OFCOM to prepare a supplementary report in the light of the postponement of the beginning of the next licensing period; and
- (b) it shall be the duty of OFCOM, within such period as may be specified by the Secretary of State, to prepare the required supplementary report and to submit it to him.

(6) In this section—

“licensing period” means—

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- (a) the period beginning with the commencement of this section and ending with the initial expiry date; or
  - (b) any subsequent period of ten years beginning with the end of the previous licensing period;
- “relevant licence” means—
- (a) a licence to provide a Channel 3 service;
  - (b) a licence to provide Channel 5; or
  - (c) the licence to provide the public teletext service.

### **230 Orders suspending rights of renewal**

- (1) This section applies where the Secretary of State has received and considered a report submitted to him by OFCOM under section 229.
- (2) If—
  - (a) the report contains a recommendation by OFCOM for the making of an order under this section, or
  - (b) the Secretary of State considers, notwithstanding the absence of such a recommendation, that it would be appropriate to do so,
 he may by order provide that licences for the time being in force that are of the description specified in the order are not to be renewable under section 216 or 222 from the end of the licensing period in which he received the report.
- (3) An order under this section preventing the renewal of licences from the end of a licensing period must be made at least eighteen months before the end of that period.
- (4) The Secretary of State is not to make an order under this section preventing the renewal of licences from the end of the initial licensing period unless he has fixed a date before the end of that period as the date for digital switchover.
- (5) Where the Secretary of State postpones the date for digital switchover after making an order under this section preventing the renewal of licences from the end of the initial licensing period, the order shall have effect only if the date to which digital switchover is postponed falls before the end of that period.
- (6) Subsection (5) does not affect the power of the Secretary of State to make another order under this section after postponing the date for digital switchover.
- (7) An order under this section with respect to Channel 3 licences must be an order of one of the following descriptions—
  - (a) an order applying to every licence to provide a Channel 3 service;
  - (b) an order applying to every licence to provide a national Channel 3 service; or
  - (c) an order applying to every licence to provide a regional Channel 3 service.
- (8) An order under this section does not affect—
  - (a) the person to whom a licence may be granted on an application made under section 15 of the 1990 Act or under paragraph 3 of Schedule 10 to this Act; or
  - (b) rights of renewal in respect of licences first granted so as to take effect from the beginning of a licensing period beginning after the making of the order, or from a subsequent time.
- (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.

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- (10) Subsection (8) of section 224 applies for construing references in this section to the date for digital switchover as it applies for the purposes of that section.
- (11) In this section—  
“initial licensing period” means the licensing period ending with the initial expiry date; and  
“licensing period” has the same meaning as in section 229.

### *Replacement of Channel 4 licence*

## **231 Replacement of Channel 4 licence**

- (1) On the commencement of this subsection—
- (a) Channel 4 shall cease to be licensed under the licence in force for the purposes of section 24(3) of the 1990 Act immediately before the commencement of this subsection; and
  - (b) a licence granted for those purposes in accordance with the following provisions of this section shall come into force as the licence under which Channel 4 is licensed.
- (2) It shall be the duty of OFCOM, as soon as practicable after the television transfer date—
- (a) to prepare a draft of a licence under Part 1 of the 1990 Act to replace the licence that is likely to be in force for the purposes of section 24(3) of the 1990 Act when subsection (1) of this section comes into force;
  - (b) to notify C4C of the terms and conditions of the replacement licence they propose; and
  - (c) after considering any representations made by C4C, to grant such a replacement licence to C4C so that it takes effect in accordance with paragraph (b) of subsection (1) of this section.
- (3) A replacement licence proposed or granted under this section—
- (a) must be a licence to provide a service with a view to its being broadcast in digital form; and
  - (b) must contain such conditions (if any) requiring C4C to ensure that the whole or a part of Channel 4 is also provided for broadcasting in analogue form as OFCOM consider appropriate.
- (4) The conditions included in a licence by virtue of subsection (3)(b) must be such as to enable effect to be given to any directions given from time to time by the Secretary of State to OFCOM about the continuance of the provision of services in analogue form.
- (5) Where a replacement licence proposed or granted under this section contains a condition falling within subsection (3)(b), it must also contain a condition that—
- (a) the programmes (apart from the advertisements) that are included in the service provided in analogue form, and
  - (b) the times at which they are broadcast,
- are to be the same as in the case of, or of the specified part of, the service provided for broadcasting in digital form.

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- (6) The terms of a replacement licence proposed or granted under this section must provide for it to continue in force until the end of 2014.
- (7) But—
- (a) such a licence may be renewed, on one or more occasions, for such period as OFCOM may think fit in relation to the occasion in question; and
  - (b) the provisions of this section (apart from subsections (1), (2) and (6)) are to apply in the case of a licence granted by way of a renewal of a licence granted under this section as they apply in the case of the replacement licence.
- (8) The conditions of a replacement licence proposed or granted under this section must include the conditions that OFCOM consider appropriate for the purpose of performing their duty under section 263.
- (9) The conditions of such a licence must also include a condition prohibiting the imposition, whether directly or indirectly, of the following—
- (a) charges on persons in respect of their reception in the United Kingdom of Channel 4;
  - (b) charges on persons in respect of their reception in the United Kingdom of any service consisting in the provision of assistance for disabled people in relation to programmes included in Channel 4; and
  - (c) charges on persons in respect of their reception in the United Kingdom of any service (other than one mentioned in paragraph (b)) which is an ancillary service in relation to so much of Channel 4 as is provided in digital form.
- (10) It shall be unlawful to impose a charge in contravention of a condition falling within subsection (9).

*Television licensable content services*

**232 Meaning of “television licensable content service”**

- (1) In this Part “television licensable content service” means (subject to section 233) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or both of the following means—
- (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or
  - (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it—
- (a) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public; and
  - (b) consists of television programmes or electronic programme guides, or both.
- (3) Where—
- (a) a service consisting of television programmes, an electronic programme guide or both (“the main service”) is provided by a person as a service to be made available for reception by members of the public, and

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- (b) that person provides the main service with other services or facilities that are ancillary to, or otherwise relate to, the main service and are also provided so as to be so available or in order to make a service so available,
- subsection (1) has effect as if the main service and such of the other services or facilities as are relevant ancillary services and are not two-way services constituted a single service falling within subsection (2).
- (4) Where a person providing the main service provides it with a facility giving access to another service, the other service shall also be taken for the purposes of this section as provided by that person with the main service only if what is comprised in the other service is something over which that person has general control.
- (5) A service is a two-way service for the purposes of this section if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—
- (a) for the transmission of visual images or sounds (or both) by the person providing the service to users of the service; and
  - (b) for the transmission of visual images or sounds (or both) by those users for reception by the person providing the service or by other users of the service.
- (6) 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;
- “relevant ancillary service”, in relation to the main service, means a service or facility provided or made available by the provider of the main service that consists of or gives access to—
- (a) assistance for disabled people in relation to some or all of the programmes included in the main service;
  - (b) a service (apart from advertising) which is not an electronic programme guide but relates to the promotion or listing of programmes so included; or
  - (c) any other service (apart from advertising) which is ancillary to one or more programmes so included and relates directly to their contents.

### **233 Services that are not television licensable content services**

- (1) A service is not a television licensable content service to the extent that it is provided with a view to its being broadcast by means of a multiplex service.
- (2) A service is not a television licensable content service to the extent that it consists of a service the provision of which is authorised by—
- (a) a licence to provide a television broadcasting service;
  - (b) the licence to provide the public teletext service; or
  - (c) a licence to provide additional television services.

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- (3) A service is not a television licensable content service to the extent that it is provided by means of an electronic communications service if—
- (a) it forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
  - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available television programmes or radio programmes (or both) for reception by members of the public.
- (4) A service is not a television licensable content service if it is a two-way service (within the meaning of section 232).
- (5) A service is not a television licensable content service if—
- (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
  - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)—
- (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
  - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a television licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—
- (a) persons who have a business interest in the programmes included in the service; or
  - (b) persons who are to receive the programmes for the purpose only of showing them to persons falling within sub-paragraph (a) or to persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or watching them—
- (a) for the purposes of a business carried on by him; or
  - (b) for the purposes of his employment.
- (9) In this section—
- “business premises”, in relation to a person, means premises at or from which any business of that person is carried on;
  - “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service;
  - “premises” includes a vehicle;
  - “vehicle” includes a vessel, aircraft or hovercraft.
- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and



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- (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

### **234 Modification of ss. 232 and 233**

- (1) The Secretary of State may by order modify any of the provisions of section 232 or 233 if it appears to him appropriate to do so having regard to any one or more of the following—
  - (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes;
  - (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
  - (c) the practicability of applying different levels of regulation in relation to different services;
  - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
  - (e) technological developments that have occurred or are likely to occur.
- (2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a television licensable content service for the purposes of the provisions of this Act that are so specified.
- (3) 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.

### **235 Licensing of television licensable content services**

- (1) The licence that is required for the purposes of section 13 of the 1990 Act in respect of a television licensable content service is a licence granted under Part 1 of that Act on an application complying with this section.
- (2) An application for a licence to provide a television licensable content service—
  - (a) must be made in such manner,
  - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
  - (c) must be accompanied by such fee (if any),as OFCOM may determine.
- (3) Where an application is made to OFCOM in accordance with subsection (2) for a licence to provide a television licensable content service, OFCOM are entitled to refuse the application only if—
  - (a) they are required to do so by section 3(3) of the 1990 Act (licences to be held only by fit and proper persons);
  - (b) they are required to do so by section 5 of the 1990 Act (restrictions on the holding of licences); or
  - (c) they are satisfied that, if the application were to be granted, the provision of the service would be likely to involve contraventions of—

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- (i) standards set under section 319 of this Act; or
  - (ii) the provisions of a code of practice in force under Part 5 of the 1996 Act (fairness).
- (4) The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.
- (5) A single licence to provide a television licensable content service may authorise the provision of a service which consists (to any extent) of different programmes to be broadcast simultaneously, or virtually so.
- (6) A licence to provide a television licensable content service shall continue in force until such time as it is surrendered or is revoked in accordance with any of the provisions of this Chapter or of the 1990 Act.

### **236 Direction to licensee to take remedial action**

- (1) This section applies if OFCOM are satisfied—
- (a) that the holder of a licence to provide a television licensable content service has contravened a condition of the licence; and
  - (b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).
- (2) OFCOM may direct the licence holder to include a correction or a statement of findings (or both) in the licensed service.
- (3) A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such time or times, as OFCOM may determine.
- (4) OFCOM are not to give a person a direction under this section unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.
- (5) Where the holder of a licence includes a correction or a statement of findings in the licensed service in pursuance of a direction under this section, he may announce that he is doing so in pursuance of such a direction.
- (6) If OFCOM are satisfied that the inclusion of a programme in a television licensable content service involved a contravention of a condition of the licence to provide that service, they may direct the holder of the licence not to include that programme in that service on any future occasion.
- (7) Where OFCOM—
- (a) give a direction to a BBC company under subsection (2), or
  - (b) receive representations from a BBC company by virtue of subsection (4),
- they must send a copy of the direction or representations to the Secretary of State.
- (8) 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 the conditions of his licence, is a statement of OFCOM's findings in relation to that contravention.

### **237 Penalties for contravention of licence condition or direction**

- (1) If OFCOM are satisfied that the holder of a licence to provide a television licensable content service—
  - (a) has contravened a condition of the licence, or
  - (b) has failed to comply with a direction given by OFCOM under or by virtue of a provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act,they may serve on him a notice requiring him to pay them, within a specified period, a specified penalty.
- (2) The amount of the penalty under this section must not exceed the maximum penalty given by subsection (3).
- (3) The maximum penalty is whichever is the greater of—
  - (a) £250,000; and
  - (b) 5 per cent. of the qualifying revenue for the licence holder's last complete accounting period falling within the period for which his licence has been in force ("the relevant period").
- (4) In relation to a person whose first complete accounting period falling within the relevant period has not ended when the penalty is imposed, subsection (3) is to be construed as referring to 5 per cent of the amount which OFCOM estimate will be the qualifying revenue for that accounting period.
- (5) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, are to apply for the purposes of subsection (3) as they apply for the purposes of Part 1 of that Act.
- (6) OFCOM are not to serve a notice on a person under subsection (1) unless they have given him a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.
- (7) Where OFCOM—
  - (a) serve a notice on a BBC company under subsection (1), or
  - (b) receive representations from a BBC company by virtue of subsection (6),they must send a copy of the notice or representations to the Secretary of State.
- (8) An exercise by OFCOM of their powers under subsection (1) does not preclude any exercise by them of their powers under section 236 in respect of the same contravention.
- (9) The Secretary of State may by order substitute a different sum for the sum for the time being specified in subsection (3)(a).
- (10) No order is to be made containing provision authorised by subsection (9) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **238 Revocation of television licensable content service licence**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—

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- (a) that the holder of the licence is in contravention of a condition of the licence or is failing to comply with a direction given by them under or by virtue of any provision of this Part, Part 1 of the 1990 Act or Part 5 of the 1996 Act; and
  - (b) that the contravention or failure, if not remedied, would justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1);
  - (b) specify the respects in which, in their opinion, the licence holder is contravening the condition or failing to comply with the direction; and
  - (c) state that OFCOM will revoke the licence unless the licence holder takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified.
- (3) If, at the end of the period specified in a notice under subsection (2), OFCOM are satisfied—
  - (a) that the person on whom the notice was served has failed to take the steps specified in it, and
  - (b) that it is necessary in the public interest to revoke his licence,they shall serve a notice on him revoking his licence.
- (4) If OFCOM are satisfied in the case of a licence to provide a television licensable content service—
  - (a) that the holder of the licence has ceased to provide the licensed service, and
  - (b) that it is appropriate for them to do so,they shall serve a notice on him revoking his licence.
- (5) If OFCOM are satisfied—
  - (a) that the holder of a licence to provide a television licensable content service has provided them, in connection with his application for the licence, with information which was false in a material particular, or
  - (b) that, in connection with his application for the licence, the holder of such a licence withheld any material information with the intention of causing them to be misled,they may serve a notice on him revoking his licence.
- (6) A notice under this section revoking a licence to provide a television licensable content service takes effect as from the time when it is served on the licence holder.
- (7) OFCOM are not to serve a notice on a person under this section unless they have given him a reasonable opportunity of making representations to them about the matters in respect of which it is served.
- (8) Where OFCOM—
  - (a) serve a notice on a BBC company under this section, or
  - (b) receive representations from a BBC company by virtue of subsection (7),they must send a copy of the notice or representations to the Secretary of State.
- (9) Nothing in this section applies to the revocation of a licence in exercise of the power conferred by section 239.

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### **239 Action against licence holders who incite crime or disorder**

- (1) OFCOM must serve a notice under subsection (2) on the holder of a licence to provide a television licensable content service if they are satisfied—
  - (a) that the holder of the licence has included in the service one or more programmes containing material likely to encourage or to incite the commission of crime, or to lead to disorder;
  - (b) that, in doing so, he has contravened conditions contained by virtue of Chapter 4 of this Part in the licence to provide that service; and
  - (c) that the contravention is such as to justify the revocation of the licence.
- (2) A notice under this subsection must—
  - (a) state that OFCOM are satisfied as mentioned in subsection (1);
  - (b) specify the respects in which, in their opinion, the licence holder has contravened the condition mentioned in paragraph (b) of that subsection;
  - (c) state that OFCOM may revoke the licence after the end of the period of twenty-one days beginning with the day on which the notice is served on the licence holder; and
  - (d) inform the licence holder of his right to make representations to OFCOM within that period about the matters appearing to OFCOM to provide grounds for revoking the licence.
- (3) The effect of a notice under subsection (2) shall be to suspend the licence as from the time when the notice is served on the licence holder until either—
  - (a) the revocation of the licence takes effect; or
  - (b) OFCOM decide not to revoke the licence.
- (4) If, after considering any representations made to them by the licence holder within the period specified for the purposes of subsection (2)(c), OFCOM are satisfied that it is necessary in the public interest to revoke the licence, they shall serve a notice of revocation on the licence holder.
- (5) The revocation of a licence by a notice under subsection (4) takes effect from such time as may be specified in the notice.
- (6) A notice of revocation under subsection (4) must not specify a time for it to take effect that falls before the end of the period of twenty-eight days beginning with the day on which the notice is served on the licence holder.

### **240 Abolition of separate licences for certain television services**

- (1) The authorisations that are to be capable of being granted on or after the television transfer date by or under a licence under Part 1 of the 1990 Act do not include the authorisation of the provision, as such, of—
  - (a) any satellite television service (as defined, disregarding its repeal by this Act, in section 43(1) of the 1990 Act); or
  - (b) any licensable programme service (as defined, disregarding its repeal by this Act, in section 46(1) of that Act).
- (2) Subsection (1) does not affect OFCOM's power, by means of a licence authorising the provision of a service falling within section 211(1), to authorise the provision of so much of any formerly regulated television service as is comprised in the licensed service.

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- (3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a television licensable content service—
- (a) shall have effect, on and after the television transfer date, as a licence under Part 1 of the 1990 Act authorising the provision of the television licensable content service comprised in the licensed service;
  - (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of this Chapter or of the 1990 Act; and
  - (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the television transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 3 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (4)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.
- (5) In this section—
- “formerly regulated television service” means a service mentioned in subsection (1); and
- “relevant existing licence”, means any licence which—
- (a) was granted by the Independent Television Commission under Part 1 of the 1990 Act before the television transfer date; and
  - (b) is in force immediately before the television transfer date as a licence authorising the provision of a formerly regulated service.

### *Television multiplex services*

#### **241 Television multiplex services**

- (1) Subject to the following provisions of this section, references in Part 1 of the 1996 Act to a multiplex service, other than those comprised in express references to a general multiplex service, shall have effect as references to any service (“a television multiplex service”) which—
- (a) falls within subsection (2); and
  - (b) is provided for broadcasting for general reception but otherwise than from a satellite.
- (2) A service falls within this subsection if—
- (a) it consists in the packaging together of two or more services which include at least one relevant television service and are provided for inclusion together in the service by a combination of the relevant information in digital form; or
  - (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one service is for the time being comprised in digital form in what is provided.
- (3) The provision, at a time after the commencement of this section, of a television multiplex service the provision of which is not authorised by or under a licence under Part 1 of the 1996 Act is not to be an offence under section 13 of the 1990 Act.
- (4) Accordingly, after the commencement of this section, a licence under Part 1 of the 1996 Act shall be required for the provision of a television multiplex service only in

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so far as it is required for the purposes of a limitation falling within subsection (5) that is contained in a wireless telegraphy licence, or is deemed to be so contained.

- (5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only television multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 1 of the 1996 Act.
- (6) Where immediately before the coming into force of this section—
- (a) a television multiplex service is licensed under Part 1 of the 1996 Act; and
  - (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,
- that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).
- (7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the television multiplex service in question—
- (a) ceases to be licensed under Part 1 of the 1996 Act in respect of that service, or
  - (b) ceases to exist,
- OFCOM may revoke the wireless telegraphy licence.
- (8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.
- (9) In subsection (2) “relevant television service” means any of the following—
- (a) any Channel 3 service in digital form;
  - (b) Channel 4 in digital form;
  - (c) Channel 5 in digital form;
  - (d) S4C Digital;
  - (e) any digital television programme service;
  - (f) the digital public teletext service.

## **242 Composition of services in television multiplexes**

- (1) In subsection (1) of section 12 of the 1996 Act—
- (a) in paragraph (c), (digital programme services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 18” there shall be inserted “, by the BBC”;
  - (b) in paragraph (d), (digital additional services included in multiplex must be provided by a licence holder or EEA broadcaster), after “section 25” there shall be inserted “, by the BBC”;
  - (c) after that paragraph there shall be inserted—
    - “(da) that the only digital sound programme services broadcast under the licence are services provided by the holder of a national digital sound programme licence (within the meaning of section 60) or by the BBC;”
  - (d) in paragraph (e), after “digital programme services” there shall be inserted “, digital sound programme services”;
  - (e) in paragraph (f), after “digital programme service” there shall be inserted “, a digital sound programme service”; and

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- (f) for paragraph (h) (conditions as to composition of multiplex service), there shall be substituted—
- “(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).”
- (2) After that subsection there shall be inserted—
- “(1A) The services falling within this subsection are—
- (a) qualifying services;
- (b) digital programme services licensed under this Part or provided by the BBC;
- (c) digital sound programme services provided by the BBC;
- (d) programme-related services; and
- (e) relevant technical services.”
- (3) In subsection (3) of that section—
- (a) after the words “digital programme services”, in the first place where they occur, there shall be inserted “or digital sound programme services”; and
- (b) for “digital programme services broadcast under the licence” there shall be substituted “so much of what is broadcast under the licence as consists of digital programme services, or of such services together with digital sound programme services,”.
- (4) In subsection (4) of that section (interpretation of subsection (1)(h))—
- (a) for “(1)(h)” there shall be substituted “(1A)”;
- (b) in paragraph (a), for “the qualifying teletext service” there shall be substituted “the digital public teletext service”;
- (c) in paragraph (b)(i), after “the 1990 Act)” there shall be inserted “, or in one or more digital sound programme services provided by the BBC,”
- (d) in paragraph (c), for “digital programme services” there shall be substituted “services falling within subsection (1A) which are comprised in the multiplex in question”.
- (5) After that subsection there shall be inserted—
- “(4A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 90 per cent. as OFCOM—
- (a) consider appropriate; and
- (b) specify in the condition.”
- (6) In subsection (5) of that section (power to change percentage in subsection (1)(h)), for “(1)(h)” there shall be substituted “(4A)”.

### **243 Powers where frequencies reserved for qualifying services**

- (1) The Secretary of State may by order provide, in relation to the matters mentioned in subsection (2)—
- (a) for any or all of the provisions of sections 7 to 16 and of sections 18 and 19 of the 1996 Act to have effect with the modifications specified in the order; and



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- (b) for provision made by the order to have effect in place of any or all of those provisions.
- (2) Those matters are—
  - (a) licences under Part 1 of the 1996 Act, and
  - (b) the awarding and grant of such licences,in a case in which the licence is, or is to be, a licence to provide a service for broadcasting on any one or more reserved frequencies.
- (3) An order under this section may require OFCOM to include conditions falling within subsection (4) in any Broadcasting Act licence to provide a television multiplex service to be broadcast on a reserved frequency.
- (4) Conditions falling within this subsection are conditions that OFCOM consider appropriate for securing that, in consideration for the making by any relevant public service broadcaster of such payments as are from time to time—
  - (a) agreed between the broadcaster and the holder of the licence to provide the television multiplex service, or
  - (b) in default of agreement, determined by OFCOM in accordance with the order, the holder of that licence will use digital capacity reserved in accordance with conditions imposed under section 12 of the 1996 Act or any order under this section for the broadcasting of services provided by that broadcaster.
- (5) Subsection (3) is not to be construed as restricting the provision that may be made under subsection (1).
- (6) A frequency is a reserved frequency for the purposes of this section if it is one as respects which OFCOM have made a determination, in exercise of their functions under the enactments relating to the management of the radio spectrum, that the frequency should be reserved for the broadcasting of television multiplex services.
- (7) In this section “relevant public service broadcaster” means any of the following—
  - (a) the holder of a licence to provide a Channel 3 service;
  - (b) C4C;
  - (c) the holder of a licence to provide Channel 5;
  - (d) the Welsh Authority;
  - (e) the public teletext provider.

#### *Local digital television services*

### **244 Local digital television services**

- (1) The Secretary of State may by order provide for—
  - (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to sound services), or
  - (b) any provision of Part 1 of the 1990 Act or of Part 1 of the 1996 Act (regulation of television services),to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

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- (2) The Secretary of State is not to make an order under this section in relation to a description of services except where—
  - (a) the description is of services to be provided in digital form with a view to their being included in a television multiplex service;
  - (b) the description is confined to services falling within one or both of subsections (3) and (4); and
  - (c) the Secretary of State is satisfied that the making of an order under this section in relation to that description of services will make possible, facilitate or encourage the provision of services so falling.
- (3) Services fall within this subsection if they are—
  - (a) intended for reception only at a particular establishment or otherwise on particular premises; or
  - (b) provided for the purposes only of a particular event.
- (4) Services fall within this subsection if the Secretary of State considers that they are services in relation to which all the following conditions are satisfied—
  - (a) they are intended for reception only within a particular area or locality;
  - (b) their provision meets, or would meet, the needs of the area or locality where they are received;
  - (c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and
  - (d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.
- (5) Services shall be taken for the purposes of subsection (4) to meet the needs of an area or locality if, and only if—
  - (a) their provision brings social or economic benefits to the area or locality, or to different categories of persons living or working in that area or locality; or
  - (b) they cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of people who do so live and work).
- (6) In subsections (4) and (5), the references to persons living or working in an area or locality include references to persons undergoing education or training in that area or locality.
- (7) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.
- (8) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.
- (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.

## CHAPTER 3

### REGULATORY STRUCTURE FOR INDEPENDENT RADIO SERVICES

#### *Preliminary*

#### **245 Regulation of independent radio services**

- (1) It shall be a function of OFCOM to regulate the following services in accordance with this Act, the 1990 Act and the 1996 Act—
  - (a) services specified in subsection (2) that are provided from places in the United Kingdom and otherwise than by the BBC;
  - (b) services so specified that do not fall within paragraph (a) but are provided by a person, other than the BBC, whose principal place of business is in the United Kingdom.
- (2) The services referred to in subsection (1)(a) are—
  - (a) sound broadcasting services to which subsection (3) applies;
  - (b) radio licensable content services;
  - (c) additional radio services;
  - (d) radio multiplex services;
  - (e) digital sound programme services;
  - (f) digital additional sound services.
- (3) This subsection applies to a sound broadcasting service which—
  - (a) is provided with a view to its being broadcast otherwise than only from a satellite; and
  - (b) is a national service, local service or restricted service.
- (4) For the purposes of this section—
  - (a) a service is a national service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in any such minimum area of the United Kingdom as may be determined in accordance with section 98(2) of the 1990 Act;
  - (b) a service is a local service if it is a sound broadcasting service which (without being a national service) is provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception in a particular area or locality in the United Kingdom; and
  - (c) a service is a restricted service if it is a sound broadcasting service provided as mentioned in subsection (3)(a) with a view to its being broadcast for reception—
    - (i) within a particular establishment in the United Kingdom or at another defined location in the United Kingdom; or
    - (ii) for the purposes of a particular event taking place within the United Kingdom.
- (5) The services that are to be treated for the purposes of this section as provided from places in the United Kingdom include every radio licensable content service which would not fall to be so treated apart from this subsection but which—
  - (a) is provided with a view to its being broadcast from a satellite;

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- (b) is a service the broadcasting of which involves its transmission to the satellite by means of an electronic communications network from a place in the United Kingdom; and
  - (c) is not a service the provision of which is licensed or otherwise authorised under the laws of another EEA State.
- (6) The services that are to be treated as so provided also include every service provided by a BBC company, a C4 company or an S4C company.
- (7) A reference in subsection (4)(b) to an area of the United Kingdom does not include an area which comprises or includes the whole of England.

#### **246 Abolition of function of assigning radio frequencies**

The Secretary of State shall cease to have any function under the 1990 Act or the 1996 Act of assigning frequencies—

- (a) for any of the purposes of Part 3 of the 1990 Act (regulation of radio services); or
- (b) for the purposes of the provision of any radio multiplex services.

#### *Radio licensable content services*

#### **247 Meaning of “radio licensable content services”**

- (1) In this Part “radio licensable content service” means (subject to section 248) any service falling within subsection (2) in so far as it is provided with a view to its availability for reception by members of the public being secured by one or both of the following means—
- (a) the broadcasting of the service (whether by the person providing it or by another) from a satellite; or
  - (b) the distribution of the service (whether by that person or by another) by any means involving the use of an electronic communications network.
- (2) A service falls within this subsection if it—
- (a) consists of sound programmes; and
  - (b) is provided (whether in digital or in analogue form) as a service that is to be made available for reception by members of the public.

#### **248 Services that are not radio licensable content services**

- (1) A service is not a radio licensable content service to the extent that—
- (a) it is provided with a view to its being broadcast by means of a multiplex service;
  - (b) it is a sound broadcasting service to which subsection (3) of section 245 applies; or
  - (c) it is comprised in a television licensable content service.
- (2) A service is not a radio licensable content service to the extent that it is provided by means of an electronic communications service if—

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- (a) it forms part only of a service provided by means of that electronic communications service or is one of a number of services access to which is made available by means of a service so provided; and
  - (b) the service of which it forms part, or by which it may be accessed, is provided for purposes that do not consist wholly or mainly in making available services of radio programmes or television programmes (or both) for reception by members of the public.
- (3) A service is not a radio licensable content service if it is a two-way service.
- (4) A service is a two-way service for the purposes of subsection (3) if it is provided by means of an electronic communications network and an essential feature of the service is that the purposes for which it is provided involve the use of that network, or a part of it, both—
  - (a) for the transmission of sounds by the person providing the service to users of the service; and
  - (b) for the transmission of sounds by those users for reception by the person providing the service or by other users of the service.
- (5) A service is not a radio licensable content service if—
  - (a) it is distributed by means of an electronic communications network only to persons all of whom are on a single set of premises; and
  - (b) that network is wholly within those premises and is not connected to an electronic communications network any part of which is outside those premises.
- (6) For the purposes of subsection (5)—
  - (a) a set of premises is a single set of premises if, and only if, the same person is the occupier of all the premises; and
  - (b) two or more vehicles are capable of constituting a single set of premises if, and only if, they are coupled together.
- (7) A service is not a radio licensable content service if it is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being—
  - (a) persons who have a business interest in the programmes included in the service; or
  - (b) persons who are to receive the programmes for the purpose only of allowing them to be listened to by persons falling within sub-paragraph (a) or by persons all of whom are on the business premises of the person receiving them.
- (8) For the purposes of subsection (7) a person has a business interest in programmes if he has an interest in receiving or listening to them—
  - (a) for the purposes of a business carried on by him; or
  - (b) for the purposes of his employment.
- (9) In this section—
  - “business premises”, in relation to a person, means premises at or from which any business of that person is carried on;
  - “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service;
  - “premises” includes a vehicle;

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“vehicle” includes a vessel, aircraft or hovercraft.

- (10) References in this section, in relation to a person, to a business include references to—
- (a) any business or other activities carried on by a body of which he is a member and the affairs of which are managed by its members; and
  - (b) the carrying out of any functions conferred on that person, or on any such body, by or under any enactment.

#### **249 Modification of ss. 247 and 248**

- (1) The Secretary of State may by order modify any of the provisions of section 247 or 248 if it appears to him appropriate to do so having regard to any one or more of the following—
  - (a) the protection which is expected by members of the public as respects the contents of sound programmes;
  - (b) the practicability of applying different levels of regulation in relation to different services;
  - (c) the financial impact for providers of particular services of any modification of the provisions of that section; and
  - (d) technological developments that have occurred or are likely to occur.
- (2) The Secretary of State may also by order provide, in cases where it otherwise appears to him appropriate to do so, that a description of service specified in the order is not to be treated as a radio licensable content service for the purposes of the provisions of this Act that are so specified.
- (3) 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.

#### **250 Licensing of radio licensable content services**

- (1) The licence that is required for the purposes of section 97 of the 1990 Act in respect of a radio licensable content service is a licence granted under Part 3 of that Act on an application complying with this section.
- (2) An application for a licence under Part 3 of the 1990 Act to provide a radio licensable content service—
  - (a) must be made in such manner,
  - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
  - (c) must be accompanied by such fee (if any),
 as OFCOM may determine.
- (3) Sections 109 to 111A of the 1990 Act (enforcement of licences) apply in relation to licences for radio licensable content services as they apply in relation to licences under Chapter 2 of Part 3 of the 1990 Act but with—
  - (a) the substitution of the word “or” for paragraph (b) of subsection (1) of section 110 (power to shorten licence period); and
  - (b) the omission of “(b)” in subsection (4) of that section and of subsection (5) of that section (which refer to the power disapplied by paragraph (a) of this subsection).

## **251 Abolition of separate licences for certain sound services**

- (1) The authorisations that are to be capable of being granted on or after the radio transfer date by or under a licence under Part 3 of the 1990 Act do not include the authorisation of the provision, as such, of—
  - (a) any satellite service (as defined, disregarding its repeal by this Act, in section 84(2)(b) of the 1990 Act); or
  - (b) any licensable sound programme service (as defined, disregarding its repeal by this Act, in section 112(1) of that Act).
- (2) Subsection (1) does not affect OFCOM’s power, by means of a licence authorising the provision of a service falling within section 245(1), to authorise the provision of so much of any formerly regulated radio service as is comprised in the licensed service.
- (3) So much of any relevant existing licence as authorises the provision of a service which consists in or includes a radio licensable content service—
  - (a) shall have effect, on and after the radio transfer date, as a licence under Part 3 of the 1990 Act authorising the provision of the radio licensable content service comprised in the licensed service;
  - (b) shall so have effect as a licence which, notwithstanding its terms and conditions, is to continue in force until such time as it is surrendered or is revoked in accordance with provisions of the 1990 Act; and
  - (c) shall otherwise have effect as a licence on the same terms and conditions as those on which it had effect immediately before the radio transfer date.
- (4) It shall be the duty of OFCOM to exercise their power under section 86 of the 1990 Act to make such variations of any licence having effect in accordance with subsection (3) of this section as (after complying with subsection (5)(b) of that section) they consider appropriate for the purpose of performing their duty under section 263 of this Act.
- (5) In this section—

“formerly regulated radio service” means a service mentioned in subsection (1); and

“relevant existing licence” means any licence which—

  - (a) was granted by the Radio Authority under Part 3 of the 1990 Act before the radio transfer date; and
  - (b) is in force immediately before the radio transfer date as a licence authorising the provision of a formerly regulated service.

### *Licence periods etc.*

## **252 Extension of licence periods**

- (1) In subsection (1) of section 86 of the 1990 Act (period of licences), for the words from “for such period” onwards there shall be substituted “(subject to a suspension of the licence under section 111B)—
  - (a) in the case of a licence to provide radio licensable content services, until such time as it is surrendered or is revoked in accordance with any of the following provisions of this Part; and
  - (b) in any other case, until whichever is the earlier of any such time or the end of the period specified in the licence.”

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(2) For subsection (3) of that section there shall be substituted—

“(3) A licence to provide a local or national service or to provide an additional service must specify a period of no more than twelve years as the period for which it is to be in force.”

### **253 Extension and modification of existing licences**

- (1) A person who immediately before the radio transfer date holds a pre-transfer national licence or a pre-transfer local licence is entitled, in accordance with the following provisions of this section, to apply to OFCOM for an extension of the licence.
- (2) The period for which a licence may be extended on such an application is a period ending not more than four years after the end of the period for which it was granted originally or (if it has been renewed) for which it was last renewed.
- (3) An application under subsection (1) may only be made in the period which—
  - (a) begins three years before the date on which the licence would otherwise expire; and
  - (b) ends three months before the day that OFCOM have determined to be the day by which they would need to publish a notice under section 98(1) or 104(1) of the 1990 Act if they were proposing to grant a fresh licence to take effect from that date.
- (4) A determination for the purposes of subsection (3)(b)—
  - (a) must be made at least one year before the day determined; and
  - (b) must be notified by OFCOM to the person who holds the licence in question.
- (5) An application under subsection (1)—
  - (a) must be made in such manner,
  - (b) must contain such information about the applicant, his business and the service he proposes to provide, and
  - (c) must be accompanied by such fee (if any),
 as OFCOM may determine.
- (6) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (7), they shall—
  - (a) modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit; and
  - (b) make such other modifications as appear to them to be necessary for the purpose of securing that the provisions of the licence correspond to those that would be contained in a national sound broadcasting licence or (as the case may be) a local sound broadcasting licence granted after the radio transfer date.
- (7) Those matters are—
  - (a) the ability of the licence holder to maintain the service for the period of the extension; and
  - (b) the likelihood of a contravention by the licence holder of a requirement imposed by—
    - (i) a condition included in the licence by virtue of section 106 of the 1990 Act; or



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- (ii) a condition of the licence varied in accordance with subsection (8).
- (8) For the purposes of the modification under this section of a national licence, OFCOM—
- (a) shall determine an amount which is to be payable to OFCOM by the licence holder in respect of the first complete calendar year falling within the period for which the licence is extended; and
  - (b) may, in relation to any accounting period of the licence holder during the period of the extension, modify a condition included in the licence in pursuance of section 102(1)(c) of the 1990 Act (additional payments to be made in respect of national licences) by specifying a different percentage of the qualifying revenue for that accounting period from that which was previously specified in the condition.
- (9) The amount determined by OFCOM under subsection (8)(a) must be the amount which, in OFCOM’s opinion, would have been the cash bid of the licence holder were the licence (instead of being extended) being granted afresh on an application made in accordance with section 98 of the 1990 Act.
- (10) For the purposes of subsection (8)(b)—
- (a) different percentages may be specified for different accounting periods; and
  - (b) the percentages that may be specified for an accounting period include a nil percentage.
- (11) The modifications set out in accordance with subsection (6)(b) must secure—
- (a) that the amount falling to be paid under the conditions of the licence for each calendar year subsequent to that for which an amount has been determined in accordance with subsection (8)(a) is the amount so determined as increased by the appropriate percentage; and
  - (b) that such adjustments as are appropriate are made as respects sums already paid in respect of any year or accounting period to which a modification under subsection (8) applies.
- (12) Where OFCOM have granted a person’s application under this section, the extensions and modifications take effect only if that person—
- (a) has been notified by OFCOM of their proposals for modifications by virtue of subsection (6)(b) or (8)(b), and for the making of a determination under subsection (8)(a); and
  - (b) has consented to the extension on the terms proposed.
- (13) In this section—
- “the appropriate percentage” has the same meaning as in section 102 of the 1990 Act;
  - “national sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a sound broadcasting service which, under subsection (4) (a) of section 245 is a national service for the purposes of that section;
  - “pre-transfer licence” means a licence which was granted under Part 3 of the 1990 Act before the radio transfer date and has not been modified under this section or renewed at any time on or after that date;
  - “pre-transfer local licence” means a pre-transfer licence which was granted as a local licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act);

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“pre-transfer national licence” means a pre-transfer licence granted or last renewed as a national licence (within the meaning of Part 3 of the 1990 Act, as it had effect without the amendments made by this Act).

#### **254 Renewal of local licences**

In section 104A(5) of the 1990 Act (conditions of renewal of local licence), after paragraph (b) there shall be inserted—

- “(c) they are satisfied that the period for which the nominated local digital sound programme service will be available for reception and the times at which it will be available will not be significantly different, week by week, from those for which and at which the licensed local service will be broadcast;”.

#### **255 Extension of special application procedure for local licences**

In section 104B(1) of the 1990 Act (special application procedure for local licences for areas with 4.5 million residents or fewer)—

- (a) the word “and” shall be inserted at the end of paragraph (a); and  
 (b) paragraph (b) (which excludes areas with more than 4.5 million residents) shall cease to have effect.

#### *Provision of simulcast radio services*

#### **256 Definition of simulcast radio services**

- (1) In section 41 of the 1996 Act (meaning of simulcast radio service), for subsection (2) there shall be substituted—

“(2) In this Part, a “simulcast radio service” means a service provided by a person for broadcasting in digital form and corresponding to a service which is a national service within the meaning of Part 3 of the 1990 Act and is provided by that person.”

- (2) In subsection (1) of section 126 of the 1990 Act (interpretation of Part 3), before the definition of “sound broadcasting service” there shall be inserted—

““simulcast radio service” means a simulcast radio service within the meaning given by section 41(2) of the Broadcasting Act 1996 for the purposes of Part 2 of that Act;”.

- (3) After that subsection there shall be inserted—

“(1A) For the purposes of this Part a simulcast radio service corresponds to a national service if, in accordance with section 41(3) of the Broadcasting Act 1996, it falls to be treated as so corresponding for the purposes of Part 2 of that Act.”

#### **257 Promotion of simulcast radio services**

- (1) Chapter 2 of Part 3 of the 1990 Act (sound broadcasting services) shall be amended as follows.

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

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- (2) In section 98(1) (notices of proposals to grant national licences), after paragraph (b) (ii) there shall be inserted—
- “(ia) the digital capacity that is likely, in their opinion, to be available from the holders of national radio multiplex licences for the broadcasting of a simulcast radio service corresponding to the service;”.
- (3) In section 98(3) (applications for national licences), after paragraph (a) there shall be inserted—
- “(aa) the applicant’s proposals (if any) for providing a simulcast radio service corresponding to the service;”.
- (4) In section 98(7) (construction of section), after “this section” there shall be inserted—
- ““national radio multiplex licence” has the same meaning as in Part 2 of the Broadcasting Act 1996; and”.
- (5) In section 100 (award of national licence to person submitting highest cash bid), for subsection (2) there shall be substituted—
- “(1A) If, in a case in which one or more of the applicants has made a proposal to provide a simulcast radio service corresponding to the service to be licensed (a “simulcast applicant”), the highest cash bid is made by an applicant who is not a simulcast applicant, OFCOM may—
- (a) disregard the requirement imposed by subsection (1); and
- (b) award the licence to the simulcast applicant whose cash bid is the highest of the bids submitted by simulcast applicants.
- (2) Where—
- (a) two or more applicants for a licence have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid, or
- (b) two or more simulcast applicants have submitted cash bids specifying an identical amount and that amount is higher than the amount of every other bid submitted by a simulcast applicant,
- OFCOM must invite those applicants and (in a case falling within paragraph (b)) every applicant who has made a higher bid to submit further cash bids in respect of that licence.
- (2A) OFCOM may decide not to invite an applicant to submit a further cash bid under subsection (2) if—
- (a) the applicant is not a simulcast applicant and they propose to exercise their power under subsection (1A); or
- (b) they propose to exercise their power under subsection (3).
- (2B) Subsection (2A) is not to be construed as preventing OFCOM from making a decision to exercise their power under subsection (1A) or (3) after they have received further bids in response to invitations under subsection (2).
- (2C) In this Part references to a person’s cash bid, in relation to a person who has submitted a further cash bid in pursuance of subsection (2), have effect as references to his further bid.”
- (6) After section 100 there shall be inserted—

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

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### **“100A Licence conditions relating to simulcast radio services**

Where OFCOM award a national licence to a person whose application for that licence included proposals to provide a simulcast radio service, that licence must include a condition requiring the licence holder—

- (a) to provide, from a date specified in the licence, a simulcast radio service corresponding to the licensed service; and
- (b) to do all that he can to secure the broadcasting of that service.”

*Multiplexes broadcasting sound programmes*

## **258 Radio multiplex services**

- (1) Subject to the following provisions of this section, references in Part 2 of the 1996 Act to a radio multiplex service shall have effect as references to any service which—
  - (a) falls within subsection (2);
  - (b) is provided for broadcasting for general reception but otherwise than from a satellite; and
  - (c) is not a television multiplex service.
- (2) A service falls within this subsection if—
  - (a) it consists in the packaging together (with or without other services) of two or more relevant sound services which are provided for inclusion together in that service by a combination of the relevant information in digital form; or
  - (b) it is a service provided with a view to its being a service falling within paragraph (a) but is one in the case of which only one relevant sound service is for the time being comprised in digital form in what is provided.
- (3) The provision, at a time after the commencement of this section, of a radio multiplex service the provision of which is not authorised by or under a licence under Part 2 of the 1996 Act is not to be an offence under section 97 of the 1990 Act.
- (4) Accordingly, after the commencement of this section, a licence under Part 2 of the 1996 Act shall be required for the provision of a radio multiplex service only in so far as it is required for the purposes of a limitation falling within subsection (5) which is contained in a wireless telegraphy licence, or is deemed to be so contained.
- (5) A limitation falls within this subsection, in relation to a wireless telegraphy licence, if it provides that the only radio multiplex services that are authorised to be broadcast using the station or apparatus to which the licence relates are those that are licensed under Part 2 of the 1996 Act.
- (6) Where immediately before the coming into force of this section—
  - (a) a radio multiplex service is licensed under Part 2 of the 1996 Act; and
  - (b) that service is one broadcast using a station or apparatus the use of which is authorised by a wireless telegraphy licence,
 that wireless telegraphy licence shall be deemed to contain a limitation falling within subsection (5).

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- (7) In any case where a wireless telegraphy licence is deemed by virtue of subsection (6) to contain a limitation falling within subsection (5) and the person providing the radio multiplex service in question—
- (a) ceases to be licensed under Part 2 of the 1996 Act in respect of that service, or
  - (b) ceases to exist,
- OFCOM may revoke the wireless telegraphy licence.
- (8) Subsection (7) is not to be construed as restricting the powers of revocation exercisable apart from this section.
- (9) In subsection (2) “relevant sound service” means any of the following—
- (a) a digital sound programme service;
  - (b) a simulcast radio service; and
  - (c) a digital additional sound service.

## **259 Composition of services in radio multiplexes**

- (1) Section 54 of the 1996 Act (conditions attached to radio multiplex licences) shall be amended as follows.
- (2) For paragraph (h) of subsection (1) (conditions as to composition of service) there shall be substituted—
- “(h) that, while the licence is in force, at least the required percentage of the digital capacity on the frequency or frequencies on which the service is broadcast is used, or left available to be used, for the broadcasting of services falling within subsection (1A).”
- (3) After that subsection there shall be inserted—
- “(1A) The services falling within this subsection are—
    - (a) digital sound programme services;
    - (b) simulcast radio services;
    - (c) programme-related services; and
    - (d) relevant technical services.”
- (4) In subsection (2) (meaning of services referred to in paragraph (h) of subsection (1))—
- (a) for “paragraph (1)(h)” there shall be substituted “subsection (1A)”; and
  - (b) in sub-paragraph (i), for the words from “(within” to “1990 Act” there shall be substituted “(within the meaning of section 245 of the Communications Act 2003)”.
- (5) After that subsection there shall be inserted—
- “(2A) In subsection (1)(h), the reference to the required percentage is a reference to such percentage equal to or more than 80 per cent. as OFCOM—
    - (a) consider appropriate; and
    - (b) specify in the condition.”
- (6) In subsection (3) (power to vary percentage in subsection (1)(h))—
- (a) for “subsection (1)” there shall be substituted “subsection (2A)”; and
  - (b) for “paragraph (h) of that subsection” there shall be substituted “that subsection”.

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## **260 Digital sound services for inclusion in non-radio multiplexes**

- (1) In section 60(1)(a) of the 1996 Act (national digital sound programme services defined as services broadcast with a view to being broadcast by means of a national radio multiplex service), after “national radio multiplex service” there shall be inserted “, by means of a television multiplex service or by means of a general multiplex service”.
- (2) In section 63(1) of the 1996 Act (meaning of digital additional sound service), for paragraph (a) there shall be substituted—
  - “(a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public;
  - (aa) is so provided with a view to the broadcasting being by means of a radio multiplex service or by means of a general multiplex service; and”.
- (3) After subsection (3) of section 63 of the 1996 Act there shall be inserted—
 

“(3A) In this section “available for reception by members of the public” shall be construed in accordance with section 361 of the Communications Act 2003.”
- (4) In section 72(1) of the 1996 Act (interpretation of Part 2)—
  - (a) after the definitions of “digital sound programme service” and “digital sound programme licence” there shall be inserted—
 

““general multiplex service” has the same meaning as in Part 3 of the Communications Act 2003;”
  - (b) after the definition of “technical service” there shall be inserted—
 

““television multiplex service” has the meaning given by section 241 of the Communications Act 2003.”

## **261 Renewal of radio multiplex licences**

In section 58(2) of the 1996 Act (renewal for twelve years of radio multiplex licences granted within six years of commencement)—

- (a) for “which is granted within six years” there shall be substituted “granted within ten years”; and
- (b) for the words from “for a period” onwards there shall be substituted—
  - “(a) in the case of a licence granted within six years of that commencement, for a period of twelve years beginning with the date on which it would otherwise expire; and
  - (b) in any other case, for a period of eight years beginning with that date.”

*Community radio*

## **262 Community radio**

- (1) The Secretary of State may by order provide for—
  - (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to television), or

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- (b) any provision of Part 3 of the 1990 Act or of Part 2 of the 1996 Act (regulation of radio services),  
to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.
- (2) The Secretary of State is not to make an order under this section in relation to a description of services unless—
- (a) the description is of services to be provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons; and
- (b) he considers that the provision of services of that description confer, or would confer, significant benefits on the public or on the communities for which they are provided.
- (3) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.
- (4) The power, by an order under this section, to make incidental, supplemental or consequential provision in connection with provision authorised by subsection (1) includes power to make incidental, supplemental or consequential provision modifying provisions of the 1990 Act, the 1996 Act or this Act that are not mentioned in that subsection.
- (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.

## 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

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- (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.
- (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



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- (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;
  - (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);

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- (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;
  - (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;

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- (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
  - (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—

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- (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—
- (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

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- 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.
- (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.

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- (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
  - (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



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- (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.

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- (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).
- (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

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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—
- (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—
  - (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;

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- (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
  - (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).

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- (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

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- (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.
- (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



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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

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may by order specify as describing the programmes that are to be original productions for the purposes of this section.

- (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.

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- (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.

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- (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
  - (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.

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

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## **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—
  - (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

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- 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.
- (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 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

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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;
  - (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—
  - (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.

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### *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—

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“(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

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“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.

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- (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,



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- (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

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- (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

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- (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.

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- (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)—

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- (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.

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- (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;

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- (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

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- (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

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- (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.

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- (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.

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- (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;

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- (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;

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- (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.



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- (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

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(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.

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- (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.

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### **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).

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- (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.

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- (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;”

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- (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—

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- (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;



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- (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

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- (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.

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- (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

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

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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;

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

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- (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.

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

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*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

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

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- (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.

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

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*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.

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- (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

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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.

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

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- (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.

## CHAPTER 5

### MEDIA OWNERSHIP AND CONTROL

#### *Restrictions on licence holders*

#### **348 Modification of disqualification provisions**

- (1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), paragraphs (a) and (b) of paragraph 1(1) (individuals and bodies from outside the member States) shall cease to have effect.
- (2) In sub-paragraph (1) of paragraph 2 of that Part (disqualification of religious bodies etc.), for the words before paragraph (a) there shall be substituted—

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- “2 (1) The following persons are disqualified persons in relation only to licences falling within sub-paragraph (1A)—”.
- (3) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted—
- “(1A) A licence falls within this sub-paragraph if it is—
- (a) a Channel 3 licence;
  - (b) a Channel 5 licence;
  - (c) a national sound broadcasting licence;
  - (d) a public teletext licence;
  - (e) an additional television service licence;
  - (f) a television multiplex licence; or
  - (g) a radio multiplex licence.
- (1B) In this paragraph—
- “additional television service licence” means a licence under Part 1 of this Act to provide an additional television service within the meaning of Part 3 of the Communications Act 2003;
- “Channel 3 licence” and “Channel 5 licence” each has the same meaning as in Part 1 of this Act;
- “national sound broadcasting licence” means a licence to provide a sound broadcasting service (within the meaning of Part 3 of this Act) which is a national service (within the meaning of that Part);
- “public teletext licence” means a licence to provide the public teletext service (within the meaning of Part 3 of the Communications Act 2003);
- “radio multiplex licence” means a licence under Part 2 of the Broadcasting Act 1996 to provide a radio multiplex service within the meaning of that Part; and
- “television multiplex licence” means a licence under Part 1 of the Broadcasting Act 1996 to provide a multiplex service within the meaning of that Part.”
- (4) In paragraph 4(2)(b) of that Part (bodies that are relevant bodies for the purposes of general disqualification on grounds of undue influence) for “as mentioned in paragraph (a)(i) or (ii) above” there shall be substituted—
- “(i) by a person falling within paragraph 1(1)(c) to (g) above;
  - (ii) by a person falling within paragraph 3 above; or
  - (iii) by two or more persons taken together each of whom falls within sub-paragraph (i) or (ii) (whether or not they all fall within the same sub-paragraph).”
- (5) The Secretary of State may by order make provision—
- (a) for repealing paragraph 2 of Part 2 of Schedule 2 to the 1990 Act; or
  - (b) for making such other modifications of that paragraph and any enactment referring to it as he thinks fit.
- (6) Before making an order under subsection (5) (other than one that is confined to giving effect to recommendations made by OFCOM in a report of a review under section 391), the Secretary of State must consult OFCOM.

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

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- (7) No order is to be made containing provision authorised by subsection (5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **349 Licence holding by local authorities**

- (1) In Part 2 of Schedule 2 to the 1990 Act (disqualification from holding licences), in paragraph 1 (which includes a disqualification for local authorities)—

- (a) in sub-paragraph (1), for “sub-paragraph (2)” there shall be substituted “sub-paragraph (1A)”; and
- (b) after that sub-paragraph there shall be inserted—

“(1A) Where a service is provided exclusively for the purposes of the carrying out of the functions of a local authority under section 142 of the Local Government Act 1972 (provision by local authorities of information relating to their activities), a person is disqualified by virtue of sub-paragraph (1) in relation to a licence to provide that service only if he would be so disqualified disregarding paragraph (c) of that sub-paragraph.”

- (2) In section 142 of the Local Government Act 1972 (c. 70) (provision by local authorities of information relating to their activities), after subsection (1A) there shall be inserted—

“(1AA) A local authority may—

- (a) for the purpose of broadcasting or distributing information falling within subsection (1AB), provide an electronic communications network or electronic communications service, or
- (b) arrange with the provider of such a network or service for the broadcasting or distribution of such information by means of the network or service.

(1AB) Information falls within this subsection, in relation to a local authority, if it is one or both of the following—

- (a) information concerning the services within the area of the authority that are provided either by the authority themselves or by other authorities mentioned in subsection (1B) below;
- (b) information relating to the functions of the authority.

(1AC) Nothing in subsection (1AA) entitles a local authority to do anything in contravention of a requirement or restriction imposed by or under—

- (a) the Wireless Telegraphy Act 1949,
- (b) the Broadcasting Act 1990,
- (c) the Broadcasting Act 1996, or
- (d) the Communications Act 2003,

and in that subsection “electronic communications network” and “electronic communications service” each has the same meaning as in the Communications Act 2003.”

- (3) In section 2(1) of the Local Government Act 1986 (c. 10) (restriction on publication by a local authority of material designed to affect support for a political party), after “publish” there shall be inserted “, or arrange for the publication of,”.

### **350 Relaxation of licence-holding restrictions**

- (1) Parts 3 to 5 of Schedule 2 to the 1990 Act (restrictions on accumulations of interests and on licence holding by newspaper proprietors and public telecommunications providers) shall cease to have effect.
- (2) In each of sections 5 and 88 of the 1990 Act and of sections 5 and 44 of the 1996 Act (under which the provisions of Schedule 2 to the 1990 Act are given effect), for paragraph (b) of subsection (1) there shall be substituted—
  - “(b) that a person does not become the holder of a licence if requirements imposed by or under Schedule 14 to the Communications Act 2003 would be contravened were he to do so; and
  - (c) that those requirements are not contravened in the case of a person who already holds a licence.”
- (3) Schedule 14 (which provides for the imposition of requirements which, in the case of Channel 3 services and certain radio services, replace those imposed by or under Parts 3 and 4 of Schedule 2 to the 1990 Act and requires approval for the holding of certain licences by religious bodies etc.) shall have effect.
- (4) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 11 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of licences for the provision of any local services (within the meaning of Part 3 of that Act).
- (5) The Secretary of State must not by order under section 411 appoint a day falling before the commencement day for paragraph 12 of Schedule 14 as the day for the coming into force of the repeal by this Act of any of the provisions of Parts 3 and 4 of Schedule 2 to the 1990 Act so far as they relate to the holding of local digital sound programme licences or the provision of local digital sound programme services.
- (6) In this section “the commencement day”, in relation paragraph 11 or 12 of Schedule 14, means the day on which the first order to be made under that paragraph comes into force.

### *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

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- (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
  - (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



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- 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;
  - (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.

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### **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
  - (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 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—

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- (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”—
- (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.

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- (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.

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- (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
  - (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.

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- (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.
- (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.

#### *Meaning of control*

### **357 Meaning of “control”**

- (1) In paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act (control where a person will be able, without having at least a 50 per cent. interest in it, to have the affairs of a body conducted in accordance with his wishes)—
  - (a) for “will be able” there shall be substituted “would (if he chose to) be able in most cases or in significant respects”; and
  - (b) for “the affairs” there shall be substituted “affairs”.
- (2) It shall be the duty of OFCOM to publish guidance setting out their intentions concerning the inclusion of particular matters in the matters that they will take into account when determining whether a person has control of a body, within the meaning of paragraph 1(3)(b) of Part 1 of Schedule 2 to the 1990 Act.
- (3) OFCOM may from time to time revise the guidance issued by them under this section.
- (4) OFCOM must publish the guidance and, where they revise it, the revised guidance 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 it.

## **CHAPTER 6**

### **OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES**

#### *Annual report on television and radio*

### **358 Annual factual and statistical report**

- (1) It shall be the duty of OFCOM—

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- (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 every subsequent period of twelve months,
- to satisfy for that period the review and reporting requirements of this section.
- (2) For any period those obligations are—
- (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom during that period; and
  - (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.
- (3) In carrying out a review for any period under this section, OFCOM must consider, in particular, each of the following—
- (a) the extent to which programmes included during that period in television and radio services are representative of what OFCOM consider to be the principal genres for such programmes;
  - (b) the extent to which codes made by OFCOM under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have been complied with during that period;
  - (c) the extent to which any guidance given by OFCOM under section 314 has been followed during that period;
  - (d) any trends appearing or operating during that period in the size and behaviour of the audience for radio and television services;
  - (e) the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced;
  - (f) what it is appropriate to achieve by conditions and duties under section 277 and paragraphs 1 and 7 of Schedule 12 and the effectiveness for that purpose of the conditions and duties for the time being in force;
  - (g) whether it would be appropriate to recommend to the Secretary of State that he exercises any of his powers under that section or those paragraphs;
  - (h) the extent to which work on independent productions (within the meaning of that section and those paragraphs) that are produced in the United Kingdom is done in a range of production centres outside the M25 area;
  - (i) any issues relating to intellectual property in programmes that have arisen or been of significance during that period;
  - (j) developments in technology that have occurred or become important during that period and are relevant to the provision, broadcasting or distribution of television and radio programmes;
  - (k) the availability during that period of persons with skills that are used or likely to be useful in connection with the provision of television and radio services and the production of programmes for inclusion in such services;
  - (l) the availability during that period of facilities for the provision of training in such skills.
- (4) Every report under this section must set out OFCOM's findings on their consideration of the matters mentioned in subsection (3).
- (5) Every report prepared by OFCOM under this section must be published by them—



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- (a) as soon as practicable after its preparation is complete; and
  - (b) in such manner as they consider appropriate.
- (6) OFCOM's duties under this section are in addition to their duties under section 264.

#### *Community radio and local digital television*

### **359 Grants to providers**

- (1) OFCOM may make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 262.
- (2) The Secretary of State may by order provide that OFCOM may also make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 244.
- (3) A grant made by virtue of this section may be made on such terms and conditions, and shall become repayable to OFCOM in such circumstances, as may be specified by OFCOM when making the grant.
- (4) A person is not—
  - (a) by reason of the making to him of a grant by virtue of this section, or
  - (b) by reason of any terms or conditions (including any provisions for repayment) subject to which such a grant is or has been made to him,to be a disqualified person by virtue of any provision of Schedule 2 to the 1990 Act in relation to a licence mentioned in subsection (5).
- (5) Those licences are—
  - (a) a licence under Part 1 of the 1990 Act, or under Part 1 of the 1996 Act, which is granted in accordance with any provision made by an order under section 244 of this Act; and
  - (b) a licence under Part 3 of the 1990 Act, or under Part 2 of the 1996 Act, which is granted in accordance with any provision made by an order under section 262 of this Act.
- (6) 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.

#### *Supplemental provisions of Part 3*

### **360 Amendments of the 1990 and 1996 Acts**

- (1) In section 201 of the 1990 Act (programme services), in subsection (1)—
  - (a) for paragraphs (a) to (bb) there shall be substituted—
    - “(aa) any service which is a programme service within the meaning of the Communications Act 2003;”
  - (b) in paragraph (c), for “a telecommunication system” there shall be substituted “an electronic communications network (within the meaning of the Communications Act 2003)”.
- (2) For subsection (2) of that section there shall be substituted—

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“(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as—

- (a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);
- (b) satisfies the conditions in section 248(5) of that Act; or
- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.

(2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as—

- (a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);
- (b) satisfies the conditions in section 233(5) of that Act; or
- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act.”

- (3) Schedule 15 (which makes minor and consequential amendments of the 1990 Act and the 1996 Act for purposes connected with the other provisions of this Chapter) shall have effect.

### **361 Meaning of “available for reception by members of the public”**

- (1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which—
- (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
  - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- (2) A service is not to be treated as available for reception by members of the public if each of the three conditions set out in subsections (3) to (5) is satisfied.
- (3) The first condition is that the service is confined to the provision of a facility—
- (a) for the making by users of the service of individual selections of the material to be received; and
  - (b) for receiving whatever is selected.
- (4) The second condition is that it is only in response to a selection made by a user of the service that anything (whether encrypted or not)—
- (a) is broadcast from a satellite or by means of a multiplex service; or
  - (b) is otherwise transmitted by means of an electronic communications network.
- (5) The third condition is that the individual selections that may be made do not include any that are limited to electing to be one of the recipients of material that is or has been offered for reception on the basis—

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- (a) that it is material selected by the provider of the service for the purpose of being made available for broadcasting or distribution simultaneously, or virtually so, to an audience consisting of users of the service; and
  - (b) that it will be broadcast or distributed simultaneously, or virtually so, to every member of the audience (if any) that consists of the users of the service who have elected to receive it.
- (6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom).
- (7) The Secretary of State may by order modify any of the provisions of this section if it appears to him appropriate to do so having regard to any one or more of the following—
- (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes or sound programmes;
  - (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
  - (c) the practicability of applying different levels of regulation in relation to different services;
  - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
  - (e) technological developments that have occurred or are likely to occur.
- (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) In this section “multiplex service” means a television multiplex service, a radio multiplex service or a general multiplex service.

### **362 Interpretation of Part 3**

- (1) In this Part—
- “additional radio service” means an additional service within the meaning given by section 114(1) of the 1990 Act for the purposes of Part 3 of that Act;
  - “additional television service” (except in the expression “digital additional television service”) means an additional service within the meaning given by section 48 of the 1990 Act for the purposes of Part 1 of the 1990 Act;
  - “analogue teletext service” is to be construed in accordance with section 218(4);
  - “ancillary service” has the same meaning as it has, by virtue of section 24(2) of the 1996 Act, in Part 1 of that Act;
  - “assistance for disabled people” means any of the following—
    - (a) subtitling;
    - (b) audio-description for the blind and partially sighted; and
    - (c) presentation in, or translation into, sign language;

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“available for reception by members of the public” is to be construed in accordance with section 361;

“the BBC Charter and Agreement” means the following documents, or any one or more of them, so far as they are for the time being in force—

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;
- (c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Act) for purposes that include the regulation of activities carried on by the BBC;

“BBC company” means—

- (a) a body corporate which is controlled by the BBC; or
- (b) a body corporate in which the BBC or a body corporate controlled by the BBC is (to any extent) a participant;

“C4 company” means—

- (a) a body corporate which is controlled by C4C; or
- (b) a body corporate in which C4C or a body corporate controlled by C4C is (to any extent) a participant;

“Channel 3”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1 of the 1990 Act (see section 71 of that Act);

“Channel 3 licence” means a licence to provide a Channel 3 service;

“a Channel 3 service” means a television broadcasting service comprised in Channel 3;

“digital additional sound service” means a digital additional service within the meaning given by section 63 of the 1996 Act for the purposes of Part 2 of that Act;

“digital additional television service” means a digital additional service within the meaning given by section 24(1) of the 1996 Act for the purposes of Part 1 of that Act;

“the digital public teletext service” means so much of the public teletext service as consists of a service provided in digital form;

“digital sound programme licence” and “digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“digital television programme service” means a digital programme service within the meaning given by section 1(4) of the 1996 Act for the purposes of Part 1 of that Act;

“EEA State” means the United Kingdom or any other State that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 22nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993, and “another EEA State” means an EEA State other than the United Kingdom;

“general multiplex service” means a multiplex service within the meaning of section 175 which is neither a television multiplex service nor a radio multiplex service;

“initial expiry date” has the meaning given by section 224;

“licensed public service channel” means any of the following services (whether provided for broadcasting in digital or in analogue form)—

- (a) any Channel 3 service;
- (b) Channel 4;

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(c) Channel 5;

“local digital sound programme licence” and “local digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 60 and 72 of that Act);

“local radio multiplex licence” and “local radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“local sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a local sound broadcasting service;

“local sound broadcasting service” means a sound broadcasting service which, under subsection (4)(b) of section 245, is a local service for the purposes of that section;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25);

“national Channel 3 service” means a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided;

“national digital sound programme service” has the same meaning as in Part 2 of the 1996 Act;

“national radio multiplex licence” and “national radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“networking arrangements” has the meaning given by section 290;

“OFCOM’s standards code” means any code or codes for the time being in force containing standards set by OFCOM under section 319 (whether originally or by way of any revision of any standards previously so set);

“provision”, in relation to a service, is to be construed (subject to subsection (3)) in accordance with subsection (2), and cognate expressions are to be construed accordingly;

“the public teletext provider” means—

(a) subject to paragraph (b), the person holding the licence under section 219 to provide the public teletext service; and

(b) in relation to a time before the grant of the first licence to be granted under that section, the person holding the Broadcasting Act licence to provide the existing service (within the meaning of section 221);

“the public teletext service” means the service the provision of which is required to be secured in accordance with section 218;

“qualifying service” has the same meaning as in Part 1 of the 1996 Act (see section 2(2) of that Act);

“radio licensable content service” has the meaning given by section 247;

“radio multiplex service” has the same meaning as (by virtue of section 258 of this Act) it has in Part 2 of the 1996 Act;

“radio programme service” means any of the following—

(a) a service the provision of which is licensed under Part 3 of the 1990 Act;

(b) a digital sound programme service the provision of which is licensed under Part 2 of the 1996 Act;

(c) a digital additional sound service the provision of which is licensed under section 64 of the 1996 Act;

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“regional Channel 3 licence” means a licence under Part 1 of the 1990 Act to provide a regional Channel 3 service;

“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under section 14(2) of the 1990 Act;

“restricted television service” means any restricted service within the meaning given by section 42A of the 1990 Act for the purposes of Part 1 of that Act;

“S4C” and “S4C Digital” means the services so described in section 204(3);

“S4C company” means—

- (a) a body corporate which is controlled by the Welsh Authority; or
- (b) a body corporate in which that Authority or a body corporate controlled by that Authority is (to any extent) a participant;

“simulcast radio service” means any simulcast radio service within the meaning given by section 41(2) of the 1996 Act for the purposes of Part 2 of that Act;

“sound broadcasting service” has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);

“standards objectives” has the meaning given by section 319(2);

“subtitling” means subtitling for the deaf or hard of hearing, whether provided by means of a teletext service or otherwise;

“television broadcasting service” means (subject to subsection (4)) a service which—

- (a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form);
- (b) is provided so as to be available for reception by members of the public; and
- (c) is not—
  - (i) a restricted television service;
  - (ii) a television multiplex service;
  - (iii) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; or
  - (iv) a service provided under the authority of a licence under Part 1 of the 1996 Act to provide a digital television programme service;

“television licensable content service” has the meaning given by section 232 of this Act;

“television multiplex service” has meaning given by section 241(1) of this Act to a multiplex service within the meaning of Part 1 of the 1996 Act;

“television programme service” means any of the following—

- (a) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) a restricted television service;

“the Television without Frontiers Directive” means Council Directive [89/552/EEC](#) on the Co-ordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit

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of television broadcasting activities, together with any modifications of that Directive by Directive 97/36/EC of the European Parliament and the Council;

“text service” means any teletext service or other service in the case of which the visual images broadcast or distributed by means of the service consist wholly or mainly of non-representational images.

(2) In the case of any of the following services—

- (a) a television broadcasting service or sound broadcasting service,
- (b) the public teletext service;
- (c) a television licensable content service or radio licensable content service,
- (d) a digital television programme service or digital sound programme service,
- (e) a restricted television service,
- (f) an additional television service or additional radio service,
- (g) a digital additional television service or a digital additional sound service,

the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service).

(3) For the purposes of this Part—

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by C4C does not include its provision by a C4 company;
- (c) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC, C4C or the Welsh Authority over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service shall be disregarded for the purposes of subsection (2).

(4) References in this Part to a television broadcasting service do not include references to any text service.

(5) References in this Part to imposing a charge on a person in respect of his reception of a service in, or in a part of, the United Kingdom include references to imposing charges—

- (a) for his use of the service at a place in the United Kingdom or in that part of it;
- (b) for an entitlement of his to receive it at such place;
- (c) for the use of a facility by means of which he exercises such an entitlement; or
- (d) for the service’s being made available for reception by him at such a place.

(6) In subsection (1) “controlled” and “participant” each has the same meaning as in Schedule 2 to the 1990 Act.

(7) In this section “non-representational images” means visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.