

# COMMUNICATIONS ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Television and Radio Services**

#### *Chapter 1: The BBC, C4C, the Welsh Authority and the Gaelic Media Service*

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

425. This section provides for OFCOM to have the function of regulating the BBC's services to the extent that there is provision for them to do so in the BBC Charter and Agreement (as defined by section 362(1)), in this Act and in Part 5 of the Broadcasting Act 1996 (that is, in relation to unfairness and unwarranted infringement of privacy). For the purposes of that regulatory function, OFCOM may, where authorised by the Charter and Agreement, act on behalf of the Secretary of State.
426. The existing Agreement between the Secretary of State and the BBC supplements the Royal Charter in setting out in more detail the provision and content of the BBC's services. It is intended that the Agreement will be amended to give effect to the new regulatory obligations placed on the BBC and to provide for OFCOM to impose financial penalties in the event of the BBC failing to comply with them. Under *subsection (3)* of this section, the BBC are required to pay to OFCOM any penalties which OFCOM impose for contraventions of provision made by or under Part 3 of the Act or the Charter and Agreement. The maximum penalty that OFCOM may impose under such a power is £250,000, but the Secretary of State will be able to change this figure by order: *subsections (5) to (7)*. The BBC must also pay to OFCOM such sums in respect of the carrying out of OFCOM's functions in relation to the BBC as may be agreed between the BBC and OFCOM (or, in the absence of agreement, set by the Secretary of State): *subsection (4)*.

#### *Section 199: Functions of C4C*

427. The Channel Four Television Corporation are able to engage in activities which appear to them to be appropriate to carry on in association with their primary functions and to be connected (other than merely in financial terms) with activities undertaken by them for the carrying out of those functions. Those functions are securing the continued provision of Channel 4 and the fulfilment of the Channel's public service remit set out in section 265(3), as described in the notes to that section below. The Corporation may also do such things and enter into such transactions as appear to them incidental or conducive to the carrying out of their statutory functions.
428. Under *subsection (3)* the Corporation will cease to have powers to establish or acquire interests in "qualifying companies" under section 24(5)(b) and (6) of the Broadcasting Act 1990.
429. **Schedule 9** provides a framework for the approval and enforcement of arrangements about the carrying out of the Corporation's activities.

430. **Paragraph 1** requires OFCOM to notify the Corporation that, within a period specified in the notification, the Corporation must submit to OFCOM proposals for arrangements that will apply to the relevant licence period. OFCOM must do this as soon as practicable after the commencement of this Schedule and as soon as practicable in the last twelve months preceding each date on which the Channel 4 licence would expire if not renewed.
431. Where the Corporation have received a notification, they must submit proposals to OFCOM setting out the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out of their primary functions (i.e. the provision of Channel 4 and the fulfilment of its public service remit) are identified, evaluated and properly managed. The proposals must include the arrangements that the Corporation consider appropriate for securing the transparency objectives set out in paragraph 2(4). They may relate in particular to the list of matters specified in paragraph 2(5), e.g. the management of new ventures, the assessment of risks.
432. OFCOM must consider the proposed arrangements and approve them, approve them with modifications, or require the Corporation to submit revised proposals. OFCOM may review the arrangements once during each licence period, either as a single review of all of the arrangements or two separate reviews, one relating to the arrangements to secure the transparency objectives and one relating to other matters. OFCOM must also publish the arrangements.
433. The Corporation must act in accordance with the approved arrangements. OFCOM have powers to enforce the arrangements and may impose a penalty, which may not exceed 3 per cent. of the Corporation's qualifying revenue, if they are contravened.
- \**Qualifying revenue* has the same meaning as in section 19(2) to (6) of and Part 1 of Schedule 7 to the Broadcasting Act 1990 with any necessary modifications.
434. In carrying out their functions under Schedule 9, OFCOM must have regard to the need to secure, so far as reasonably practicable, that all significant risks that the Corporation's other activities will have an adverse effect on the provision of Channel 4 or its public service remit are identified, evaluated and properly managed.

### ***Section 200: Removal of members of C4C***

435. This section gives OFCOM the power, after consulting the Secretary of State, to remove members of the Channel Four Television Corporation appointed by them.

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

436. This section repeals sections 26 and 27 of the Broadcasting Act 1990 (revenue deficits and excesses of Channel Four Television Corporation to be met or distributed to providers of Channel 3 services) in respect of any year ending after the commencement of this section.

### ***Section 202: Borrowing limit for C4C***

437. The Secretary of State may by order limit the amount of money that the Channel Four Television Corporation are permitted to borrow. Before making an order under this section, the Secretary of State must consult the Corporation and obtain the consent of the Treasury. The Corporation must not borrow money in excess of any limit set by the Secretary of State. The effect of this will be only to circumscribe new borrowing – the setting of a limit at a figure below that of the Corporation's actual outstanding borrowing would not require the Corporation to take positive steps to reduce their outstanding borrowing to a level which did not exceed the limit.

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

438. OFCOM are to regulate the services provided by the Welsh Authority to the extent provided by Part 5 of the Broadcasting Act 1996 and the present Act.

***Section 204: Welsh Authority's function of providing S4C and S4C Digital***

439. The Welsh Authority, as currently constituted, shall continue to exist. However, their functions as described under section 57 of the Broadcasting Act 1990, will be replaced with the function in *subsection (2)*, namely of providing high quality television programmes for reception in Wales. The Welsh Authority must continue to provide S4C and may continue to provide S4C Digital. However, under *subsections (8) and (9)*, the Secretary of State may by order require the Welsh Authority to provide S4C in digital rather than analogue form, to merge S4C and S4C Digital and/or to provide the whole or part of the merged service in both analogue and digital form for a period specified in the order.
440. *Subsection (5)* imposes a duty on the Welsh Authority to ensure that S4C and S4C Digital are public services used for the dissemination of information, education and entertainment. The Welsh Authority may provide programming subtitles and other ancillary services for their S4C programmes. They may also provide assistance for disabled people and other ancillary services for their S4C Digital services.

***Section 205: Powers to provide other services***

441. This section confers on the Welsh Authority the power to provide certain services in addition to S4C and S4C Digital. *Subsection (1)* prohibits the Welsh Authority from providing any television programme service (other than S4C and S4C Digital) unless its provision is approved by an order made by the Secretary of State and it is a public service of high quality used for the dissemination of information, education or entertainment wholly or mainly to the Welsh public. Any television programme services provided under this section must broaden the existing range of public television programme services in Wales.

\*The meaning of a television programme service is given in section 362(1).

442. *Subsection (2)* allows the Welsh Authority to provide services other than television programme services or sound services, provided they are public services of high quality used for the dissemination of information, education or entertainment which will be made available wholly or mainly to the Welsh public, or for use in Wales, and have been approved by the Secretary of State. Examples of the types of service that the Welsh Authority may provide under this subsection include (but are not limited to) an interactive service delivered via the Internet. Paragraph 27(1) of Schedule 18 stipulates that the Welsh Authority are not required to obtain the Secretary of State's approval for the continued provision of any service that they are providing before section 205 comes into effect.
443. In the course of providing a service approved by the Secretary of State under section 205, the Welsh Authority may under *subsection (7)* also provide: assistance for disabled people in relation to programmes included in the service, services ancillary to programmes included in the service and related to their content, and other types of ancillary services offered in a digital format.
444. Any programme service approved by the Secretary of State under this section must contain a substantial proportion of programmes in the Welsh language.

***Section 206: Other activities of Welsh Authority***

445. This section enables the Welsh Authority to carry on activities appearing to them to be activities which it is appropriate for them to carry on in association with the function of providing S4C, S4C Digital and any other service approved by the Secretary of State

under section 205, or to be connected (other than merely in financial terms) with that function. Prior to carrying out such activities, the Welsh Authority must obtain the approval of the Secretary of State under *subsection (2)*. The types of activities that may be approved by her under *subsection (2)* include those needed to secure, and those provided in connection with, the provision of licensable services by an S4C company (e.g. a company controlled by the Authority: see section 362(1)), such as the formation of a company to provide a programme service, but do not include the provision of a licensable service. *Subsection (6)* amends the provisions in the Broadcasting Act 1990 which govern the power of the Welsh Authority to do things incidental or conducive to the carrying out of their functions. Paragraph 27(2) and (3) of Schedule 18 provides that the Secretary of State's approval is not required for the continuation of activities undertaken by the Welsh Authority or an S4C company before this section comes into effect.

\*A *licensable service* is defined in *subsection (7)* as an independent television or independent radio service that would be regulated under section 211 or 245 if provided by an S4C company.

### ***Section 207: Welsh Authority finances***

446. It is unlawful under *subsection (2)* for the Welsh Authority to charge people in Wales for the reception or use of any of their public services, any assistance provided to disabled persons for programmes included in their public services or any of the ancillary services that they provide in a digital format.

\*Under *subsection (9)*, the Welsh Authority's public services are S4C, S4C Digital and other services approved by the Secretary of State under section 205.

447. *Subsection (3)* states that the power of the Welsh Authority to do anything that is conducive or incidental to the carrying out of their functions includes the power to borrow money. However, they may not do so without the approval of the Secretary of State and the consent of the Treasury. The Welsh Authority must also pay such fees towards the carrying out of OFCOM's functions as may be agreed between the Authority and OFCOM (or, in the absence of agreement, as are set by the Secretary of State).

448. *Subsection (7)* amends section 61 of the Broadcasting Act 1990 so that the Secretary of State may increase the annual grant paid to the Welsh Authority if she is satisfied that additional funding is appropriate in light of the costs they incur in providing their public services and broadcasting or distributing such services.

449. *Subsection (8)* amends section 61A of the Broadcasting Act 1990 so that the Welsh Authority must use the money in their public service fund only for the provision of television programme services that are "public services" as defined by *subsection (9)*. *Subsection (8)* also amends section 61A of the Broadcasting Act 1990 so that the first broadcast of any programme funded from the public service fund must be on one of the Authority's public television services.

### ***Section 208: The Gaelic Media Service***

450. This section renames the Gaelic Broadcasting Committee (Comataidh Craolaidh Gàidhlig), originally the Gaelic Television Committee (Comataidh Telebhisein Gàidhlig) established under section 183 of the Broadcasting Act 1990, as the Gaelic Media Service (Seirbheis nam Meadhanan Gàidhlig). It also inserts new subsections (3B), (4), (4A) and (4B) into section 183. These set out the functions and powers of the Gaelic Media Service who must secure that a wide and diverse range of high quality programmes in Gaelic are broadcast or otherwise transmitted so as to be available for reception in Scotland.

451. The Gaelic Media Service may apply the Gaelic Broadcasting Fund for the purpose of, or any purpose connected with, the carrying out of their functions: new subsection (4). In carrying out their functions, the Gaelic Media Service may finance, or engage in, the making of television and sound programmes in Gaelic to be broadcast or transmitted so as to be available for reception in Scotland, provide or arrange training in relation to programme-making and carry out research to discover the types of television and sound programmes that the Gaelic-speaking community would like to be broadcast. The Gaelic Media Service may not provide any of the services specified in subsection (4B).
452. [Paragraph 28](#) of Schedule 18 provides for transitional provisions in respect of the membership of the Comataidh Craolaidh Gàidhlig. Paragraph 29 of that Schedule provides for the continuation of the Multiplex Licence (Broadcasting of Programmes in Gaelic) Order 1996 ([S.I. 1996/2758](#)).

### ***Section 209: Membership of the Service***

453. This section inserts a new section 183A into the Broadcasting Act 1990 that deals with the composition of the Gaelic Media Service. The Service must consist of no more than 12 members, each of whom must be appointed by OFCOM, having regard to the matters listed in *subsection (6)* of section 183A, and must be approved by the Secretary of State for Scotland. OFCOM must appoint one member as chairman. One member must be nominated, respectively, by the BBC, Highlands and Islands Enterprise and the Bòrd Gàidhlig na h-Alba (Gaelic Development Agency).
454. OFCOM must also secure that the members of the Services are able adequately to represent the interests of (i) providers of regional Channel 3 services for areas wholly in Scotland or such other areas as are determined by OFCOM under section 184(4) (b) of the Broadcasting Act 1990; (ii) the independent radio and television production industries in Scotland; and (iii) other persons and bodies concerned with the promotion and use of the Gaelic language.
455. Schedule 19 to the Broadcasting Act 1990 (Gaelic Broadcasting Committee: supplementary provisions) (as amended by section 210 and paragraph 73 of Schedule 15) also applies to the Gaelic Media Service.

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

456. This section amends Schedule 19 (supplementary provisions) to the Broadcasting Act 1990.

### ***Chapter 2: Regulatory Structure for Independent Television Services***

457. [Paragraph 30](#) of Schedule 18 provides that, subject to any express provision of this Act, any pre-transfer Broadcasting Act licence shall continue to have effect on the same terms and conditions, and for the same period, as it would have done had this Act not been passed.

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

458. This section specifies the television services that OFCOM are required to regulate. The first group of services comprises television broadcasting services (other than those broadcast only from a satellite), restricted television services and additional television services broadcast or provided from places in the United Kingdom, and television licensable content services and digital television programme services provided by persons under United Kingdom jurisdiction for the purposes of the Television without Frontiers Directive (see below). OFCOM are not under this section to regulate these services where they are provided by the BBC or the Welsh Authority. The second group of services comprises television multiplex services provided from places in the United Kingdom and digital additional television services provided by persons under United

Kingdom jurisdiction. OFCOM are not under this section to regulate these services where they are provided by the BBC.

\*“*television broadcasting service*” is defined in section 362 as a service (other than any text service) which consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form), and which is provided so as to be available for reception by members of the general public. It does not include a restricted television service, a television multiplex service, a service provided under the authority of a licence to provide a television licensable content service, or a service provided under the authority of a licence to provide a digital television programme service.

\*“*restricted television service*” has the same meaning as in section 42A of the Broadcasting Act 1990 (as amended by Schedule 19 to this Act), namely a service which consists in the broadcasting of television programmes for a particular establishment or other defined location, or a particular event, in the United Kingdom. The label in the 1990 Act is simply a “restricted service”: the word “television” has been added here, and also in relation to digital television programme services and digital additional television services, to distinguish them from radio-related services which, in the 1990 and 1996 Acts are given the same name.

\*the meaning of “*television licensable content services*” is given in section 232 and is described in more detail in the notes to that section below.

\*a “*digital additional television service*” is defined under section 24 of the Broadcasting Act 1996, which is amended by Schedule 15 to this Act, as being any service provided with a view to its being broadcast to the public in digital form by means of a television or general multiplex service, but not including a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital television programme service, a digital sound programme service, an ancillary service, or a technical service.

\*a “*digital television programme service*” means any digital programme service within the meaning of section 1(4) of the Broadcasting Act 1996, namely a service consisting in the provision of television programmes (together with any ancillary services as defined by section 24(2) of that Act) with a view to its being broadcast in digital form so as to be available for reception by members of the public (see the amendment in paragraph 74 of Schedule 15). It does not include a teletext service, any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures (except to the extent that either of these services are ancillary to the television programme) or a qualifying service.

\*persons under United Kingdom jurisdiction for the purposes of the Television without Frontiers Directive are primarily persons established in the United Kingdom. A provider is deemed to be established in the United Kingdom if its head office is located here and this is where editorial decisions are taken, or if a significant part of the workforce engaged in the television broadcasting activity operates in the United Kingdom, or if this is where the provider first began broadcasting, assuming that the provider still maintains a stable and effective link with the economy of the United Kingdom. If these tests are not met, persons established under UK jurisdiction may also, in descending order, be persons using a frequency granted by the United Kingdom, persons who use a satellite capacity appertaining to the United Kingdom, and persons who use a satellite up-link situated in the United Kingdom. References to the Television without Frontiers Directive are to Council Directive [89/552/EEC](#), as amended by Directive [97/36/EC](#).

\*“*additional television service*” is defined in section 48 of the Broadcasting Act 1990 as any service which consists in the sending of electronic signals for

transmission by wireless telegraphy by means of the use of spare capacity within the signals carrying any television broadcasting service.

\*“*qualifying service*” has the meaning given in section 2 of the Broadcasting Act 1996.

\*an “*ancillary service*” is defined in section 24 of the Broadcasting Act 1996, as amended by paragraph 93(3) of Schedule 15 to this Act, and refers to assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by a licence-holder, a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided or any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents.

\*a “*technical service*” is a service provided for the encryption or decryption of digital programme services, digital sound programme services, or digital additional services and specified in an order made by the Secretary of State (see section 24(3) of the Broadcasting Act 1996, as amended by paragraph 93(4) of Schedule 15 to this Act).

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

459. The Secretary of State shall no longer have the power to assign television frequencies for independent television services which are licensable under Part 1 of the Broadcasting Act 1990, for S4C, or for television multiplex services which are licensable under Part 1 of the Broadcasting Act 1996. The function of managing radio spectrum (from which the function of assigning frequencies derives) is transferred by the Act to OFCOM.

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

460. From the television transfer date the provision of a local delivery service shall no longer require a licence under Part 2 of the Broadcasting Act 1990.

\*a “*local delivery service*” is defined in section 72 of the 1990 Act to mean (broadly) a service of a kind specified by the Secretary of State consisting in the use of a telecommunication system (whether run by the person providing the local delivery service or not) for the delivery of various television and radio services listed in section 72(2). Licences are awarded on a system of cash bids.

\*“*television transfer date*” means the date on which the ITC’s functions under the Broadcasting Acts of 1990 and 1996 are transferred to OFCOM.

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

461. Any Channel 3 or a Channel 5 licence granted after the television transfer date must provide for the licensed service to be broadcast digitally. Such a licence may also contain such conditions requiring the service also to be provided in analogue form as OFCOM consider appropriate. In such cases the programming (apart from advertisements) should replicate that of the digital service (see *subsection (4)*).

462. The conditions included in the licence must enable compliance with any directions given from time to time by the Secretary of State about the continuation of analogue services.

463. Any licence taking effect before “the initial expiry date”(which is 31st December 2014 or any later date set by the Secretary of State under section 224) must remain in force until the end of that day. Any licence taking effect thereafter must remain in force from the time when it takes effect until the end of the licensing period beginning or current at that time.

\*the meaning of “*the initial expiry date*” can be found in section 224. *Subsection (6)* of section 214 provides that a licensing period is the period beginning with the commencement of that section and ending with the initial expiry date, or any subsequent period of 10 years beginning with the end of the previous licensing period.

464. There can be no charge levied for the use of a licensed service or for any related assistance for disabled people or for ancillary services: *subsections (8) and (9)*.

***Section 215: Replacement of existing Channel 3 and Channel 5 licences***

465. As soon as practicable after the television transfer date OFCOM must offer persons who hold a Channel 3 or Channel 5 licence the opportunity to exchange that licence for a replacement licence, being a licence of the kind described in the notes to section 214 above. The replacement licence must provide for a service that is equivalent in all material respects to the present one, and for it to be provided for substantially the same area and times, although it does not have to be identical in all respects.
466. Any offer made by OFCOM to replace an existing licence must specify the terms of the proposed replacement licence, the conditions on which they propose to grant it, the time frame of their offer, the date on which the licence will be granted if the offer is accepted, the time from which the licence will take effect if the offer is accepted (which must fall within the period of twelve months after the television transfer date) and the time from which the licence will cease to have effect if the offer is rejected.
467. The financial terms of the offer must propose that the licensee will pay the same annual amount and percentage of qualifying revenue as would have been payable under the existing licence had it continued in force until the end of the period for which the replacement is granted.
468. A licence holder refusing this offer will have his existing licence revoked on a date specified by OFCOM in the offer. This date must fall no later than eighteen months after the closing date for agreeing the offer.

***Section 216: Renewal of Channel 3 and 5 licences***

469. This section permits the holders of a licence to provide a Channel 3 service or a licence to provide Channel 5 to apply to OFCOM for the renewal of his licence for the next licensing period.
470. An application for renewal may only be made in the period beginning four years before the end of the current licensing period and ending three months before the day that OFCOM determine they would have to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of the current licensing period. Any determination of that date must be made at least one year before the date on which the tender notice would have to be published and must be notified to every person who is, at the time of the determination, a holder of a licence to provide a Channel 3 service or the Channel 5 licence.
471. Unless the Secretary of State makes an order suspending the rights of renewal under section 230 (see *subsection (11)*), where OFCOM receive an application for the renewal of a licence, they must determine whether or not they will be renewing the licence and, if they will, the financial terms on which the licence will be renewed. They must also notify the applicant accordingly. *Subsections (6) and (7)* provide that OFCOM may determine that they will not renew a 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 Part 3 of the Act relating to the public service remit for the licensed service, programming quotas, news and current affairs programmes or regional programming; or



*These notes refer to the Communications Act 2003  
(c.21) which received Royal Assent on 17 July 2003*

- they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in the areas where it would be provided or the times of the day, or days of the week, between or on which it would be provided.
472. OFCOM must not grant a renewal under this section more than 18 months before the end of the current licensing period: *subsection (9)*.
473. Where OFCOM determine that a licence should be renewed, they must renew it on the same terms and subject to the same conditions, with such modifications as are required to give effect to the requirements imposed under section 217(4) (*subsection (10)*).

***Section 217: Financial terms of licence renewed under s.216***

474. Any offer made by OFCOM to renew an existing licence under section 216 must specify the amount that the licensee is required to pay during the first year of the replacement licence and the percentage of qualifying revenue to be paid for each accounting period of the applicant falling within the relevant licence period.
475. The amount payable for the first year of the renewed licence must approximate to what OFCOM estimate would have been the cash bid of the licensee had the licence been offered by a notice requesting tenders under section 15 of the Broadcasting Act 1990. When determining the percentage of qualifying revenue, OFCOM may set different percentages (including nil percentages) for different accounting periods.
476. OFCOM must include conditions in any replacement licence requiring payment of: the amount for the first calendar year of the licence, that amount increased by an appropriate percentage for each subsequent year and a specified percentage of the qualifying revenue attributable to a licence holder in each accounting period of the licence term. Payments required under these conditions are in addition to the fees required by OFCOM under section 4(1)(b) of the Broadcasting Act 1990.

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

477. This section imposes a duty on OFCOM to secure (i) the provision of a single, nationwide, public teletext service in a digital format broadcast by way of a television multiplex service, and (ii) the provision of an analogue teletext service on the spare capacity available on Channels 3 and 4 and S4C until the first of these services ceases to transmit in analogue format. The licence holder will thereafter have the option of continuing to provide an analogue service.

*\*Subsection (4)* specifies that the analogue teletext service is a single additional television service that uses the spare radio spectrum allocated to Channel 3 services, Channel 4 and S4C for the provision of additional television services.

478. OFCOM must ensure that the analogue and digital teletext services are provided by the same person, although the content of the two services may differ and the licence holder may appoint third parties to provide the teletext services in accordance with section 220.
479. OFCOM shall have regard to their duties under this section when making radio spectrum available to providers of Channel 3 services, Channel 4 and S4C and when making determinations of spare capacity under section 48(2)(b) of the Broadcasting Act 1990.

***Section 219: Licensing of the public teletext service***

480. The public teletext service is to be licensed under Part 1 of the Broadcasting Act 1990, subject to the restrictions and conditions set out in this section. For example, *subsection (5)* specifies that OFCOM must include in the public teletext service licence

a condition prohibiting the imposition of charges for the reception of the licensed service in the United Kingdom.

481. [Schedule 10](#) specifies the procedure with which OFCOM must comply when it seeks to award a licence to provide the public teletext service and the conditions to be included in the licence. It also gives OFCOM powers to enforce the conditions included in the public teletext service licence.
482. When OFCOM propose to award a licence to provide a public teletext service, they must publish (along with general guidance) a notice that sets out the information listed in paragraph 1(2). OFCOM must include the additional information listed in paragraph 1(3) if the teletext service must be provided in analogue form.
483. Any application made in response to a notice published by OFCOM must be accompanied by the appropriate fee and must also include the information listed in paragraph 3(1), e.g. a technical plan indicating the nature of the service proposed to be provided. OFCOM may require the applicant to provide further information once they have received the application. Following the closing date for applications, OFCOM must then publish the name of each applicant along with certain details of each application as described in paragraph 4(1). OFCOM must also invite the public to make representations.
484. Before OFCOM may consider whether to award a public teletext service licence to an applicant, they must find that: (i) the applicant's technical plan and its proposals relating to the fulfilment of the public service remit for the public teletext service, the inclusion and updating of news items and the inclusion of material of interest to different communities in the United Kingdom are acceptable to them; and (ii) the provision of the proposed services can be maintained during the licence term. OFCOM must then award the licence in accordance with sections 17 and 17A of the Broadcasting Act 1990 (as modified by this Schedule).
485. [Paragraph 6](#) permits OFCOM to revoke and re-award a public teletext service licence when the licensee indicates that he does not intend to provide the service or OFCOM have reasonable grounds to believe that the licensee will not provide the service. Before revoking a licence, OFCOM must serve a notice on the licensee and offer him a reasonable opportunity to submit representations.
486. [Paragraph 7](#) requires OFCOM to include in a public teletext service licence conditions requiring payment of the following determined in accordance with Schedule 10, during the licence term: an annual amount, increased by an appropriate percentage, and a specified percentage of the qualifying revenue for each accounting period of the licensee falling within the licence term. Payments required under these conditions are in addition to those required by OFCOM under section 4(1)(b) of the Broadcasting Act 1990.
- \*Appropriate percentage has the same meaning as in section 19 of the Broadcasting Act 1990 (i.e. it takes account of inflation).
487. OFCOM may also include conditions permitting them to estimate the amount of payments due from the licence holder during an accounting period and requiring him to make monthly interim payments. Conditions permitting OFCOM to revise their estimate and the monthly interim payments made by the licence holder and to make adjustments for any over- or under payment made may also be included.
488. [Paragraph 8](#) provides that section 40 of the Broadcasting Act 1990 (power to direct correction or statement of findings) has effect in relation to the public teletext service.
489. [Paragraphs 9 and 10](#) confer on OFCOM the power to enforce the conditions included in the public teletext service licence. Where OFCOM are satisfied that a licence holder has contravened a condition of the licence or has failed to comply with a direction given by OFCOM under the Broadcasting Acts 1990 or 1996 or Part 3 of this Act, they may

impose a penalty and/or reduce the term of the licence by up to two years. Licences may also be revoked for contraventions of licence conditions or directions. Where OFCOM do not revoke the licence they may fine the offender up to 5 per cent of the qualifying revenue for its last complete accounting period.

490. Before imposing a penalty or reducing the term of the public teletext service licence, OFCOM must notify the licence holder and provide him with a reasonable opportunity to make representations. A licence may be revoked where OFCOM are satisfied that the conduct of the licence holder justifies its revocation.
491. Where OFCOM decide to revoke a public teletext service licence, they must also notify the former licence holder of the penalty that he must pay. A maximum fine (whichever is the greater) of either £500,000 or 7 per cent of either the estimated or actual qualifying revenue may be imposed. The Secretary of State can modify the amount of the maximum fine by order.

\*“qualifying revenue” is defined for the purposes of this Schedule in paragraph 15.

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

492. A licence for the provision of the public teletext service may enable the licence holder to subcontract the provision of all or part of the service to a third party, subject to and in accordance with the requirements of conditions set by OFCOM. Contravention by the relevant third party of a condition imposed under this section will be treated for the purposes of Chapter 2 of Part 3 and the Broadcasting Act 1990 as a contravention by the licensee.

### ***Section 221: Replacement of existing public teletext provider’s licence***

493. As soon as practicable after the television transfer date, OFCOM must offer the person who holds the existing licence to provide the public teletext service the opportunity to exchange that licence for a replacement licence. The replacement licence must provide for a service that is equivalent in all material respects both to the existing service and to the digital service that the licensee is required to provide under section 30 of the Broadcasting Act 1996. The replacement licence must be awarded in accordance with section 219 and Part 1 of the Broadcasting Act 1990. However, the procedure in Part 1 of Schedule 10 is not to apply to the replacement licence.
494. The offer of the replacement licence must specify each of the following as determined by OFCOM: the conditions on which they propose to grant the replacement licence, the timeframe of their offer, the date on which the licence will take effect if the offer is accepted (which must fall within the period of twelve months after the television transfer date), and the time from which the licence will cease to have effect if the offer is rejected. The financial terms of the offer must propose that the licensee will pay the same annual amount and percentage of qualifying revenue as would have been payable under the existing licence had it continued in force until the end of the period for which the replacement is granted. A licence holder refusing this offer will have his existing licence revoked on a date specified by OFCOM in the offer. This date must fall no later than eighteen months after the closing date for agreeing the offer.

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

495. This section permits the holder of the licence to provide the public teletext service to apply to OFCOM for the renewal of his licence for the next licensing period.
- \**Subsection (12)* provides that a licensing period is the period beginning with the commencement of this section and ending with the initial expiry date (see section 224); or any subsequent period of 10 years beginning with the end of the previous licensing period.

496. An application for renewal may only be made in the period beginning four years before the end of the current licensing period and ending three months before the day that OFCOM determine they would have to publish a tender notice if they were proposing to grant a fresh licence to take effect from the end of the current licensing period. Any determination of that date must be made at least one year before the date on which the tender notice would have to be published and must be notified to the person who is holding the public teletext licence at the time that the determination is made.
497. Unless the Secretary of State makes an order suspending the rights of renewal under section 230, where OFCOM receive an application for the renewal of a licence they must determine whether or not they will renew the licence and, if they do intend to renew the licence, the financial terms on which they intend to do so. They must also notify the applicant accordingly. *Subsections (6) and (7)* provide that OFCOM may determine that they will not renew a 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 Part 3 of the Act relating to the public service remit for the public teletext service, news programmes and regional matters; or
  - they propose to grant a fresh licence for a service replacing the licensed service which would differ from the licensed service in any material respect.
498. OFCOM must not grant a renewal under this section more than 18 months before the end of the current licensing period.
499. Where OFCOM determine that a licence should be renewed, they must renew it on the same terms and conditions, subject only to such modifications as are required to give effect to the requirements imposed under paragraph 7 of Schedule 10 (payments to be made to OFCOM by the licence-holder).

***Section 223: Financial terms of licence renewed under s. 222***

500. Any offer made by OFCOM to renew an existing licence under section 222 must include a determination of the amount that the licensee is required to pay during the first complete calendar year of the renewal period and the percentage of qualifying revenue to be paid for each accounting period of the applicant falling within the relevant renewal period. The amount for the first year of the replacement licence must approximate to what OFCOM estimate would have been the highest cash bid of the licensee had the licence been awarded under Part 1 of Schedule 10. When determining the percentage of qualifying revenue, OFCOM may set different percentages (including nil percentages) for different accounting periods.

***Section 224: Meaning of “initial expiry date”***

501. The initial expiry date for the purposes of Part 3 of the Act is 31<sup>st</sup> December 2014, unless it is postponed under this section.
502. The Secretary of State may postpone the initial expiry date on one or more occasions. This is to ensure that the licences will not expire less than eighteen months after the date set for digital switchover. This power can only be exercised where switchover is later than 30th June 2013.
503. *Subsections (4) and (5)* have the effect that the initial expiry date must always fall at least 18 months after digital switchover (so that the licences will continue for at least that long after switchover).
504. The extended licence will be deemed to be granted on the same terms as the original one.

505. “The date for digital switchover” is defined by *subsection (8)* as the date that appears to the Secretary of State to be the date after which Channel 3 and Channel 5 services are no longer to be broadcast to any significant extent in analogue form.

***Section 225: Application for review of financial terms of replacement licences***

506. The holder of a licence granted under section 215 (Channel 3 or 5) or 221 (the public teletext service) may apply for a review of the financial terms of this licence, on one or more different occasions. The first one may happen at any time during the first review period, i.e. the period starting four years before the first notional expiry date (see below) and ending on a date fixed by OFCOM. The subsequent reviews may happen at any point during any subsequent review period, which begins four years before the relevant subsequent notional expiry date and ends on a date fixed by OFCOM.
507. No such application may be made when an application for a review under section 226 is pending or less than twelve months after a determination of new financial terms has been made by OFCOM under that section.
508. *Subsection (7)* defines the “first notional expiry date” as the date on which the existing licence would have expired if not renewed and “subsequent notional expiry date”, in relation to a replacement licence, as either the tenth anniversary of the last notional expiry date, or, if the licensee has previously applied for a review under this section, the tenth anniversary of the date on which OFCOM’s determination of that review was notified to the licensee.

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

509. This section applies where a commencement order brings into force any of sections 272, 273 or 274 (must-offer in relation to networks and satellite services and must-provide). In that event a Channel 3 service provider or the provider of Channel 5 or of the public teletext service may apply for a review of the financial terms of his licence. Any application for a review must be made during the review period, namely the period running from the day on which the order is made until the coming in to force of the relevant section (or sections). Sections 272(10), 273(8) and 274(11) have the effect of ensuring that this period is at least six months long.

***Section 227: Reviews under ss. 225 and 226***

510. A determination made by OFCOM under this section following an application for a review must include the amount to be paid for the first calendar year of the period under review (which must be what OFCOM think would have been the amount that the licensee would have bid if the licence were awarded in response to a notice under section 15 of the Broadcasting Act 1990) and the percentage of qualifying revenue to be used for each accounting period.
511. When determining these new financial terms, OFCOM must have regard to any additional costs that are likely to be incurred by the licence holder as a consequence of the new conditions imposed following the commencement of sections 272, 273 and/or 274.

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

512. This section provides that, as soon as reasonably practicable after making a determination under section 227, OFCOM must send to the applicant a notification setting out this determination, the modifications required in the applicant’s licence, a response date by which the applicant has to notify his acceptance to OFCOM, and an end date by which the licence will cease to have effect if he does not.

513. *Subsection (5)* provides that the new licence conditions are to have effect when the applicant notifies OFCOM that he accepts the determination. If the applicant does not notify his acceptance before the response date set by OFCOM, his licence will cease to have effect on the end date set by OFCOM.

***Section 229: Report in anticipation of new licensing round***

514. This section gives a duty to OFCOM, no later than 30 months before the end of each licensing period, to report to the Secretary of State on the effects of the conditions which would be included in the renewed licences on the capacity of the holders of Channel 3, 5 and public teletext service licences to contribute to the fulfilment of the public service remit at a cost that is commercially sustainable for them.
515. Under *subsection (4)*, OFCOM will also include any recommendations that they consider appropriate to make as to the use by the Secretary of State of her powers under section 230 or under Chapter 4 of Part 3 of this Act.
516. When the Secretary of State has made an order extending the licences under section 224, after the report was submitted, she has, under *subsection (5)*, the power to require a supplementary report.

***Section 230: Orders suspending rights of renewal***

517. This section applies when the Secretary of State receives a report made by OFCOM under section 229. If the report contains a recommendation to make an order under this section, or (in the absence of a recommendation) where the Secretary of State believes it is appropriate to do so, she may by order provide that specified licences are not to be renewed under section 216 or 222 from the end of the current licensing period.
518. *Subsection (3)* provides that such an order must be made at least eighteen months before the end of the current licensing period.
519. Under *subsection (4)*, the power to prevent the renewal of the licences from the end of the initial licensing period can be exercised only if a date for switchover has been fixed which falls before the end of that period. *Subsection (5)* provides that if the Secretary of State postpones the date for switchover after she has made an order preventing the renewal of licences, this order will not have effect if the new date for switchover falls after the end of that initial licensing period. However, in such a case, the Secretary of State will be able to make another order preventing the renewal of licences. But this power will be subject to the requirement, set by *subsection 224(5)*, that she must postpone the initial expiry date of the licences when this date falls within the period of eighteen months after switchover.
520. Under *subsection (7)*, an order with respect to Channel 3 licences must apply to all licences to provide a Channel 3 service, or to all licences to provide a national Channel 3 service, or to all licences to provide a regional Channel 3 service. Any order made by the Secretary of State will be subject to the affirmative resolution procedure.

***Section 231: Replacement of Channel 4 licence***

521. When *subsection (1)* comes into force, Channel 4 shall be granted a new licence under this section. Its licence granted under section 24(3) of the Broadcasting Act 1990 shall no longer apply. In advance of this, OFCOM must prepare a draft replacement licence and consult the Channel Four Television Corporation on its contents. The replacement licence must provide for the service to be broadcast digitally and may provide that the service is also to be provided in analogue form until such time as is determined according to conditions in the licence giving effect to the Secretary of State's directions as to how long the service must continue to be provided in analogue form. The programming of the analogue service should replicate that of the digital service, or such part of it as is specified by the licence conditions included under

*subsection (3)(b)*. There can be no charge levied for the use of such a service or for any assistance for disabled people or for other ancillary services included in the service.

522. *Subsection (6)* provides that such a replacement licence must continue in force until the end of 2014. The licence may be renewed as OFCOM think fit.

### **Section 232: Meaning of “television licensable content service”**

523. A “television licensable content service” is defined in this section as any service (i) which is provided (whether in digital or analogue form) as a service to be made available for reception by members of the public (as defined in section 361) by being broadcast from a satellite, or distributed by an electronic communications network, and (ii) which consists of television programmes or electronic programme guides (or both). The service covered by a single licence will comprise not only what *subsection (3)* calls a “main service” (which could consist either of television programmes or of an electronic programme guide, or both) but also such of the ancillary services and facilities provided with it as are “relevant ancillary services” and are not “two-way services”. “Two way services” are defined in *subsection (5)* and encompass services such as video conferencing. The term “relevant ancillary services” encompasses both services that are actually provided by the provider of the “main service” and those facilities which are no more than links to services provided by others. It is not intended to encompass any apparatus (such as a television set, a PC, or a set-top box).
524. A licensee is not held to be providing services which may be accessed from the “main service”, unless he has general control over them (*subsection (4)*).
525. Ancillary services that are not “relevant” ones are not to be covered by the licence for the main service (although some might be licensable in their own right, e.g. if they constitute a television licensable content service provided by someone other than the provider of the main service). To give some examples, say you are watching a wildlife programme on the “main service” i.e. a television channel in the conventional sense, albeit that it includes all the enhanced features to be expected from digital services. A menu might offer access to different camera angles: these would constitute “relevant ancillary services” which would be part of the licensed service. The menu might also give you access to additional factual information (provided within the broadcast stream) about the animals you are watching. That is expected to be within the scope of the licence too. But there might be a link (a “facility”) which might take you to a website. The fact that the link is provided would be within the licence (and so OFCOM might require it to be removed if it led directly to unsuitable material), but the website at the end of the link would neither be regulated nor within the licence of the “main service” as it would not be a service made “available for reception by members of the public”. Also outside the scope of the licence would be content that could be accessed from the “main service” but which is not under the general control of the provider of the “main service”, such as a television service provided by someone else showing similar wildlife programmes. Other services, such as being able to order takeaway food, or engage in on-line banking, or participate in an on-line chatroom, would not be within the licence either. These are just examples, and the question of whether particular services fall within the scope of a person’s television licensable content service licence would depend on the exact nature of the services and facilities offered and the circumstances in which they were offered.

\*an *electronic programme guide* is defined in *subsection (6)* as a service which lists and/or promotes television programmes, including programmes of providers other than the provider of the guide. The service must also allow the user to access programmes contained in the guide.

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

526. This section sets out the services that are excluded from the definition of a television licensable content service in section 232. A service is not a television content service

licence if it is broadcast by means of a multiplex service or to the extent that it consists of a service which is authorised by a licence to provide a television broadcasting service, the licence to provide the public teletext service or a licence to provide additional television services. Nor does it meet the description of a television licensable content service if it forms part only of a service provided by means of an electronic communications service or is one of a number of services that may be accessed through such a service where the purpose of the service provided by these means is not wholly or mainly to make available television and/or radio programmes for reception by members of the public. A service is also excluded if it is a two-way service (as defined in the previous section). The aim of these provisions is, broadly, to maintain licensing obligations in respect of services which are or equate to broadcasting while excluding Internet services, such as web sites or web-casting, from OFCOM's regulatory powers. The effect of *subsection (3)* is to exclude not only any website material provided as part of another service (for example, a website which is accessed via an ISP which also provides its own in-house content) but also material provided from a stand alone site, whether it be text, web-cast or video images. *Subsection (6)* also excludes a service that is distributed to a single set of premises by an electronic communications network that is contained within the premises and is not connected to any external network. *Subsections (7) and (8)* exclude a service that is provided for the purpose only of being received by persons who have an interest in receiving the service for use in their business or employment, such as stockbrokers or bookmakers.

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

527. The Secretary of State may modify sections 232 or 233 by order, if she considers it appropriate. In making any modification, she must have regard to the level of protection expected by the public as regards the content of television programmes and text services, taking into account the means of reception; the ability of the public – having been made aware of the contents of a forthcoming programme – to control what they watch; technical innovation; the financial consequences of modification; and the relative ease or difficulty of setting different levels of regulation for different services.

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

528. A television licensable content service is required for the purposes of section 13 of the Broadcasting Act 1990 to have a licence under Part 1 of that Act awarded according to an application procedure that is set by OFCOM. OFCOM must approve the application unless they are not satisfied that the applicant is a fit and proper person to hold the licence, or if the person is disqualified from holding the licence by virtue of Part 2 of Schedule 2 of the Broadcasting Act 1990 or if there would be a contravention of Schedule 14 of this Act if he held the licence. OFCOM are entitled to refuse an application if satisfied that the service would be unlikely to comply with OFCOM's standards code or the code on fairness issued under Part 5 of the Broadcasting Act 1996.
529. *Subsection (4)* requires that a provider must seek a separate licence for every television licensable content service he proposes to offer. In other words, if a provider is intending to offer three television licensable content services he must have three licences, one for each service. *Subsection (5)* provides that a single licence may authorise different programmes to be broadcast simultaneously, or virtually so, for example where a service provides a choice of programmes that may be viewed at any one time.
530. Each licence for a television licensable content service will be valid until surrendered or revoked.

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

531. If the licence holder has breached a condition of his television licensable content service licence then, if this will sufficiently remedy the breach, OFCOM may, after giving him a chance to comment, require the licence holder to include a correction in the licensed



service or broadcast a finding by OFCOM against the licence holder. The licence holder may announce that he is making a correction or a statement of findings because OFCOM have directed him to do so. OFCOM must send a copy of any direction given to a BBC company requiring the broadcasting of a correction and/or statement of findings and any representations received from that BBC company to the Secretary of State.

532. OFCOM may direct a television licensable content service licence holder not to include a programme in the service on a future occasion if satisfied that the previous inclusion of that programme in the service involved a contravention of a licence condition.

***Section 237: Penalties for contravention of licence condition or direction***

533. If OFCOM are satisfied that a television licensable content service licence holder has breached a condition of that licence, or has not complied with a direction given by OFCOM, they may serve a notice on that person imposing a fine. The maximum fine is the greater of £250,000 or 5 per cent of qualifying revenue within the relevant period. OFCOM may not impose a fine unless they have first given the licence holder the chance to comment. If OFCOM serve a notice on a BBC company, they must send a copy of that notice, and of any representations received from the company, to the Secretary of State. The Secretary of State may vary the amount of the maximum fine by order.

\*“qualifying revenue” is calculated in accordance with section 19(2) to (6) of the Broadcasting Act 1990 and Part 1 of Schedule 7 to that Act, with any necessary modifications.

***Section 238: Revocation of television licensable content service licence***

534. If satisfied that a television licensable content service licence holder is in contravention of the terms of his licence, or is failing to comply with a direction, and that such a contravention or failure would, if not remedied, warrant revocation of the licence, OFCOM must serve a notice on the licence holder. The notice must specify the nature of the contravention or failure and state that the licence will be revoked unless the licence holder takes specified steps within a specified period. If the licence holder does not comply within the specified period then OFCOM may, if satisfied that this is necessary in the public interest, revoke the licence. At each stage in the process, OFCOM shall first give the licence holder the chance to comment. The provisions in this section do not apply to the revocation of a licence under section 239 (see below).
535. *Subsections (4) and (5)* provide that OFCOM may revoke a television licensable content service licence if satisfied that the licence holder is no longer providing the service, or that the licence holder provided false or misleading information in support of his licence application.
536. If OFCOM serve a notice on a BBC company under this section, they must send a copy of that notice, and of any representations received from the company, to the Secretary of State.

***Section 239: Action against licence holders who incite crime or disorder***

537. OFCOM must serve a notice under *subsection (2)* on a television licensable content service licence holder if satisfied that the service has included one or more programmes which contain material likely to encourage or to incite crime or disorder, that this has contravened a licence condition, and that the contravention warrants the revocation of that licence. A notice under *subsection (2)* must specify the nature of the contravention, state that the licence may be revoked at the end of 21 days beginning with the date of service of the notice, and inform the licence holder of his right to make representations. The effect of the notice is to suspend the licence until revocation, or until OFCOM decide not to revoke the licence. At the end of 21 days, and having considered any representations, OFCOM may, if satisfied that this is necessary in the public interest,

serve on the licence holder a notice of revocation. This may not take effect less than 28 days after being served.

***Section 240: Abolition of separate licences for certain television services***

538. This section abolishes the two forms of licence which the television licensable content services licence replaces, that is satellite television service and licensable programme service licences. It puts in place transitional provisions so that after the television transfer date, any person holding one of the abolished licence types is to be regulated by OFCOM as if he held a television licensable content services licence, unless the service is of a kind that falls outside the new definition and so no longer requires a licence at all. To the extent that any existing licence takes effect as a licence to provide a television licensable content service, OFCOM must use their power under section 3 of the Broadcasting Act 1990 to modify that licence if they feel that it is necessary to do so in order to comply with their duty under section 263 (see below).

***Section 241: Television multiplex services***

539. References in Part 1 of the Broadcasting Act 1996 to a television multiplex service are references to a service (i) which is broadcast for general reception, otherwise than by satellite, so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more services which include at least one “relevant television service” (as defined in *subsection (9)*) for simultaneous broadcast on the same frequency.
540. *Subsection (3)* provides that it is not an offence to provide a television multiplex service that is not licensed under the Broadcasting Act 1996. Only where a wireless telegraphy licence provides that any television multiplex service being broadcast using the station or apparatus to which that licence relates must itself be licensed, shall that multiplex service require a licence. This will be assumed to be the case where the multiplex service is already licensed under the Broadcasting Act 1996 and the service is broadcast using a station or apparatus that is authorised by a wireless telegraphy licence. Where this assumption applies, and a person affected by it either ceases to be licensed under Part 1 of the Broadcasting Act 1996 or ceases to exist, OFCOM may revoke the wireless telegraphy licence relating to the provision by that person of the television multiplex service in question.

***Section 242: Composition of services in television multiplexes***

541. This section amends section 12 of the Broadcasting Act 1996. OFCOM will now be able to include conditions in any multiplex licence granted under that Act to secure that: (i) all digital programme services and digital additional services provided by the BBC may be carried on that multiplex, (ii) the digital sound programme services broadcast under the licence are either provided by the BBC or licensed under section 60 of that Act and (iii) a licensee does not show undue discrimination either against or in favour of a digital sound programme service provider, or restrict that provider’s ability to share any of his spare capacity (unless it is reasonable to do so in order to ensure the technical quality of the multiplex service).
542. Currently, section 12(1)(h) requires that at least 90 per cent. of digital capacity on the frequency of the service to which the licence relates be available for broadcasting digital programmes and related services. *Subsection (1)(f)* amends the 90 per cent. threshold to ‘the required percentage’. This figure, to be set by OFCOM as they think appropriate, must be 90 per cent or higher. The Secretary of State retains the power to amend the minimum percentage, by order. *Subsection (2)* adds digital programme services and digital sound programme services provided by the BBC to the services currently listed in section 12(1)(h). Digital sound programme services provided otherwise than by the BBC must be accommodated within the remaining capacity. *Subsection (3)* of this section makes a consequential change to the test that the Independent Television

Commission currently apply where a multiplex licence holder applies for a variation of any condition imposed relating to the implementation of any proposals as to the characteristics of the digital programme services to be broadcast.

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

543. OFCOM, in fulfilling their spectrum management role, may require providers of television multiplex services to reserve digital capacity on their frequencies for the provision of certain types of service. The Secretary of State may by order provide that OFCOM must ensure that the holders of licences for multiplex services on these reserved frequencies enter into agreements with relevant public service broadcasters for the broadcasting of services provided by those broadcasters on the reserved digital capacity. An order under this section may also require OFCOM to include in the licence conditions requiring any such broadcaster to pay the licence holder for use of the reserved digital capacity. The amount paid is to be agreed between the broadcaster and the television multiplex licensee or (in the absence of any agreement) determined by OFCOM.

\*a “*relevant public service broadcaster*” is defined in *subsection (7)* as a holder of a Channel 3 service licence, the C4 Corporation, the holder of a Channel 5 licence, the Welsh Authority or the public teletext provider. This definition excludes the BBC.

\*“*public teletext provider*” is defined in section 362 as the person who holds the licence to provide that service awarded under section 217 (or, in relation to a time before such a licence is awarded, the holder of the additional services licence under the 1990 Act which relates to the public teletext service).

### ***Section 244: Local digital television services***

544. The Secretary of State may, by order, apply (with modifications) the provisions of Part 3 of the Act (except for this section and any provisions relating exclusively to sound services), or any part of Part 1 of the Broadcasting Act 1990, or of Part 1 of the Broadcasting Act 1996, to make special provision for local digital television services of the type further described in *subsections (3) to (5)*. Such services should be provided with a view to including them in a television multiplex service. Such an order can be made only where the Secretary of State is satisfied that this will enhance the provision of such services. In turn, this should benefit the locality where the services are to be received, not least by broadening the range of programmes that can be received in that locality. The order may restrict advertising and programme sponsorship in the service.

## ***Chapter 3: Regulatory Structure for Independent Radio Services***

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

545. This section sets out those independent radio services whose regulation is a function of OFCOM, as specified in *subsections (1) and (2)*. These are national, local or restricted sound broadcasting services (so long as not broadcast solely by satellite); radio licensable content services; additional radio services; radio multiplex services; digital sound programme services; and digital additional sound services. All of these must be broadcast from the United Kingdom and are not to be regulated under this section if they are broadcast by the BBC. OFCOM’s regulatory function also extends to the types of service set out above provided from somewhere outside the United Kingdom by a person (other than the BBC) whose principal place of business is in the United Kingdom.

\*“*additional radio service*” has the meaning given to it by section 114(1) of the Broadcasting Act 1990, namely any radio service which consists in the sending of signals for transmission by wireless telegraphy using the spare capacity within signals carrying any sound broadcasting service.

\*“*digital additional sound service*” means a digital additional service as defined by section 63 of the Broadcasting Act 1996, being any service which is provided for broadcast in digital form by means of a multiplex service, for reception by members of the public, but which is not a digital sound programme service, a simulcast radio service, an ancillary service or a technical service.

\*an “*ancillary service*” refers to services that are ancillary to programmes and directly related to their contents, or which relate to the promotion or listing of such programmes. Such a service is provided by the holder of a digital sound programme licence or by an independent national (analogue radio) broadcaster.

\*a “*technical service*” is a service provided for the encryption or decryption of digital programme services or digital additional services and specified in an order made by the Secretary of State (see section 63 of the 1996 Act).

\*“*digital sound programme service*”, defined in section 40(5) of the Broadcasting Act 1996 (as amended by paragraph 101 of Schedule 15), means a service consisting in the provision of programmes consisting wholly of sound (together with any ancillary services), with a view to their being broadcast in digital form so as to be available for reception by members of the public (as defined in section 361 of this Act), but does not include a simulcast radio service or a service where the sounds are to be received through the use of coded reference to pre-defined phonetic elements of sounds.

\*“*radio multiplex service*” is defined in section 40(1) of the Broadcasting Act 1996 (and see also section 258 of this Act, and paragraph 101(2) of Schedule 15) as a service provided by any person which consists in broadcasting, for general reception, two or more digital sound programme services, simulcast radio services or digital additional sound services, by combining the relevant information in digital form.

\*“*radio licensable content service*” has the meaning given in section 247.

\*“*simulcast radio service*” is defined in section 41(2) of the Broadcasting Act 1996 (as amended by section 256 of this Act) as a service which is provided by an independent national broadcaster for broadcasting in digital form, which corresponds to a national service provided in analogue form.

546. *Subsections (5) and (6)* specify when services will be treated as if they are provided from the United Kingdom. Satellite radio services transmitted to the satellite from the UK are to be so treated, unless they are licensed or otherwise authorised under the laws of another EEA state.

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

547. This section removes the Secretary of State’s power to assign frequency for the purpose of the regulation of radio services, or the provision of any radio multiplex services.

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

548. Broadly, subject to the following provisions of the Act, this term includes all sound programmes broadcast for reception by members of the public from a satellite, or through an electronic communications network, whether in analogue or digital form.

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

549. Services that are not radio licensable content services include services comprised in television licensable content services, sound broadcasting services of the type regulated by OFCOM pursuant to section 245(3), and services provided with a view to their being broadcast by means of radio multiplex services. Nor does a service meet the

description of a radio licensable content service if it is a two-way service (as defined in *subsection (4)*); or if it forms part only of a service provided by means of an electronic communications service or is one of a number of services that may be accessed through such a service where the purpose of the service provided by these means is not wholly or mainly to make available television and/or radio programmes for reception by members of the public; or if it is received only by people who have an interest in receiving the services for use in their business or employment. Finally, a service is not a radio licensable content service where it is distributed to a single set of premises by an electronic network which is contained within the premises and is not connected to any external network. These exclusions serve similar purposes to those in section 233 (television licensable content services).

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

550. The Secretary of State may modify sections 247 or 248 by order, if she considers it appropriate, taking into account the level of content protection expected by the public; technical innovation; the financial consequences of modification; and the relative ease or difficulty of setting different levels of regulation for different services. The Secretary of State may also provide that a particular service should not be treated as a radio licensable content service for such provisions of this Act as she specifies.

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

551. An application for this type of licence under Part 3 of the Broadcasting Act 1990 must follow a procedure to be set by OFCOM. *Subsection (3)* applies sections 109 to 111A of the Broadcasting Act 1990 (powers to require broadcast of corrections, to impose penalties or shorten licence periods and to revoke licences) for the purposes of the enforcement of radio licensable content service licences.

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

552. This section abolishes the two forms of licence which the radio licensable content service licence replaces. It puts in place transitional provisions so that after the radio transfer date any persons holding one of the abolished licence types is to be regulated by OFCOM as if he held a radio licensable content service licence, unless the service is of a kind that falls outside the definition and so no longer requires a licence at all. To the extent that any existing licence takes effect as a licence to provide a radio licensable content service, OFCOM must use their power under section 86 of the Broadcasting Act 1990 to modify that licence if they feel that it is necessary to do so in order to comply with their duty under section 263 (see below).

#### ***Section 252: Extension of licence periods***

553. *Subsection (1)* amends section 86 of the Broadcasting Act 1990 by stating that licences shall continue in force until the earlier of their being surrendered or revoked, or the licences coming to the end of their terms. The exception is for radio licensable content services - they shall continue in force until the relevant licences are surrendered or revoked. Any licence to provide local, national or additional services must specify a maximum licence period of twelve years (*subsection (2)*).

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

554. Previously, a newly granted licence to provide a local, national or additional service could not continue in force for more than eight years. This has now been extended to twelve years. To ensure that holders of pre-transfer national or local licences are not disadvantaged, holders of such licences can make an application for a four-year extension to that licence, and OFCOM shall grant the extension if satisfied as to the ability of the licence holder to maintain the service and the likelihood of a contravention by that licence holder of any condition imposed as to the character of the service

by virtue of section 106 of the Broadcasting Act 1990, or the making of payments to OFCOM (see *subsection (8)*). On extending the licence, OFCOM may modify the licence as they think fit, by extending the period for which the licence is to be in force and making any other modifications necessary to make the licence correspond with licences granted after the radio transfer date. In the case of national licence, OFCOM must also modify the sums to be paid to OFCOM under the licence.

555. The period within which an application may be made begins no sooner than three years before the date the licence would otherwise expire and ends three months before the day that OFCOM would need to publish a notice inviting applications if they were proposing to grant a fresh licence.

\*a “*pre-transfer licence*” is defined in *subsection (13)* as a licence granted under the Broadcasting Act 1990 prior to the radio transfer date that has not been modified under section 253 or renewed any time on or after that date.

#### ***Section 254: Renewal of local licences***

556. This section amends section 104A(5) of the Broadcasting Act 1990 (conditions of renewal of local licences). When a renewal application has been made, OFCOM will be required to grant the licence provided the following criteria are met: (i) they are satisfied that the applicant would, if the licence were renewed, provide a local service complying with any conditions imposed to secure the character of the licensed service (ii) the nominated local digital sound programme service the applicant provides is being broadcast by means of a nominated local radio multiplex services; and (iii) they are satisfied that the period and times at which the nominated local digital sound programme service will be available under the renewed licence will not be significantly different, week by week, from those for and at which the licensed local service will be broadcast. This third criterion is added by this section.

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

557. This section extends to all local licences the special “fast-track” application procedure for local licences under section 104B of the Broadcasting Act 1990. This allows the expedited award of a new licence to the existing licence holder if no declarations of intent to apply for the new licence are received from a person other than the licence-holder.

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

558. This section amends the definition of simulcast radio services found in section 41 of the Broadcasting Act 1996. Broadly, they are services provided for broadcasting in digital form and which correspond to national services, as defined by section 245(4)(a) of this Act.

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

559. This section amends Chapter 2 of Part 3 of the Broadcasting Act 1990 (sound broadcasting services) so that OFCOM promotes the provision of simulcast radio services. When OFCOM propose to award a national service licence, they must indicate the amount of digital capacity that national radio multiplex licensees will have available for the broadcasting of simulcast radio services.

\*A “*national radio multiplex licence*” has the same meaning as in Part 2 of the Broadcasting Act 1996 (digital terrestrial sound broadcasting).

560. An application for a national service licence must contain the applicant’s proposals (if any) for providing a digital simulcast of their national analogue radio services. When determining the recipient of a national service licence, OFCOM may disregard the requirement under section 100 of the Broadcasting Act 1990 to award the licence to

the absolute highest bidder and award the licence instead to the highest bidder amongst those applicants who propose to provide simulcast radio services. In the event of a tie between the highest bidders, OFCOM shall also have the power to exclude applicants who do not propose to provide simulcast radio services.

561. *Subsection (6)* confers on OFCOM the duty to impose conditions in a national service licence requiring a licensee to provide simulcast radio services where his application included proposals to provide such services.

### ***Section 258: Radio multiplex services***

562. Where a radio multiplex service is referred to in Part 2 of the Broadcasting Act 1996, it means a service (i) which is broadcast otherwise than by satellite so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more digital sound services for simultaneous broadcast on the same frequency.
563. *Subsection (3)* provides that it will not be an offence to provide a radio multiplex service that is not licensed under the Broadcasting Act 1996. Only where a wireless telegraphy licence provides that any radio multiplex service being broadcast using the station or apparatus to which that licence relates must itself be licensed, shall that radio multiplex service require a licence. This will be assumed to be the case where the multiplex service is provided under a licence under the Broadcasting Act 1996 that was in force immediately before this section comes into force and the service is broadcast using a station or apparatus that is authorised by a wireless telegraphy licence.

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

564. This section makes changes to section 54 of the 1996 Act (conditions attached to radio multiplex licences) to allow OFCOM, rather than the Secretary of State, to increase (on a licence-by-licence basis) the minimum percentage of radio multiplex capacity that must be devoted to broadcasting services.
565. The Secretary of State retains the power to vary the lowest percentage that could be specified by OFCOM in a licence (currently 80%) (see *subsections (5) and (6)*).

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

566. This section amends the definition of national digital sound programme services in section 60 of the Broadcasting Act 1996. Such services may now be carried by a national radio multiplex service, a television multiplex service, or even a general multiplex service.
567. *Subsection (2)* amends the definition of digital additional sound services, in section 63 of the same Act, to encompass such services whether provided by means of a radio multiplex service or a general multiplex service.
568. *Subsection (4)* amends section 72 of that Act to define a general multiplex service by reference to Part 3 of this Act. A general multiplex service is a multiplex service that is neither a television multiplex service nor a radio multiplex service: see section 362 of this Act.

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

569. This section amends section 58 of the 1996 Act. Under that section, radio multiplex licences granted within 6 years of commencement of that section may be renewed for 12 years. This section extends the period during which an extension can be made from 6 to 10 years, and reduces the length of an extension made more than 6 years after commencement from 12 to 8 years.

***Section 262: Community radio***

570. The Secretary of State may by order modify the Act and the Broadcasting Acts to make special provision for radio services broadcast mainly for the benefit of the public (or members of a particular community) rather than for commercial reasons. The services should confer significant benefits on the public for which they are provided. The order may restrict advertising and programme sponsorship in the service.

***Chapter 4: Regulatory Provisions***

***Section 263: Application of regulatory regimes***

571. OFCOM must use their Broadcasting Act powers, and their powers under this Act, to implement and enforce the regulatory regime for each licensed service. The Secretary of State has the power to remove any condition from the regulatory regime.

***Section 264: OFCOM reports on the fulfilment of the public service remit***

572. OFCOM are to prepare - twelve months after commencement of this section, and thereafter no less frequently than every five years - a report on the current state of public service television broadcasting, documenting the extent to which broadcasters have together satisfied the requirements of the public service television broadcasting remit set out in this section. In essence, the remit involves the provision of a balanced diversity of high-quality programming, which meets the needs and interests of different audiences (*subsection (4)*).

573. OFCOM are also to have regard to the more detailed obligations listed in *subsection (6)*. These include obligations relating to culture, news and current affairs, sport, education, entertainment, religion and other beliefs, science, social issues, matters of international significance, programming for children, and local programming. OFCOM are also required to have regard to the number of programmes within the services which are made outside the M25 area. In addition, OFCOM must consider the costs to the broadcasters of fulfilling their public service television remit and their available resources.

\*the *public service broadcasters* listed in *subsection (12)* are the BBC, the Welsh Authority, the public teletext provider and the providers of licensed public service channels, namely the providers of Channel 3 services, Channel 4 or Channel 5 (see section 362).

***Section 265: Public service remits of licensed providers***

574. A public service remit applies to each licensed public service channel. For Channel 3 services, and Channel 5, the remit is to provide a range of high quality and diverse programming. For Channel 4, the remit specifically includes the need for programming to be innovative, creative and distinctive, for it to take account of cultural diversity and to make a significant contribution to meeting the need for licensed public service channels to include educational programmes. For the public teletext service (transmitted in both analogue and digital form) the remit is to provide a range of high quality and diverse text material. Licences relating to each of these must include a condition requiring that the public service remit be satisfied.

***Section 266: Statements of programme policy***

575. The provider of a licensed public service channel must publish an annual statement of programme policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the broadcaster will satisfy its public service remit, as well as those more specific programming obligations under sections 277 to 296 of the Act, and report on how successful it was in doing so in the previous year.



576. *Subsection (4)* provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. *Subsection (7)* states that licences for public service channels may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, *subsection (9)* provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.
577. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in *subsection (8)*.

### ***Section 267: Changes of programme policy***

578. The statement described in the notes to section 266 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the channel, unless OFCOM have been consulted and the provider of the channel has taken account of OFCOM's views. If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM. In determining what constitutes a material change, regard is to be had to OFCOM's guidance and to the time over which the change (and any related change) will take effect. OFCOM are obliged to review their guidance from time to time and amend it as appropriate.

### ***Section 268: Statements of service policy by the public teletext provider***

579. This section sets out similar requirements to section 266. The provider of the public teletext service must publish an annual statement of policy, and must review its performance against this statement. The statement must demonstrate how, in the coming year, the provider will satisfy its public service remit and report on how successful it was in doing so in the previous year. The statement must also address, where relevant, both analogue and digital teletext services.
580. *Subsection (5)* provides that the statement should take account of OFCOM's guidance on its preparation, and should have regard to the reports of OFCOM as described in the notes to section 264 above and section 358 below. Particular regard should be had to the latest such report. *Subsection (8)* states that licences for the public teletext provider may include conditions relating to the treatment of any "previous statement of policy" made by the licensee. However, *subsection (10)* provides that such conditions may not postpone the time at which the licensee is required to make his first statement of programme policy under this section.
581. The first statement should be published as soon as possible after this section comes into force. The term "previous statement of policy" is defined in *subsection (9)*.

### ***Section 269: Changes of service policy***

582. This section mirrors section 267. The statement described in the notes on section 268 above must not contain proposals for what is to be regarded (taking account of OFCOM's guidance) as a material change in the character of the service unless OFCOM have been consulted and the service provider has taken account of OFCOM's views. If this process has not been followed, OFCOM may insist that the provider publish a revised statement that has been approved by OFCOM.

### ***Section 270: Enforcement of public service remits***

583. This section provides for the case where OFCOM conclude that a provider of a licensed public service channel or the public teletext provider has failed to fulfil its public service remit, or has not contributed adequately to the general requirements for public service broadcasting. If OFCOM are of the opinion that this failure is serious, and cannot be

excused by reference to economic or market conditions, OFCOM may exercise their powers under this section. Before doing so, OFCOM must also consider the factors set out in *subsection (3)* regarding the provider's remit and more general performance.

584. OFCOM may have recourse to a number of powers. *Subsection (4)* provides that OFCOM may direct that the provider amend his policy statement as directed, and may direct that the provider remedy its failure to fulfil satisfactorily its public service obligations. Such directions are to be accompanied by a reasonable timetable for compliance and guidance as to how OFCOM will decide whether the failure has been remedied and whether they will exercise their powers under *subsection (6)*.
585. If OFCOM are satisfied that their directions have not been complied with, that the provider is still failing its public service remit, and that this reasonably merits variation of the provider's licence, they may replace the self-regulatory regime described in the notes above with more detailed regulation (*subsection (6)*). In other words, the conditions set under sections 265 to 269 would be replaced by specific conditions set by OFCOM in order to ensure that the provider fulfils its public service remit.
586. One of the general objectives of the Act is that OFCOM be required to review continually the need for regulation in the sector, ensuring that unnecessary regulatory burdens are neither imposed nor maintained. In accordance with this de-regulatory approach, *subsection (8)* gives OFCOM the power, having previously exercised their powers in accordance with *subsection (6)*, to vary again a provider's licence in order to reinstate the conditions imposed under sections 265 to 269, and to remove or amend any specific conditions that were inserted in their place.
587. Before giving any direction, or exercising any of their powers, under this section, OFCOM shall consult the provider affected.

#### ***Section 271: Power to amend public service remits***

588. This section provides the Secretary of State with the power to make an order amending the public service remits under section 261 for any licensed public service channel or the public teletext service, the list of public service television broadcasting purposes set out at section 264(4), and the list of more detailed matters set out at subsections (5) and (6) of section 264. No such order may be made unless OFCOM have recommended it in a report under section 229 or 264, unless *subsection (3)* applies. Before recommending the making of an order under this provision OFCOM will be under an obligation to consult members of the public, such public service broadcasters (including the public teletext service provider if appropriate) as are likely to be affected by the proposed change and other providers of television and radio services as appropriate. Before making an order the Secretary of State must consult OFCOM, the public service broadcasters likely to be affected and other relevant providers. Any order made by the Secretary of State will be subject to the affirmative resolution procedure.

#### ***Section 272: Must-offer obligations in relation to networks***

589. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-carry services under section 64 conditions which they consider appropriate for securing the three following objectives:
- that digital channels or services on the list of must-carry services under section 64 are offered for broadcasting and distribution over every appropriate network;
  - that each provider of those channels or services enters into arrangements which ensure that their digital channels or services and any ancillary services are broadcast or distributed on appropriate networks so that those channels and services are made available for reception by as many members of the intended audience (as defined in *subsection (7)*) for a given service as possible; and

- that such arrangements prohibit the provider of the network from charging for reception of the channels or services.

\*An “*appropriate network*” is defined in *subsection (7)* as a network used to provide public electronic communications services to a significant number of end-users as their principal means of receiving television programmes.

### ***Section 273: Must-offer obligations in relation to satellite services***

590. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every other licensed television service specified by the Secretary of State conditions which they consider appropriate for securing the following three objectives:

- that digital channels or services to which this section applies are offered as available for broadcast by means of every satellite television service available for reception in the whole or a part of the United Kingdom;
- that each provider of those channels or services enters into arrangements which ensure that its digital channels or services and any related ancillary services are broadcast by means of satellite television services, such that they are available for reception by as many members of the intended audience (as defined in *subsection (7)*) for a given service as possible; and
- that such arrangements prohibit a charge being imposed for the reception of the channel or service.

\*A “*satellite television service*” is defined in *subsection (7)* as a service which consists of broadcasting television programme services from a satellite and is used by a significant number of persons as their principal means of receiving television programmes.

591. These objectives apply to a service or channel only whilst its digital form is included in the list of “must-provide” services for the purpose of section 274 (see below).

### ***Section 274: Securing reception of must-provide services in certain areas***

592. This section requires OFCOM to include in the licences for every licensed public service channel, the public teletext service and every licensed television service added to the list of must-provide services under section 275 conditions which secure the reception of those services. Such conditions may provide that where persons required to provide must-provide services fail to enter into or maintain arrangements that meet the requirements of *subsection (3)*, OFCOM may impose such arrangements. Before doing so, OFCOM must consult all persons who provide must-provide services. The arrangements that may be entered into by, or imposed upon, providers of must-provide services must secure that, where necessary, any member of the intended audience (as defined in *subsection (10)*) for a given service, who has bought the relevant equipment (for instance a dish and a digital satellite decoder), has available to them a facility for receiving the must-provide services (including any that are broadcast by satellite) and that this is made available free of charge. This applies only where that person could not otherwise (e.g. by digital terrestrial broadcasting) receive the service to an acceptable technical standard. The effect of the arrangements currently, for example, would be to require the relevant broadcasters to supply “smart” cards for the operation of receiving equipment that will permit reception of the free-to-view services (“solus cards”). The broadcasters must share the costs involved. They must also establish complaints procedures and ensure that these procedures are publicised in accordance with OFCOM’s guidance. Any such arrangements will only take effect if approved by OFCOM.

593. *Subsections (6) and (7)* clarify when reception of a service is to be regarded as being free of charge. *Subsection (8)* provides that OFCOM shall determine the quality of reception required before someone can be treated for the purpose of this section as receiving a service in an intelligible form.

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

594. This section provides that the list of must-provide services for the purposes of section 274 includes the following: every service of digital television programmes provided by the BBC and in relation to which OFCOM have functions; the Channel 3 services, Channel 4 and Channel 5 services, so far as any of them are provided in digital form; S4C Digital; and the digital public teletext service. The Secretary of State may by order amend the list of must-provide services. In exercising this power, she must have regard to the public benefit to be secured by the modification, the likely financial effects of the proposed modification on the affected parties and the proportionality of these effects when set against the public benefit secured.

***Section 276: Co-operation with the public teletext provider***

595. OFCOM are to include, in each licence to provide a Channel 3 service or Channel 4, conditions that secure that the public teletext provider and any person authorised by him under section 220 have access to such of the facilities of the relevant provider as are needed in order to provide the public teletext service. A provider of a Channel 3 service or Channel 4 may require the public teletext provider and authorised persons to pay a reasonable charge for such access. Similar provisions apply to the Welsh Authority: see paragraph 11 of Schedule 12.

***Section 277: Programming quotas for independent productions***

596. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that at least 25 per cent (or such other figure as is substituted by the Secretary of State by order) of the time allocated to the broadcasting of qualifying programmes on that channel is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions.

\*“*qualifying programmes*” are defined in *subsection (2)(a)* as programmes of such a description as the Secretary of State may by order specify as qualifying programmes. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of qualifying programmes shall continue to be effective after the commencement of sections 277 and 309 of the Act and paragraphs 1 and 7 of Schedule 12 to the Act.

\*“*independent productions*” are defined in *subsection (2)(b)* as programmes of such a description as the Secretary of State may by order specify as independent productions. Paragraph 34 of Schedule 18 provides that any order under the Broadcasting Act 1990 as to the definition of independent productions shall continue to be effective after the commencement of the Act as specified above.

\*“*licensed public service channels*” are defined in section 362 as meaning any of the following services (whether provided for broadcasting in digital or in analogue form): any Channel 3 service, Channel 4 and Channel 5.

597. OFCOM may give directions to the providers of the licensed public service channels for the purpose of carrying over to one or more subsequent years any shortfall for any year in meeting the independent productions quota.
598. The Secretary of State may also provide, by order, that OFCOM include conditions in the licences of the licensed public service channels in order to secure that, in each year, not less than a specified percentage of the programming budget for that channel

is applied in the acquisition of independent productions. These conditions may apply as well as, or instead of, the requirement to allocate 25% of airtime to independent productions.

\*“*programming budget*” is defined in *subsection (13)* as the budget for the production and acquisition of qualifying programmes.

### ***Section 278: Programming quotas for original productions***

599. OFCOM are to include conditions in the licences of all licensed public service channels in order to secure that an appropriate amount of airtime is allocated to original productions and that the time allocated is divided as may be appropriate between peak viewing times and other times. OFCOM may also include conditions excluding specified descriptions of programmes from the calculation of the necessary proportion of original productions. Before including such a condition, OFCOM must consult the licence holder on whom it is to be imposed.

\*References to original productions in section 278 are to programmes of such description as the Secretary of State may by order specify as original productions. The Secretary of State may confer such discretions on OFCOM as she sees fit for the purposes of the order. The Secretary of State must consult OFCOM, the BBC and the Welsh Authority before making any order under this section.

\*“*Peak viewing time*” is defined in *subsection (10)* as such time as appears to OFCOM to be – actually or potentially - a peak viewing time for any given public service channel.

### ***Section 279: News and current affairs programmes***

600. OFCOM are to include conditions in the licences of all public service channels in order to secure that the programmes included on those channels include news and current affairs programmes and that the time allocated to the broadcasting of news and current affairs programmes is an appropriate proportion of the total time allocated to the broadcasting of all other programmes. Such programmes are to be of a high standard, and are to cover both national and international matters. News programmes should be broadcast at intervals throughout the day, and the times at which both news and current affairs programmes are to be broadcast should include an appropriate amount of peak viewing times. OFCOM must consult with the channel provider before determining the proportion of broadcasting time to be allocated to news and current affairs programmes and what constitutes a peak viewing time.

\*“*peak viewing time*” is defined in *subsection (5)* as such time as appears to OFCOM to be – actually or potentially – a peak viewing time for that channel.

### ***Section 280: Appointed news providers for Channel 3***

601. OFCOM are to include in every regional Channel 3 licence conditions to secure nationwide broadcasting of news programmes that are able to compete with other television news programmes broadcast nationwide in the United Kingdom. Such conditions must require that all holders of regional Channel 3 licences maintain arrangements for the appointment of a single body corporate as the appointed news provider and that at all times when a licensee is providing a regional Channel 3 service there is a news provider appointed under those arrangements.

602. *Subsection (3)* provides that OFCOM must approve the terms of appointment, to ensure that the finances of the appointed person are adequate to meet news obligations throughout the period of appointment. Holders of the regional Channel 3 licences and the body which is the appointed news provider are required to provide OFCOM with all such information as they may need to ensure that the necessary arrangements are in place and working effectively.

603. *Subsection (5)* provides that news programmes must always be provided by the person who is the appointed news provider, and must be broadcast simultaneously with the broadcasting of news programmes included in other regional Channel 3 services.

***Section 281: Disqualification from appointment as news provider***

604. OFCOM may impose conditions to ensure that a body does not become or remain the appointed news provider (i) if it is a disqualified person under Part 2 of Schedule 2 to the 1990 Act in relation to a Channel 3 licence (such as a local authority, a political body, the BBC, the Welsh Authority or a Channel 4 company) or (ii) if there would be a contravention of Part 1 of Schedule 14 to this Act if that body held a licence to provide a Channel 3 service, (e.g. because the body has interests in national or local newspapers).

***Section 282: Power to repeal or modify Channel 3 news provider provisions***

605. This section allows the Secretary of State, by an affirmative procedure order, to repeal or modify the provisions of section 280 or 281. Unless simply giving effect to recommendations made by OFCOM, the Secretary of State must consult OFCOM before making an order under this section.

***Section 283: News providers for Channel 5***

606. The Secretary of State may by order impose requirements for the provision of Channel 5 news programmes that correspond to the news provider provisions for Channel 3 services, with such modifications as the Secretary of State sees fit. An order may only be made on OFCOM's recommendation or after consulting OFCOM. Before the Channel 5 licence is varied, the licence-holder must be given an opportunity to make representations to OFCOM.
607. The Secretary of State is prohibited from imposing new obligations in relation to Channel 5 unless she is satisfied that Channel 5's share of the audience is broadly equivalent to that for the services comprising Channel 3.

***Section 284: News provision on the public teletext service***

608. OFCOM are to include in the licence of the public teletext provider conditions that secure that news items are included in public teletext services, and that they are up-to-date and regularly revised.

***Section 285: Code relating to programme commissioning***

609. OFCOM are to include conditions in the licences of every licensed public service channel in order to secure that the channel provider draws up, from time to time revises and complies with a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions. The code must be submitted to OFCOM for approval and will have effect only if approved by OFCOM.
610. OFCOM must issue general guidance setting out the procedure for drawing up and revising the code and the matters to be covered. OFCOM's guidance may not however specify particular terms to be included in agreements to which the guidance relates. OFCOM must ensure that there is always published guidance for the purposes of this section in force and must consult the providers of the licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority before issuing or revising the guidance.

\*an "independent production" has the same meaning as in section 277.

**Section 286: Regional programme-making for Channels 3 and 5**

611. OFCOM may include in every licence for a Channel 3 service conditions to secure that, where Channel 3 programmes are broadcast in more than one Channel 3 area, a suitable proportion of those programmes that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should make up a suitable range of programmes. An associated requirement is that Channel 3 providers invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. None of these requirements need be included as a licence condition for a national Channel 3 service, unless OFCOM consider this to be appropriate having regard to the nature of the service. OFCOM must consult the licence holder on whom conditions under this section are to be imposed before imposing the conditions.

\*a “national Channel 3 service” is defined in section 362 as a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided.

612. OFCOM are also to include conditions in the licence for Channel 5 in order to ensure that a suitable proportion of Channel 5 programmes that are made in the United Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel 5 provider must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25.

**Section 287: Regional programmes on Channel 3**

613. OFCOM are to include in national, regional and local Channel 3 licences conditions to secure that the areas served by the licensee are provided with programmes appropriate to the area concerned. In relation to regional and national services, the objectives to be secured are set out in *subsections (1) and (4)*, respectively, and include ensuring that a sufficient amount of time is given in the service to regional programmes, including news programmes, which are of high quality, that a suitable proportion of regional programmes included in the service consists of programmes made in the relevant regional area and that a sufficient proportion of such programmes are broadcast at or around peak time.

\*“regional programme” is defined in *subsection (8)* as - in relation to a regional Channel 3 service – a programme included in that service as being of particular interest to persons within the area covered by the service or - in relation to a national Channel 3 service – as being of particular interest to persons within a particular area of the United Kingdom.

614. In this section, a Channel 3 service is a local service if it is required to provide programmes for specific areas or specific communities within that region (*subsection (7)*). In the case of a local service, OFCOM may include conditions requiring that a sufficient amount of time is given in the service to an appropriate range of local programmes, including news programmes, which are of high quality; that a sufficient proportion of such programmes are broadcast at or around peak time; and that an adequate proportion of such programmes have been produced in the relevant locality.

\*“local programme” is defined in *subsection (7)* as a programme included in a regional Channel 3 service for part of an area, or for a particular community.

615. Before including a licence condition in this respect OFCOM must consult the licence holder on whom it is to be imposed.

**Section 288: Regional programme-making for Channel 4**

616. OFCOM are to include in the Channel 4 licence conditions providing that a suitable proportion of the programmes to be broadcast on Channel 4 that are made in the United

Kingdom are made outside the area enclosed by the M25. Such programmes should comprise a suitable range of programmes. The Channel Four Television Corporation must also invest sufficiently in programme production at a suitable range of production centres in different parts of the United Kingdom outside the area enclosed by the M25. Before imposing a condition under this section, OFCOM must consult the Corporation.

***Section 289: Regional matters in the public teletext service***

617. OFCOM must include, in the public teletext service licence, conditions which ensure that an appropriate proportion of material reflecting the interests of the different regions of the United Kingdom is included in the analogue and digital teletext services.

***Section 290: Proposals for arrangements***

618. Any application for a regional Channel 3 licence must include the applicant's proposals for participating in networking arrangements. OFCOM may publish guidance for applicants on the kinds of proposals which they are likely to consider satisfactory.

\*For the purposes of Part 3, arrangements are networking arrangements if they: (1) apply to all holders of regional Channel 3 licences; (2) allow programmes made, commissioned or acquired by a Channel 3 licensee to be made available to all other regional Channel 3 licensees for broadcasting; and (3) enable regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom.

***Section 291: Obligation as to making and continuance of approved arrangements***

619. OFCOM are to include in every regional Channel 3 licence conditions to secure that, where no arrangements imposed by OFCOM under section 292 are in force, the licensee has entered into and given effect to networking arrangements (including any modification thereto) that are approved by OFCOM in accordance with Schedule 11. The Chapter I prohibition of the Competition Act 1998 does not apply to any networking arrangements that have been approved by OFCOM in accordance with any licence condition imposed by them under this section or that have been considered and approved under Schedule 4 to the Broadcasting Act 1990 (*subsection (3)*).
620. Under paragraph 36 of Schedule 18, networking arrangements that are in force immediately before the commencement of this section and have been approved under section 39 of the Broadcasting Act 1990 will be treated as if approved by OFCOM under this section.

***Section 292: OFCOM's power to impose arrangements***

621. Any notice published by OFCOM stating that they propose to award one or more regional Channel 3 licences must specify a date by which networking arrangements must be entered into if they are to be effective before the new Channel 3 licensees start to provide their licensed services. If suitable networking arrangements do not exist by that date or subsequently cease to apply, OFCOM may impose appropriate networking arrangements on all regional Channel 3 providers, including the new licensee. *Subsection (7)* allows OFCOM to set licence conditions appropriate for securing that regional Channel 3 providers comply with networking arrangements imposed under this section. The imposed networking arrangements will cease to have effect if the licence holders bound by those arrangements enter into alternative networking arrangements which are approved by OFCOM.

***Section 293: Review of approved networking arrangements etc.***

622. This section imposes a duty on OFCOM to carry out general reviews of the networking arrangements approved under section 291 or imposed under section 292. The first review must be carried out no more than six months after the last closure date for an offer



of a replacement regional Channel 3 licence, made under section 215. Reviews must be undertaken yearly thereafter. OFCOM may also, at any other time, carry out a review of whether the networking arrangements continue to satisfy one of the two competition tests set out in paragraph 6 of Schedule 11 (approval, imposition and modification of networking arrangements).

\*The first competition test is that the networking arrangements do not have the object or effect of preventing, restricting or distorting competition within the United Kingdom. The second competition test is that the networking arrangements do have such an object or effect but would satisfy the criteria set out in section 9 of the Competition Act 1998 (agreements contributing to improving the production or distribution of goods or to promoting technical or economic progress).

623. Where, following a review, OFCOM are satisfied that modifications to the networking arrangements are required, they may require regional Channel 3 licensees to give effect to those modifications or, in the case of arrangements imposed under section 292, make those modifications themselves. OFCOM may not require modifications to be made to approved networking arrangements already in force without conducting a review under section 293 unless they have the consent of the Channel 3 licensees affected by the modification.
624. *Subsection (7)* allows OFCOM to set licence conditions that secure that Channel 3 licensees give effect to any modifications of the networking arrangements proposed by OFCOM.

#### ***Section 294: Supplemental provision about networking arrangements***

625. [Schedule 11](#) sets out the procedures to be followed by OFCOM when approving, imposing or modifying networking arrangements under sections 291 to 293.
626. Where networking arrangements (and modifications thereto) are submitted to OFCOM for their approval, OFCOM must publish a description of those arrangements and allow third parties a reasonable period of time to comment on them. OFCOM may then approve, or conditionally approve, or reject the arrangements (or modifications to them). Before deciding to give a conditional approval requiring changes to the arrangements, OFCOM must consult each holder of a regional Channel 3 licence about the changes. OFCOM must then, subject to confidentiality, publish their decision and their reasons for it. Once arrangements have been approved by OFCOM they are not to be modified without OFCOM's approval.
627. [Paragraph 5](#) requires OFCOM to publish, subject to confidentiality, reports explaining any networking arrangements that they impose under section 292 and the outcome of any reviews carried out under section 293.
628. Under paragraphs 6 and 7, OFCOM must not approve, impose or modify any networking arrangements under sections 291 to 293 unless:
- they are satisfied that the arrangements satisfy the first or second competition tests (as described in the note to section 293 above); and
  - they consider that the networking arrangements represent a satisfactory means of achieving the purpose of enabling regional Channel 3 services (taken as a whole) to compete effectively with other television programme services provided in the United Kingdom. OFCOM must also take into consideration the likely effect of the arrangements on the ability of regional Channel 3 licensees to maintain the quality and range of their regional programmes and the regional character of their services.
629. Under paragraph 8, OFCOM may not approve, impose or modify any networking arrangements where it appears to them that they are likely to prejudice the ability of regional Channel 3 licensees to comply with their public service remits or conditions imposed under sections 286, 287 or 352.

630. **Paragraph 9** confers a right of appeal against OFCOM's decisions concerning the competition aspects of networking arrangements. The right of appeal extends to any holder of a regional Channel 3 licence. An appeal may be brought only by sending a notice of appeal to the Competition Appeal Tribunal (CAT) and on the grounds listed in sub-paragraph (4). A Channel 3 licensee is not required to comply with OFCOM's decision, pending the outcome of the appeal.
631. The CAT is to decide the appeal on the merits. The CAT is to decide whether OFCOM's decision was appropriate and may confirm OFCOM's decision or issue any directions it considers are necessary to give effect to its decision. OFCOM must comply with any such directions. A decision of the CAT may be appealed under paragraph 11 on a point of law to the Court of Appeal or, in Scotland, to the Court of Session. Such an appeal may, with the permission of the CAT or the appellate court, be brought by a party to the original CAT proceedings.
632. **Paragraph 12** allows OFCOM to require any person to provide them with information necessary to enable OFCOM to carry out their functions under section 293 or Schedule 11. *Sub-paragraph (4)* limits the types of document that OFCOM may demand. The High Court, the Court of Session or, in Northern Ireland, the High Court or a judge of the High Court may, on an application made by OFCOM, enquire into whether a person has refused or otherwise failed (without reasonable excuse) to comply with a request from OFCOM. If the court is satisfied that that is the case, the person concerned may be punished as if he had been held in contempt of court (paragraph 13).
633. A person is guilty of an offence under paragraph 13 if he:
- intentionally alters, suppresses or destroys a document requested by OFCOM; or
  - knowingly or recklessly provides OFCOM with false or misleading information himself or knowingly or recklessly provides false or misleading information to a third person which he knows will be provided to OFCOM.
634. The penalties to which any person found guilty of committing an offence will be liable are set out in sub-paragraph (11).

### ***Section 295: Involvement of C4 Corporation in programme-making***

635. OFCOM are to include in the Channel 4 licence a condition prohibiting the Channel Four Television Corporation from being involved in making programmes to be aired on Channel 4, except as permitted by OFCOM.

### ***Section 296: Schools programmes on Channel 4***

636. OFCOM are to include in the Channel 4 licence any conditions necessary to ensure that Channel 4 broadcasts a sufficient proportion of schools programmes. This may be achieved by setting a minimum number of hours (in term time or within normal school hours) that must be dedicated to schools programming. The Corporation may also be required to finance the production of schools programmes, to acquire such programmes from others and/or to produce any materials that may be necessary to ensure the effective use of such programmes. The programming should be of a high standard and, in producing their schools programmes, the Corporation should consult such persons concerned with schools or schools programmes as OFCOM direct. OFCOM must consult the Corporation before imposing any conditions under this section.

*\*schools programmes* are defined in *subsection (12)* as programmes which are intended for use in schools.

637. *Subsection (11)* provides that the requirement in section 34 of the Broadcasting Act 1990, that a suitable proportion of the programmes which are included in Channel 3 services and Channel 4 and 5 (taken as a whole) are schools programmes, shall no longer apply.

***Section 297: Channel 4 contribution towards national television archive***

638. This section amends section 185 of the Broadcasting Act 1990 to allow OFCOM to determine the amount of money that the holder of the Channel 4 licence must contribute after the television transfer date towards the expenses of maintaining a television archive for the United Kingdom.
639. **Section 185** already requires such contributions from holders of Channel 3 and 5 licences and similar arrangements apply to the BBC under the BBC Agreement.

***Section 298: Conditions prohibiting interference with other services***

640. OFCOM must include in the licence for the public teletext service conditions that prohibit the public teletext service provider from causing interference with any television broadcasting service on whose frequency it is provided or any other wireless telegraphy transmissions.

***Section 299: Categorisation of listed events***

641. This section amends section 97 of the Broadcasting Act 1996 to provide for the existing concept of 'listed events' to be divided into two categories, called 'group A' and 'group B'. Listed events are sporting or other events of national interest, which the Secretary of State has listed for the purpose of attracting the legal consequences provided for by Part 4 of the 1996 Act. The amendment requires all listed events to be allocated to one of these groups. When an event is listed, the Secretary of State will allocate it to a group, and she may decide to move a listed event from one group to another, subject to the same consultation requirements that already apply to a decision to list an event. The existing requirement to consult the ITC is replaced by one to consult OFCOM.

***Section 300: Effects of categorisation of listed events***

642. *Subsection (1)* amends section 99(1) of the Broadcasting Act 1996 so that it applies only to Group A listed events. Section 99(1) makes a contract void if it purports to grant exclusive rights to televise a listed event live for reception in the UK. It will, therefore, become possible for valid contracts to be made granting such exclusive rights in relation to group B events.
643. *Subsection (2)* amends section 101 of the Broadcasting Act 1996. That section currently prohibits a television service provider who provides, for reception in the UK, a service falling within either of the categories set out in section 98(1) of the 1996 Act from including in that service live coverage of the whole or any part of a listed event unless either the live rights have also been acquired by another person providing a service in the other of those two categories, or the ITC has given its consent. As well as replacing references to the ITC with references to OFCOM, the amendment introduces a new ground on which live coverage can be included without satisfying either of those existing grounds. The new ground applies only to group B events, and requires that rights to provide adequate alternative coverage have been acquired by one or more persons, other than the person proposing to include the live coverage in his service, who satisfy the requirements of regulations made under section 104ZA of the 1996 Act (which is inserted by section 302 of this Act). The amendments also make minor drafting improvements.

***Section 301: Code relating to listed events***

644. This section amends section 104 of the Broadcasting Act 1996, which makes provision for an ITC Code for various purposes of Part 4 of that Act. The amendment transfers responsibility to OFCOM and repeals one of the Code's existing functions, that of specifying the circumstances in which the televising of listed events is, or is not, to be treated as live for various purposes of Part 4 (which becomes instead a function of regulations under section 104A, which is inserted by section 302 of this Act).

645. Paragraph 51 of Schedule 18 provides that until OFCOM draw up a code under this clause, the code drawn up by the ITC under section 104 of the Broadcasting Act 1996 shall have effect.

***Section 302: Regulations about coverage of listed events***

646. This section inserts a new section 104ZA into the Broadcasting Act 1996 enabling OFCOM to make regulations for determining, for the purposes of Part IV of that Act, first, the circumstances in which the televising of listed events is, or is not, to be treated as live and, secondly, what is to be taken to represent the provision of adequate alternative coverage (the first function was formerly one of the Code drawn up under section 104, and the second is relevant to the amendment of section 101 made by section 300 of this Act).

***Section 303: Code relating to provision for deaf and visually impaired***

647. This section provides that OFCOM are to draw up, publish and maintain a code giving guidance as to the extent to which the services to which the section applies should promote their understanding and enjoyment by persons who are deaf or hard of hearing, persons who are blind or partially-sighted and persons with a dual sensory impairment. Subsections (4) and (5) set out obligations on the services set out at subsection (12) that must, from the fifth and tenth anniversaries respectively of the ‘relevant date’ (which is defined in section 305), be fulfilled. Subsection (4) sets out targets in respect of subtitling, and subsection (5) sets out targets in respect of subtitling, audio-description and sign language. The total of programmes from which that proportion is set shall exclude such programmes as OFCOM consider should be excluded under subsection (7) having regard to the factors set out in subsection (8). OFCOM may also set interim targets and exclude different descriptions of programmes in relation to different services. Where OFCOM are satisfied that a service is a special case they may exclude all the programmes in that service.

***Section 304: Procedure for issuing and revising code under s. 303***

648. Before drawing up the code described in the notes to section 303 above, OFCOM shall, as they see fit, consult with representatives of the deaf or hard of hearing, blind or partially-sighted, and dual sensory impaired, as well as with those providing the relevant services. When the code is published it shall be in a form easily accessed by those who are deaf or hard of hearing, those who are blind or partially-sighted, and those with a dual sensory impairment.

***Section 305: Meaning of “relevant date” in s. 303***

649. This section defines “relevant date” for the purposes of section 303. The definition varies according to the service in question, and when provision of that service commenced.

***Section 306: Power to modify targets in s. 303***

650. The Secretary of State, following consultation with OFCOM, may by order increase the target percentages set out in subsection (4) of section 303, or substitute a different anniversary, where it appears that the obligation set out in that subsection has been or is likely to be fulfilled before the specified anniversary. She may also substitute a later anniversary for the one specified in subsection (5) or substitute a higher percentage.

***Section 307: Observance of code under s. 303***

651. OFCOM are to include in the licence for every service to which this section applies (namely, any of the services listed in section 303(12)) conditions requiring that the code provided for in section 303 is observed.

***Section 308: Assistance for the visually impaired with the public teletext service***

652. OFCOM are to include in the licence for the public teletext service conditions to secure, so far as is reasonable and practicable, that the service includes features enabling persons with disabilities affecting their sight to use the service.

***Section 309: Quotas for independent programmes***

653. OFCOM are to include in every licence for a digital television programme service that is not comprised in a licensed public service channel conditions to secure that at least 10 per cent of the time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity (judged both in terms of the types of programmes involved and of the cost of their acquisition) of independent productions. The Secretary of State may, by order, and having consulted OFCOM, vary this percentage and determine what are to be considered “qualifying programmes” and “independent productions”.

***Section 310: Code of practice for electronic programme guides***

654. OFCOM must draft and maintain a code of practice for the provision of electronic programme guides (EPGs). This must ensure that EPG providers give the listing and/or promotion of the programmes on public service channels an appropriate degree of prominence, as determined by OFCOM. This obligation also applies to the means of selecting and accessing the programmes on these channels from an EPG.
655. These obligations are expressed by reference to “intended audience” (defined in *subsection (7)*). This has the effect that, where the provider of a public service channel provides the channel in regional versions, in any given region the channel’s most prominent EPG listing will be occupied by the programmes provided for that region. Programmes on the other regional versions of that channel will usually be found listed further down the EPG.

\*an “*electronic programme guide*” is defined, for the purposes of this section, in *subsection (8)* as a service which comprises (i) the listing and/or 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 so far as it is promoted or listed in the guide. As at the date of Royal Assent, the only EPGs available are principally visual services. However, the Act has been drafted to provide for EPGs whether their features are wholly visual, or a combination of sound and vision, or even (if they are developed) EPGs that operate wholly in sound.

656. The code must also ensure that providers of guides comply with any decision of OFCOM that specified features should be incorporated in the guides in order to (i) help people who have disabilities affecting their sight and/or hearing to use the guides for the same purposes as they are used by those without such disabilities and (ii) ensure that such people are informed about and are able to use any assistance provided for them in relation to the programmes listed and/or promoted.
657. For the purposes of these provisions the public service channels are the BBC’s television services in digital form, any Channel 3 service in digital form, Channel 4 in digital form, Channel 5 in digital form, S4C Digital, and the digital public teletext service. *Subsection (5)* provides the Secretary of State with a power to amend this list by order, though she must not do so without consulting OFCOM (*subsection (6)*).

***Section 311: Conditions to comply with code under s. 310***

658. OFCOM are to include in every licence for a service which comprises or includes the provision of an electronic programme guide conditions to secure the observation of the code provided for in section 310.

***Section 312: Character and coverage of sound broadcasting services***

659. This section amends section 106 of the Broadcasting Act 1990 dealing with the character and coverage of radio services. Broadly, OFCOM are to set such conditions as are necessary for maintaining the character of the service. The character of the service includes the music and spoken material selected for inclusion in that service. The conditions may provide that OFCOM may only consent to a departure from the original character if such a departure would not substantially change that character, if the departure would not narrow the range of relevant independent radio services available in the area covered by the service, if, in the case of local licences, there is user demand for the changes that the departure would effect or if the departure would be in the interests of competition.

\*“*Relevant independent radio services*” consist of sound broadcasting services, radio licensable content services and additional radio services that fall within the scope of OFCOM’s regulatory functions under section 245.

660. OFCOM may allow a local licence holder to extend the area to which he broadcasts, but only if such an extension is not significant and is justified by exceptional circumstances.

***Section 313: Consultation about change of character of local service***

661. This section adds a new section 106A to the Broadcasting Act 1990. It requires OFCOM, before agreeing to a substantial departure from the character of a local or national analogue service, to publish a notice specifying the proposed departure and the period within which representations may be made to OFCOM (normally not less than 28 days). The notice must be published in a manner in which appears to OFCOM appropriate for bringing it to the attention of those likely to be affected by such a departure. OFCOM do not have to consult if they are satisfied that the departure would not substantially alter the character of the service.

662. OFCOM also do not have to consult, or can shorten the consultation period, if they consider that to do so would result in a delay which would be likely prejudicially to affect the licence holder (for example, where they might go out of business). OFCOM are not required to publish confidential material.

***Section 314: Local content and character of local sound broadcasting services***

663. *Subsection (1)* imposes a duty on OFCOM to ensure that local sound broadcasting services contain local material, to the extent (if any) that OFCOM consider appropriate in that case, and include locally-made programmes. OFCOM are required to draft, publish and maintain guidance setting out when local sound broadcasting services satisfy the requirements of *subsection (1)* and to have regard to that guidance when carrying out their functions in relation to local sound broadcasting services. OFCOM’s guidance may extend to such issues as providing descriptions of local material and locally-made programmes. *Subsection (5)* requires OFCOM to consult with persons having an interest in local sound broadcasting services before drafting or revising the guidance. OFCOM’s duties under this section do not extend to local advertising.

***Section 315: Variations of radio multiplex licences affecting service characteristics***

664. This section replaces subsection (6) of section 54 of the Broadcasting Act 1996 with subsections (6) to (6B). Upon the request of a radio multiplex licensee to vary a licence condition implementing a proposal submitted in his original application under section 46(4) or 50(4) of the Broadcasting Act 1996 relating to the number of digital sound programme services and the characteristics of each service to be broadcast, the timetable for the launch for those services, the broadcasting of digital additional services or the promotion of the acquisition of digital receivers by the listening public, OFCOM must vary the licence as requested, subject to the tests set out in subsections (6A) and (6B).

665. Section 54(6A) provides that OFCOM may not vary a national radio multiplex licence where it appears that, if the requested amendment were made, 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.
666. Section 54(6B) stipulates that OFCOM may vary a local radio multiplex licence only where they are satisfied that:
- the variation would not unacceptably narrow the range of programmes available to people living in the areas where the multiplex service is provided;
  - the variation is in the interests of competition; or
  - there is user demand for the changes to the services.

### ***Section 316: Conditions relating to competition matters***

667. **Section 316** makes specific provision for OFCOM to have powers, in addition to concurrent powers under the Competition Act, to use licence conditions to ensure fair and effective competition in the provision of licensed services and connected services. This gives OFCOM competition powers specific to the broadcasting sector. *Subsection (3)* provides that, in order to ensure fair and effective competition between licence holders, OFCOM can require licence holders to comply with a code approved by OFCOM on the specifics of how they should comply with the licence conditions and that they can also issue directions to individual licensees for that purpose.

*\*licensed service* means a service licensed by a Broadcasting Act licence.>

### ***Section 317: Exercise of Broadcasting Act powers for a competition purpose***

668. This section applies to OFCOM's Broadcasting Act powers, as defined in *subsection (1)*. The effect of *subsections (2) and (3)* is that OFCOM are not to use Broadcasting Act powers for a competition purpose (as defined in *subsection (9)*), where they consider that a more appropriate way of proceeding would be through the use of their general competition powers under the Competition Act 1998.

*\*OFCOM's Broadcasting Act powers* are their powers under Part 3 of this Act and under the Broadcasting Acts to impose or vary licence conditions, their powers to give approvals or directions for the purposes of such conditions and their powers to enforce such conditions.

669. *Subsections (4) and (5)* require that where OFCOM decide to exercise their Broadcasting Act powers for a competition purpose, they must notify that decision to persons likely to be affected by it, and the notification must include a description of the rights of appeal that apply. *Subsection (6)* provides that where OFCOM have considered that the exercise of their Broadcasting Act powers for a competition purpose is the more appropriate way to proceed, the route of appeal for any person affected by any decisions under these powers shall be to the Competition Appeal Tribunal. *Subsection (8)* limits the jurisdiction of the Tribunal in any such appeal, so as to exclude questions as to whether OFCOM have complied with *subsections (2) and (3)*: those questions can, though, be challenged by way of judicial review. *Subsection (10)* provides that this section does not apply to the exercise by OFCOM of their powers in relation to Channel 3 networking arrangements under sections 290 to 294 and Schedule 11.

### ***Section 318: Review of powers exercised for competition purposes***

670. This section provides for OFCOM periodically to review any guidance or codes or directions that they issue in respect of their Broadcasting Act powers and which has effect for a competition purpose. OFCOM must consult on any changes they propose to make.

### **Section 319: OFCOM's standards code**

671. *Subsection (1)* places OFCOM under a duty to set standards for the content of television and radio services, which shall be contained in a code or codes.
672. These codes must secure the objectives set out in *subsection (2)*. Those objectives relate to the protection of minors; the prohibition of material likely to encourage crime or disorder; the impartiality of television and radio services; the accuracy of the news; the content of religious programmes; the protection of the public from offensive and harmful material; the exclusion of advertising which contravenes the ban on political advertising set out in section 321(2); the prevention of misleading, harmful or offensive advertising and unsuitable sponsorship; compliance with the United Kingdom's international obligations with respect to advertising; the prevention of undue discrimination between advertisers; and the prohibition of broadcasts of subliminal material.
673. A particular standards objective relates to responsible religious broadcasting. *Subsection (6)* expands upon this to safeguard against the improper exploitation of any susceptibilities of the audience or the abusive treatment of the religious views and beliefs of those belonging to a particular religion or denomination.
674. *Subsection (5)* makes clear that, while minimum standards will be of general application, OFCOM are also under a duty to set standards for particular types of programme or service (for example, children's programmes) where OFCOM consider that such standards are appropriate to achieve the objectives contained in *subsection (2)*.
675. In setting the standards, OFCOM are under a duty to have regard to the factors set out in *subsection (4)* so far as they are relevant. These concern the degree of harm or offence likely to be caused by the content of programmes; the probable size and composition of the audience; the expectation of the audience as to the nature of a programme's content and the extent to which it can be brought to their attention; the danger of accidental exposure of a person to content, the nature of which they were unaware; the desirability of indicating when there is a change affecting the nature of the service being watched or listened to; and the desirability of maintaining independent editorial control over the content of a programme.
676. [Paragraph 43](#) of Schedule 18 provides that any code drawn up under section 6, 7, 9, 90, 91 or 93 of the Broadcasting Act 1990 or section 108 of the Broadcasting Act 1996 shall have effect as if it were a code issued by OFCOM for the purpose of this section. However, codes drawn up under the Broadcasting Act 1990 shall only apply to services authorised by licences under that Act and, in the case of codes under section 6, 7 and 9 of that Act, S4C. As regards codes drawn up under section 108 of the Broadcasting Act 1996, these will only have effect for services provided by the BBC or the Welsh Authority and then only to the extent that the codes contain provisions applying to those services and, in the case of the Welsh Authority, which relate to matters other than advertising and impartiality.

### **Section 320: Special impartiality requirements**

677. The standards objectives referred to in section 319 include the objective that the impartiality requirements set out in this section are observed. This section specifies particular requirements, some of which are to be further expanded upon by rules in OFCOM's standards code, placed upon service providers to ensure that programme services are free from undue bias. The matters to which the requirements apply are matters of political or industrial controversy, and matters relating to current public policy. The requirements are:
- the service provider must not air its own views on such matters (unless they concern the provision of television or radio programme services); as in the 1990 Act, this restriction does not apply to providers of radio restricted services.



- as regards every television programme service, teletext service, national radio service and national digital sound programme service, the service provider must preserve due impartiality about such matters. The relevant rules in OFCOM's standards code must particularly take account of the need to preserve impartiality for major matters of political or industrial controversy or relating to current public policy. Fulfilment of this requirement need not necessarily be measured programme by programme, but on balance over all programmes included in the relevant service; and
- as regards local radio services, local digital sound programme services, and radio licensable content services, the service provider must ensure that undue prominence is not given to any particular viewpoint about such matters. This need be satisfied only by considering the entire service, rather than programme by programme, or even series by series.

### ***Section 321: Objectives for advertisements and sponsorship***

678. This section specifies standards objectives which must include general provisions about the required standards in advertising and sponsorship and permits OFCOM to prohibit advertisements and methods of advertising and sponsorship.
679. *Subsection (2)* imposes on OFCOM a duty to secure in the broadcast media a general prohibition on political advertising and advertising related to industrial disputes. This reproduces the duty imposed under the Broadcasting Act 1990 on the ITC and the Radio Authority to secure a similar prohibition. *Subsection (7)* specifies that an advertisement of a public service nature which is inserted by or on behalf of a government department, and a party political or referendum campaign broadcast required by a condition imposed under section 333 or by paragraph 18 of Schedule 12, may nonetheless be broadcast. The Act sets out in *subsection (3)* the matters which are included in the reference in *subsection (2)* to "objects of a political nature" and "political ends", so as to make clear the scope of the prohibition. These include each of the following: influencing the outcome of elections or referendums in the UK or elsewhere; bringing about changes in the law or otherwise influencing the legislative process in the UK or elsewhere; influencing the policies or decisions of local, regional or national governments in the UK or elsewhere; influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the UK or of a country or territory outside the UK; influencing the policy or decisions of persons on whom functions are conferred by or under international agreements; influencing public opinion on a matter which in the UK is a matter of public controversy; and promoting the interests of a party or other group of persons organised in the UK or elsewhere for political ends.
680. It is because of the ban that this section (in conjunction with section 319(2)(g)) would impose on political advertising that, in the light of the decision of the European Court of Human Rights in the case of *Vgt Verein gegen Tierfabriken v Switzerland*, the Minister in charge of the Bill was unable to make a statement of compatibility under section 19(1)(a) of the Human Rights Act 1998. The fact that the Minister made a statement under section 19(1)(b) of that Act does not, however, mean that the Government believes the ban would necessarily be found to be incompatible if the ban were to be challenged in the United Kingdom courts or to be considered by the European Court of Human Rights.
681. More generally, *subsections (5) and (6)* provide for consultation by OFCOM with the Secretary of State regarding the descriptions of advertisements that should not be included in programme services; and the forms and methods of advertising and sponsorship that should not be used. In addition, the Secretary of State has a power to issue directions (with which OFCOM must comply) on any of those matters.

***Section 322: Supplementary powers relating to advertising***

682. This section requires all licences related to the provision of programme services, the public teletext service and other teletext services (either additional television services or digital additional television services) to include a condition that the licence holder must comply with OFCOM's directions on the maximum time to be given to advertisements in any given time period, the minimum interval that must elapse between two periods of advertisements, the number of advertisement slots that are allowed in any programme or hour or day, and the exclusion of any advertisement from a specified part of a service.

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

683. This section provides that the Secretary of State, following consultation with OFCOM, may by order modify the factors set out in section 319(4) to be considered by OFCOM when setting or amending standards codes.

***Section 324: Setting and publication of standards***

684. This section concerns the procedures for setting the codes containing the standards for the content of television, radio and teletext services. *Subsections (1) to (5)* deal with the consultation process that OFCOM must enter into prior to setting or revising these standards. Different provision is made regarding the persons to be consulted depending on the relevance of the code to their interests.
685. Following this process, OFCOM may modify their proposed standards code as they see fit in light of the consultation, and must then publish the code. If new standards are being set, or old standards being revised, OFCOM must bring them to the attention of those whom the standards are likely to affect and send a copy to the Secretary of State, the BBC (unless it is a code containing only standards for advertising or sponsorship) and, if the code relates to television programme services, the Welsh Authority.

***Section 325: Observance of standards code***

686. OFCOM are to include in every Broadcasting Act licence for a programme service such conditions as they deem to be suitable in order to safeguard the standards listed in section 319. OFCOM must also implement procedures for hearing complaints in connection with the non-observance of such standards. OFCOM may report to the Secretary of State periodically regarding issues relating to OFCOM's standards code that appear to raise questions of general broadcasting policy.
687. Regarding advertising and sponsorship, OFCOM must include a further licence condition obliging the licence holder for a programme service to comply with any direction from OFCOM on the matters set out in *subsection (5)*, all of which relate to the exclusion of certain advertisements or sponsorship.

***Section 326: Duty to observe fairness code***

688. This section requires OFCOM to include in each Broadcasting Act licence for a programme service such conditions as they consider appropriate for securing observance, in connection with the provision of that service and in relation to programmes included in that service, of the fairness code for the time being in force under section 107 of the Broadcasting Act 1996.

***Section 327: Standards with respect to fairness***

689. This section relates to the exercise by OFCOM of functions relating to the consideration of complaints regarding fairness and privacy which were formerly exercised by the Broadcasting Standards Commission under Part 5 of the Broadcasting Act 1996.

690. A standards complaint under Part 5 of that Act may not be made after the commencement of this section. This section amends the provisions in sections 115, 119 and 120 of the 1996 Act relating to the consideration of fairness complaints.

*\*a standards complaint* is defined in section 110(4) of the Broadcasting Act 1996 as a complaint made to the Broadcasting Standards Commission which relates to the portrayal of violence or sexual conduct or to standards of taste and decency.

***Section 328: Duty to publicise OFCOM's functions in relation to complaints***

691. OFCOM are to include in a licence for every service to which this section applies conditions to ensure that procedures for handling and resolving complaints about observance of standards, including OFCOM's functions under Part 5 of the Broadcasting Act 1996, are publicised. This section applies to every programme service licensed by a Broadcasting Act licence

***Section 329: Proscription orders***

692. Where OFCOM have notified the Secretary of State that a foreign television or sound service repeatedly contains programmes with content that offends taste or decency, is likely to incite crime or disorder or is likely to be offensive to public feeling, she may issue a proscription order where she is satisfied that to do so is in the public interest and compatible with the international obligations of the United Kingdom. *Subsection (6)* sets out the services to which this section applies.

*\*The meaning of a foreign service* is given in *subsection (7)* and broadly encompasses those services which do not need to be licensed under the Broadcasting Acts 1990 and 1996 but would be if they were provided in the United Kingdom or the provider fell within the jurisdiction of the United Kingdom for the purposes of the Television without Frontiers Directive.

***Section 330: Effect of proscription order***

693. No service proscribed by the Secretary of State in an order made under section 329 can be included in any multiplex service or any cable package service (as defined in *subsections (3) and (4)* respectively). The effect of *subsection (5)* is that the provision of radio and/or television (or similar) services via the Internet will not constitute the provision of a cable package service.

***Section 331: Notification for enforcing proscription***

694. Where OFCOM have reasonable grounds to believe that a service proscribed by an order made under section 329 is included in a multiplex service or cable package, they may notify the multiplex service provider or cable packager accordingly and require that person to cease including the proscribed service. OFCOM must give the notified provider 7 days to comply with their request, although he must cease to include the service in less than 7 days if reasonably practicable. A notified provider has a statutory duty to comply with OFCOM's request, failure to comply with which is enforceable in civil proceedings by OFCOM.

***Section 332: Penalties for contravention of notification under s.331***

695. OFCOM may impose a penalty on any multiplex service provider or cable packager who contravenes a requirement notified by OFCOM under section 331. Before imposing a penalty, OFCOM must give a multiplex service provider or cable packager a reasonable opportunity to make representations. Any penalty imposed must be appropriate and proportionate to the contravention, and in any case may not exceed £5,000 per day for each day (or part thereof) that a multiplex service provider or cable packager includes a proscribed service in contravention of a notification made under

section 331. The Secretary of State may, by order, amend the maximum penalty set out in *subsection (3)*.

### ***Section 333: Party political broadcasts***

696. OFCOM must include in the licence for every licensed public service channel and every national radio service conditions requiring the licensee to broadcast party political broadcasts and referendum campaign broadcasts and to observe associated rules set by OFCOM. These rules may include provision for determining which political parties and designated organisations may make broadcasts, and how long and frequent these broadcasts may be. OFCOM are subject in this respect to the [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#) and shall have regard to the views of the Electoral Commission. Paragraph 38 of Schedule 18 provides that any rules made by the ITC under section 38 of the Broadcasting Act 1990 or by the Radio Authority under section 107 of that Act, which are in force immediately before the commencement of this section, shall have effect as rules made by OFCOM under this section.

### ***Section 334: Retention and production of recordings***

697. OFCOM are to include in the licence for every programme service licensed under the Broadcasting Acts conditions requiring the licensee to record every programme that they broadcast, and to keep each recording for a specified period (which for radio programmes shall be no longer than 42 days and for television programmes shall be no longer than 90 days) and, at OFCOM's request, to provide them with any such recording as well as any script or transcript of the relevant programme that the licensee is able to produce. Under *subsection (3)*, OFCOM may themselves make and use recordings of programmes for the purposes of supervision. However, *subsection (4)* makes it clear that they are not required to vet programmes in advance of their being broadcast.

### ***Section 335: Conditions securing compliance with international obligations***

698. OFCOM are to include in the licence for every service of the types listed in *subsection (3)* conditions to secure compliance with such of the United Kingdom's international obligations as have been notified to OFCOM by the Secretary of State.

### ***Section 336: Government requirements for licensed services***

699. The Secretary of State, or any other Minister of the Crown, has the power by notice to require OFCOM to issue a direction to licence holders to include a particular announcement in their service at specified times. The Secretary of State alone may require OFCOM to direct licence holders to refrain from including any particular matter in their services.

*\*Subsection (9) makes clear that Minister of the Crown includes the Treasury.*

700. Where a licence holder is obliged to make a particular announcement, they may make clear in their service that this is being carried out further to a direction given by OFCOM. Similarly, where a licence holder has been obliged to refrain from including a particular matter in their service, the licence holder may announce in the service that this is the case, and may also announce when that obligation has come to an end.

701. The purpose of these provisions is principally to allow Ministers to address matters of national security or major public interest, and to do so in such a way that the affected broadcasters are not required to take editorial responsibility for the content of the announcements.

### ***Section 337: Promotion of equal opportunities and training***

702. OFCOM are to include in the licence for every service to which this section applies (as defined in *subsections (6) to (8)*) conditions to promote equality of opportunity in

relation to employment with the licence holder. The conditions must promote equality between men and women and between different races. Licensees must also be required to promote the equalisation of opportunities for disabled persons.

703. OFCOM must also impose on licensees any conditions necessary to ensure that licensees make such arrangements for the training and retraining of their employees (employed both in the provision of the service and in the making of programmes to be included in the service) as OFCOM consider appropriate.
704. The conditions imposed by OFCOM must require licensees to ensure that the arrangements put in place by the licensees to meet equal opportunities and training requirements are notified to those affected by them. Also the licensee must review the arrangements from time to time and publish annually his observations on their operation.
705. Those licensees that employ no more than 20 people, or broadcast for no more than 31 days per year, are not covered by these provisions, though OFCOM are able to aggregate the numbers of staff employed across a group of companies or a range of services under the provisions in *subsections (7) and (10)* and the definition of “licensed service” in *subsection (9)*.

### ***Section 338: Corresponding rules for the BBC and the Welsh Authority***

706. This section provides that Schedule 12 shall have effect. Schedule 12 provides for the imposition on the BBC and the Welsh Authority of obligations that correspond to those described above in the regulatory regime for licensed providers and it is explained in more detail below.

### ***Section 339: Review of fulfilment by Welsh Authority of public service remits***

707. The Welsh Authority is under a duty to ensure that S4C, S4C Digital and services approved by the Secretary of State under section 205 fulfil their public service remits. The Secretary of State may review the Welsh Authority’s performance in this regard, but not within five years of the passage of the Act. Any subsequent review must not be undertaken within a further five-year period. The Secretary of State must consult the National Assembly for Wales and the Welsh Authority on the matters under review, must have regard to their opinions when reaching her conclusions and must publish a report of those conclusions after each review.

### ***Section 340: Directions to Welsh Authority to take remedial action***

708. If the review described in the notes to section 339 above reveals that, without reasonable excuse, the Welsh Authority have not properly performed their duty to fulfil their public service remits, the Secretary of State may, having consulted the Welsh Authority, direct the Welsh Authority to take remedial action. Any such direction must first be approved, in draft, by both Houses of Parliament.

### ***Section 341: Imposition of penalties on the Welsh Authority***

709. This section gives OFCOM the power to fine the Welsh Authority where they are satisfied that a contravention of any requirement listed in *subsection (1)* has occurred. Broadly, these include obligations relating to programme quotas, news and current affairs, programming standards, advertising or sponsorship, complaints procedure publicity, international obligations, assistance for disabled people and fairness. The maximum fine is £250,000. Under *subsection (6)*, the Secretary of State may vary the maximum penalty by order. *Subsection (4)* states that OFCOM may not fine the Welsh Authority without giving them a chance to make representations in its defence. *Subsection (5)* makes clear that the imposition of a fine would not prevent OFCOM from issuing a direction to the Welsh Authority, under paragraph 15 of Schedule 12,

to broadcast a correction or a finding by OFCOM of a breach of the standards code issued under section 319.

***Section 342: Contraventions recorded in Welsh Authority's annual report***

710. This section amends Schedule 6 to the Broadcasting Act 1990 to ensure that any notifications given to the Welsh Authority by OFCOM about contraventions by the Authority of either the Broadcasting Acts or Part 3 of this Act are recorded in the Welsh Authority's annual report.

***Section 343: Provision of information by Welsh Authority***

711. This section imposes a duty on the Welsh Authority to provide such information as OFCOM reasonably request in order that OFCOM may fulfil their functions, under this Act and the Broadcasting Acts, as regards the Welsh Authority.

***Section 344: Transmission of statement of findings***

712. This section amends sections 40 and 109 of the Broadcasting Act 1990 (power to direct licensee to broadcast correction or apology). As amended, these sections provide that OFCOM may direct the broadcast of a correction or a statement of OFCOM's findings in relation to a contravention of licence conditions, for example a failure to comply with OFCOM's standards code. This change arises from a recommendation of the Joint Committee on Human Rights.

***Section 345: Financial penalties imposable on licence holders***

713. [Schedule 13](#), which modifies the maximum penalties that may be imposed on the holders of Broadcasting Act licences, shall have effect. Further detail on this Schedule is set out below.

***Section 346: Recovery of fees and penalties***

714. Where a payment of a kind listed in *subsection (1)* is payable to OFCOM, it is recoverable by them as a debt due from the person who must pay it. Those payments include amounts paid under licences granted under the Broadcasting Acts 1990 and 1996 and penalties imposed by OFCOM under those Acts.

***Section 347: Statement of charging principles***

715. This section provides that OFCOM must not fix a tariff under section 4(3) or 87(3) of the Broadcasting Act 1990 or under section 4(3) or 43(3) of the Broadcasting Act 1996 unless at the time they do so there is in force a statement of the principles they propose to apply in fixing that tariff. Any tariff must be fixed in accordance with those principles.
716. The principles set out in any statement must be likely to secure, on the basis of such estimates of the likely costs as it is practicable for OFCOM to make, that the aggregate amount of the Broadcasting Act licence fees required to be paid to OFCOM during a financial year is sufficient to enable them to meet, but does not exceed, the annual costs of the carrying out during that year of their functions relating to the regulation of broadcasting; that tariffs are justifiable and proportionate to the matters in respect of which they are imposed; and that the relationship between meeting the cost of carrying out those functions and the tariffs applied to such fees is transparent.

\*“*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 Broadcasting Act 1990; or
- (b) section 4(1)(b) or 43(1)(c) of the Broadcasting Act 1996.

*Financial year* means a period of 12 months ending with 31<sup>st</sup> March.

717. *Subsection (3)* requires that, before making or revising a statement of principles, OFCOM must consult such persons as they consider likely to be affected by those principles as they think fit. Under *subsection (4)*, the making or revision of a statement of principles is by the publication of the statement, or revised statement, in such manner as OFCOM consider appropriate to bring it to the attention of those likely, in OFCOM's opinion, to be affected by it.
718. Under *subsections (5) and (6)*, OFCOM must publish a statement as soon as practicable after the end of each financial year, setting out the aggregate amount of Broadcasting Act licence fees received by them which were required to be paid during that year; the aggregate amount of Broadcasting Act licence fees remaining outstanding and likely to be paid or recovered; and, the costs to OFCOM of carrying out their functions in relation to the regulation of broadcasting during that year. Any deficit or surplus must be carried forward by OFCOM and taken into account in determining the amount required in relation to the following year.
719. References to OFCOM's functions in relation to the regulation of broadcasting do not include any of their functions in relation to the BBC or Welsh Authority.

## **Chapter 5: Media Ownership and Control**

### **Section 348: Modification of disqualification provisions**

720. This section amends Part 2 of Schedule 2 to the Broadcasting Act 1990. Under *subsection (1)* persons not resident or established in the EEA are no longer disqualified from holding Broadcasting Act licences. *Subsections (2) and (3)* amend paragraph 2 of that Part, disqualifying religious bodies from holding the following licences granted under the Broadcasting Acts 1990 and 1996:
- A Channel 3 licence;
  - A Channel 5 licence;
  - A national sound broadcasting licence;
  - A public teletext licence;
  - An additional television service licence;
  - A television multiplex licence; and
  - A radio multiplex licence.

This needs to be read with paragraph 15 in Part 4 of Schedule 14 to the Act. In the case of licences that are not in this list, a religious body may apply for a licence and OFCOM may grant the licence if they make a determination in the case of that organisation; and they may make such a determination if (and only if) they consider it appropriate for that body to hold a licence of that description. This applies to-

- restricted service licences;
- digital television programme licences;
- digital additional television services licences;
- licences to provide television licensable content services;
- licences under Part 3 of the 1990 Act (other than a national licence) - meaning local analogue radio licences, licences to provide radio licensable content services, and licences to provide (analogue) additional services;

- national and local digital sound programme licences;
  - digital additional sound services licences.
721. OFCOM are required to publish guidance for persons wishing to make such applications.
722. *Subsections (5), (6) and (7)* allow the Secretary of State, following consultation with OFCOM and with Parliament's approval, to make an order amending or repealing the provisions of paragraph 2 of Part 2 of Schedule 2 to the 1990 Act. Paragraph 16 of Schedule 14 gives a similar power to repeal or otherwise modify the restrictions set out in Part 4 of that Schedule.

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

723. This section inserts a new provision into Part 2 of Schedule 2 to the Broadcasting Act 1990, the effect of which is that local authorities will no longer be disqualified from holding a licence where the service in question is provided solely in pursuance of the functions of local authorities under section 142 of the Local Government Act 1972.
724. **Section 142** relates to the provision by a local authority of information concerning their functions and the services available within their area.. *Subsection (2)* of section 349 inserts into section 142 provisions allowing a local authority to provide an electronic communications network or electronic communications service for the purpose of broadcasting or distributing information generally relating to the functions of the authority or about services available within their area that are provided by them or by another local authority or by an authority, board or committee with similar functions, or to arrange for the broadcasting or distribution of such information by means of an electronic communications network or electronic communications service provided by someone else.
- \*“*electronic communications network*” and “*electronic communications service*” are defined in section 32.
725. *Subsection (3)* amends section 2(1) of the Local Government Act 1986 in order to widen the prohibition on a local authority from publishing any material which appears to be designed to affect public support for a political party, to a local authority arranging for such a publication.

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

726. *Subsection (1)* repeals the rules in Parts 3, 4 and 5 of Schedule 2 to the Broadcasting Act 1990 relating to restrictions on accumulations of interests and on licence holding by newspapers and telecommunications providers, some of which are replaced by Schedule 14 to this Act. Rules relating to licences for local sound broadcasting and local digital sound programme service licences are to be replaced by provision made by order under paragraphs 11 and 12 of Schedule 14. *Subsections (4), (5) and (6)* ensure that these rules will not lapse before the relevant orders come into force.
727. **Part 1** of Schedule 14 establishes the new rules relating to the ownership of television services, replacing the rules repealed by section 350. These apply only to Channel 3 services and not, as before, to Channel 5.
728. Paragraph 1 sets out the circumstances in which a person may not hold a licence for a Channel 3 service. A person may not hold any such licence if he runs national newspapers with more than 20 per cent of the total national market. No one may own a regional Channel 3 licence if he runs local newspapers which together have more than 20 per cent of the local market in the coverage area of the service. For these purposes, a licence to provide a Channel 3 service is to be treated as held by the actual licence holder and every person connected with him.



*\*the expression “connected person” is defined for these purposes by paragraph 3 of Part 1 of Schedule 2 to the 1990 Act. For example, a company (“A”) is connected with any person that controls A (e.g. a holding company), with any company controlled by A, and with another company (“B”) if someone else controls both A and B. Separate rules apply for determining who is “connected with” an individual. For example, an individual is connected with certain of his relations, with business partners and with companies of which he is a director.*

729. Paragraph 2 establishes further restrictions on participation in companies holding Channel 3 licences. No one may hold more than a 20 per cent share in such a company if he is the proprietor of national newspapers with more than a 20 per cent share of the total national market. No licence-holder may own more than a 20 per cent share of any such national newspaper proprietor. A company in which such a newspaper proprietor holds more than a 20 per cent share cannot be a participant with more than a 20 per cent share of a company that holds a licence. These rules apply as much to participation in a company that controls the holder of a Channel 3 licence as they do to participation in the actual holder of the licence, and restrictions applicable to a proprietor or licence holder apply as if he and every person connected with him were one person.

*\*“control” is defined in paragraph 1(3) of Part 1 of Schedule 2 to the 1990 Act, as amended by section 357 of this Act.*

730. Paragraph 3 explains how ‘national newspaper’, ‘local newspaper’ and ‘market share’ are to be defined for the purposes of the above rules. References to national or local newspapers are references to newspapers that circulate wholly or mainly in the United Kingdom (national) or in a part of the United Kingdom (local). Where there is any difficulty with this definition (for example if a newspaper is published in different regional editions) OFCOM have the power to define whether the newspaper in question is national, local or both. Market share is defined as the percentage of total newspaper sales in the relevant area (either the UK or a Channel 3 licence region) represented by sales of the newspaper in question over the previous six months. If a newspaper is distributed free of charge, ‘sales’ are taken to include the number of copies distributed.
731. Paragraph 4 identifies a person as running a newspaper if he is either the proprietor of the newspaper or controls a body which is the proprietor. The definition of ‘control’ is that in the Broadcasting Act 1990, Schedule 2, Part 1, paragraph 1(3).
732. Paragraph 6 gives the Secretary of State power to repeal or modify any of the rules in Part 1 by order. Before making any such order (unless it is confined to giving effect to recommendations made by OFCOM under section 391), the Secretary of State must consult OFCOM; and no such order may be made unless it has been approved in draft by both Houses of Parliament: see paragraph 17.
733. [Part 2](#) of Schedule 14 establishes the rules relating to the ownership of radio multiplex licences, again replacing the rules repealed by section 350. Paragraph 7 prevents one person from owning more than one national radio multiplex licence at the same time.
734. Paragraph 8 deals with the ownership of local radio multiplex licences. It establishes a limit of one multiplex licence per owner in areas where there is overlap of services so that the potential audience of one service includes at least half the potential audience of another. OFCOM are to lay down the technical standards by which ‘coverage area’ can be determined. If a person is in contravention of this rule when it is enacted, but is not in contravention of the existing rules on multiplex ownership, the contravention will be ignored and no divestment will be required until another person becomes the holder of the licences in question.
735. Paragraph 9 provides that a radio multiplex licence is to be treated for the purposes of this Part of this Schedule as if it were held by the actual licence holder and any person connected with him.

736. Under paragraph 10, the Secretary of State is given power to repeal or modify any of the rules in Part 2 by order.
737. [Part 3](#) of Schedule 14 contains a power for the Secretary of State to impose by order new rules on the holding of local sound broadcasting licences and the provision of local digital sound programme services. Such rules would replace those repealed by section 350.
738. That Part allows the Secretary of State to impose limits on the number of licences that any person owns, or to prevent a person owning any licences at all in certain circumstances. The circumstances that could be specified in establishing rules of this sort include:
- the degree of overlap of the different services involved;
  - the size of the potential audience for those services and the times when they would be made available;
  - the extent to which there would be other persons with licences to broadcast to the same potential audience, the number of those persons and the audience size and coverage area of their stations;
  - whether the person who holds (or wants to hold) the licence runs national newspapers, and the national market share of those newspapers;
  - whether that person runs local newspapers that serve any part of the coverage area for which they would hold a radio licence, and the newspapers' local market share;
  - whether and to what extent the coverage area of the licence in question overlaps with the coverage area of a regional Channel 3 service for which he also owns the licence.
739. Paragraph 12 gives the Secretary of State similar powers to impose limits on the provision of local digital sound programme services, with the exception that the newspaper and Channel 3 assets held by a person are not included in the list of factors that may be considered when establishing rules.
740. Paragraph 13 explains that definitions of the different forms of licence-holding, and of national and local newspapers and their market share, may be made under the order-making powers in paragraphs 11 and 12, and makes other supplemental provision. Paragraph 14 contains transitional provisions for orders made under paragraphs 11 and 12. If a person is in contravention of any rule established by such an order when it is enacted, but is not in contravention of the rules that preceded it, then the contravention will be ignored and no divestment will be required until there is a relevant change of circumstances in the licence-holding arrangements.
741. [Part 4](#) of this Schedule is concerned with the ownership of broadcasting licences by religious bodies, and the details are covered under section 348 above.
742. [Part 5](#) of Schedule 14 contains supplementary provisions relating to its implementation and interpretation. There is a requirement for the Secretary of State to consult OFCOM before making an order under any provision in the Schedule. There is also a stipulation that Part 1 of Schedule 2 to the 1990 Act should apply to Schedule 14 in the same way as it does to Part 2 of that Schedule. An overlapping area is defined as including any area that is the same as, or lies wholly inside, another area.

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

743. OFCOM are to include in the licence for every Channel 3 service conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected

with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service.

744. Where such a change of control may result, or has resulted, over a body corporate holding a Channel 3 licence, OFCOM must review and publish a report on the effects or likely effects, and their proposed response. OFCOM must review the impact of the change of control on the quality and range of regional programmes and the effect on the regional character of the service (*subsection (6)*), as well as the amount of time given in the service to regional programmes, the proportion of regional programmes made in the relevant region and the extent to which persons are employed in and decisions are made in the relevant region in connection with the service (*subsection (7)*). They must also review the effect on the time allocated in the service to original productions and news and current affairs programmes (*subsection (4)*); and the extent to which Channel 3 programmes in the service are made in the UK outside the M25 area, the range of such programmes, the extent to which expenditure by the Channel 3 provider on Channel 3 programmes is referable to programme production at different production centres outside the M25, and the range of such production centres to which the expenditure is referable (*subsection (5)*).
745. In the case of a national Channel 3 service, OFCOM will only review the effect on programme production and production expenditure outside the M25 area where a national Channel 3 service is subject to relevant conditions under section 286 (programme production) or OFCOM otherwise consider it would be appropriate.

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

746. If, following a review under section 351, OFCOM consider that the effect of the change of control is prejudicial to any of the matters they have reviewed, then under section 352 they must vary the licence, the only exception being where the matter in issue relates to subsection (7) of section 351, in which case they have a discretion whether to vary the licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled throughout the twelve months immediately before the relevant change of control.
747. The licensee must be given a reasonable opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

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

748. OFCOM are to include in the licence for Channel 5 conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service.
749. Where such a change of control may result, or has resulted, over a body corporate holding the Channel 5 licence, OFCOM shall review and publish a report on the effects or likely effects, and their proposed response. OFCOM must review the effect of the change of control on the time allocated in the service to original productions and news and current affairs programmes; and the extent to which Channel 5 programmes in the service are made in the UK outside the M25 area, the range of such programmes, the extent to which expenditure by the Channel 5 provider on Channel 5 programmes is referable to programme production at different production centres outside the M25, and the range of such production centres to which the expenditure is referable.

***Section 354: Action following review under s. 353***

750. If, following a review under section 353, OFCOM consider that the effect of the change of control is prejudicial to any of the matters they have reviewed, then under section 354 they must vary the licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled throughout the twelve months immediately before the relevant change of control.
751. The licensee must be given a reasonable opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

***Section 355: Variation of local licence following change of control***

752. OFCOM are to include in the licence for every local sound broadcasting service conditions to ensure that any body corporate holding such a licence notifies OFCOM in advance of any proposals that may result in a change of control of the licensee, or of a person connected with the licensee who is, actually or potentially, involved to a substantial extent in providing programmes for inclusion in the licensed service. Where such a change of control may result, or has resulted, over a body corporate holding a relevant licence, OFCOM shall review the effects, or likely effects, of the change. The review will consider the possible impact of such a change on: the quality and range of programmes; the character of the service; OFCOM's duty in respect of the local content and character of services (set out in section 314). The character of the service includes the music and spoken material selected for inclusion on that service. OFCOM must publish a report of their review setting out its conclusions and any proposed action.

***Section 356: Action following review under section 353***

753. If, following a review under section 353, OFCOM consider that the effect of the relevant change of control is prejudicial to the matters set out in section 353(4), they must vary the relevant licence. Any such variation may lead to the inclusion in the licence of conditions that are more burdensome than those included prior to the variation. However, they must be conditions that would have been fulfilled during the three months prior to the change of control or, if those three months were atypical of the licensee's performance during the previous year, another three-month period during the preceding year. The licensee must always be given the opportunity to comment on the report before OFCOM vary the licence. The variation shall not be effective until the change of control actually occurs.

***Section 357: Meaning of "control"***

754. This section amends the provisions relating to the control of a body corporate set out in paragraph 1 of Schedule 2 to the Broadcasting Act 1990 (circumstances where there is deemed to be control even though the person in question does not have a 50 per cent, or greater, interest in a company):
- It provides that a person will be treated as having de facto control of such a body if he would (if he chose to) be able in most cases or in significant respects to ensure that affairs of the company are conducted in accordance with his wishes.
  - OFCOM will be required to publish and update guidance on some, but not necessarily all, of the factors 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.

## **Chapter 6: Other provisions about television and radio services**

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

755. OFCOM are under a duty to carry out a review of the provision of the television and radio programmes in the United Kingdom and to prepare and publish a factual and statistical report setting out their findings twelve months after the commencement of this section and annually thereafter. In carrying out the review, OFCOM must consider each of the matters listed in *subsection (3)*. These include: the extent to which television and radio programmes are representative of the principal genres of such programmes; the extent to which OFCOM's codes relating to, for example, provision for the deaf and visually impaired, listed events and fairness have been complied with; trends in audience behaviour; the financial condition of the television and radio programme market(s); the operation of the independent productions quota in section 277 and paragraphs 1 and 7 of Schedule 12; relevant intellectual property matters that have been significant during the period; technological developments; the availability of people with skills used to provide television and radio services and programmes; and the availability of facilities for the provision of and training in such skills. OFCOM's duty under this section is in addition to their duty to prepare a report on the current state of public service television broadcasting under section 264.

### **Section 359: Grants to providers**

756. OFCOM may make such grants as they consider appropriate to the providers of community radio (see the notes to section 262 above). Under *subsection (2)*, the Secretary of State may by order provide that OFCOM may also give grants to providers of local digital television services (see the notes to section 244 above). The terms and conditions of such grants are at the discretion of OFCOM, but neither the bestowing of a grant upon any person, nor the terms on which this is done, shall make that person a disqualified person under Schedule 2 to the Broadcasting Act 1990 in relation to a community radio or local digital television licence.

### **Section 360: Amendments of 1990 and 1996 Acts**

757. This section amends the definition of programme services in the 1990 Act so as to correspond to the language of the Act. The 1990 Act definition will continue to include a broader range of services than is licensable under the Communications Act, including on-demand and Internet services. Separate definitions are needed for this Act and the 1990 Act because various outlying statutory provisions will continue to rely on the broader 1990 Act definition to control activities that go beyond what is licensable. For example, provisions in the Children Act 1989 seek to protect the privacy of children involved in certain legal proceedings, and the effectiveness of that restriction would be lessened if it did not extend beyond broadcast material. This section also introduces Schedule 15, which makes amendments to the 1990 and 1996 Acts. Most of these amendments are consequential on the Act. They are described in more detail in the notes for Schedule 15.

### **Section 361: Meaning of "available for reception by members of the public"**

758. This section defines "available for reception by members of the public" in such a way as to exclude 'one to one' services made available on cable, satellite or by means of a multiplex service. Examples of such services include internet and video-on-demand services where an individual viewer requests an individual library item such as a film. However, any television service that is designed to be broadcast or distributed simultaneously, or virtually simultaneously, to its audience will be held to be "available for reception by members of the public", even where the technical means of distribution is on a one to one basis.

*These notes refer to the Communications Act 2003  
(c.21) which received Royal Assent on 17 July 2003*

759. The Secretary of State may by order modify section 361 having regard to: the public's expectations of protection as regards the contents of television programmes; the extent to which members of the public are able to make use of facilities for exercising control over the programmes accessed; the practicability of applying different levels of regulation for different services; the financial impact of any proposed modifications on service providers; and technological developments.

***Section 362: Interpretation of Part 3***

760. This section provides for the interpretation of defined terms used in Part 3.