

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Television and Radio Services

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.
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.