

SCHEDULES

SCHEDULE 9

Section 199

ARRANGEMENTS ABOUT CARRYING ON OF C4C'S ACTIVITIES

Notification of requirement to submit proposals

- 1 (1) It shall be the duty of OFCOM to give a notification under this paragraph to C4C—
- (a) as soon as practicable after the commencement of this Schedule, and
 - (b) as soon as practicable in the last twelve months preceding each date on which the replacement licence granted in accordance with section 231 would expire if not renewed.
- (2) A notification under this paragraph is one requiring C4C to submit proposals to OFCOM in accordance with this Schedule for the relevant licence period.
- (3) A notification under this paragraph must specify the period within which C4C must submit their proposals.
- (4) The period specified under sub-paragraph (3) must be a period ending not less than three months after the day of the giving of the notification.

Submission of proposed arrangements

- 2 (1) This paragraph applies where C4C have received a notification under paragraph 1.
- (2) C4C must, within the period set out in the notification, submit proposals to OFCOM for 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, during the relevant licence period, of their primary functions are—
- (a) identified;
 - (b) evaluated; and
 - (c) properly managed.
- (3) The proposals must include proposals for the arrangements that C4C consider appropriate for securing the transparency objectives during the relevant licence period.
- (4) For the purposes of this Schedule the transparency objectives are—
- (a) an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and
 - (b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.

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- (5) The matters to which the proposals submitted under this paragraph may relate include, in particular, the procedures and other practices to be followed by C4C in the case of—
 - (a) the initiation and management of new ventures;
 - (b) the exercise of particular powers;
 - (c) the assessment of risks;
 - (d) the imposition of charges; and
 - (e) the keeping of records.
- (6) The determination of what is appropriate for the purposes of sub-paragraphs (3) and (4) is not to be confined to a determination of what is appropriate for securing the matters mentioned in sub-paragraph (2).
- (7) The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed in accordance with that provision.
- (8) That person must be a person other than the person for the time being holding an appointment for the purposes of paragraph 12(2) of Schedule 3 to the 1990 Act (C4C’s auditor).

Consideration and approval of proposals

- 3 (1) OFCOM must consider every proposal or revised proposal submitted to them by C4C under paragraph 2 or this paragraph and may do one of the following—
 - (a) approve the proposed arrangements;
 - (b) approve them with such modifications as they may notify to C4C;
 - (c) require C4C to submit revised proposals in accordance with directions given by OFCOM.
- (2) Before—
 - (a) making modifications of proposed arrangements for the purpose of approving them, or
 - (b) requiring the submission of revised proposals,
 OFCOM must consult C4C.

Duration of approval and modification of arrangements

- 4 (1) Arrangements approved under this Schedule are to remain in force (subject to the following provisions of this paragraph) throughout the licence period to which they relate.
- (2) The arrangements for the time being approved under this Schedule for any licence period may be modified, by agreement between OFCOM and C4C, at any time during the licence period for which they apply.
- (3) OFCOM may carry out a review of the arrangements for the time being approved under this Schedule.
- (4) The reviews that may be carried out under this paragraph in any one licence period are confined to either—
 - (a) one review relating to all the arrangements; or

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- (b) two reviews carried out at separate times as follows—
 - (i) one (whether the first or second) relating to the arrangements for securing the transparency objectives; and
 - (ii) the other relating to other matters.
- (5) On a review under this paragraph, OFCOM may require C4C to submit proposals for modifying the arrangements for the time being approved under this Schedule so far as they relate to the matters under review.
- (6) Paragraph 3 applies where proposals are submitted to OFCOM under sub-paragraph (5) as it applies where they are submitted under paragraph 2.

Publication of approved arrangements

- 5 (1) OFCOM must publish all arrangements approved by them under this Schedule.
- (2) The publication of anything under this paragraph must be in such manner as OFCOM consider appropriate for bringing it to the attention of members of the public.

Duty of C4C to act in accordance with the approved arrangements

- 6 It shall be the duty of C4C to act in accordance with the arrangements for the time being in force under this Schedule.

Enforcement of duties

- 7 (1) This paragraph applies to—
 - (a) every duty of C4C under this Schedule to submit proposals to OFCOM; and
 - (b) the duty imposed on C4C by paragraph 6.
- (2) Each of those duties shall be enforceable in civil proceedings by OFCOM—
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
 - (c) for any other appropriate remedy or relief.

Penalty for contravention of the arrangements

- 8 (1) OFCOM may impose a penalty on C4C if C4C have contravened—
 - (a) a requirement of this Schedule to submit proposals to OFCOM;
 - (b) a requirement of arrangements for the time being approved under this Schedule.
- (2) The amount of the penalty must not exceed 3 per cent. of C4C's qualifying revenue for their last complete accounting period before the contravention.
- (3) Before imposing a penalty on C4C under this paragraph OFCOM must give C4C a reasonable opportunity of making representations to OFCOM about their proposal to impose the penalty.
- (4) Where OFCOM impose a penalty on C4C under this paragraph, they shall—
 - (a) notify C4C; and

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- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.
- (5) In the case of a continuing contravention—
- (a) separate penalties may be imposed in respect of different periods during which the contravention continues;
 - (b) the notification of the penalty must specify the period in respect of which the penalty is imposed; and
 - (c) the reference in sub-paragraph (2) to the last complete accounting period before the contravention is a reference to the last complete accounting period before the end of the period in respect of which the penalty is imposed.
- (6) A penalty imposed under this paragraph must be paid to OFCOM within the period fixed by them.
- (7) Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act (calculation of qualifying revenue), with any necessary modifications, have effect in relation to C4C for the purposes of this paragraph as they have effect in relation to the holder of a Channel 3 licence for the purposes of Part 1 of that Act.

OFCOM’s duty to take account of need to support C4C’s primary functions

- 9 In exercising their powers under this Schedule OFCOM must have regard, in particular, to the need to secure, so far as practicable, that all significant risks that C4C’s other activities will have an adverse effect on the carrying out of their primary functions are—
- (a) identified;
 - (b) evaluated; and
 - (c) properly managed.

Interpretation of Schedule

- 10 In this Schedule—
- “arrangements” means arrangements about the procedures and other practices to be followed by C4C and about other matters connected with the carrying on by them of any of their activities;
 - “licence period” means—
 - (a) the period for which the replacement licence is granted to C4C in accordance with section 231; or
 - (b) any subsequent period for which it is renewed;
 - “primary functions” is to be construed in accordance with section 199(2);
 - “relevant licence period”—
 - (a) in relation to the first notification to be given under paragraph 1, the licence period mentioned in paragraph (a) of the definition of that period; and
 - (b) in relation to any other such notification, the first licence period to begin after the giving of the notification;
 - “transparency objectives” is to be construed in accordance with paragraph 2(4).