



# Draft Media Bill





# Draft Media Bill

Presented to Parliament  
by the Secretary of State for Culture, Media & Sport  
by Command of His Majesty

March 2023



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# Media Bill

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**B I L L**

TO

Make provision about public service television; about the name, remit, powers, governance and audit of S4C; about the sustainability of, and programme-making by, C4C; about the regulation of television selection services; about the regulation of on-demand programme services; about the regulation of radio services; about the regulation of radio selection services; for the repeal of section 40 of the Crime and Courts Act 2013; for addressing deficiencies in broadcasting legislation arising from the withdrawal of the United Kingdom from the European Union; and for connected purposes.

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

PUBLIC SERVICE TELEVISION

*The public service remit for television*

**1 Reports on the fulfilment of the public service remit**

- (1) Section 264 of the Communications Act 2003 (OFCOM reports on the fulfilment of the public service remit) is amended as follows.
- (2) For subsections (3) to (8) (OFCOM's review and reporting obligations and the purposes of public service television broadcasting in the United Kingdom) substitute—
  - “(3) The review and reporting obligations for a period are—
    - (a) an obligation to carry out a review of the extent to which the public service remit for television in the United Kingdom has, during that period, been fulfilled by the public service broadcasters (taking them all together over the period as a whole); and



- 
- (b) an obligation, with a view to maintaining and strengthening the quality of the audiovisual content made available in order to fulfil the public service remit for television in the United Kingdom, to prepare a report on the matters found in the review.
- (4) The public service remit for television in the United Kingdom is fulfilled where the public service broadcasters (taken together) make available a broad range of audiovisual content—
- (a) in a manner which, taking into account when and how their relevant audiovisual services are received or accessed, is likely to meet the needs and satisfy the interests of as many different audiences as practicable, and
  - (b) which meets the needs and satisfies the interests of as many different available audiences as practicable as regards the nature of the audiovisual content made available and the subject-matters covered by it,
- and that range of audiovisual content includes material satisfying the requirements in subsection (5).
- (5) The requirements in this subsection are—
- (a) that the audiovisual content made available by the public service broadcasters (taken together) provides, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs—
    - (i) in, and in the different parts of, the United Kingdom, and
    - (ii) from around the world;
  - (b) that the audiovisual content made available by the public service broadcasters (taken together) includes what appears to OFCOM to be a sufficient quantity of audiovisual content that—
    - (i) reflects the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom, or
    - (ii) without prejudice to the generality of sub-paragraph (i), is in, or mainly in, a recognised regional or minority language;
  - (c) that the audiovisual content made available by the public service broadcasters (taken together) includes an appropriate range and quantity of audiovisual content, contained in original productions, that—
    - (i) reflects the lives and concerns of children and young people in the United Kingdom, and
    - (ii) helps them to understand the world around them; and
  - (d) that the audiovisual content made available by the public service broadcasters (taken together) includes—
    - (i) an appropriate range of independent productions with an appropriate combined duration,
    - (ii) an appropriate range of original productions with an appropriate combined duration, and

- (iii) so far as the audiovisual content consists of programmes made in the United Kingdom, an appropriate range of programmes made outside the M25 area with an appropriate combined duration.
- (6) Particular audiovisual content made available by a public service broadcaster is to be regarded as contributing to the fulfilment of the public service remit for television in the United Kingdom only if the broadcaster has taken steps to ensure that the audiovisual content in question may be received or accessed in accordance with subsection (7) by so much of the broadcaster's intended audience as is reasonably practicable.
- (7) Audiovisual content may be received or accessed in accordance with this subsection if—
  - (a) the audiovisual content, and
  - (b) the relevant audiovisual service by means of which the audiovisual content is provided,may be received or accessed in intelligible form and free of charge.
- (8) Any requirement to pay sums in accordance with regulations under section 365 is to be disregarded for the purpose of determining whether audiovisual content may be received or accessed in accordance with subsection (7).
- (8A) Particular audiovisual content made available by a public service broadcaster by means of an on-demand programme service is to be regarded as contributing to the fulfilment of the public service remit for television in the United Kingdom only if the audiovisual content in question is available for a period of not less than 30 days beginning with the day on which that material is first made available for viewing.
- (8B) The Secretary of State may by regulations amend subsection (8A) so as to substitute a different period for the period for the time being specified there.
- (8C) In carrying out a review under this section OFCOM must consider—
  - (a) the costs to public service broadcasters of fulfilling the public service remit for television in the United Kingdom;
  - (b) the sources of income available to them for meeting those costs.
- (8D) Every report under this section must—
  - (a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the public service remit for television in the United Kingdom has been fulfilled;
  - (b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which that remit is fulfilled;
  - (c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (8C) and any conclusions they have arrived at in relation to those findings; and
  - (d) set out OFCOM's conclusions on the current state of the audiovisual content made available by public service broadcasters in order to fulfil the public service remit for television in the United Kingdom."

- (3) After subsection (10) insert—
- “(10A) Before making regulations under this section the Secretary of State must consult OFCOM.
- (10B) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (4) For subsection (11) substitute—
- “(11) The following are relevant audiovisual services for the purposes of this section—
- (a) television broadcasting services;
  - (b) television licensable content services;
  - (c) digital television programme services;
  - (d) internet programme services;
  - (e) other services provided by means of the internet where there is a person who exercises editorial control in respect of the service.”
- (5) For subsection (13) substitute—
- “(13) For the purposes of this section, audiovisual content is made available by a public service broadcaster if—
- (a) it is provided by means of a relevant audiovisual service provided by the broadcaster, or
  - (b) it is provided, under arrangements made between the broadcaster and a person who is the provider of a relevant audiovisual service, by means of that relevant audiovisual service.
- (14) In the case of such service as is referred to in subsection (11)(e), the person, and the only person, who is to be treated for the purposes of this section as providing the service is the person who exercises editorial control in respect of the service.
- (15) In this section—
- “audiovisual content” means material, other than advertisements, which is included in a relevant audiovisual service;
- “children” means persons under the age of 18;
- “independent production”—
- (a) in relation to the provider of a licensed public service channel, has the same meaning as in section 277;
  - (b) in relation to the BBC, has the same meaning as in paragraph 1 of Schedule 12;
  - (c) in relation to S4C, has the same meaning as in paragraph 7 of Schedule 12;
- “intended audience” means—
- (a) in relation to the provider of a Channel 3 service provided for an area of the United Kingdom, members of the public in that area;
  - (b) in relation to any other public service broadcaster, members of the public in the United Kingdom;

“internet programme service” has the same meaning as in Part 3A (see section 362AA);

“original production”—

- (a) in relation to the provider of a licensed public service channel, has the same meaning as in section 278;
- (b) in relation to the BBC, has the meaning given by the BBC Charter and Agreement;
- (c) in relation to S4C, has the same meaning as in paragraph 8 of Schedule 12; and

“provide”, in relation to an internet programme service, has the same meaning as in Part 3A;

“recognised regional or minority language” means Welsh, the Gaelic language as spoken in Scotland, Irish, Scots, Ulster Scots or Cornish.”

## **2 OFCOM reports: wider review and reporting obligations**

- (1) Section 264A of the Communications Act 2003 (OFCOM reports: wider review and reporting obligations) is amended as follows.
- (2) In subsection (1), for “public service objectives” substitute “public service requirements”.
- (3) For subsections (3) and (4) substitute—
  - “(3) “The public service requirements” are the requirements set out in paragraphs (a) to (d) of section 264(5), as modified by subsection (4).
  - (4) Section 264(5) has effect for the purposes of subsection (3) as if references to audiovisual content made available by the public service broadcasters, or to programmes included in that content, were references to material included in media services.”

## **3 Public service remits of licensed providers**

- (1) Section 265 of the Communications Act 2003 (licence conditions for a licensed public service channel to include fulfilling public service remits) is amended as follows.
- (2) In subsection (2) (public service remit for Channel 3 services and Channel 5), for “the provision of a range of high quality and diverse programming” substitute “the making available of a range of high quality and diverse audiovisual content which makes an adequate contribution to the fulfilment of the public service remit for television in the United Kingdom”.
- (3) In subsection (3) (public service remit for Channel 4)—
  - (a) in the opening words, for “the provision of a broad range of high quality and diverse programming which” substitute “the making available of a broad range of high quality and diverse audiovisual content which makes an adequate contribution to the fulfilment of the public service remit for television in the United Kingdom and”;
  - (b) in paragraph (c), for the words from the beginning to “include” substitute “includes a significant quantity and range of”.

- (4) After subsection (5) insert—

“(6) Section 264(13) applies for the purposes of this section as it applies for the purposes of section 264.”

#### 4 Statements of programme policy

- (1) Section 266 of the Communications Act 2003 (statements of programme policy for Channel 3 services, Channel 4 and Channel 5) is amended as follows.

- (2) After subsection (2) insert—

“(2A) The condition must require such proposals—

- (a) to state whether two or more relevant audiovisual services (including the channel) are proposed to be used to fulfil the public service remit for the channel, and
- (b) if so, to identify, in relation to each of the relevant audiovisual services, its proposed contribution to the fulfilment of the remit.”

- (3) In subsection (5), for “section 264(4) and (6)” substitute “section 264(4) and (5)”.

#### 5 Changes of programme policy

In section 267 of the Communications Act 2003 (changes of programme policy for Channel 3 services, Channel 4 and Channel 5), in subsection (4), for “which the channel would” substitute “which—

- (a) the channel, or
  - (b) any other relevant audiovisual service which is being used to fulfil the public service remit for the channel,
- would”.

#### 6 Enforcement of public service remits

- (1) Section 270 of the Communications Act 2003 (enforcement of public service remits) is amended as follows.

- (2) In subsection (1)—

- (a) in paragraph (a), after “failed” insert “, in any respect,”;
- (b) omit paragraph (b) and the “or” preceding it.

- (3) In subsection (3), after paragraph (c) insert—

“(ca) the record of the provider as regards compliance with duties under Part 4A (on-demand programme services);”.

- (4) After subsection (4) insert—

“(4A) Where the provider’s latest statement of programme policy states that one or more relevant audiovisual services other than the provider’s channel will be used to fulfil the public service remit for the channel, a direction given under this section may make provision with respect to that service or any of those services.”

- (5) In subsection (6)(b), omit the words from “or adequately” to “Kingdom”.

- (6) In subsection (7)(b), omit sub-paragraph (ii) and the “and” preceding it.

(7) After subsection (7) insert—

“(7A) Where the provider’s latest statement of programme policy states that one or more relevant audiovisual services other than the provider’s channel will be used to fulfil the public service remit for the channel, specific conditions inserted into the provider’s licence under subsection (7) may make provision with respect to that service or any of those services.”

## **7 Power to amend public service remit for television in the United Kingdom**

In section 271 of the Communications Act 2003 (power to amend the public service remits), in subsection (1)—

(a) for paragraph (b) substitute—

“(b) the public service remit for television in the United Kingdom (see section 264(4) to (8B)).”;

(b) omit paragraph (c).

### *Programming quotas for public service television*

## **8 Quotas: independent productions**

(1) Section 277 of the Communications Act 2003 (programming quotas for independent productions) is amended as follows.

(2) For subsection (1) substitute—

“(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that in each year—

(a) the provider of the licensed public service channel makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with the provider’s commissioning code, and

(b) the duration (in total) of those independent productions is at least the number of hours specified by order of the Secretary of State.”

(3) In subsection (2), omit paragraph (a).

(4) Omit subsection (3).

(5) In subsection (5), for the words from “, in each year” to the end of the subsection substitute “—

(a) in each year, the provider of the licensed public service channel makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with the provider’s commissioning code, and

(b) the cost (in total) of the acquisition of those independent productions is at least the amount specified in the order.”

(6) In subsection (8), in paragraph (b), for “the percentage” substitute “the number of hours or (as the case may be) the amount”.

(7) Omit subsection (9).

- 
- (8) In subsection (10), in paragraph (a)—
- (a) for “different percentages” substitute “different numbers of hours”;
  - (b) after “or” (where it first occurs) insert “different amounts for the purposes”.
- (9) In subsection (13)—
- (a) after the definition of “acquisition” insert—
    - ““commissioning code”, in relation to a provider, means the code of practice drawn up by the provider in pursuance of conditions included in the provider’s licence by virtue of section 285;”;
  - (b) omit the definition of “programming budget” and the word “and” before it.
- (10) After subsection (13) insert—
- “(14) See also sections 278B and 278C (which make further provision for the interpretation of this section etc).”

## 9 Quotas: original productions

- (1) Section 278 of the Communications Act 2003 (programming quotas for original productions) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that in each year—
- (a) the provider of the licensed public service channel makes available qualifying audiovisual content that includes a range of original productions,
  - (b) the duration (in total) of those original productions is at least the number of hours that OFCOM consider appropriate, and
  - (c) if OFCOM consider it appropriate, the additional peak viewing time objective described in subsection (1A) is met.
- (1A) The additional peak viewing time objective is that (out of the number of hours determined by OFCOM for the purposes of subsection (1)(b)) at least the number of hours that OFCOM consider appropriate is allocated to the broadcasting of original productions included in the channel at peak viewing times.”
- (3) Omit subsections (2) and (3).
- (4) After subsection (7) insert—
- “(7A) An order under subsection (6) may—
- (a) authorise OFCOM to provide in a condition included in a licence by virtue of this section that original productions of a description specified in the licence may not be counted towards meeting the condition;
  - (b) require OFCOM to prepare and publish guidance about the determination of whether an original production falls within a description included in a licence by virtue of paragraph (a);

- (c) authorise OFCOM to provide in a condition included in a licence by virtue of this section that the holder of the licence must have regard to that guidance.”
- (5) After subsection (11) insert—
  - “(12) See also sections 278B and 278C (which make further provision for the interpretation of this section etc).”

## 10 Power to create additional quotas for qualifying audiovisual content

After section 278 of the Communications Act 2003 insert—

### “278A Additional quotas for qualifying audiovisual content

- (1) The Secretary of State may by regulations specify a description of qualifying audiovisual content for the purposes of this section if —
  - (a) the Secretary of State considers that qualifying audiovisual content of that description is not being made available by the providers of licensed public service channels (taken together) to the extent that is appropriate, and
  - (b) either subsection (3) or (4) applies.
- (2) The descriptions that may be specified under subsection (1) include descriptions that are framed in part by reference to the qualifying audiovisual service by means of which the content is made available.
- (3) This subsection applies where OFCOM have made a recommendation for the making of the regulations in their most recent report under section 229 or 264.
- (4) This subsection applies where—
  - (a) the Secretary of State has considered OFCOM’s most recent report under section 229 or 264,
  - (b) the Secretary of State is satisfied that it is appropriate to make the regulations because of circumstances or other matters which are dealt with in the report or which (in the Secretary of State’s opinion) should have been dealt with in it, and
  - (c) less than 12 months have elapsed since the date on which the Secretary of State received the report.
- (5) Where the Secretary of State makes regulations under subsection (1), the regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that in each year—
  - (a) the provider of the licensed public service channel makes available qualifying audiovisual content that includes content of the description specified in the regulations, and
  - (b) the duration (in total) of content of that description is at least the number of hours that OFCOM consider appropriate.
- (6) Before including a recommendation for the making of regulations under subsection (1) in a report under section 229 or 264, OFCOM must consult—
  - (a) members of the public in the United Kingdom,



- (b) providers of licensed public service channels who are likely to be affected if the Secretary of State accepts the recommendation, and
  - (c) such other persons providing television programme services or on-demand programme services as OFCOM consider appropriate.
- (7) Before making regulations under subsection (1), the Secretary of State must consult the following persons about their content (even if the regulations are those recommended by OFCOM)—
- (a) OFCOM,
  - (b) providers of licensed public service channels who are likely to be affected by the regulations, and
  - (c) such other persons providing television programme services or on-demand programme services as the Secretary of State considers appropriate.
- (8) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (9) See also sections 278B and 278C (which make further provision for the interpretation of this section etc)."

## 11 Quotas: meaning of “qualifying audiovisual content” etc

After section 278A of the Communications Act 2003 (as inserted by section 10) insert—

### “278B Quotas: meaning of “qualifying audiovisual content” etc

- (1) In this Part, “qualifying audiovisual content” means any material, other than advertisements, included in a qualifying audiovisual service.
- (2) For the purposes of this Part, a person makes available qualifying audiovisual content if—
  - (a) the person provides that content by means of a qualifying audiovisual service provided by the person,
  - (b) that content, and the qualifying audiovisual service by means of which it is provided, may be received or accessed in intelligible form and free of charge, and
  - (c) where the qualifying audiovisual service in question is an on-demand programme service, that content is available for the period described in section 264(8A).
- (3) Where the period described in section 264(8A) falls partly in one year and partly in another year, the person is to be regarded for the purposes of this Part as making the qualifying audiovisual content available in the year in which the period begins.
- (4) Subsection (8) of section 264 applies for the purposes of subsection (2)(b) as it applies for the purposes of subsection (7) of that section.
- (5) For the purposes of this Part, the following are qualifying audiovisual services—
  - (a) television broadcasting services;

- (b) on-demand programme services that are, or form part of, designated internet programme services;
- (c) any other service that—
  - (i) is a relevant audiovisual service for the purposes of section 264 (see section 264(11)), and
  - (ii) is specified, or falls within a description specified, in regulations made by the Secretary of State.
- (6) In relation to a qualifying audiovisual service that is an on-demand programme service, references in this Part to “provide” (and related expressions) are to be read in accordance with section 368R(5).
- (7) Before making regulations under subsection (5)(c), the Secretary of State must consult OFCOM.
- (8) A statutory instrument containing regulations under subsection (5)(c) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (9) In this section, “designated internet programme service” has the same meaning as in Part 3A (see section 362AZ8).”

## 12 Quotas: further provision about their fulfilment

After section 278B of the Communications Act 2003 (as inserted by section 11) insert—

### “278C Quotas: further provision about their fulfilment

- (1) In this section, a “quota condition” means—
  - (a) a condition that forms part of the regulatory regime of a licensed public service channel by virtue of—
    - (i) section 277(1) or (4) (quotas for independent productions),
    - (ii) section 278(1) (quotas for original productions),
    - (iii) section 278A(5) (additional quotas), or
    - (iv) section 286(1)(a) and (aa) or (3)(a) and (aa) or 288(1)(a) and (aa) (regional programme-making quotas relating to duration);
  - (b) a condition that forms part of the regulatory regime of a licensed public service channel by virtue of section 286(1)(c) or (3)(c) or 288(1)(c) (regional programme-making quotas relating to expenditure), where the condition is framed by reference to the making available of qualifying audiovisual content;
  - (c) a duty of the BBC under or by virtue of paragraph 1(1) or (4) of Schedule 12 (BBC quotas for independent productions);
  - (d) a duty of S4C under or by virtue of paragraph 7(1) or (4) or 8(1) of Schedule 12 (S4C quotas for independent productions and original productions).
- (2) The Secretary of State must by regulations make provision determining whether qualifying audiovisual content that is made available by a person in the circumstances described in subsection (3) may be counted towards meeting a quota condition.

- (3) Those circumstances are that the person has previously made available audiovisual content consisting of the same or substantially the same material (whether in the same year or a previous year).
- (4) For the purposes of subsection (3)—
  - (a) “audiovisual content” has the same meaning as in section 264;
  - (b) section 264(13) (interpretation of “made available”) applies as it applies for the purposes of section 264.
- (5) Except in the case of a quota condition relating to independent productions, regulations under subsection (2) may, instead of determining the matter described in that subsection, require OFCOM to determine it.
- (6) Where the regulations require OFCOM to determine the matter, OFCOM must do so—
  - (a) in relation to a quota condition falling within subsection (1)(a) or (b), by conditions included in the licence of the provider of the licensed public service channel, and
  - (b) in relation to a quota condition falling within subsection (1)(d), by a direction given by OFCOM to S4C.
- (7) Before giving a direction under subsection (6)(b), OFCOM must consult S4C.
- (8) In relation to a quota condition falling within subsection (1)(a) or (b), the reference in subsection (3) to the person includes a reference to any person who previously held the licence to provide the licensed public service channel in question.
- (9) Before making regulations under subsection (2), the Secretary of State must consult OFCOM.
- (10) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

### **13 Quotas: independent productions: commissioning code**

- (1) Section 285 of the Communications Act 2003 (code relating to programme commissioning) is amended as follows.
- (2) In subsection (1), for the words from “he will apply” to the end of the subsection substitute “that the provider will apply—
  - (a) when agreeing terms for the commissioning of independent productions that will be included in television broadcasting services;
  - (b) when agreeing terms for the commissioning of independent productions that will be included in other qualifying audiovisual services but which the provider wishes to count towards meeting the conditions included in the provider’s licence by virtue of section 277(1) or (4) (programming quotas for independent productions).”
- (3) In subsection (3), after paragraph (g) insert—
  - “(h) that such information about the application of the code as OFCOM consider appropriate is given to persons who make

independent productions that are to be commissioned in accordance with the code.”

(4) After subsection (9) insert—

“(10) See also section 278B (which makes further provision for the interpretation of this section).”

#### **14 Regional programme-making: Channels 3, 4 and 5**

(1) Section 286 of the Communications Act 2003 (regional programme-making for Channels 3 and 5) is amended in accordance with subsections (2) to (6).

(2) In subsection (1)—

(a) in the words before paragraph (a), after “securing” insert “in each year”;

(b) for paragraph (a) substitute—

“(a) that the provider of that service makes available qualifying audiovisual content that, so far as it consists of Channel 3 programmes made in the United Kingdom, includes Channel 3 programmes made outside the M25 area;

(aa) that the duration (in total) of the Channel 3 programmes that are made in the United Kingdom outside the M25 area is at least the number of hours that OFCOM consider appropriate;”

(c) in paragraph (b), for the words from “the Channel 3 programmes” to “the M25 area” substitute “those programmes”;

(d) in paragraph (c), for “a suitable proportion” substitute “a suitable amount”.

(3) In subsection (3)—

(a) in the words before paragraph (a), after “securing” insert “in each year”;

(b) for paragraph (a) substitute—

“(a) that the provider of that Channel makes available qualifying audiovisual content that, so far as it consists of programmes made in the United Kingdom, includes programmes made outside the M25 area;

(aa) that the duration (in total) of the programmes that are made in the United Kingdom outside the M25 area is at least the number of hours that OFCOM consider appropriate;”

(c) in paragraph (b), for the words from “the programmes” to “the M25 area” substitute “those programmes”;

(d) in paragraph (c), for “a suitable proportion” substitute “a suitable amount”;

(e) in that paragraph, after “that Channel” insert “, or for viewing by means of any other qualifying audiovisual service provided by the provider of that Channel,”.

(4) In subsection (6)—

(a) for “A proportion” substitute “An amount of expenditure”;

(b) for “a significant proportion of the programmes or expenditure” substitute “a significant amount of the expenditure”.

- (5) In subsection (7), in the definition of “Channel 3 programmes” after “on Channel 3” insert “, or for viewing by means of any other qualifying audiovisual service provided by a provider of a Channel 3 service,”.
- (6) After subsection (7) insert—
  - “(8) See also sections 278B and 278C (which make further provision for the interpretation of this section etc).”
- (7) Section 288 of the Communications Act 2003 (regional programme-making for Channel 4) is amended in accordance with subsections (8) to (10).
- (8) In subsection (1)—
  - (a) in the words before paragraph (a), after “securing” insert “in each year”;
  - (b) for paragraph (a) substitute—
    - “(a) that the provider of that Channel makes available qualifying audiovisual content that, so far as it consists of programmes made in the United Kingdom, includes programmes made outside the M25 area;
    - (aa) that the duration (in total) of the programmes that are made in the United Kingdom outside the M25 area is at least the number of hours that OFCOM consider appropriate;”;
  - (c) in paragraph (b), for the words from “the programmes” to “the M25 area” substitute “those programmes”;
  - (d) in paragraph (c), for “a suitable proportion” substitute “a suitable amount”;
  - (e) in that paragraph, after “Channel 4” insert “, or for viewing by means of any other qualifying audiovisual service provided by the provider of Channel 4,”.
- (9) In subsection (4)—
  - (a) for “A proportion” substitute “An amount of expenditure”;
  - (b) for “a significant proportion of the programmes or expenditure” substitute “a significant amount of the expenditure”.
- (10) After subsection (5) insert—
  - “(6) See also sections 278B and 278C (which make further provision for the interpretation of this section etc).”

## 15 Networking arrangements for Channel 3

- (1) Section 290 of the Communications Act 2003 (proposals for arrangements) is amended in accordance with subsections (2) and (3).
- (2) In subsection (4)—
  - (a) in paragraph (b), for “for broadcasting in all regional Channel 3 services” substitute “for inclusion by every holder of such a licence in qualifying audiovisual services provided by that person”;
  - (b) in paragraph (c), for the words from “regional Channel 3 services” to the end of the paragraph substitute “holders of such licences to provide qualifying audiovisual services that (taken as a whole) are able to compete effectively with other television programme services and on-demand programme services provided in the United Kingdom.”

- (3) After subsection (4) insert—
- “(5) See also section 278B (which makes further provision for the interpretation of this section).”
- (4) In section 293 of that Act (review of approved networking arrangements etc), in subsection (3), for “one year” substitute “five years”.

#### **16 Removal of quotas for schools programmes on Channel 4**

Omit section 296 of the Communications Act 2003 (provision of schools programmes on Channel 4).

#### **17 Quotas: the BBC and S4C**

Schedule 1 contains amendments relating to —

- (a) quotas for independent productions in relation to the BBC and S4C, and
- (b) quotas for original productions in relation to S4C.

#### *Information*

#### **18 Power to require information**

After section 338 of the Communications Act 2003 insert—

##### *“Information relating to certain OFCOM functions*

#### **338A Power to require information**

- (1) OFCOM may by notice (an “information notice”) require a person within subsection (4) to provide them with any information that they require for the purpose of carrying out their functions under—
- (a) sections 263 to 294 and Schedule 11, and
- (b) paragraphs 5 and 7 to 10 of Schedule 12.
- (2) The power conferred by subsection (1) includes power to require a person within subsection (4) to obtain or generate information.
- (3) The power conferred by subsection (1) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.
- (4) The persons within this subsection are—
- (a) a provider of a licensed public service channel;
- (b) S4C;
- (c) a person with whom a public service broadcaster has made such arrangements as are referred to in section 264(13)(b);
- (d) a person who is not within any of paragraphs (a) to (c) but who provides a media service (within the meaning of section 264A);
- (e) a person who was within any of paragraphs (a) to (d) at a time to which the required information relates;

- 
- (f) a person who is not within any of paragraphs (a) to (e) but who appears to OFCOM to have, or to be able to obtain or generate, information required by them as mentioned in subsection (1).
- (5) An information notice must—
- (a) specify or describe the information to be provided,
  - (b) specify why OFCOM require the information,
  - (c) specify the form and manner in which the information must be provided, and
  - (d) contain information about the consequences of not complying with the notice.
- (6) An information notice must specify when the information must be provided which may be—
- (a) on or by a specified date, or
  - (b) within a specified period.
- (7) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice.
- (8) The power conferred by subsection (1) to require the provision of information includes power to require the provision of information held outside the United Kingdom.
- (9) OFCOM may not use the power conferred by subsection (1) to require the BBC to provide, obtain or generate information.
- (10) The power conferred by subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (11) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice (subject to subsection (12)).
- (12) The duty under subsection (11) does not require a disclosure of information if that disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, that duty is to be taken into account).
- (13) In this section—
- “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
  - “public service broadcaster” has the meaning given by section 264.

### **338B Penalties for failure to provide information**

- (1) This section applies if—
- (a) OFCOM have given an information notice under section 338A to a person within section 338A(4), and
  - (b) OFCOM have determined, after giving the person an opportunity to make representations, that there are reasonable grounds for believing that there was, or is, a failure by the person to comply with the information notice.

- (2) OFCOM may give the person a notice (a “penalty notice”) requiring the person to pay OFCOM a penalty of an amount specified in the notice.
- (3) The penalty may include an amount for each day on which the person fails to comply with the information notice.
- (4) The amount of the penalty under subsection (2) is to be such amount, not exceeding £250,000, as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the failure to comply in respect of which it is imposed.
- (5) If the penalty notice is given in relation to a continuing failure to comply with the information notice, the penalty notice may also require the person to pay OFCOM a penalty of an amount specified in the penalty notice in respect of each day after the giving of the penalty notice on which the failure continues.
- (6) The amount of a penalty under subsection (5) is to be such amount, not exceeding £500 per day, as OFCOM determine to be—
  - (a) appropriate; and
  - (b) proportionate to the failure to comply in respect of which it is imposed.
- (7) A penalty notice must—
  - (a) fix a reasonable period after it is given as the period within which a penalty under subsection (2) is to be paid;
  - (b) where penalties under subsection (5) are imposed, fix a reasonable period as the period within which such a penalty is to be paid.
- (8) A financial penalty imposed under this section must be paid to OFCOM within the period fixed by them.”

*Amount of financial penalties*

**19 Amount of financial penalties: qualifying revenue**

- (1) The Broadcasting Act 1990 is amended as set out in subsections (2) to (5).
- (2) In section 18 (failure to begin providing licensed Channel 3 service and financial penalties on revocation of Channel 3 licence), in subsection (3D), for “Section 19(2) to (6)” substitute “Section 18A”.
- (3) After section 18 insert—

**“18A Section 18: supplementary provision**

- (1) For the purposes of section 18(3B) or (3C) the qualifying revenue for an accounting period of a holder of a Channel 3 licence is the aggregate of—
  - (a) the qualifying revenue for that accounting period of the licence holder which derives from that licensed service, and
  - (b) the qualifying revenue for that accounting period of the licence holder which derives from any on-demand programme service or television programme service that is—



- 
- (i) provided by the licence holder or a person associated with the licence holder, and
    - (ii) included in an internet programme service that is designated under section 362AA(2) of the Communications Act 2003 as a service provided by the licence holder or as a service provided by a person associated with the licence holder.
  - (2) Section 19(2) to (6) applies for determining the qualifying revenue referred to in subsection (1)(a).
  - (3) Section 368J(4), (5) and (7) of the Communications Act 2003 applies for determining the qualifying revenue referred to in subsection (1)(b) which derives from an on-demand programme service.
  - (4) Section 19(2) and (4) to (6) applies for determining the qualifying revenue referred to in subsection (1)(b) which derives from a television programme service as if—
    - (a) references in section 19(2) and (6) to a Channel 3 service were references to the television programme service,
    - (b) references in section 19(2), (4) and (6) to the holder of a Channel 3 licence were references to the provider of the television programme service, and
    - (c) as if in section 19(2) and (6) the words “of the licence holder” were omitted.
  - (5) For the purposes of this section, a person (“P”) is associated with the holder of a Channel 3 licence where—
    - (a) the licence holder is body corporate and P is a wholly-owned subsidiary (within the meaning of section 1159 of the Companies Act 2006) of the licence holder;
    - (b) P is a body corporate and the licence holder is a wholly-owned subsidiary (within the meaning of section 1159 of that Act) of P; or
    - (c) the licence holder and P are wholly-owned subsidiaries (within the meaning of section 1159 of that Act) of one and the same body corporate.
  - (6) For the purposes of this section—
    - (a) the person who provides an internet programme service is the person treated for the purposes of Part 3A of the Communications Act 2003 as providing that service (see section 362AZ8 of that Act), and
    - (b) the person who provides an on-demand programme service is the person treated for the purposes of Part 4A of that Act as providing that service (see section 368R of that Act).
  - (7) In this section—
    - “designated internet programme service” has the same meaning as in Part 3A of the Communications Act 2003 (see section 362AZ8(1));
    - “on-demand programme service” has the same meaning as in Part 4A of that Act (see section 368A).”
  - (4) In section 41 (power to impose financial penalty or shorten licence period of a

Channel 3 service, Channel 4 and Channel 5), for subsection (1C) substitute—

“(1C) Section 18A applies for determining or estimating qualifying revenue for the purposes of subsection (1A) or (1B), with any necessary modifications in relation to the holder of the Channel 5 licence.”

- (5) In Schedule 7 (qualifying revenue: supplementary provisions), in Part 1 (qualifying revenue for the purposes of Part 1 or 2 of this Act), in paragraph 1, after sub-paragraph (4) insert—

“(5) This paragraph does not apply in relation to such part of a person’s qualifying revenue as falls to be ascertained in accordance with section 368J of the Communications Act 2003 (see section 18A(1)(b) and (3)).”

- (6) In Schedule 9 to the Communications Act 2003 (arrangements about the carrying on of C4C’s activities), in paragraph 8 (penalty for contravention of the arrangements), for sub-paragraph (7) substitute—

“(7) Section 18A of the 1990 Act, with any necessary modifications, has effect in relation to C4C for the purposes of this paragraph as it has effect in relation to the holder of a Channel 3 licence for the purposes of Part 1 of the 1990 Act; and Part 1 of Schedule 7 to the 1990 Act has effect as if C4C’s qualifying revenue for an accounting period were being ascertained for the purposes of a provision of Part 1 of the 1990 Act.”

#### *Sporting and other events of national interest*

## **20 Categories of service**

- (1) Section 98 of the Broadcasting Act 1996 (categories of television programme services) is amended as set out in subsections (2) to (6).

- (2) In subsection (1) (division into two categories)—

(a) in the words before paragraph (a), after “services” insert “and internet programme services”;

(b) for paragraphs (a) and (b) substitute—

“(a) those television programme services and internet programme services which for the time being satisfy the qualifying conditions in subsection (2) or (as the case may be) (2A), and

(b) all other television programme services and internet programme services.”

- (3) For subsection (2) substitute—

“(2) In this section “the qualifying conditions” in relation to a television programme service are—

(a) that the service may be received free of charge,

(b) that the service is—

(i) a service provided by the BBC or a BBC company otherwise than with a view to generating a profit,

(ii) a Channel 3 service, Channel 4 or Channel 5,

(iii) S4C Digital, or

- (iv) a service, other than a Channel 3 service, Channel 4, Channel 5 or S4C Digital, which is provided by the provider of one of those services or by a C4C company, S4C company or body corporate controlled by the provider of a Channel 3 service or Channel 5, and
- (c) that, in the case of a service described in paragraph (b)(iv), the provider's latest statement of programme policy under—
  - (i) section 266 or 267 of the Communications Act 2003, or
  - (ii) paragraph 4 of Schedule 12 to that Act,
 states that the service will be used to fulfil the public service remit for the Channel 3 service, Channel 4 or Channel 5 or (as the case may be) S4C's public service remit.
- (2A) In this section, "the qualifying conditions" in relation to an internet programme service are—
  - (a) that the service and the programmes included in the service may be accessed free of charge, and
  - (b) that the service is a designated internet programme service."
- (4) After subsection (2A) (inserted by subsection (3)) insert—
 

"(2B) Where an internet programme service would satisfy the qualifying conditions referred to in subsection (2A) but for access to some of the programmes included in the service not being free of charge—

  - (a) so much of the service as includes programmes that may be accessed free of charge, and
  - (b) the remainder of the service,
 are to be regarded as separate internet programme services for the purposes of this Part."
- (5) In subsection (3) (disregard of TV licence fee), after "(2)(a)" insert ", (2A)(a) or (2B)".
- (6) In subsection (5) (OFCOM to publish list of services satisfying qualifying conditions), after "services" insert "and internet programme services".
- (7) An amendment made by subsections (2) to (6) does not affect the validity of a contract entered into before those subsections come into force or the exercise of rights acquired under such a contract.
- (8) Section 101 of that Act (restriction on televising of listed event) is amended as set out in subsections (10) to (12).
- (9) In the heading, for "televising" substitute "showing".
- (10) In subsection (1) (before its substitution by section 300(2) of the Communications Act 2003)—
  - (a) in the words before paragraph (a)—
    - (i) for "television programme provider providing a service" substitute "person providing a television programme service or internet programme service";
    - (ii) for "reception" substitute "reception or (as the case may be) access";
  - (b) in paragraph (a)—
    - (i) for "service", in the first place it occurs, substitute "television programme service or internet programme service";

- (ii) after “second service”)” insert “and is not a person connected with the provider of the first service”.
- (11) In subsection (1) (as substituted by section 300(2) of the Communications Act 2003)—
- (a) after “programme provider” insert “or a provider of an internet programme service”;
  - (b) for paragraph (b) substitute—
    - “(b) is providing it—
      - (i) in the case of a television programme service, with a view to its being available (within the meaning of Part 3 of the Communications Act) for reception by members of the public in the United Kingdom or in any area of the United Kingdom, or
      - (ii) in the case of an internet programme service, with a view to its being accessed by members of the public in the United Kingdom or in any area of the United Kingdom,”.
- (12) In subsection (1A) (as substituted by section 300(2))—
- (a) in paragraph (a), after “programme provider” insert “or a provider of an internet programme service”;
  - (b) omit the “and” following paragraph (a);
  - (c) after paragraph (a) insert—
    - “(aa) the provider of the second service is not connected with the provider of the first service; and”.

#### *Public teletext service*

### **21 Public teletext service**

In the Communications Act 2003, omit sections 218 to 223 (duty to secure the provision of a public teletext service etc).

#### *Further amendments*

### **22 Further amendments relating to public service television**

Schedule 2 contains further amendments relating to public service broadcasters.

## **PART 2**

### **PROMINENCE ON TELEVISION SELECTION SERVICES**

### **23 Prominence on television selection services**

- (1) The Communications Act 2003 is amended as follows.

- (2) After Part 3 insert—

**“PART 3A**

PROMINENCE ON TELEVISION SELECTION SERVICES

*Designated internet programme services*

**362AA Designation of internet programme services**

- (1) In this Part, “designated internet programme service” means—
  - (a) an internet programme service provided by the BBC,
  - (b) an internet programme service provided by a public service broadcaster other than the BBC and designated by OFCOM under subsection (2) for the purposes of this Part, or
  - (c) an internet programme service provided by a person associated with a public service broadcaster and so designated by OFCOM.
- (2) OFCOM may designate an internet programme service provided by a public service broadcaster other than the BBC or a person associated with a public service broadcaster if—
  - (a) the service satisfies the conditions in subsection (3), (4) or (5) that apply to it; and
  - (b) OFCOM consider that it is appropriate to designate the service.
- (3) The conditions in the case of an internet programme service provided by the provider of a licensed public service channel or a person associated with the provider of that licensed public service channel are—
  - (a) that the service makes or would, if designated, be capable of making a significant contribution to the fulfilment of the public service remit for that licensed public service channel; and
  - (b) that the public service remit content included in the service is readily discoverable and is promoted by the service.
- (4) The conditions in the case of an internet programme service provided by S4C or a person associated with S4C are—
  - (a) that the service makes or would, if designated, be capable of making a significant contribution to the fulfilment of S4C’s public service remit; and
  - (b) that the public service remit content included in the service is readily discoverable and is promoted by the service.
- (5) The conditions in the case of an internet programme service provided by a person associated with the BBC are—
  - (a) that the service makes or would, if designated, be capable of making a significant contribution to the promotion of one or more of the BBC’s public purposes; and
  - (b) that the content contributing to the promotion of one or more of those purposes which is included in the service is readily discoverable and is promoted by the service.
- (6) In considering whether it is appropriate to designate an internet programme service provided by a public service broadcaster other than

- the BBC or a person associated with such a broadcaster, OFCOM must have regard, in particular, to the following matters—
- (a) any proposals included in the relevant public service broadcaster's latest statement of programme policy published under section 266 or 267 or paragraph 4 of Schedule 12 as to the contribution that its internet programme service or (as the case may be) the internet programme service of a person associated with it will make towards fulfilling the public service remit for the licensed public service channel or (as the case may be) S4C's public service remit;
  - (b) whether that proposed contribution is capable of satisfying the needs and interests of—
    - (i) a specific audience, in a case where the service would, if designated, be the second or further designated internet programme service provided by a public service broadcaster or a person associated with that broadcaster, or
    - (ii) a wide range of audiences, in any other case;
  - (c) how effective and efficient is the relevant public service broadcaster's monitoring of its performance so far as relating to the fulfilment of the public service remit for the licensed public service channel or (as the case may be) S4C's public service remit.
- (7) In considering whether it is appropriate to designate an internet programme service provided by a person associated with the BBC, OFCOM must have regard, in particular, to the following matters—
- (a) any proposals included in a statement of policy made by the BBC in pursuance of the BBC Charter and Agreement as to the contribution that the service will make towards the promotion of one or more of the BBC's public purposes;
  - (b) whether that proposed contribution is capable of satisfying the needs and interests of—
    - (i) a specific audience, in a case where the service would, if designated, be the second or further designated internet programme service provided by the BBC or a person associated with the BBC, or
    - (ii) a wide range of audiences, in any other case;
  - (c) how effective and efficient is the BBC's monitoring of the contribution of persons associated with the BBC to the promotion of one or more of the BBC's public purposes.
- (8) Before designating an internet programme service, OFCOM must consult—
- (a) the provider of the service;
  - (b) such other persons as OFCOM consider appropriate.
- (9) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that—
- (a) a designated internet programme service provided by the provider of that channel, or an internet programme service provided by a person associated with the provider of that channel and designated by reference to the public service remit

- for that channel, makes a significant contribution to the fulfilment of that remit, and
- (b) the public service remit content included in the service is readily discoverable and is promoted by the service.
- (10) For the purposes of this Part, an internet programme service is a service which satisfies the following requirements—
- (a) its principal purpose is the provision of programmes,
- (b) the programmes viewed by a user of the service are received by the user by means of the internet, and
- (c) the programmes it provides to a user of the service are either—
- (i) contained in a single on-demand programme service, or
- (ii) contained in an on-demand programme service and one or more other services which are either on-demand programme services or other services that consist of, or have as their principal purpose the provision of, programmes.
- (11) In this section—
- “public service remit”—
- (a) in relation to a Channel 3 service or Channel 5, has the meaning given by section 265(2);
- (b) in relation to Channel 4, has the meaning given by section 265(3);
- (c) in relation to S4C, has the meaning given by section 204A;
- “public service remit content”, in relation to an internet programme service provided by a public service broadcaster other than the BBC or a person associated with such a broadcaster, means material included in the internet programme service that contributes to the fulfilment of—
- (a) the public service remit for the licensed public service channel in question, or
- (b) S4C’s public service remit (as the case may be).

### **362AB Revocation of designation**

- (1) If an internet programme service provided by a person other than a public service broadcaster is designated under section 362AA(2), the designation is revoked on the person ceasing to be associated with the public service broadcaster by reference to which the service was designated.
- (2) OFCOM may give notice under subsection (3) to a person other than the BBC who provides a designated internet programme service if OFCOM consider that there are reasonable grounds for believing that—
- (a) a designated internet programme service provided by that person is not making such contribution as is described in section 362AA(3)(a) or (as the case may be) (5)(a),
- (b) the content included in the service which is of the description referred to in section 362AA(3)(b) or (as the case may be) (5)(b) is not readily discoverable or is not promoted by the service, or

- (c) the service is not a service that it would be appropriate for OFCOM to designate under section 362AA(2).
- (3) A notice under this subsection must—
  - (a) state that OFCOM consider that there are reasonable grounds for believing the matter in paragraph (a), (b) or (c) of subsection (2);
  - (b) give OFCOM's reasons for that opinion;
  - (c) give OFCOM's reasons for proposing to revoke the designation of the internet programme service;
  - (d) state that the person may make representations to OFCOM about the matters contained in the notice;
  - (e) specify the period within which such representations may be made.
- (4) Where the period allowed for representations has expired, OFCOM must, after considering any representations that have been made—
  - (a) decide whether or not to revoke the designation, and
  - (b) give notice to the person of their decision.
- (5) Where OFCOM decide to revoke a designation, a notice under subsection (4)(b) must—
  - (a) state that OFCOM are satisfied as to the matter in paragraph (a), (b) or (c) of subsection (2);
  - (b) give OFCOM's reasons for being so satisfied.
- (6) OFCOM is to revoke a designation of an internet programme service under section 362AA(2) if the person providing the service requests them to do so.

### **362AC Notifications in relation to designated internet programme services**

- (1) Where an internet programme service provided by a person associated with a public service broadcaster has been designated under section 362AA(2), the public service broadcaster must give notice to OFCOM if the person ceases to be a person associated with that public service broadcaster.
- (2) A notice given to OFCOM under this section must—
  - (a) be sent in such manner as OFCOM may require;
  - (b) contain such information as OFCOM may require.

#### *Regulated television selection services*

### **362AD Meaning of “television selection service”**

- (1) In this Part, “television selection service” means a service or a dissociable section of a service, provided by means of the internet and in connection with internet television equipment, which consists of—
  - (a) the presentation of the internet programme services included in the service, and
  - (b) a facility that enables the user—
    - (i) to make a selection between those services or between programmes provided by those services or both, and



- (ii) to access the service selected or the programme selected or both.
- (2) In subsection (1), “internet television equipment” means any apparatus or combination of apparatus specified in regulations made by the Secretary of State setting out the descriptions of apparatus or combinations of apparatus that are internet television equipment for the purposes of this Part.
- (3) Regulations made by virtue of subsection (2) may—
  - (a) provide for references to internet television equipment to include references to software used in association with apparatus, and
  - (b) describe apparatus or a combination of apparatus by reference to software used in association with the apparatus or any of it.
- (4) Exceptions in regulations made by virtue of subsection (2) may include exceptions relating to the purpose or purposes for which a description of apparatus may be used in addition to the purpose of viewing internet programme services.
- (5) In this Part, “provider”, in relation to a television selection service, means the person who has general control over the manner in which the service presents to its users the internet programme services that are included in the service.
- (6) The fact that a television selection service relies to any extent on algorithms to determine the prominence given to—
  - (a) an internet programme service included in the service, or
  - (b) any programme provided by an internet programme service included in the service,does not prevent a person from having general control as described in subsection (5).
- (7) The Secretary of State may by regulations—
  - (a) amend this section so as to alter the definition of “television selection service” or “internet television equipment”, and
  - (b) make such amendments or repeals of any provision of this Act or any other Act as appear to the Secretary of State to be expedient in consequence of the amendments made by virtue of paragraph (a).
- (8) A statutory instrument containing regulations subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **362AE Meaning of “regulated television selection service”**

- (1) In this Part, “regulated television selection service” means a television selection service which—
  - (a) is designated by the Secretary of State by regulations, or
  - (b) is of a description specified by the Secretary of State by regulations.
- (2) The Secretary of State may designate a television selection service under subsection (1)(a) only if the Secretary of State considers that the

service is used by a significant number of members of the public in the United Kingdom.

- (3) Regulations made by virtue of subsection (1)(b) may, in particular, include requirements about particular television selection services being used by no fewer than such number of members of the public in the United Kingdom as may be specified.
- (4) Before making regulations under subsection (1)(a) or (b), the Secretary of State must have received a report under section 362AF relating to the television selection service or description of television selection services in question.

### **362AF Advice from OFCOM**

- (1) OFCOM may prepare reports making recommendations about the exercise of the power under section 362AE(1)(a) or (b).
- (2) Where—
  - (a) the Secretary of State proposes to make regulations under section 362AE(1)(a) or (b), and
  - (b) the Secretary of State has not received a report under subsection (1) relating to the television selection service or description of television selection services that would be affected by the proposed regulations,the Secretary of State must request OFCOM to prepare a report making recommendations about such an exercise of the power under 362AE(1)(a) or (b).
- (3) Where the Secretary of State makes a request under subsection (2), OFCOM must prepare such a report as soon as practicable.
- (4) A report under subsection (1) or (3) relating to the exercise of the power under section 362AE(1)(a) must include OFCOM's assessment of—
  - (a) the number of members of the public using the television selection service in question and whether that number is significant;
  - (b) the manner in which that service is used by those persons;
  - (c) such matters as OFCOM consider likely to affect the matters referred to in paragraph (a) or (b).
- (5) A report under subsection (1) or (3) relating to the exercise of the power under section 362AE(1)(b) must include OFCOM's assessment of—
  - (a) in relation to each television selection service of the description in question, the number of members of the public using the service and whether that number is significant;
  - (b) the manner in which those services are used by members of the public;
  - (c) such matters as OFCOM consider likely to affect the matters referred to in paragraph (a) or (b).
- (6) OFCOM must give the Secretary of State a report prepared under subsection (1) or (3).
- (7) If the Secretary of State exercises the power under section 362AE(1)(a) or (b) in a manner which differs materially from recommendations made in a report under this section, the Secretary of State must publish,

no later than the time at which the regulations are made, a statement giving the Secretary of State's reasons for doing so.

- (8) OFCOM must publish reports given to the Secretary of State under this section.
- (9) OFCOM must draw up, and from time to time review and revise, a statement about the principles and methods to be followed by OFCOM when preparing a report under subsection (1) or (3).
- (10) OFCOM must publish the statement and any revised statement.

*Notification by providers of television selection services*

**362AG Notification by providers of television selection services**

- (1) A provider of a television selection service must give notice to OFCOM if the service is or becomes a television selection service of a description specified in regulations made by virtue of section 362AE(1)(b).
- (2) A provider of a television selection service must give notice to OFCOM if, having been a service of a description specified in regulations made by virtue of section 362AE(1)(b), the service ceases to be a service of such a description.
- (3) A provider of a regulated television selection service must give notice to OFCOM if the provider ceases to provide that service.
- (4) A notice given to OFCOM under this section must—
  - (a) be sent in such manner as OFCOM may require;
  - (b) contain such information as OFCOM may require.

*Lists of services*

**362AH Lists of services**

- (1) OFCOM must establish and maintain up to date lists of—
  - (a) designated internet programme services; and
  - (b) regulated television selection services and their providers.
- (2) OFCOM must publish the up to date lists on a publicly accessible part of their website.

*Must-offer and must-carry obligations*

**362AI Must-offer obligations in the case of designated internet programme services**

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing the objectives set out in subsections (2) to (4).
- (2) The first objective is that any designated internet programme service provided by the provider of the channel is at all times offered as available (subject to the need to agree terms) to be, in relation to every regulated television selection service, included in the regulated television selection service.

- (3) The second objective is that the provider of the channel does its best to secure that arrangements are entered into, and kept in force, that ensure that any designated internet programme service provided by the provider of the channel is, in relation to every regulated television selection service, included in the regulated television selection service.
- (4) The third objective is that the provider of the channel acts consistently with the agreement objectives when entering into such arrangements and while they are in force.
- (5) In this section “the agreement objectives” are—
  - (a) that a designated internet programme service is given an appropriate degree of prominence within a regulated television selection service;
  - (b) that arrangements made between the provider of a designated internet programme service and the provider of a regulated television selection service are consistent with the former being able to meet costs reasonably incurred in fulfilling the public service remit for the licensed public service channel in question or (as the case may be) S4C’s public service remit;
  - (c) that arrangements so made do not disproportionately restrict how the provider of a regulated television selection service may make innovations in the ways that users may select and access internet programme services or programmes included in such services.
- (6) The reference in subsection (5)(a) to a designated internet programme service being given an appropriate degree of prominence within a regulated television selection service includes a reference to an appropriate degree of prominence being given to public service remit content and any listed channel provided by that designated internet programme service, so far as the prominence of that content or channel is affected by the operation of the regulated television selection service.
- (7) The following are listed channels for the purposes of this section—
  - (a) any service of television programmes provided by the BBC so as to be available for reception by members of the public;
  - (b) any Channel 3 service;
  - (c) Channel 4;
  - (d) Channel 5;
  - (e) S4C Digital.

### **362AJ Must-carry obligations**

- (1) The provider of a regulated television selection service must—
  - (a) in respect of each designated internet programme service, enter into arrangements with the provider of the designated internet programme service for the regulated television selection service to include that designated internet programme service, and
  - (b) keep them in force.
- (2) The provider of a regulated television selection service must act consistently with the agreement objectives when entering into arrangements in pursuance of subsection (1) and while they are in force.

- (3) For provision applying where there is a dispute about the arrangements that should be made or their operation, see sections 362AQ to 362AV.

### **362AK Guidance as regards agreement objectives**

- (1) OFCOM must prepare and publish guidance about how public service broadcasters and providers of regulated television selection services may act consistently with the agreement objectives.
- (2) OFCOM may revise and replace any guidance published under this section and, where they do, must publish the revised or replacement guidance.
- (3) Before preparing guidance under this section (or revising or replacing it), OFCOM must consult—
  - (a) the Secretary of State, and
  - (b) such other persons as they consider appropriate.
- (4) In exercising or deciding whether to exercise any of their powers under sections 362AR to 362AU, OFCOM must have regard to any guidance for the time being published under this section.

#### *Duties relating to a regulated television selection service*

### **362AL Duties relating to a regulated television selection service**

- (1) A provider of a regulated television selection service must secure that the manner in which its service presents internet programme services to its users in the United Kingdom gives an appropriate degree of prominence to each of the designated internet programme services included in its service.
- (2) Subsection (1) does not require that a designated internet programme service be given prominence, or the same degree of prominence, in relation to every area of the United Kingdom.
- (3) The reference in subsection (1) to giving an appropriate degree of prominence to a designated internet programme service included in a regulated television selection service includes a reference to giving an appropriate degree of prominence to public service remit content and any listed channel provided by that designated internet programme service, so far as the prominence of that content or channel is affected by the operation of the regulated television selection service.
- (4) A provider of a regulated television selection service must incorporate features in the service that secure that persons with disabilities, in particular those affecting their sight or hearing or both—
  - (a) are able, so far as practicable, to make use of the service for all the same purposes as persons without disabilities; and
  - (b) are informed about, and are able to make use of, whatever assistance for disabled people is provided in relation to the internet programme services included in the service.
- (5) In this section “assistance for disabled people” has the same meaning as in Part 3 (see section 362(1)).

### **362AM Code of practice**

- (1) OFCOM must issue a code of practice describing actions that OFCOM recommends for the purpose of securing that the manner in which a regulated television selection service presents internet programme services to its users complies with the duties in section 362AL.
- (2) OFCOM may—
  - (a) revise a code of practice issued under this section and issue the code as revised;
  - (b) withdraw a code of practice issued under this section and issue a new code of practice.
- (3) OFCOM must—
  - (a) publish a code of practice issued under this section in such manner as they consider appropriate;
  - (b) keep a code of practice issued under this section under review.
- (4) If requested by the Secretary of State to review all or part of a code of practice issued under this section, OFCOM must review the code or that part of it.
- (5) OFCOM must secure that the actions recommended in a code of practice issued under this section are consistent with the agreement objectives.
- (6) The actions recommended in a code of practice issued under this section may include—
  - (a) actions relating to particular descriptions of regulated television selection services;
  - (b) actions relating to particular descriptions of internet programme services.

### **362AN Effects of the code of practice**

- (1) The provider of a regulated television selection service is to be treated as complying with the duty in section 362AL(1) or (4) if the provider takes the actions described in the code of practice which are recommended for the purpose of complying with the duty.
- (2) A failure by the provider of a regulated television selection service to act in accordance with a provision of the code of practice does not of itself make the provider liable to legal proceedings before a court or tribunal.
- (3) In any legal proceedings before a court or tribunal, the court or tribunal must take into account a provision of the code of practice in determining any question arising in the proceedings if—
  - (a) the question relates to a time when the provision was in force, and
  - (b) the provision appears to the court or tribunal to be relevant to the question.
- (4) OFCOM must take into account a provision of the code of practice in determining any question arising in connection with the carrying out by them of a relevant function if—

- (a) the question relates to a time when the provision was in force, and
  - (b) the provision appears to OFCOM to be relevant to the question.
- (5) In this section, “relevant function” means a function conferred on OFCOM by any of the following provisions—
- (a) sections 362AQ to 362AV (references of disputes to OFCOM), and
  - (b) sections 362AW to 362AZ3 (enforcement).

### **362AO Issuing a code of practice**

- (1) Before issuing a code of practice under section 362AM OFCOM—
- (a) must publish a draft of the code or (as the case may be) a draft of the revisions of the existing code;
  - (b) must consult the following about the draft—
    - (i) the Secretary of State;
    - (ii) public service broadcasters;
    - (iii) such persons who appear to OFCOM to represent providers of regulated television selection services;
    - (iv) such other persons as OFCOM consider appropriate;
  - (c) may make such alterations to the draft as OFCOM consider appropriate following the consultation.
- (2) Subsection (1) does not apply in relation to revisions of the code of practice if—
- (a) if OFCOM give the Secretary of State a draft of the revisions of the existing code, and
  - (b) the Secretary of State agrees that it is not necessary for subsection (1) to apply in relation to the revisions.

### *Power to require information*

### **362AP Power to require information**

- (1) OFCOM may by notice (an “information notice”) require a person within subsection (4) to provide them with any information that they require for the purpose of carrying out their functions under this Part.
- (2) The power conferred by subsection (1) includes power to require a person within subsection (4) to obtain or generate information.
- (3) The power conferred by subsection (1) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.
- (4) The persons within this subsection are—
- (a) a public service broadcaster;
  - (b) a provider of a television selection service;
  - (c) a person who provides an ancillary service in relation to a designated internet programme service or a television selection service;
  - (d) a manufacturer of apparatus that is, or in combination with other apparatus is, internet television equipment;

- (e) a person who creates or provides software used in association with such apparatus;
  - (f) a person who was within any of paragraphs (a) to (e) at a time to which the required information relates;
  - (g) a person who is not within any of paragraphs (a) to (f) but who appears to OFCOM to have, or to be able to obtain or generate, information required by them as mentioned in subsection (1).
- (5) The information that OFCOM may require under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—
- (a) the purpose of deciding whether to designate an internet programme service for the purposes of this Part or to revoke such a designation;
  - (b) the purpose of assessing compliance with any conditions included in the regulatory regime of a licensed public service channel by virtue of section 362AA(9) (obligations as to content of designated internet programme services);
  - (c) the purpose of assessing compliance with any duty of S4C under paragraph 5A of Schedule 12 (obligations as to content of designated internet programme services);
  - (d) the purpose of assessing compliance with any duty of the BBC under the BBC Charter and Agreement that is comparable to any duty of S4C described in paragraph (c);
  - (e) the purpose of preparing a report under section 362AF (advice from OFCOM about the designation of television selection services etc);
  - (f) the purpose of assessing compliance with section 362AG (duty of providers of television selection services to notify OFCOM);
  - (g) the purpose of assessing compliance with any conditions included in the regulatory regime of a licensed public service channel by virtue of section 362AI (must-offer obligations of licensed public service channels);
  - (h) the purpose of assessing compliance with any duty of S4C under paragraph 5B of Schedule 12 (must-offer obligations of S4C);
  - (i) the purpose of assessing compliance with any duty of the BBC under the BBC Charter and Agreement that is comparable to any duty of S4C described in paragraph (h);
  - (j) the purpose of assessing compliance with any duty of a provider of a regulated television selection service under section 362AJ or 362AL (must-carry and prominence obligations);
  - (k) the purpose of OFCOM's functions under sections 362AQ to 362AV (dispute resolution);
  - (l) the purpose of assessing compliance with any requirements imposed by a confirmation decision under section 362AX;
  - (m) the purpose of determining the appropriate fee that a provider is required to pay under section 362AZ4;
  - (n) the purpose of ascertaining the amount of a person's or a group of entities' qualifying worldwide revenue for the purposes of paragraph 3 or 4 of Schedule 15ZA;



- (o) the purpose of OFCOM's monitoring role under section 362AZ5.
- (6) An information notice must—
  - (a) specify or describe the information to be provided,
  - (b) specify why OFCOM require the information,
  - (c) specify the form and manner in which the information must be provided, and
  - (d) contain information about the consequences of not complying with the notice.
- (7) An information notice must specify when the information must be provided which may be—
  - (a) on or by a specified date, or
  - (b) within a specified period.
- (8) The power conferred by subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (9) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice.
- (10) The duty under subsection (9) does not require a disclosure of information if that disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, that duty is to be taken into account).
- (11) For the purposes of subsection (4)(c), a service is an “ancillary service” in relation to a designated internet programme service or a television selection service if it facilitates the provision of that service (or part of it), whether directly or indirectly.
- (12) In this section, “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

*References of disputes to OFCOM*

**362AQ References of disputes to OFCOM**

- (1) This section applies in the case of a dispute between the provider of a designated internet programme service and the provider of a regulated television selection service about—
  - (a) the arrangements that should be made between them for the purposes of their prominence duties, or
  - (b) the operation of arrangements made between them for those purposes.
- (2) For the purposes of subsection (1)—
  - (a) the prominence duties of the provider of a designated internet programme service are—
    - (i) where that person is the provider of a licensed public service channel, the conditions included in the provider's licence by virtue of section 362AI;

- (ii) where that person is S4C, the duties under paragraph 5B of Schedule 12;
  - (iii) where that person is the BBC, any duties of the BBC under the BBC Charter and Agreement that are comparable to the duties of S4C described in subparagraph (ii);
- (b) the prominence duties of the provider of a regulated television selection service are the duties under sections 362AJ and 362AL(1).
- (3) Any one or more of the parties to the dispute may refer it to OFCOM but only if (and when) there is no realistic prospect of resolving the dispute without referring it.
- (4) OFCOM may invite any one or more of the parties to the dispute to make a reference under subsection (3).
- (5) OFCOM—
  - (a) may impose requirements about the manner in which a reference must be made by publishing a notice setting out those requirements,
  - (b) may withdraw or modify any requirements that have been imposed by publishing a further notice, and
  - (c) in exercising their powers under paragraph (a) or (b), may make different provision for different cases.
- (6) OFCOM may publish a notice under subsection (5) in such ways as they consider appropriate for bringing the notice to the attention of those who, in their opinion, are likely to be affected by it.

### **362AR Action by OFCOM on reference of dispute**

- (1) This section applies where—
  - (a) a dispute is referred to OFCOM under section 362AQ(3), and
  - (b) any requirements imposed by OFCOM under section 362AQ(5) are met in relation to the reference.
- (2) OFCOM must decide whether or not it is appropriate for them to handle the dispute.
- (3) Subsection (4) applies where—
  - (a) the dispute is of the kind described in section 362AQ(1)(a) (disputes between the provider of a designated internet programme service and the provider of a regulated television selection service about the arrangements that should be made between them for the purposes of their prominence duties), and
  - (b) unless the dispute is resolved, it is highly likely that the designated internet programme service will—
    - (i) not be included in the regulated television selection service, or
    - (ii) not be given the appropriate degree of prominence within it.
- (4) OFCOM must decide that it is appropriate for them to handle the dispute unless they consider—

- (a) that there are alternative means available for resolving the dispute,
  - (b) that a resolution by those means is likely to result in an outcome that is consistent with the agreement objectives, and
  - (c) that a prompt and satisfactory resolution of the dispute is likely if those alternative means are used.
- (5) As soon as reasonably practicable after OFCOM have decided whether or not it is appropriate from them to handle the dispute, they must inform each of the parties to the dispute of—
- (a) their decision and the date on which it was made, and
  - (b) their reasons for it.
- (6) Where OFCOM decide that it is not appropriate for them to handle the dispute, the dispute may subsequently be referred back to OFCOM by one or more of the parties if—
- (a) the parties have used alternative means for resolving the dispute but it has not been resolved within a reasonable period of time, or
  - (b) the parties have not used alternative means for resolving the dispute but OFCOM consider that there is a satisfactory explanation for that.

### **362AS Interim measures**

- (1) This section applies where—
- (a) OFCOM decide under section 362AR(2) whether or not it is appropriate for them to handle a dispute, or
  - (b) a dispute is referred back to OFCOM under section 362AR(6).
- (2) OFCOM may do one or more of the following—
- (a) make an interim declaration setting out the rights and obligations of the parties to the dispute;
  - (b) give an interim direction fixing the terms or conditions of transactions between the parties to the dispute;
  - (c) give an interim direction imposing an obligation on the parties to the dispute, and enforceable by them, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM.
- (3) OFCOM must exercise their powers under subsection (2) in the way that seems to them to be most appropriate in the light of the agreement objectives.
- (4) Before exercising their powers under subsection (2), OFCOM must—
- (a) give the parties to the dispute an opportunity to make representations about the exercise of those powers, and
  - (b) consider those representations.
- (5) Otherwise, the procedure to be followed by OFCOM in connection with the exercise of their powers under subsection (2) is to be the procedure that OFCOM consider appropriate.
- (6) In the case of a dispute referred back to OFCOM under section 362AR(6), OFCOM may, in exercising their powers under subsection

- (2), take account of decisions already made by others in the course of an attempt to resolve that dispute by alternative means.
- (7) OFCOM must withdraw an interim declaration or an interim direction if requested to do so by the parties to the dispute.
- (8) OFCOM may withdraw an interim declaration or an interim direction otherwise than at the request of the parties to the dispute if they consider that it is appropriate to do so in the light of the agreement objectives.
- (9) An interim declaration or an interim direction binds the parties to the dispute (unless withdrawn by OFCOM or ceasing to have effect under section 362AV(4)).
- (10) In this section—
- (a) “an interim declaration” means a declaration that has effect until the resolution of the dispute by OFCOM or by any alternative means (unless withdrawn by OFCOM or ceasing to have effect under section 362AV(4));
  - (b) “an interim direction” means a direction that has effect until the resolution of the dispute by OFCOM or by any alternative means (unless withdrawn by OFCOM or ceasing to have effect under section 362AV(4)).

### **362AT Procedure for resolving disputes**

- (1) This section applies where—
- (a) OFCOM decide under section 362AR(2) that it is appropriate for them to handle a dispute, or
  - (b) a dispute is referred back to OFCOM under section 362AR(6).
- (2) OFCOM must—
- (a) consider the dispute, and
  - (b) make a determination for resolving it.
- (3) The procedure for the consideration and determination of the dispute is to be the procedure that OFCOM consider appropriate.
- (4) In the case of a dispute referred back to OFCOM under section 362AR(6), that procedure may involve allowing the continuation of a procedure that has already begun for resolving the dispute by alternative means.
- (5) Unless there are exceptional circumstances, OFCOM must make their determination before the end of the period of four months beginning with—
- (a) where OFCOM decide under section 362AR(2) that it is appropriate for them to handle the dispute, the day on which they make that decision;
  - (b) where the dispute is referred back to OFCOM under section 362AR(6), the day on which it is referred back.
- (6) Where it is practicable for OFCOM to make their determination before the end of the period of four months referred to in subsection (5), they must make it as soon in that period as is practicable.

- (7) The requirements of subsections (5) and (6) are subject to section 362AV(4).
- (8) OFCOM must—
  - (a) send a copy of their determination, together with a full statement of their reasons for it, to every party to the dispute, and
  - (b) publish so much of their determination as (having regard, in particular, to the need to preserve commercial confidentiality) they consider it appropriate to publish.
- (9) OFCOM may fulfil their duty under subsection (8)(b) in such ways as they consider appropriate for bringing the material that they consider it appropriate to publish to the attention of members of the public.

### **362AU Resolution of referred disputes**

- (1) This section applies where OFCOM make a determination for resolving a dispute under section 362AT(2).
- (2) OFCOM may do one or more of the following—
  - (a) make a declaration setting out the rights and obligations of the parties to the dispute;
  - (b) give a direction fixing the terms or conditions of transactions between the parties to the dispute;
  - (c) give a direction imposing an obligation on the parties to the dispute, and enforceable by them, to enter into a transaction between themselves on the terms and conditions fixed by OFCOM;
  - (d) for the purpose of giving effect to a determination by OFCOM of the proper amount of a charge in respect of which amounts have been paid by one of the parties to the dispute to the other, to give a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment.
- (3) OFCOM must exercise their powers under subsection (2) in the way that they consider to be the most appropriate for meeting the agreement objectives.
- (4) In the case of a dispute referred back to OFCOM under section 362AR(6)—
  - (a) OFCOM may, in making their determination, take account of decisions already made by others in the course of an attempt to resolve that dispute by alternative means, and
  - (b) the determination made by OFCOM may include provision ratifying such decisions.
- (5) Where OFCOM make a determination for resolving a dispute, they may require a party to the dispute—
  - (a) to make payments to another party to the dispute in respect of costs and expenses incurred by that other party in consequence of the reference of the dispute to OFCOM or in connection with it;
  - (b) to make payments to OFCOM in respect of costs and expenses incurred by them in dealing with the dispute.

- (6) OFCOM may determine—
  - (a) the amount of any costs or expenses required to be paid under subsection (5)(a) or (b), and
  - (b) when those costs or expenses are to be paid.
- (7) OFCOM may not require a party to the dispute to make payments to another party or to OFCOM under subsection (5) unless they have considered—
  - (a) the conduct of the party before and after the reference to OFCOM (including, in particular, whether any attempts have been made to resolve the dispute), and
  - (b) whether OFCOM have made a decision in the party's favour in respect of the whole or a part of the dispute.
- (8) A determination made by OFCOM for resolving a dispute referred to them under section 362AQ(3), or referred back to them under section 362AR(6), binds the parties to the dispute.

### **362AV Effect of referrals on legal proceedings**

- (1) This section applies where—
  - (a) a dispute is referred to OFCOM under section 362AQ(3), or
  - (b) a dispute is referred back to OFCOM under section 362AR(6).
- (2) The reference, or reference back, does not prevent the person making it, the other party to the dispute, OFCOM or any other person from bringing, or continuing, any legal proceedings with respect to any of the matters under dispute.
- (3) The reference, or reference back, also does not prevent OFCOM from—
  - (a) giving a notification in respect of something that they have reasonable grounds for believing to be a contravention of an obligation imposed by or under an enactment;
  - (b) exercising any of their powers under any enactment in relation to a contravention of an obligation imposed by or under an enactment;
  - (c) taking any other step in preparation for, or with a view to, doing anything mentioned in the preceding paragraphs.
- (4) If, in any legal proceedings with respect to a matter to which a dispute relates, the court orders the handling of the dispute by OFCOM to be stayed or sisted—
  - (a) OFCOM are required to make a determination for resolving the dispute only if the stay or sist is lifted or expires,
  - (b) the period during which the stay or sist is in force must be disregarded in determining the period within which OFCOM are required to make a determination, and
  - (c) any interim declaration or interim direction made or given by OFCOM under section 362AS(2) ceases to have effect.
- (5) In this section, “legal proceedings” means civil or criminal proceedings in or before a court.
- (6) Subsection (2) is subject to—
  - (a) section 362AU(8), and
  - (b) any agreement to the contrary binding the parties in dispute.

*Enforcement***362AW Provisional notices of contravention**

- (1) OFCOM may give a notice under this section (a “provisional notice of contravention”) to a person if they consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with any duty under section 362AG, 362AJ or 362AL (duties of providers of regulated television selection services under this Part).
- (2) OFCOM may also give a provisional notice of contravention to a person to whom an information notice has been given if they consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with the duty under section 362AP(9).
- (3) A provisional notice of contravention must—
  - (a) specify the duty with which (in OFCOM's opinion) there are reasonable grounds for believing the person has failed, or is failing, to comply, and
  - (b) give OFCOM's reasons for that opinion.
- (4) A provisional notice of contravention may also specify steps that OFCOM consider the person needs to take in order to—
  - (a) comply with the duty, or
  - (b) remedy the failure to comply with it.
- (5) A provisional notice of contravention may also state that OFCOM propose to impose a penalty on the person and, in such a case, the notice must—
  - (a) give OFCOM's reasons for proposing to impose the penalty,
  - (b) indicate the amount in sterling of the penalty that is being proposed, and
  - (c) give OFCOM's reasons for proposing a penalty of that amount, including any aggravating or mitigating factors that OFCOM propose to take into account.
- (6) A provisional notice of contravention must—
  - (a) state that the person may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice, and
  - (b) specify the period within which such representations may be made.
- (7) A provisional notice of contravention may be given in respect of a failure by the same person to comply with more than one duty and, in such a case, the notice may include a proposal to impose a single penalty in respect of some or all of those duties (as an alternative to separate penalties).
- (8) Where a provisional notice of contravention is given in respect of a continuing failure to comply with a duty, the notice—
  - (a) may be given in respect of any period during which the failure has continued,
  - (b) must specify that period, and
  - (c) may include a proposal to impose no more than one penalty in respect of that period.

- (9) Where a provisional notice of contravention is given to a person in respect of a failure to comply with a duty, a further provisional notice of contravention in respect of a failure to comply with that same duty may be given to that person only—
  - (a) in respect of a separate instance of the failure that occurs after the first notice is given,
  - (b) where a period is specified in the first notice in accordance with subsection (8)(b), in respect of the continuation of the failure after the end of that period, or
  - (c) if the notice is withdrawn without a confirmation decision under section 362AX having been given to the person in respect of that failure.
- (10) OFCOM may give a provisional notice of contravention to a person who was but is no longer a provider of a regulated television selection service if that person was a provider of a regulated television selection service at the time of the failure to which the notice relates.

### **362AX Confirmation decisions: general**

- (1) This section applies where—
  - (a) OFCOM have given a provisional notice of confirmation to a person in relation to a failure to comply with a duty or duties, and
  - (b) the period allowed for representations has expired.
- (2) After considering any representations that have been made (and any supporting evidence), OFCOM must decide whether or not to give the person a further notice under this section (a “confirmation decision”).
- (3) OFCOM may decide to give a person a confirmation decision only if they are satisfied that the person has failed, or has been failing, to comply with one or more of the notified duties.
- (4) For the purposes of this section and sections 362AY and 362AZ, a “notified duty” means a duty specified in the provisional notice of contravention.
- (5) If OFCOM decide not to give a person a confirmation decision (whether because they are not satisfied as described in subsection (3) or for any other reason), they must inform the person of that fact.
- (6) A confirmation decision must—
  - (a) state that OFCOM are satisfied that the person has failed, or has been failing, to comply with one or more notified duties, and
  - (b) give OFCOM’s reasons for being satisfied as described in paragraph (a).
- (7) A confirmation decision may require the person to take such steps as OFCOM consider appropriate for either or both of the following purposes—
  - (a) complying with a notified duty or duties;
  - (b) remedying the failure to comply with that duty or those duties.
- (8) Where a provisional notice of contravention stated that OFCOM proposed to impose a penalty in relation to a notified duty or (by virtue of section 362AX(7)) in relation to notified duties, a confirmation



decision may require the person to pay a penalty, of an amount in sterling determined by OFCOM, in relation to that duty or (as the case may be) those duties.

- (9) The amount determined by OFCOM under subsection (8) may be greater than the amount indicated in the provisional notice of contravention in accordance with section 362AW(5)(b).
- (10) OFCOM may give a confirmation decision to a person who was but is no longer a provider of a regulated television selection service if that person was a provider of a regulated television selection service at the time of the failure to which the decision relates.

### **362AY Confirmation decisions: steps**

- (1) This section applies where a confirmation decision requires the person to whom it is given to take steps as provided for by section 362AX(7).
- (2) The notice must—
  - (a) specify the steps that are required and the notified duty or duties to which each relates,
  - (b) give OFCOM's reasons for requiring those steps to be taken,
  - (c) specify a reasonable period within which each of the steps specified in the notice must be taken, and
  - (d) contain information about the consequences of not taking the steps (including information about further kinds of enforcement action that it would be open to OFCOM to take).
- (3) Where a confirmation decision requires a person to take steps, the person to whom the notice is given has a duty to take those steps.
- (4) The duty under subsection (3) is 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) for any other appropriate remedy or relief.

### **362AZ Confirmation decisions: penalties**

- (1) This section applies where a confirmation decision imposes one or more penalties (see section 362AX(8)).
- (2) In relation to each penalty imposed, the notice must—
  - (a) give OFCOM's reasons for their decision to impose the penalty,
  - (b) specify each notified duty to which the penalty relates,
  - (c) give OFCOM's reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (d) specify a reasonable period within which the penalty must be paid, and
  - (e) contain information about the consequences of not paying the penalty (including information about the kinds of enforcement action that it would be open to OFCOM to take).

- (3) The period specified under subsection (2)(d) for the payment of a penalty must be at least 28 days beginning with the day on which the confirmation decision is given.
- (4) Schedule 15ZA contains further provision about the imposition of a penalty by a confirmation decision.

### **362AZ1 Penalty for failure to comply with confirmation decisions**

- (1) This section applies where—
  - (a) OFCOM have given a confirmation decision to a person,
  - (b) the notice includes requirements to take steps (as provided for by section 362AX(7)), and
  - (c) OFCOM are satisfied that the person has failed to comply with one or more of those requirements.
- (2) OFCOM may give the person a penalty notice.
- (3) A “penalty notice” is a notice requiring a person to pay to OFCOM a penalty of an amount in sterling determined by OFCOM.
- (4) Before giving the person a penalty notice, OFCOM must—
  - (a) notify the person that they propose to give a penalty notice in respect of the failure to comply with the confirmation decision, specifying the reasons for their proposal and indicating the amount of the proposed penalty, and
  - (b) give the person an opportunity to make representations to OFCOM (with any supporting evidence) about their proposal.
- (5) A penalty notice must—
  - (a) give OFCOM’s reasons for their decision to impose the penalty,
  - (b) state the amount of the penalty,
  - (c) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (d) specify the period within which the penalty must be paid, and
  - (e) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (6) The period specified under subsection (5)(d) must be at least 28 days beginning with the day on which the penalty notice is given.
- (7) Schedule 15ZA contains further provision about the imposition of a penalty by a penalty notice.

### **362AZ2 Enforcement: supplementary provision**

For the purposes of this Part, Schedule 15ZB contains provision about—

- (a) the giving of joint provisional notices of contravention to parent entities etc,
- (b) the liability of parent entities for failures by subsidiary entities,
- (c) the liability of subsidiary entities for failures by parent entities,
- (d) the liability of fellow subsidiary entities for failures by subsidiary entities, and

- (e) the liability of controlling individuals for failures by entities.

### **362AZ3 Enforcement: guidance**

- (1) OFCOM must prepare and publish guidance about the exercise of their powers under sections 362AW to 362AZ1 or Schedule 15ZB.
- (2) The guidance must include the factors that OFCOM will take into account in deciding whether to exercise any of those powers.
- (3) OFCOM may revise or replace any guidance published under this section and, where they do so, must publish the revised or replacement guidance.
- (4) Before preparing guidance under this section (or revising or replacing it), OFCOM must consult—
  - (a) the Secretary of State, and
  - (b) such other persons as they consider appropriate.
- (5) Guidelines prepared by OFCOM under section 392 (amount of penalties) may, so far as relating to penalties imposed by a confirmation decision under section 362AX or a penalty notice under section 362AZ1, be included in the same document as guidance under this section.
- (6) In exercising or deciding whether to exercise any of their powers under sections 362AW to 362AZ1 or Schedule 15ZB, OFCOM must have regard to any guidance for the time being published under this section.

### *Supplemental provisions of Part 3A*

### **362AZ4 Fees**

- (1) OFCOM may require any of the following persons to pay to OFCOM a fee of an amount determined by OFCOM—
  - (a) a provider of a licensed public service channel who provides a designated internet programme service;
  - (b) a provider of a regulated television selection service.
- (2) The amount of a fee required under subsection (1) must be determined by OFCOM in accordance with a statement of principles prepared and published by them for the purpose of this section.
- (3) Those principles must be such as appear to OFCOM to be likely to secure the following objectives—
  - (a) that, on a year by year basis, the aggregate amount of the fees payable to OFCOM under subsection (1) is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their functions under this Part less an appropriate amount to take into account costs that will be met by fees payable by the BBC under section 198(4) or by S4C under section 207(6);
  - (b) that the relationship between the aggregate amount of the fees and the cost to OFCOM of carrying out the functions is transparent;
  - (c) that any fee required is justifiable and proportionate having regard to the circumstances of the person required to pay it.

- (4) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement of accounts setting out in respect of that year—
  - (a) the aggregate amount of the fees payable under subsection (1) for that year that have been received by OFCOM,
  - (b) the aggregate amount of the fees payable under that subsection for that year that remain outstanding and are likely to be paid or recovered, and
  - (c) the costs to them of carrying out their functions under this Part less an appropriate amount to take into account costs that have been or are to be met by fees payable by the BBC under section 198(4) or by S4C under section 207(6).
- (5) Any deficit or surplus shown (after applying this subsection for all previous years) by the statement of accounts is to be—
  - (a) carried forward, and
  - (b) taken into account in determining what is required to meet the objective described in subsection (3)(a) in relation to the following year.
- (6) OFCOM may repay a person some or all of a fee paid under subsection (1) if—
  - (a) in the case of a fee paid by the provider of a licensed public service channel, OFCOM revoke the designation of an internet programme service provided by that person under section 362AB at some time during the period to which the fee relates;
  - (b) in the case of a fee paid by the provider of a regulated television selection service—
    - (i) the Secretary of State has revoked the designation of a regulated television selection service provided by that person at some time during the period to which the fee relates, or
    - (ii) the person gives OFCOM a notice under section 362AG(2) or (3) in accordance with section 362AG(4) at some time during the period to which the fee relates.
- (7) For the purposes of this section, OFCOM's costs of carrying out their functions under this Part during a financial year include their costs of preparing to carry out those functions during that year.
- (8) OFCOM—
  - (a) may revise a statement of principles published by them, and
  - (b) where they do so, must publish the statement as revised.
- (9) Before publishing a statement of principles or a revision of it, OFCOM must consult such persons as they consider appropriate.
- (10) In this section, "financial year" means a period of 12 months ending on 31 March.

### **362AZ5 Monitoring role for OFCOM**

OFCOM has the function of obtaining, compiling and keeping under review information about matters which may be relevant to—

- (a) designating or revoking the designation of an internet programme service under section 362AA or 362AB;

- (b) designating or revoking the designation of a television selection service or specifying or ceasing to specify a description of television selection services under section 362AE;
- (c) deciding whether to take enforcement action under this Part.

### **362AZ6 Notices**

- (1) This section applies in relation to a notice that may or must be given by OFCOM to a person under any provision of this Part.
- (2) OFCOM may give a notice to a person by—
  - (a) delivering it by hand to the person,
  - (b) leaving it at the person's proper address,
  - (c) sending it by post to the person at that address, or
  - (d) sending it by email to that person's email address.
- (3) A notice to a body corporate may be given to any officer of that body.
- (4) A notice to a partnership may be given to any partner or to a person who has the control or management of the partnership business.
- (5) A notice to an entity that is not a legal person under the law under which it is formed (other than a partnership) may be given to any member of the governing body of the entity.
- (6) In the case of a notice given to a person who is a provider of a regulated television selection service, the person's proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is any address (within or outside the United Kingdom) at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of the person or (where that person is an entity) any director or other officer of that entity.
- (7) In the case of a notice given to a person other than a provider of regulated television selection service, a person's proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is—
  - (a) in the case of an entity, the address of the entity's registered or principal office;
  - (b) in any other case, the person's last known address.
- (8) In the case of an entity registered or carrying on business outside the United Kingdom, or with offices outside the United Kingdom, the reference in subsection (7) to its principal office includes its principal office in the United Kingdom or, if the entity has no office in the United Kingdom, any place in the United Kingdom at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of any director or other officer of that entity.
- (9) For the purposes of subsection (2)(d), a person's email address is—
  - (a) any email address published for the time being by that person as an address for contacting that person, or
  - (b) if there is no such published address, any email address by means of which OFCOM believe, on reasonable grounds, that the notice will come to the attention of that person or (where

that person is an entity) any director or other officer of that entity.

- (10) A notice sent by email is treated as given 48 hours after it was sent, unless the contrary is proved.
- (11) In this section—  
“director” includes any person occupying the position of a director, by whatever name called;  
“officer”, in relation to an entity, includes a director, a manager, a partner, an associate, a secretary or, where the affairs of the entity are managed by its members, a member.

### **362AZ7 Extra-territorial application**

- (1) References in this Part to a television selection service include such a service provided from outside the United Kingdom (as well as such a service provided from within the United Kingdom).
- (2) The power to require the provision of information by an information notice includes power to require the provision of information held outside the United Kingdom.
- (3) Section 362AY(4) (requirements enforceable in civil proceedings against a person) applies whether or not the person is in the United Kingdom.

### **362AZ8 Interpretation of Part 3A**

- (1) In this Part—  
“the agreement objectives” has the meaning given by section 362AI;  
“designated internet programme service” means an internet programme service designated by OFCOM under section 362AA(2);  
“entity” means a body or association of persons or an organisation, regardless of whether the body, association or organisation is—  
(a) formed under the law of any part of the United Kingdom or of a country or territory outside the United Kingdom, or  
(b) a legal person under the law under which it is formed;  
“information notice” has the meaning given in section 362AP;  
“internet programme service” has the meaning given by section 362AA;  
“licensed public service channel” has the same meaning as in Part 3 (see section 362);  
“listed channel” has the meaning given by section 362AI;  
“programme” means such programme as is described in section 368ZA;  
“provider”, in relation to a television selection service, has the meaning given by section 362AD;  
“public service broadcaster” has the meaning given by section 264;  
“public service remit” has the meaning given by section 362AA; “public service remit content” has the meaning given by section 362AA;

“regulated television selection service” has the meaning given by section 362AE;

“television selection service” has the meaning given by section 362AD.

- (2) The person, and the only person, who is to be treated for the purposes of this Part as providing an internet programme service is the person who has general control of the service.
- (3) In the case of an internet programme service where the programmes provided to a user of the service are contained in a single on-demand programme service, the person with general control of the service is the person who has editorial responsibility for the on-demand programme service (see section 368A(4)).
- (4) In the case of any other internet programme service, the person with general control of the service is the person who has general control over which—
  - (a) on-demand programme services, or
  - (b) services (other than on-demand programme services) that consist of, or have as their principal purpose the provision of, programmes,are included in the service.
- (5) For the purposes of this Part—
  - (a) the provision of an internet programme service by the BBC does not include its provision by a BBC company;
  - (b) the provision of an internet programme service by C4C does not include its provision by a C4 company;
  - (c) the provision of an internet programme service by S4C does not include its provision by an S4C company;and, accordingly, control that is or is capable of being exercised by the BBC, C4C or S4C over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service is to be disregarded for the purposes of determining who has general control of the service.
- (6) For the purposes of this Part, a person (“P”) is associated with a public service broadcaster where—
  - (a) the public service broadcaster is a body corporate and P is a wholly-owned subsidiary (within the meaning of section 1159 of the Companies Act 2006) of the public service broadcaster;
  - (b) P is a body corporate and the public service broadcaster is a wholly-owned subsidiary (within the meaning of section 1159 of that Act) of P; or
  - (c) the public service broadcaster and P are wholly-owned subsidiaries (within the meaning of section 1159 of that Act) of one and the same body corporate.
- (7) A reference in this Part to access, in relation to a programme provided by an internet programme service, is a reference to the opportunity of viewing in an intelligible form a programme so provided.
- (8) For the purposes of this Part, a reference to an internet programme service being included in a television selection service is a reference to being one of the internet programme services that are, or whose

programmes are, available for selection and access by means of the television selection service.

- (9) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include any service which—
  - (a) is made available for reception only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision, but
  - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.”
- (3) After Schedule 15 insert (as Schedule 15ZA) the Schedule set out in Schedule 3 (financial penalties).
- (4) After Schedule 15ZA insert (as Schedule 15ZB) the Schedule set out in Schedule 4 (liability of parent entities etc).
- (5) Schedule 5 contains further amendments relating to prominence on television selection services.

### PART 3

#### PUBLIC SERVICE BROADCASTERS

#### CHAPTER 1

#### C4C

### 24 Sustainability duty of C4C

- (1) The Broadcasting Act 1990 is amended as follows.
- (2) After section 23 insert—

#### “23A Sustainability duty of Corporation

The Corporation must carry on their activities in the way that they have reasonable grounds to consider would be most likely to enable the Corporation, over the long term—

- (a) at least to sustain the level of their activities. and
- (b) to be securely in a position to meet costs incurred in carrying on their activities.”
- (3) In Schedule 3 (the Channel Four Television Corporation: supplementary provisions), in paragraph 13 (annual reports), after sub-paragraph (1) insert—
  - “(1A) The report must include a report on the discharge by the Corporation of their duty under section 23A (sustainability duty of Corporation).”

### 25 Involvement of C4C in programme-making

In the Communications Act 2003, omit section 295 (which restricts C4C’s involvement in programme-making).



**CHAPTER 2****S4C****26 S4C's public service remit and powers**

- (1) The Communications Act 2003 is amended in accordance with subsections (2) and (3).
- (2) For sections 204 to 206 (S4C's functions and main powers), substitute—  
**“204A S4C's public service remit and associated powers**
  - (1) S4C's public service remit is to make an adequate contribution to the fulfilment of the public service remit for television in the United Kingdom by making available a broad range of high quality and diverse audiovisual content, a substantial proportion of which is in Welsh.
  - (2) S4C must fulfil its public service remit.
  - (3) S4C may do anything it considers appropriate—
    - (a) for the purpose of fulfilling its public service remit, or
    - (b) in association with anything it does for the purpose of fulfilling that remit.
  - (4) In this section “audiovisual content” has the same meaning as in section 264.
  - (5) Subsection (13) of section 264 (interpretation of “made available”) applies for the purposes of this section as it applies for the purposes of that section.

**204B Restrictions on S4C's powers**

- (1) S4C must obtain the Secretary of State's approval in writing before (whether under section 204A or otherwise)—
  - (a) providing any television programme services;
  - (b) doing anything for a charge or with a view to making a profit (see paragraph 1(3) of Schedule 6 to the Broadcasting Act 1990).
- (2) S4C must ensure that an S4C company obtains the Secretary of State's approval in writing before the company does anything for a charge or with a view to making a profit.
- (3) An approval under this section may be—
  - (a) a general approval in relation to a description of activities, or
  - (b) a specific approval in relation to particular activities.
- (4) For the purposes of this section, the carrying on of the following activities is treated as approved by the Secretary of State (so far as approval under this section would otherwise be required)—
  - (a) the provision of S4C Digital,
  - (b) each activity whose carrying on is approved under section 205 or 206 of this Act (S4C's other activities) immediately before this section comes into force, and

- (c) each activity which is being carried on by S4C or an S4C company immediately before this section comes into force.
- (5) S4C may not provide a service that would fall to be regulated under section 245 (independent radio services) if provided by an S4C company.

#### **204C Publication of approvals under section 204B**

- (1) The Secretary of State must publish any approval under section 204B, subject to subsection (2).
  - (2) The Secretary of State must exclude from publication any matters which appear to the Secretary of State to be matters whose publication would or might seriously and prejudicially affect the interests of any person.
  - (3) This section does not apply in relation to activities treated under section 204B(4) as approved under that section.”
- (3) In section 207 (S4C: charging and borrowing etc), omit subsections (1) and (2).
- (4) In Schedule 6 to the Broadcasting Act 1990 (S4C: supplementary provisions), in paragraph 1, for sub-paragraph (3) substitute—
- “(3) In carrying out its functions S4C may carry on activities in any way whatever, including—
- (a) through or with other persons;
  - (b) anywhere in the United Kingdom or elsewhere;
  - (c) with a view to making a profit;
  - (d) for a charge, except where the activities are carried on in fulfilment of S4C’s public service remit (see sections 204A and 264(6) and (7) of the Communications Act 2003).”

### **27 The S4C Board**

- (1) The Broadcasting Act 1990 is amended in accordance with subsections (2) to (4).
- (2) In section 56 (Welsh Authority to continue in existence as S4C), for subsection (2) substitute—

“(2) The members of the S4C Board (see section 56A and Schedule 6A) are to be the members of S4C, but membership of S4C does not enable any person to act otherwise than through the S4C Board.”
- (3) After section 56 insert—

#### **“56A The S4C Board**

- (1) A Board of S4C is established.
- (2) That Board—
  - (a) is to be known as the S4C Board or (in Welsh) Bwrdd S4C, and
  - (b) is to be constituted in accordance with this Act.
- (3) Except where otherwise provided by or under any enactment, the duties and powers of S4C are to be discharged and exercised by the S4C Board on behalf of S4C.

(4) Schedule 6A makes further provision about the S4C Board.”

(4) After Schedule 6 insert—

“SCHEDULE 6A

THE S4C BOARD

*Membership*

- 1 (1) The S4C Board is to consist of—
    - (a) non-executive members, and
    - (b) executive members.
  - (2) The non-executive members are to be—
    - (a) a chair, and
    - (b) at least five, and not more than eight, other non-executive members.
  - (3) It is for the Secretary of State—
    - (a) to decide, in accordance with sub-paragraph (2)(b), the number of other non-executive members;
    - (b) to appoint the non-executive members.
  - (4) The executive members are to be—
    - (a) the employee of S4C holding the position of, or acting as, Chief Executive of S4C, and
    - (b) at least one and not more than two other employees of S4C.
  - (5) It is for the non-executive members, in accordance with sub-paragraph (4)(b)—
    - (a) to decide the number of other executive members;
    - (b) to appoint the other executive members.
  - (6) A person making an appointment under this paragraph must do so with a view to ensuring that, collectively, the members of the S4C Board have the range of skills and experience needed for the effective running of S4C.
- 2 (1) The members of the S4C Board must not at any time include a person who is a member or an employee of the British Broadcasting Corporation.
  - (2) The members of the S4C Board must not at any time include a person who is a member or an employee of OFCOM.
  - (3) The Secretary of State must—
    - (a) before appointing a person to be a non-executive member of the S4C Board, be satisfied that the person will not have any financial or other interest likely to affect prejudicially the discharge of that person’s duties as a member of the S4C Board, and
    - (b) from time to time consider, in respect of each non-executive member of the S4C Board, whether that member has any such interest.

### *Tenure of office*

- 3 (1) A member of the S4C Board holds and vacates office in accordance with the terms of the member's appointment, subject to the provisions of this Schedule.
- (2) A non-executive member must be appointed for a fixed term of not more than five years.
- (3) A person who has held office as a non-executive member for two consecutive terms may not be re-appointed as a non-executive member until the end of the five years beginning with the end of the second of those terms.
- (4) A non-executive member ceases to be a member of the S4C Board if the member—
  - (a) becomes an employee of S4C, or
  - (b) resigns from office by giving written notice to the Secretary of State.
- (5) An executive member under paragraph 1(4)(a) ceases to be a member of the S4C Board on ceasing to be the Chief Executive of S4C.
- (6) Any other executive member ceases to be a member of the S4C Board if the member—
  - (a) ceases to be an employee of S4C, or
  - (b) resigns from office by giving written notice to S4C.

### *Remuneration and pensions of members*

- 4 (1) S4C may pay to each non-executive member of the S4C Board such remuneration and allowances as the Secretary of State may determine.
- (2) S4C may pay or make provision for paying to or in respect of any non-executive member of the S4C Board such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) S4C may pay compensation, of such amount as the Secretary of State may determine, to a person where—
  - (a) the person ceases to be a non-executive member of the S4C Board otherwise than on the expiry of the person's term of office, and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for the person to receive compensation.

### *Proceedings*

- 5 (1) The S4C Board may regulate its own procedure (including quorum), subject to the provisions of paragraphs 6 and 7.
- (2) The S4C Board may make arrangements providing for the discharge of any of the S4C Board's functions by—
  - (a) a committee, or

- (b) one or more persons each of whom is either a member of the S4C Board or an employee of S4C.
- 6 In managing the affairs of S4C the S4C Board must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to S4C.
- 7 (1) A member of the S4C Board who has an interest, whether directly or indirectly, in any matter that is brought up for consideration at a meeting of the S4C Board must disclose the nature of that interest to the meeting.
- (2) Where a disclosure is made under sub-paragraph (1)—
- (a) the disclosure must be recorded in the minutes of the meeting, and
- (b) subject to sub-paragraph (3), the member must not take part in any deliberation or decision of the S4C Board, or any of its committees, with respect to that matter.
- (3) Sub-paragraph (2)(b) does not apply in relation to a meeting of the S4C Board at which all the other members present resolve that the member's interest is to be disregarded for the purposes of that provision.
- (4) For the purposes of sub-paragraph (1)—
- (a) a general notification given at a meeting of the S4C Board that the member is to be regarded as interested in any matter involving a specified organisation is to be regarded as a sufficient disclosure of the member's interest in relation to any such matter, and
- (b) a member may make a disclosure under that sub-paragraph without attending a meeting of the S4C Board if the member takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at a meeting.
- (5) References in this paragraph to a meeting of the S4C Board include references to a meeting of any of its committees.
- 8 The validity of any proceedings of S4C or the S4C Board is not affected by—
- (a) any vacancy among the members of the S4C Board,
- (b) any defect in the appointment of a member of the S4C Board, or
- (c) a failure to comply with the requirements of paragraph 7.”
- (5) Any person who is the chair, or one of the other members, of S4C immediately before this section comes into force—
- (a) becomes the chair, or one of the other non-executive members, of the S4C Board on the coming into force of this section, and
- (b) holds that office—
- (i) for the remainder of the term of the person's appointment as chair or other member of S4C (subject to paragraph 3(4) of Schedule 6A to the Broadcasting Act 1990, as inserted by subsection (4) of this section), and
- (ii) on and subject to the terms of that appointment.

## 28 Accounts and audit

- (1) Schedule 6 to the Broadcasting Act 1990 (S4C: supplementary provisions) is amended as follows.
- (2) For paragraph 12(2) and (3) (audit of S4C's accounts by appointed auditor) substitute—
  - “(2A) S4C must send a copy of its statement of accounts to the Comptroller and Auditor General as soon as possible after the end of the financial year to which the statement relates.
  - (2B) The Comptroller and Auditor General must—
    - (a) examine, certify and report on each statement of accounts of S4C, and
    - (b) send a copy of the report and certified statement of accounts to the Secretary of State.
  - (2C) The Secretary of State must lay before Parliament a copy of each such report and certified statement.
  - (2D) As soon as possible after the Secretary of State lays copies of the report and statement of accounts before Parliament, S4C must arrange for the report and certified statement to be laid before Senedd Cymru.
  - (2E) S4C must ensure that each S4C subsidiary undertaking appoints the Comptroller and Auditor General as auditor, unless the S4C subsidiary undertaking requests the Comptroller and Auditor General's permission to appoint another person and the Comptroller and Auditor General permits the appointment of that person as auditor.
  - (2F) The Comptroller and Auditor General may inspect the accounts of any S4C subsidiary undertaking (regardless of who is appointed as auditor).”
- (3) After paragraph 12(4), insert—
  - “(5) S4C must ensure that an S4C subsidiary undertaking, if told to do so by the Secretary of State or any person authorised by the Secretary of State, grants the Secretary of State or authorised person access to—
    - (a) that undertaking's accounts;
    - (b) information and documents relating to that undertaking's financial transactions and commitments.
  - (6) In this paragraph “S4C subsidiary undertaking” means an undertaking which, for the purposes of the Companies Act 2006, is a subsidiary undertaking of S4C (see section 1162 of that Act).”
- (4) Omit paragraph 13(2) (accounts and audit report to be attached to annual report).

## 29 Amendment of BBC's obligation to provide Welsh programmes

- (1) Section 58 of the Broadcasting Act 1990 (sources of programmes for S4C) is amended as follows.

- (2) For subsections (1) and (1A) substitute—
- “(1) The BBC must provide to S4C (free of charge) sufficient television programmes in Welsh to occupy not less than ten hours’ transmission time per week, in a way that meets the reasonable requirements of S4C.
- (1A) The duty in subsection (1) does not apply during any period for which the BBC and S4C agree in writing to put in place alternative arrangements that contribute to S4C fulfilling its public service remit.
- (1B) If the BBC and S4C make an agreement under subsection (1A) the BBC must, as soon as reasonably practicable, publish the terms of the agreement.
- (1C) The BBC must exclude from publication any information which it or S4C considers—
- (a) constitutes a trade secret, or
  - (b) would be likely, if published, to prejudice the commercial interests of any person,
- unless the BBC and S4C consider that there is an overriding public interest in publishing the information.”
- (3) Omit subsections (2) to (4) (which relate to S4C’s switched-off analogue service).
- (4) In subsection (5)—
- (a) for “The Welsh Authority” substitute “S4C”;
  - (b) for “on S4C” substitute “on S4C Digital”.

### **30 Chapter 2 of Part 3: minor and consequential amendments**

Schedule 6 contains minor and consequential amendments relating to this Chapter.

#### **PART 4**

##### ON-DEMAND PROGRAMME SERVICES

### **31 Tier 1 services**

- (1) Part 4A of the Communications Act 2003 (on-demand programme services) is amended as follows.
- (2) After the heading of Part 4A insert—

#### **“CHAPTER 1**

##### INTRODUCTORY PROVISIONS”.

- (3) After section 368A insert—

#### **“368AA Meaning of non-UK on-demand programme service**

- (1) For the purposes of this Act, a service (or a dissociable section of a service) is a “non-UK on-demand programme service” if—
  - (a) it meets the conditions in paragraphs (a) to (d) of section 368A(1),

- (b) it does not meet one or both of the conditions in paragraphs (e) and (f) of section 368A(1), and
  - (c) the members of the public for whose use it is made available are or include members of the public in the United Kingdom.
- (2) Section 368A(5) to (7) applies in relation to a non-UK on-demand programme service as it applies in relation to an on-demand programme service.

### **368AB Overview of Part 4A**

- (1) This section provides an overview of this Part.
  - (2) This Chapter (Chapter 1) gives the meaning of certain expressions used in this Part.
  - (3) Chapter 2 contains provision for the regulation of on-demand programme services (as defined by section 368A).
  - (4) Chapter 3—
    - (a) sets out the rules that apply for determining when an on-demand programme service (as defined by section 368A) or a non-UK on-demand programme service (as defined by section 368AA) is a Tier 1 service,
    - (b) makes provision for certain sections of Chapter 2 to apply in relation to a non-UK on-demand programme service that is a Tier 1 service in the same way that they apply in relation to an on-demand programme service, and
    - (c) makes provision for the additional regulation of Tier 1 services (whether on-demand programme services or non-UK on-demand programme services).
  - (5) Chapter 4 makes provision about the enforcement of certain provisions of Chapters 2 and 3.
  - (6) Chapter 5 makes supplementary provision.”
- (4) In section 368B (the appropriate regulatory authority)—
- (a) after subsection (A1) insert—

“(A2) OFCOM is the appropriate regulatory authority for the purposes of sections 368HC, 368HJ and 368HK (and OFCOM may not designate any other body to be the appropriate regulatory authority for those purposes).”;
  - (b) in subsection (1), after “subsections (A1)” insert “, (A2)”;
  - (c) in subsection (5), in paragraph (a), after “on-demand programme services” insert “, or non-UK on-demand programme services that are Tier 1 services.”;
  - (d) in subsection (9), in paragraph (d), after “on-demand programme services” insert “or non-UK on-demand programme services”.



- (5) After section 368B insert—

**“CHAPTER 2**

REGULATION OF ON-DEMAND PROGRAMME SERVICES”.

- (6) After section 368H, insert (as Chapter 3 of Part 4A) the Chapter set out in Schedule 7 (regulation of Tier 1 services).
- (7) Schedule 8 contains further amendments of Part 4A in connection with Tier 1 services (within the meaning of that Part).
- (8) Schedule 9 contains amendments of other legislation in connection with Tier 1 services (within the meaning of Part 4A of the 2003 Act).

**32 Audience protection reviews**

In Part 4A of the Communications Act 2003, after section 368OA insert—

*“Audience protection reviews etc*

**368OB Audience protection reviews etc**

- (1) As soon as practicable after this section comes into force, OFCOM must carry out a review of audience protection measures in use by providers of—
- (a) on-demand programme services, or
  - (b) non-UK on-demand programme services that are Tier 1 services.
- (2) The scope of that review is to consider whether the audience protection measures are adequate for the purpose of assisting the providers to comply with the duties imposed on them by or under this Act for the protection of audiences from harm.
- (3) After the review under subsection (1), OFCOM may carry out further reviews for the same purpose at such times as appear appropriate to OFCOM.
- (4) “Audience protection measures” are measures that are capable of assisting in protecting audiences from harm, the following being examples—
- (a) age rating or other classification systems;
  - (b) content warnings;
  - (c) parental controls;
  - (d) age assurance measures.
- (5) OFCOM may request any provider described in subsection (1) to provide OFCOM with information about its audience protection measures for the purposes of a review under subsection (1) or (3).
- (6) OFCOM may also request any provider described in subsection (1) to provide OFCOM with information about its audience protection measures where, in consequence of a review or anything else done in the exercise of their functions, they are concerned that the measures in use by that provider are or might be inadequate.

- (7) A request under subsection (5) or (6) must specify or describe the information to be provided and may also—
  - (a) specify a period of time within which the information must be provided;
  - (b) specify the form and manner in which the information must be provided.
- (8) A request under subsection (6) may specify that information is to be provided at intervals specified by OFCOM.
- (9) A provider described in subsection (1) must comply with a request under subsection (5) or (6).
- (10) OFCOM may publish any information provided to them under this section.”

### **33 S4C: on-demand programme services**

- (1) The Communications Act 2003 is amended as follows.
- (2) Omit section 368Q (which makes provision about the application of Part 4A in relation to the Welsh Authority).
- (3) In section 341 (imposition of penalties on the Welsh Authority), omit subsection (1)(ja) and (jb).
- (4) In Schedule 12, in Part 2 (the Welsh Authority)—
  - (a) in paragraph 15—
    - (i) omit sub-paragraph (1)(a)(ii) to (vi) (but not the “and” following sub-paragraph (1)(a)(vi));
    - (ii) in sub-paragraph 1(b), omit “or on-demand programme services”;
    - (iii) in sub-paragraph (2), omit “or on-demand programme services”;
    - (iv) in sub-paragraph (5), omit “or on-demand programme services”;
  - (b) omit paragraph 23A.

### **34 Other amendments of Part 4A of the 2003 Act**

Schedule 10 contains other minor amendments of Part 4A of the Communications Act 2003.

## **PART 5**

### **REGULATION OF RADIO SERVICES**

### **35 Licensing of analogue radio services**

- (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 85 (licensing of independent radio)—
  - (a) in subsection (1), omit “Subject to subsection (2),”;
  - (b) omit subsections (2) and (5) to (7).
- (3) In section 97B (variation of licence periods related to digital switchover), after

subsection (4) insert—

“(5) If the period for which the licence to provide the post-commencement service is to continue in force ends before the date for digital switchover, OFCOM may by notice vary the licence so that the period ends—  
 (a) on that date, or  
 (b) before that date (and after the date when it would have otherwise ended),  
 if the licence holder consents to the variation.”

- (4) In section 98 (applications for national licences)—  
 (a) in subsection (1)(b)—  
 (i) at the end of sub-paragraph (ii), insert “and”;  
 (ii) omit sub-paragraphs (iii) and (iv);  
 (b) omit subsection (3)(a);  
 (c) in subsection (4), omit “(a),”;  
 (d) in subsection (6)(b), for “(3)(a) and (aa)” substitute “(3)(aa)”.
- (5) In section 99 (procedure in connection applications for national licences)—  
 (a) omit subsection (1)(a);  
 (b) in subsection (1)(b), for “that service” substitute “the proposed service”;  
 (c) in subsection (2), for “(1)(a) and (b)” substitute “(1)”.
- (6) In section 100 (award of national licences to cash bidders)—  
 (a) omit subsection (9)(b);  
 (b) omit subsection (10)(a).
- (7) In section 103 (restrictions relating to changes of control)—  
 (a) omit subsection (3);  
 (b) for subsection (4) substitute—  
 “(4) OFCOM may refuse to approve a change described in subsection (1)(a) if they consider it appropriate to do so.”
- (8) In section 117 (procedure in connection with applications), in subsection (4)(b), for the words from “with the substitution” to the end substitute “as if the matters specified in that subsection included the name of every other applicant in whose case it appeared to OFCOM that the requirement specified in subsection (1)(a) above was satisfied.”

### 36 Licensing of local services

- (1) The Broadcasting Act 1990 is amended as follows.  
 (2) For section 104 (applications for other licences) substitute—

#### “104 Applications for licences: local services and restricted services

- (1) An application for a licence to provide a local service must—  
 (a) be made in such manner as OFCOM may determine, and  
 (b) be accompanied by such fee (if any) as OFCOM may determine.
- (2) An application for a licence to provide a restricted service must—  
 (a) be made in such manner as OFCOM may determine, and

(b) be accompanied by such fee (if any) as OFCOM may determine.”

(3) In section 104AA (further renewal of local licences)—

- (a) in subsection (3), for “subsections (4), (4A) and (5)” substitute “subsections (4) to (5)”;
- (b) after subsection (4) insert—

“(4ZA) Where the application for the renewal of the licence under this section has been duly made to OFCOM (as mentioned in section 104A(5)), OFCOM must grant the application if—

- (a) the condition in section 104A(5)(a) is met,
- (b) the conditions in section 104A(5)(b) and (c) are not met because the applicant does not make the nomination required by section 104A(4), but
- (c) the alternative condition in subsection (4ZB) below is met.

(4ZB) The alternative condition is met if—

- (a) in the application for the renewal, or at any time before the consideration of that application, the applicant makes to OFCOM—
  - (i) a statement of explanation — which is a statement that it has not been possible for the applicant to make the nomination required by section 104A(4) because of the lack of availability of a relevant local radio multiplex service, or of a relevant small-scale radio multiplex service, that is suitable for the applicant’s needs and could be nominated in accordance with section 104A(4)(b); and
  - (ii) a statement of intent — which is a statement that the applicant will make to OFCOM a nomination of the kind required by section 104A(4) as soon as practicable after it becomes possible to do so because of the availability of a relevant local radio multiplex service, or of a relevant small-scale radio multiplex service, that is suitable for the applicant’s needs and meets the requirements of section 104A(4); and
- (b) OFCOM are satisfied that it has not been possible for the applicant to make the nomination required by section 104A(4) for a reason of the kind set out in subsection (4ZB)(a)(i).

(4ZC) Where OFCOM grant the application in accordance with subsection (4ZA) they must include in the licence as renewed—

- (a) a condition requiring the licence holder to do all that it can to ensure that it makes the nomination described in the statement of intent as soon as it becomes possible to do so, and
- (b) a condition requiring the licence holder to do all that it can to ensure that it starts broadcasting the nominated digital sound programme service, by means of the

nominated multiplex service, as soon as reasonably possible after it has made that nomination.”

- (4) Omit sections 104B (special application procedure for local licences) and 105 (special requirements relating to grant of local licences).

### 37 Character of local services

- (1) The Broadcasting Act 1990 is amended in accordance with subsections (2) and (3).
- (2) In section 106 (requirements as to character and coverage of national and local services)—
- (a) in subsection (1) omit “or local”;
  - (b) in subsection (1A), omit paragraphs (b) to (e);
  - (c) omit subsection (1B);
  - (d) omit subsection (7).
- (3) Omit section 106ZA (consultation about change of character of local services).
- (4) In the Communications Act 2003, omit sections 355 and 356 (variation of local licence following change of control).

### 38 Local news and information

- (1) The Communications Act 2003 is amended in accordance with this section.
- (2) Section 314 (local content and character of local sound broadcasting services) is amended as follows.
- (3) In subsection (1), for paragraphs (a) and (b) substitute—
- “(a) that programmes consisting of or including local news and information are—
    - (i) included in such services, and
    - (ii) broadcast regularly, and
  - (b) that, in each programme consisting of or including local news and information broadcast in such a service, that news consists of or includes locally-gathered news.”
- (4) For subsection (1A) substitute—
- “(1A) Paragraphs (a) and (b) of subsection (1) apply in the case of each local sound broadcasting service unless OFCOM consider it is appropriate for them not to apply (wholly or partly) in that case.”
- (5) In subsection (7)—
- (a) omit the definition of “approved area”;
  - (b) in the definition of “local material”—
    - (i) for ““local material”” substitute ““local news and information””;
    - (ii) for “means material” substitute “means news and information”;
  - (c) for the definition of “locally-made” substitute—
 

““locally-gathered news”, in relation to a local sound broadcasting service, means news that has been gathered in the area or locality for which the local sound

broadcasting service is provided, by persons who gather news in the course of an employment or business;”;

(d) omit the definition of “material”.

(6) After section 315 insert—

**“315A Local news and information in local digital radio services**

(1) The Secretary of State may, by regulations, make provision for enabling OFCOM to ensure that, for each licensed local radio multiplex service, at least one of the licensed local digital sound programme services broadcast by means of that multiplex service consists of, or includes, local news and information or locally-gathered news and information.

(2) The provision that may be made by regulations under this section includes provision about the conditions that OFCOM may, or must, include in a licence that authorises the provision of—

- (a) a local digital sound programme service, or
- (b) a local radio multiplex service.

(3) Regulations made under this section may amend any Act of Parliament.

(4) In this section—

“licensed” local radio multiplex service or local digital sound programme service means such a service which is provided in accordance with a licence issued by OFCOM;

“local news and information”, in relation to a local radio multiplex service or a local digital sound programme service provided through such a multiplex service, means news and information which is of particular interest—

- (a) to persons living or working within the area or locality for which the multiplex service is provided;
- (b) to persons living or working within a part of that area or locality; or
- (c) to particular communities living or working within that area or locality or a part of it;

“locally-gathered news”, in relation to a local radio multiplex service or a local digital sound programme service provided through such a multiplex service, means news that has been gathered in the area or locality for which the multiplex service is provided, by persons who gather news in the course of an employment or business.”

(7) In section 402 (orders and regulations made by the Secretary of State), in subsection (2A), before paragraph (za) insert—

“(zza) regulations under section 315A which amend any Act of Parliament;”.

**39 Financial assistance for radio**

After section 359 of the Communications Act 2003 insert—

*“Financial assistance for radio*

**359A Power of the Secretary of State to give financial assistance for radio**

- (1) The Secretary of State may give financial assistance for or in connection with—
  - (a) the provision of eligible services;
  - (b) the production of sound programmes (whether intended for broadcast or distribution by any other means).
- (2) The financial assistance may be given—
  - (a) by way of grant, loan or guarantee or in any other form, and
  - (b) subject to such conditions as the Secretary of State considers appropriate.
- (3) The conditions may (among other things) include provision under which the financial assistance is to be repaid or otherwise made good (with or without interest).
- (4) The eligible services for the purposes of subsection (1)(a) are—
  - (a) services of a description in relation to which provision is for the time being in force under section 262 (community radio);
  - (b) local sound broadcasting services;
  - (c) local digital sound programme services.”

**40 Licensing of non-UK digital sound programme services**

- (1) Section 245 of the Communications Act 2003 (regulation of independent radio services) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert—

“(c) digital sound programme services that do not fall within paragraph (a) or (b) but—

  - (i) are provided from a place in a qualifying country, and
  - (ii) are or are intended to be broadcast by means of a local radio multiplex service, or small-scale radio multiplex service, which falls within paragraph (a) or (b).”
- (3) After subsection (3) insert—

“(3A) The Secretary of State may, by regulations, amend or otherwise modify Schedule 2 to the Broadcasting Act 1990 (restrictions on the holding of licences) in its application to digital sound programme services that fall within subsection (1)(c).

(3B) The regulations may in particular—

  - (a) disapply or modify existing restrictions;
  - (b) provide for new restrictions to apply.

(3C) In subsection (1)(c)—

“qualifying country” means a country or territory outside the United Kingdom that is specified in regulations made by the Secretary of State for the purposes of subsection (1)(c);  
“small-scale radio multiplex service” has the same meaning as in section 258A.”

#### 41 Radio multiplex licences

- (1) The Broadcasting Act 1996 is amended as follows.
- (2) In section 46 (national radio multiplex licences)—
  - (a) in subsection (3)(a), omit “and (f)”;
  - (b) in subsection (4), omit paragraphs (c) to (f);
  - (c) omit subsection (5);
  - (d) in subsection (8)(a)—
    - (i) at the end of sub-paragraph (i) insert “and”;
    - (ii) omit sub-paragraph (ii).
- (3) In section 47 (award of national radio multiplex licences)—
  - (a) in subsection (2)—
    - (i) in paragraph (b), omit “and (d)”;
    - (ii) at the end of paragraph (c) insert “and”;
    - (iii) omit paragraphs (d) and (e);
  - (b) omit subsection (3).
- (4) In section 50 (local radio multiplex licences)—
  - (a) in subsection (4), omit paragraphs (c) to (e);
  - (b) in subsection (7)(a)—
    - (i) at the end of sub-paragraph (i) insert “and”;
    - (ii) omit sub-paragraph (ii).
- (5) In section 51(2) (award of local radio multiplex licences)—
  - (a) in paragraph (b), omit “and (d)”;
  - (b) omit paragraphs (d) and (e);
  - (c) in paragraph (f), for “living in that area or locality,” substitute “providing or proposing to provide community or local digital sound programme services in the area or locality for which the proposed service is to be provided,”.
- (6) In section 54 (conditions of radio multiplex licences)—
  - (a) in subsection (1)—
    - (i) omit paragraph (b);
    - (ii) omit the “and” at the end of paragraph (g);
    - (iii) after paragraph (h) insert—
      - (i) that the holder of the licence publishes information, in such manner as OFCOM consider appropriate, as to the payments to be made by the holders of community, local and national digital sound programme licences for the broadcasting of their services under the licence, and



- (j) that the holder of the licence provides to OFCOM information, in such manner as OFCOM consider appropriate, on the community, local and national digital sound programme services provided for broadcasting by means of the service.”;
- (b) in subsection (5)—
  - (i) omit “or (b)”;
  - (ii) for “section 42(3)(b)” substitute “section 42(3)”;
- (c) omit subsections (6) to (6B).
- (7) In section 54A(6) (variation of radio multiplex licences), for the words from “doing so” to the end substitute “the coverage area of the licensed service would not (as a result of the variation) be unacceptably reduced.”
- (8) In section 58 (duration and renewal of radio multiplex licences)—
  - (a) omit subsection (4)(a)(ii);
  - (b) in subsection (11), omit “and supplementary proposals”.
- (9) In consequence of the amendment made by subsection (6)(c), omit section 315 of the Communications Act 2003.

## PART 6

### REGULATION OF RADIO SELECTION SERVICES

#### 42 Regulation of radio selection services

After section 362AZ8 of the Communications Act 2003 (inserted by section 23) insert—

### “PART 3B

#### REGULATION OF RADIO SELECTION SERVICES

##### *Regulated radio selection services*

#### **362BA Meaning of “radio selection service”**

- (1) In this Part, “radio selection service” means a service provided by means of the internet which enables, or among other things enables, a user of the service to use that service—
  - (a) to make a selection between internet radio services provided by different persons, and
  - (b) to cause a selected internet radio service to play,
 by giving spoken commands that are recorded by equipment connected to the internet.
- (2) The Secretary of State may by regulations—
  - (a) amend this section so as to alter the definition of “radio selection service”, and
  - (b) make such amendments of any provision of this Act or any other Act as appear to the Secretary of State to be expedient in consequence of the amendments made by virtue of paragraph (a).

- (3) The amendments that may be made by virtue of subsection (2)(a) include—
  - (a) amendments adding or removing functions relating to other sound services, and
  - (b) amendments about how users operate the service.
- (4) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **362BB Meaning of “regulated radio selection service”**

- (1) For the purposes of this Part, a “regulated radio selection service” is—
  - (a) a radio selection service designated by the Secretary of State by regulations, or
  - (b) a radio selection service of a description specified by the Secretary of State by regulations.
- (2) The Secretary of State may designate a radio selection service under subsection (1)(a) only if the Secretary of State considers that the service is used by a significant number of members of the public in the United Kingdom.
- (3) Regulations made by virtue of subsection (1)(b) must include a requirement about a radio selection service being used by at least such number of members of the public in the United Kingdom as may be specified.
- (4) Subsection (3) does not restrict what may otherwise be done by regulations made by virtue of subsection (1)(b).
- (5) Before making regulations under subsection (1)(a) or (b), the Secretary of State must have received a report under section 362BC relating to the radio selection service, description of radio selection services or service in question.
- (6) The Secretary of State may by regulations—
  - (a) amend this section so as to alter a condition that must be satisfied before a radio selection service may be designated under subsection (1)(a) or to remove or add such a condition,
  - (b) amend this section so as to alter a requirement relating to regulations under subsection (1)(b) or to remove or add such a requirement, and
  - (c) make such amendments of any provision of this Act or any other Act as appear to the Secretary of State to be expedient in consequence of the amendments made by virtue of paragraph (a) or (b).
- (7) A statutory instrument containing regulations under subsection (6) may not be made under a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **362BC Advice from OFCOM**

- (1) OFCOM may prepare reports making recommendations about the exercise of the power under section 362BB(1)(a) or (b).
- (2) Where—

- (a) the Secretary of State proposes to make regulations under section 362BB(1)(a) or (b), and
  - (b) the Secretary of State has not received a report under subsection (1) relating to the radio selection service or services that would be affected by the proposed regulations,
- the Secretary of State must request OFCOM to prepare a report making recommendations about such an exercise of the power under 362BB(1)(a) or (b).
- (3) Where the Secretary of State makes a request under subsection (2), OFCOM must prepare such a report as soon as practicable.
  - (4) A report under subsection (1) or (3) relating to the exercise of the power under section 362BB(1)(a) must include OFCOM's assessment of—
    - (a) the number of members of the public using the radio selection service or service in question and whether that number is significant;
    - (b) the manner in which that service is used by those persons;
    - (c) such matters as OFCOM consider likely to affect the matters referred to in paragraph (a) or (b).
  - (5) A report under subsection (1) or (3) relating to the exercise of the power under section 362BB(1)(b) must include OFCOM's assessment of—
    - (a) in relation to each radio selection service of the description in question, the number of members of the public using the service and whether that number is significant;
    - (b) the manner in which those services are used by members of the public;
    - (c) such matters as OFCOM consider likely to affect the matters referred to in paragraph (a) or (b).
  - (6) OFCOM must give the Secretary of State a report prepared under subsection (1) or (3).
  - (7) If the Secretary of State exercises the power under section 362BB(1)(a) or (b) in a manner which differs materially from recommendations made in a report under this section, the Secretary of State must publish, no later than the time at which the regulations are made, a statement giving the Secretary of State's reasons for doing so.
  - (8) OFCOM must publish reports given to the Secretary of State under this section.
  - (9) OFCOM must draw up, and from time to time review and revise, a statement about the principles and methods to be followed by OFCOM when preparing a report under subsection (1) or (3).
  - (10) OFCOM must publish the statement and any revised statement.

### **362BD Notification by providers of radio selection services**

- (1) A provider of a radio selection service must give notice to OFCOM if the service is or becomes a radio selection service of a description specified in regulations made by virtue of section 362BB(1)(b).
- (2) A provider of a radio selection service must give notice to OFCOM if, having been a service of a description specified in regulations made by

virtue of section 362BB(1)(b), the service ceases to be a service of such a description.

- (3) A provider of a regulated radio selection service must give notice to OFCOM if the provider ceases to provide that service.
- (4) A notice given to OFCOM under this section must—
  - (a) be sent in such manner as OFCOM may require;
  - (b) contain such information as OFCOM may require.

### **362BE Lists of regulated radio selection services**

- (1) OFCOM must establish and maintain an up to date list of regulated radio selection services and their providers.
- (2) OFCOM must publish the up to date list on a publicly accessible part of their website.

#### *Relevant internet radio services*

### **362BF Meaning of “internet radio service”**

- (1) In this Part, “internet radio service” means a service—
  - (a) which consists in the provision by a person of programmes consisting wholly of sound (together with any ancillary services) with a view to their being made available for reception by members of the public by being distributed by means of the internet (whether by the provider of the service or another person),
  - (b) which corresponds to a relevant radio service and is provided by the person who provides that relevant radio service, and
  - (c) in relation to which the requirement in subsection (3) is satisfied.
- (2) For the purposes of this section, a service corresponds to a relevant radio service if all of the programmes included in the relevant radio service, other than such programmes as are advertisements, are provided at the same time on both services.
- (3) The requirement in this subsection is satisfied in relation to a service which corresponds to a relevant radio service where the provider of the service makes reasonable efforts to secure that any advertisement included in the service is an advertisement that has been, or is intended to be, included in the relevant radio service to which the service corresponds.
- (4) In this section—

“ancillary service”, in relation to an internet radio service, means a service which is provided by the provider of the internet radio service and consists in the provision of a service which—

  - (a) is ancillary to the programmes included in the internet radio service and is directly related to their contents, and
  - (b) relates to the promotion or listing of such programmes;

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

“digital sound programme service” has the same meaning as in Part 2 of the 1996 Act (see section 40 of that Act);

“relevant radio service” means—

- (a) a sound broadcasting service or digital sound programme service provided by the BBC, or
- (b) a sound broadcasting service or digital sound programme service authorised to be provided by a licence under Part 3 of the 1990 Act or Part 2 of the 1996 Act;

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

### **362BG List of relevant internet radio services**

- (1) OFCOM must establish and maintain an up to date list of the internet radio services in relation to which notice has been given to OFCOM under subsection (3), and not withdrawn, and their providers.
- (2) For the purposes of this Part, a relevant internet radio service is an internet radio service which is for the time being specified in the list referred to in subsection (1).
- (3) The provider of an internet radio service may give notice to OFCOM for the purpose of securing inclusion in the list.
- (4) The provider of a service included in the list may give notice to OFCOM withdrawing the provider’s notice under subsection (3).
- (5) The provider of a service included in the list must give notice to OFCOM withdrawing the provider’s notice under subsection (3) if—
  - (a) the service ceases to be an internet radio service, or
  - (b) the provider ceases to provide that service.
- (6) A notice given to OFCOM under this section must—
  - (a) be sent in such manner as OFCOM may require;
  - (b) contain such information as OFCOM may require.
- (7) OFCOM must publish the up to date list on a publicly accessible part of their website.

### *Regulation of radio selection services*

### **362BH Access to relevant internet radio services**

- (1) The provider of a regulated radio selection service must, within a reasonable period beginning with the inclusion of a service in the list under section 362BG, secure that users of the service are able to use the service—
  - (a) to select that relevant internet radio service, and
  - (b) to cause it to play,
 by giving spoken commands that are recorded by equipment connected to the internet.
- (2) The provider of a regulated radio selection service must, within a reasonable period beginning with the inclusion of a service in the list under section 362BG, secure that, so far as reasonably possible, the

service deals effectively with the spoken commands of those users who seek to select and cause to play that relevant internet radio station.

- (3) Subsection (4) applies if the provider of a relevant internet radio service requests the provider of a regulated radio selection service to secure that the service, when used as described in subsection (1) to select and cause to play the relevant internet radio service, operates in a particular way (for example by using a particular service provided by means of the internet).
- (4) Where this subsection applies, the provider of the regulated radio selection service must make all reasonable efforts to secure that the service operates in the way requested.
- (5) Subsection (4) does not prevent the provider from causing the radio selection service to operate in a different way if, when it does so, it is operating in a way selected by the person using it.

### **362BI Further requirements as regards relevant internet radio services**

- (1) The provider of a regulated radio selection service must secure that, where the service is used to cause a relevant internet radio service to play, the service causes only the relevant internet radio service to play.
- (2) The provider of a regulated radio selection service may not impose a charge on the provider of a relevant internet radio service that is attributable (whether directly or indirectly) to the service operating as required by—
  - (a) section 362BH(1), (2) or (4), or
  - (b) subsection (1) of this section.in relation to the selection or playing of the relevant internet radio service.
- (3) The provider of a regulated radio selection service must draw up a statement about how the provider intends to comply with the duties in—
  - (a) section 362BH(1), (2) and (4), and
  - (b) subsection (1) of this section.
- (4) The provider must keep the statement under review and, if appropriate, revise it.
- (5) The provider must publish the statement and any revised statement.

### **362BJ Code of practice**

- (1) OFCOM must issue a code of practice describing actions that OFCOM recommends for the purpose of securing that the manner in which a regulated radio selection service operates complies with the duties in—
  - (a) section 362BH(1), (2) and (4), and
  - (b) section 362BI(1).
- (2) OFCOM may—
  - (a) revise a code of practice issued under this section and issue the code as revised;
  - (b) withdraw a code of practice issued under this section and issue a new code of practice.

- (3) OFCOM must—
  - (a) publish a code of practice issued under this section in such manner as they consider appropriate;
  - (b) keep a code of practice issued under this section under review.
- (4) If requested by the Secretary of State to review all or part of a code of practice issued under this section, OFCOM must review the code or that part of it.
- (5) The actions recommended in a code of practice issued under this section may include—
  - (a) actions relating to particular descriptions of regulated radio selection services;
  - (b) actions relating to particular descriptions of internet radio services.

### **362BK Effects of the code of practice**

- (1) The provider of a regulated radio selection service is to be treated as complying with a duty in section 362BH(1), (2) or (4) or 362BI(1) if the provider takes the actions described in the code of practice which are recommended for the purpose of complying with that duty.
- (2) A failure by the provider of a regulated radio selection service to act in accordance with a provision of the code of practice does not of itself make the provider liable to legal proceedings before a court or tribunal.
- (3) In any legal proceedings before a court or tribunal, the court or tribunal must take into account a provision of the code of practice in determining any question arising in the proceedings if—
  - (a) the question relates to a time when the provision was in force, and
  - (b) the provision appears to the court or tribunal to be relevant to the question.
- (4) OFCOM must take into account a provision of the code of practice in determining any question arising in connection with the carrying out by them of a relevant function if—
  - (a) the question relates to a time when the provision was in force, and
  - (b) the provision appears to OFCOM to be relevant to the question.
- (5) In this section, “relevant function” means a function conferred on OFCOM by any of sections 362BQ to 362BW (enforcement).

### **362BL Issuing a code of practice**

- (1) Before issuing a code of practice under section 362BJ, OFCOM—
  - (a) must publish a draft of the code or (as the case may be) a draft of the revisions of the existing code;
  - (b) must consult the following about the draft—
    - (i) the Secretary of State;
    - (ii) persons who appear to OFCOM to represent providers of relevant internet radio services;
    - (iii) persons who appear to OFCOM to represent providers of regulated radio selection services;

- (iv) such other persons as OFCOM consider appropriate;
  - (c) may make such alterations to the draft as OFCOM consider appropriate following the consultation.
- (2) Subsection (1) does not apply in relation to revisions of the code of practice if—
  - (a) OFCOM give the Secretary of State a draft of the revisions of the existing code, and
  - (b) the Secretary of State agrees that it is not necessary for subsection (1) to apply in relation to the revisions.

### **362BM Complaints procedures**

The provider of a regulated radio selection service must establish and maintain procedures for the handling and resolution of complaints made by providers of relevant internet radio services that the provider is failing, or has failed, to comply with—

- (a) section 362BH(1), (2) or (4), or
- (b) section 362BI(1).

#### *Modification of regulation of radio selection services*

### **362BN Power to modify regulation**

- (1) The Secretary of State may by regulations—
  - (a) amend this Part so as to alter, add to or remove requirements or prohibitions imposed on providers of regulated radio selection services, and
  - (b) make such amendments of any other provision of this Act or any other Act as appear to the Secretary of State to be expedient in consequence of the amendments made by virtue of paragraph (a).
- (2) The provision that may be made by regulations under subsection (1) includes—
  - (a) provision about enabling the use of a radio selection service to select a relevant internet radio service by reference to its characteristics (for example, the nature of its contents or the identity of its provider) and cause it to play;
  - (b) provision about the terms and conditions that may be offered by the provider of a radio selection service to the provider of a relevant internet radio service for or in connection with the use of the service to access the relevant internet radio service;
  - (c) provision about the charges that may be imposed by the provider of a radio selection service on the provider of a relevant internet radio service in connection with the use of the service to access the relevant internet radio service;
  - (d) provision about the publication of information about such terms, conditions and charges.
- (3) Before making regulations under subsection (1), the Secretary of State must have received a report of a review under section 362BO.
- (4) Before making regulations under subsection (1), the Secretary of State must consult—



- (a) persons who appear to the Secretary of State to represent providers of relevant internet radio services;
- (b) persons who appear to the Secretary of State to represent providers of regulated radio selection services;
- (c) such other persons as the Secretary of State considers appropriate.

### **362BO Review by OFCOM**

- (1) OFCOM may prepare reports that review the adequacy of the regulation of regulated radio selection services by this Part.
- (2) Where—
  - (a) the Secretary of State proposes to make regulations under section 362BN(1), and
  - (b) the Secretary of State has not received a report under subsection (1),
 the Secretary of State must request OFCOM to prepare a report that reviews the adequacy of the regulation of regulated radio selection services by this Part.
- (3) Where the Secretary of State makes a request under subsection (2), OFCOM must prepare such a report as soon as practicable.
- (4) OFCOM must give the Secretary of State a report prepared under subsection (1) or (3).
- (5) OFCOM must publish reports given to the Secretary of State under this section.

### *Power to require information*

### **362BP Power to require information**

- (1) OFCOM may by notice (an “information notice”) require a person within subsection (4) to provide them with any information that they require for the purpose of carrying out their functions under this Part.
- (2) The power conferred by subsection (1) includes power to require a person within subsection (4) to obtain or generate information.
- (3) The power conferred by subsection (1) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.
- (4) The persons within this subsection are—
  - (a) a provider of a relevant internet radio service;
  - (b) a provider of a radio selection service;
  - (c) a person who provides an ancillary service in relation to a relevant internet radio service or a radio selection service;
  - (d) a person who was within any of paragraphs (a) to (c) at a time to which the required information relates;
  - (e) a person who is not within any of paragraphs (a) to (d) but who appears to OFCOM to have, or to be able to obtain or generate, information required by them as mentioned in subsection (1).

- (5) The information that OFCOM may require under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—
  - (a) the purpose of preparing a report under section 362BC (advice from OFCOM about the designation of radio selection services etc);
  - (b) the purpose of assessing compliance with section 362BD (duty of providers of radio selection services to notify OFCOM);
  - (c) the purpose of assessing whether a service is an internet radio service (see sections 362BF and 362BG);
  - (d) the purpose of assessing compliance with a duty or prohibition under section 362BH or 362BI (access duties of providers of regulated radio selection services etc);
  - (e) the purpose of assessing compliance with any requirements imposed by a confirmation decision under section 362BR;
  - (f) the purpose of determining the appropriate fee that a provider is required to pay under section 362BX;
  - (g) the purpose of ascertaining the amount of a person's or a group of entities' qualifying worldwide revenue for the purposes of paragraph 3 or 4 of Schedule 15ZA, as applied by section 362BV;
  - (h) the purpose of OFCOM's monitoring role under section 362BY.
- (6) An information notice must—
  - (a) specify or describe the information to be provided,
  - (b) specify why OFCOM require the information,
  - (c) specify the form and manner in which the information must be provided, and
  - (d) contain information about the consequences of not complying with the notice.
- (7) An information notice must specify when the information must be provided which may be—
  - (a) on or by a specified date, or
  - (b) within a specified period.
- (8) The power conferred by subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (9) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice.
- (10) The duty under subsection (9) does not require a disclosure of information if that disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, that duty is to be taken into account).
- (11) For the purposes of subsection (4)(c), a service is an “ancillary service” in relation to a internet radio service or a radio selection service if it facilitates the provision of that service (or part of it), whether directly or indirectly.

- (12) In this section, “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

### *Enforcement*

#### **362BQ Provisional notices of contravention**

- (1) OFCOM may give a notice under this section (a “provisional notice of contravention”) to a person if they consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with any duty or prohibition under section 362BD, 362BG, 362BH or 362BI.
- (2) OFCOM may also give a provisional notice of contravention to a person to whom an information notice has been given if they consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with the duty under section 362BP(9).
- (3) A provisional notice of contravention must—
  - (a) specify the duty with which (in OFCOM’s opinion) there are reasonable grounds for believing the person has failed, or is failing, to comply, and
  - (b) give OFCOM’s reasons for that opinion.
- (4) A provisional notice of contravention may also specify steps that OFCOM consider the person needs to take in order to—
  - (a) comply with the duty, or
  - (b) remedy the failure to comply with it.
- (5) A provisional notice of contravention may also state that OFCOM propose to impose a penalty on the person and, in such a case, the notice must—
  - (a) give OFCOM’s reasons for proposing to impose the penalty,
  - (b) indicate the amount in sterling of the proposed penalty, and
  - (c) give OFCOM’s reasons for proposing a penalty of that amount, including any aggravating or mitigating factors that OFCOM propose to take into account.
- (6) A provisional notice of contravention must—
  - (a) state that the person may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice, and
  - (b) specify the period within which such representations may be made.
- (7) A provisional notice of contravention may be given in respect of a failure by the same person to comply with more than one duty or prohibition and, in such a case, the notice may include a proposal to impose a single penalty in respect of some or all of those duties or prohibitions (as an alternative to separate penalties).
- (8) Where a provisional notice of contravention is given in respect of a continuing failure to comply with a duty or prohibition, the notice—
  - (a) may be given in respect of any period during which the failure has continued,
  - (b) must specify that period, and

- (c) may include a proposal to impose no more than one penalty in respect of that period.
- (9) Where a provisional notice of contravention is given to a person in respect of a failure to comply with a duty or prohibition, a further provisional notice of contravention in respect of a failure to comply with that same duty or prohibition may be given to that person only—
- (a) in respect of a separate instance of the failure that occurs after the first notice is given,
  - (b) where a period is specified in the first notice in accordance with subsection (8)(b), in respect of the continuation of the failure after the end of that period, or
  - (c) if the notice is withdrawn without a confirmation decision under section 362BR having been given to the person in respect of that failure.
- (10) OFCOM may give a provisional notice of contravention to a person who was but is no longer a provider of a regulated radio selection service if that person was a provider of a regulated radio selection service at the time of the failure to which the notice relates.

### **362BR Confirmation decisions: general**

- (1) This section applies where—
- (a) OFCOM have given a provisional notice of confirmation to a person in relation to a failure to comply with a duty or duties or a prohibition, and
  - (b) the period allowed for representations has expired.
- (2) After considering any representations that have been made (and any supporting evidence), OFCOM must decide whether or not to give the person a further notice under this section (a “confirmation decision”).
- (3) OFCOM may decide to give a person a confirmation decision only if they are satisfied that the person has failed, or has been failing, to comply with one or more of the notified duties.
- (4) For the purposes of this section and sections 362BS and 362BT, a “notified duty” means a duty or prohibition specified in the provisional notice of contravention.
- (5) If OFCOM decide not to give a person a confirmation decision (whether because they are not satisfied as described in subsection (3) or for any other reason), they must inform the person of that fact.
- (6) A confirmation decision must—
- (a) state that OFCOM are satisfied that the person has failed, or has been failing, to comply with one or more notified duties, and
  - (b) give OFCOM’s reasons for being satisfied as described in paragraph (a).
- (7) A confirmation decision may require the person to take such steps as OFCOM consider appropriate for either or both of the following purposes—
- (a) complying with a notified duty or duties;
  - (b) remedying the failure to comply with that duty or those duties.

- (8) Where a provisional notice of contravention stated that OFCOM proposed to impose a penalty in relation to a notified duty or (by virtue of section 362BQ(7)) in relation to notified duties, a confirmation decision may require the person to pay a penalty, of an amount in sterling determined by OFCOM, in relation to that duty or (as the case may be) those duties.
- (9) The amount determined by OFCOM under subsection (8) may be greater than the amount indicated in the provisional notice of contravention in accordance with section 362BQ(5)(b).
- (10) OFCOM may give a confirmation decision to a person who was but is no longer a provider of a regulated radio selection service if that person was a provider of a regulated radio selection service at the time of the failure to which the decision relates.

### **362BS Confirmation decisions: steps**

- (1) This section applies where a confirmation decision requires the person to whom it is given to take steps as provided for by section 362BR(7).
- (2) The notice must—
  - (a) specify the steps that are required and the notified duty or duties to which each relates,
  - (b) give OFCOM's reasons for requiring those steps to be taken,
  - (c) specify a reasonable period within which each of the steps specified in the notice must be taken, and
  - (d) contain information about the consequences of not taking the steps (including information about further kinds of enforcement action that it would be open to OFCOM to take).
- (3) Where a confirmation decision requires a person to take steps, the person to whom the notice is given has a duty to take those steps.
- (4) The duty under subsection (3) is 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) for any other appropriate remedy or relief.

### **362BT Confirmation decisions: penalties**

- (1) This section applies where a confirmation decision imposes one or more penalties (see section 362BR(8)).
- (2) In relation to each penalty imposed, the notice must—
  - (a) give OFCOM's reasons for their decision to impose the penalty,
  - (b) specify each notified duty to which the penalty relates,
  - (c) give OFCOM's reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (d) specify a reasonable period within which the penalty must be paid, and

- (e) contain information about the consequences of not paying the penalty (including information about the kinds of enforcement action that it would be open to OFCOM to take).
- (3) The period specified under subsection (2)(d) for the payment of a penalty must be at least 28 days beginning with the day on which the confirmation decision is given.
- (4) Schedule 15ZA, as applied by section 362BV, contains further provision about the imposition of a penalty by a confirmation decision.

### **362BU Penalty for failure to comply with confirmation decision**

- (1) This section applies where—
  - (a) OFCOM have given a confirmation decision to a person,
  - (b) the notice includes requirements to take steps (as provided for by section 362BR(7)), and
  - (c) OFCOM are satisfied that the person has failed to comply with one or more of those requirements.
- (2) OFCOM may give the person a penalty notice.
- (3) A “penalty notice” is a notice requiring a person to pay to OFCOM a penalty of an amount in sterling determined by OFCOM.
- (4) Before giving the person a penalty notice, OFCOM must—
  - (a) notify the person that they propose to give a penalty notice in respect of the failure to comply with the confirmation decision, specifying the reasons for their proposal and indicating the amount of the proposed penalty, and
  - (b) give the person an opportunity to make representations to OFCOM (with any supporting evidence) about their proposal.
- (5) A penalty notice must—
  - (a) give OFCOM’s reasons for their decision to impose the penalty,
  - (b) state the amount of the penalty,
  - (c) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (d) specify the period within which the penalty must be paid, and
  - (e) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (6) The period specified under subsection (5)(d) must be at least 28 days beginning with the day on which the penalty notice is given.
- (7) Schedule 15ZA, as applied by section 362BV, contains further provision about the imposition of a penalty by a penalty notice.

### **362BV Enforcement: application of Schedules 15ZA and 15ZB**

- (1) Schedule 15ZA applies for the purposes of this Part as if—
  - (a) the reference in that Schedule to section 362AX(8) were a reference to section 362BR(8),
  - (b) the reference in that Schedule to section 362AZ1(2) were a reference to section 362BU(2), and

- (c) a reference in that Schedule to a regulated television selection service were a reference to a regulated radio selection service.
- (2) Schedule 15ZB applies for the purposes of this Part as if—
  - (a) the reference in that Schedule to section 362AW were a reference to section 362BQ,
  - (b) the reference in that Schedule to section 362AW(6)(a) were a reference to section 362BQ(6)(a),
  - (c) the reference in that Schedule to section 362AX were a reference to section 362BR,
  - (d) the reference in that Schedule to section 362AZ1 were a reference to section 362BU,
  - (e) a reference in that Schedule to Schedule 15ZA were a reference to Schedule 15ZA as applied by subsection (1), and
  - (f) a reference in that Schedule to a regulated television selection service were a reference to a regulated radio selection service.
- (3) Schedule 15ZB, as so applied, contains provision about—
  - (a) the giving of joint provisional notices of contravention to parent entities etc,
  - (b) the liability of parent entities for failures by subsidiary entities,
  - (c) the liability of subsidiary entities for failures by parent entities,
  - (d) the liability of fellow subsidiary entities for failures by subsidiary entities, and
  - (e) the liability of controlling individuals for failures by entities.

### **362BW Enforcement: guidance**

- (1) OFCOM must prepare and publish guidance about the exercise of their powers under sections 362BQ to 362BV or Schedule 15ZB, as applied by section 362BV.
- (2) The guidance must include the factors that OFCOM will take into account in deciding whether to exercise any of those powers.
- (3) OFCOM may revise or replace any guidance published under this section and, where they do so, must publish the revised or replacement guidance.
- (4) Before preparing guidance under this section (or revising or replacing it), OFCOM must consult—
  - (a) the Secretary of State, and
  - (b) such other persons as they consider appropriate.
- (5) Guidelines prepared by OFCOM under section 392 (amount of penalties) may, so far as relating to penalties imposed by a confirmation decision under section 362BR or a penalty notice under section 362BU, be included in the same document as guidance under this section.
- (6) In exercising or deciding whether to exercise any of their powers under sections 362BQ to 362BV or Schedule 15ZB, as applied by section 362BV, OFCOM must have regard to any guidance for the time being published under this section.

*Supplemental provisions of Part 3B*

**362BX Fees**

- (1) OFCOM may require any of the following persons to pay to OFCOM a fee of an amount determined by OFCOM—
  - (a) a provider of a relevant internet radio service;
  - (b) a provider of a regulated radio selection service.
- (2) The amount of a fee required under subsection (1) must be determined by OFCOM in accordance with a statement of principles prepared and published by them for the purpose of this section.
- (3) Those principles must be such as appear to OFCOM to be likely to secure the following objectives—
  - (a) that, on a year by year basis, the aggregate amount of the fees payable to OFCOM under subsection (1) is sufficient to meet, but does not exceed, the annual cost to OFCOM of carrying out their functions under this Part less an appropriate amount to take into account costs that will be met by fees payable by the BBC under section 198(4);
  - (b) that the relationship between the aggregate amount of the fees and the cost to OFCOM of carrying out the functions is transparent;
  - (c) that any fee required is justifiable and proportionate having regard to the circumstances of the person required to pay it.
- (4) As soon as reasonably practicable after the end of each financial year, OFCOM must publish a statement of accounts setting out in respect of that year—
  - (a) the aggregate amount of the fees payable under subsection (1) for that year that have been received by OFCOM,
  - (b) the aggregate amount of the fees payable under that subsection for that year that remain outstanding and are likely to be paid or recovered, and
  - (c) the costs to them of carrying out their functions under this Part less an appropriate amount to take into account costs that have been or are to be met by fees payable by the BBC under section 198(4).
- (5) Any deficit or surplus shown (after applying this subsection for all previous years) by the statement of accounts is to be—
  - (a) carried forward, and
  - (b) taken into account in determining what is required to meet the objective described in subsection (3)(a) in relation to the following year.
- (6) OFCOM may repay a person some or all of a fee paid under subsection (1) if, in the case of a fee paid by the provider of a regulated radio selection service—
  - (a) the Secretary of State has revoked the designation of a regulated radio selection service provided by that person at some time during the period to which the fee relates, or



- (b) the person gives OFCOM a notice under section 362BD(2) or (3) in accordance with section 362BD(4) at some time during the period to which the fee relates.
- (7) For the purposes of this section, OFCOM's costs of carrying out their functions under this Part during a financial year include their costs of preparing to carry out those functions during that year.
- (8) OFCOM—
  - (a) may revise a statement of principles published by them, and
  - (b) where they do so, must publish the statement as revised.
- (9) Before publishing a statement of principles or a revision of it, OFCOM must consult such persons as they consider appropriate.
- (10) In this section, “financial year” means a period of 12 months ending on 31 March.

### **362BY Monitoring role for OFCOM**

OFCCOM has the function of obtaining, compiling and keeping under review information about matters which may be relevant to—

- (a) designating or revoking the designation of a radio selection service or specifying or ceasing to specify a description of radio selection services under section 362BB;
- (b) deciding whether to take enforcement action under this Part.

### **362BZ Notices**

- (1) This section applies in relation to a notice that may or must be given by OFCOM to a person under any provision of this Part.
- (2) OFCOM may give a notice to a person by—
  - (a) delivering it by hand to the person,
  - (b) leaving it at the person's proper address,
  - (c) sending it by post to the person at that address, or
  - (d) sending it by email to that person's email address.
- (3) A notice to a body corporate may be given to any officer of that body.
- (4) A notice to a partnership may be given to any partner or to a person who has the control or management of the partnership business.
- (5) A notice to an entity that is not a legal person under the law under which it is formed (other than a partnership) may be given to any member of the governing body of the entity.
- (6) In the case of a notice given to a person who is a provider of a regulated radio selection service, the person's proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is any address (within or outside the United Kingdom) at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of the person or (where that person is an entity) any director or other officer of that entity.
- (7) In the case of a notice given to a person other than a provider of regulated radio selection service, a person's proper address for the

purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is—

- (a) in the case of an entity, the address of the entity's registered or principal office;
  - (b) in any other case, the person's last known address.
- (8) In the case of an entity registered or carrying on business outside the United Kingdom, or with offices outside the United Kingdom, the reference in subsection (7) to its principal office includes its principal office in the United Kingdom or, if the entity has no office in the United Kingdom, any place in the United Kingdom at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of any director or other officer of that entity.
- (9) For the purposes of subsection (2)(d), a person's email address is—
- (a) any email address published for the time being by that person as an address for contacting that person, or
  - (b) if there is no such published address, any email address by means of which OFCOM believe, on reasonable grounds, that the notice will come to the attention of that person or (where that person is an entity) any director or other officer of that entity.
- (10) A notice sent by email is treated as given 48 hours after it was sent, unless the contrary is proved.
- (11) In this section—
- “director” includes any person occupying the position of a director, by whatever name called;
  - “officer”, in relation to an entity, includes a director, a manager, a partner, an associate, a secretary or, where the affairs of the entity are managed by its members, a member.

### **362BZ1 Extra-territorial application**

- (1) References in this Part to a radio selection service include such a service provided from outside the United Kingdom (as well as such a service provided from within the United Kingdom).
- (2) The power to require the provision of information by an information notice includes power to require the provision of information held outside the United Kingdom.
- (3) Section 362BS(4) (requirements enforceable in civil proceedings against a person) applies whether or not the person is in the United Kingdom.

### **362BZ2 Interpretation of Part 3B**

- (1) In this Part—
- “entity” means a body or association of persons or an organisation, regardless of whether the body, association or organisation is—
    - (a) formed under the law of any part of the United Kingdom or of a country or territory outside the United Kingdom, or
    - (b) a legal person under the law under which it is formed;
  - “information notice” has the meaning given in section 362BP;
  - “internet radio service” has the meaning given by section 362BF;

“provide”, in relation to a sound broadcasting service or digital sound programme service, has the same meaning as in Part 3 (see section 362(2) and (3));

“radio selection service” has the meaning given by section 362BA; “regulated radio selection service” has the meaning given by section 362BB;

“relevant internet radio service” has the meaning given by section 362BG.

- (2) A reference in this Part to the playing of an internet radio service is a reference to the playing of an internet radio service through a speaker.”

## PART 7

### MISCELLANEOUS AND GENERAL

#### *Publishers of news-related material*

#### **43 Awards of costs**

- (1) The Crime and Courts Act 2013 is amended as follows.
- (2) Section 40 (awards of costs) is repealed.
- (3) In section 41 (meaning of “relevant publisher”), in subsection (1), for “40” substitute “39”.

#### *Amendments related to the UK’s withdrawal from the EU*

#### **44 Amendments of broadcasting legislation: UK’s withdrawal from EU**

Schedule 11 contains amendments of the Broadcasting Act 1990, the Broadcasting Act 1996 and the Communications Act 2003 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

#### *General*

#### **45 Power to make consequential provision**

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under this section may, in particular, amend, repeal or revoke provision made by or under an Act passed—
  - (a) before this Act, or
  - (b) in the same session of Parliament as this Act.
- (3) Regulations under this section may—
  - (a) make different provision for different purposes;
  - (b) make transitional, transitory or saving provision.
- (4) Regulations under this section are to be made by statutory instrument.

- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend or repeal any provision of an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### **46 Extent**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsection (2).
- (2) An amendment or repeal made by this Act has the same extent within the United Kingdom as the provision amended or revoked.
- (3) The power under—
  - (a) section 204(6) of the Broadcasting Act 1990,
  - (b) section 150(4) of the Broadcasting Act 1996, or
  - (c) section 411(6) of the Communications Act 2003,may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment or repeal made by or under this Act of any part of the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 (with or without modifications).
- (4) His Majesty may by Order in Council provide for any of the other provisions of this Act to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.

#### **47 Commencement**

- (1) The following come into force on the day on which this Act is passed—
  - (a) Part 2, so far as it confers powers to make regulations;
  - (b) sections 45 and 46, this section and section 48.
- (2) Section 43 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The following come into force on such day or days as the Secretary of State may by regulations appoint—
  - (a) Part 1;
  - (b) the remaining provisions of Part 2;
  - (c) Part 3;
  - (d) Part 4;
  - (e) Part 5;
  - (f) Part 6;
  - (g) section 44 and Schedule 11.
- (4) Different days may be appointed for different purposes.
- (5) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (6) Regulations under this section are to be made by statutory instrument.

**48 Title**

This Act may be cited as the Media Act 2023.

## SCHEDULES

### SCHEDULE 1

Section 17

#### QUOTAS: THE BBC AND S4C

##### PART 1

#### QUOTAS: THE BBC

- 1 (1) Paragraph 1 of Schedule 12 to the Communications Act 2003 (the BBC: quotas for independent productions) is amended as follows.
  - (2) For sub-paragraph (1) substitute—
    - “(1) It shall be the duty of the BBC to secure that, in each year—
      - (a) it makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with any relevant code drawn up by the BBC under the BBC Charter and Agreement, and
      - (b) the duration (in total) of those independent productions is at least the number of hours specified by order of the Secretary of State.”
  - (3) In sub-paragraph (2), omit paragraph (a).
  - (4) Omit sub-paragraph (3).
  - (5) In sub-paragraph (5), for the words from “, in each year” to the end of the sub-paragraph substitute “—
    - (a) in each year, it makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with any relevant code drawn up by the BBC under the BBC Charter and Agreement, and
    - (b) the cost (in total) of the acquisition of those independent productions is at least the amount specified in the order.”
  - (6) Omit sub-paragraphs (8) and (9).
  - (7) In sub-paragraph (10), in paragraph (b), for “the percentage” substitute “the number of hours or (as the case may be) the amount”.
  - (8) Omit sub-paragraph (11).
  - (9) In sub-paragraph (14), omit the definition of “programming budget” and the word “and” before it.

(10) After sub-paragraph (14) insert—

“(15) See also sections 278B and 278C (which make further provision for the interpretation of this paragraph etc).”

PART 2

QUOTAS:

S4C

2 (1) Paragraph 7 of Schedule 12 to the Communications Act 2003 (S4C: quotas for independent productions) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) It shall be the duty of S4C to secure that, in each year—

- (a) it makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with the code drawn up under paragraph 10, and
- (b) the duration (in total) of those independent productions is at least the number of hours specified by order of the Secretary of State.”

(3) In sub-paragraph (2), omit paragraph (a).

(4) Omit sub-paragraph (3).

(5) In sub-paragraph (5), for the words from “, in each year” to the end of the sub-paragraph substitute “—

- (a) in each year, it makes available qualifying audiovisual content that includes a range and diversity of independent productions commissioned in accordance with the code drawn up under paragraph 10, and
- (b) the cost (in total) of the acquisition of those independent productions is at least the amount specified in the order.”

(6) In sub-paragraph (8), in paragraph (b), for “the percentage” substitute “the number of hours or (as the case may be) the amount”.

(7) Omit sub-paragraph (9).

(8) Omit sub-paragraph (12).

(9) In sub-paragraph (13), omit the definition of “programming budget” and the word “and” before it.

(10) After sub-paragraph (13) insert—

“(14) See also sections 278B and 278C (which make further provision for the interpretation of this paragraph etc).”

3 (1) Paragraph 8 of Schedule 12 (programme quotas for original productions) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) It shall be the duty of S4C to secure that, in each year—

- (a) it makes available qualifying audiovisual content that includes a range of original productions,

- (b) the duration (in total) of those original productions is at least the number of hours determined in accordance with sub-paragraph (1B), and
    - (c) if OFCOM so provide in a direction given to S4C, the additional peak viewing time objective described in subsection (1A) is met.
  - (1A) The additional peak viewing time objective is that (out of the number of hours determined for the purposes of sub-paragraph (1)(b)) at least the number of hours determined in accordance with sub-paragraph (1B) is allocated to the broadcasting of original productions included in S4C Digital at peak viewing times.
  - (1B) A determination for the purposes of sub-paragraph (1)(b) or (1A) is to be—
    - (a) by agreement between S4C and OFCOM, or
    - (b) in default of agreement, by a direction given by OFCOM to S4C specifying the number of hours.
  - (1C) Before giving a direction under sub-paragraph (1)(c), OFCOM must consult S4C.”
- (3) Omit sub-paragraphs (2) to (5).
- (4) In sub-paragraph (6), omit the words from “, in relation to” to “the Welsh Authority,”.
- (5) After sub-paragraph (7) insert—
  - “(7A) An order under sub-paragraph (6) may—
    - (a) authorise OFCOM to give a direction to S4C that original productions of a description specified in the direction may not be counted towards meeting S4C’s duty under sub-paragraph (1);
    - (b) require OFCOM to consult S4C before giving such a direction;
    - (c) require OFCOM to prepare and publish guidance about the determination of whether an original production falls within a description specified in a direction given by virtue of paragraph (a);
    - (d) require S4C to have regard to that guidance.”
- (6) Omit sub-paragraph (10).
- (7) In sub-paragraph (11)—
  - (a) omit the words from “, in relation to” to “the Welsh Authority,”;
  - (b) for “one or more of those services” substitute “S4C Digital”.
- (8) After sub-paragraph (12) insert—
  - “(13) See also sections 278B and 278C (which make further provision for the interpretation of this paragraph etc).”
- 4 In paragraph 10 (code relating to programme commissioning)—
  - (a) in sub-paragraph (1), after “to be applied” insert “—
    - (a) ”;



- (b) at the end of that sub-paragraph insert “, or
  - (b) when they are agreeing terms for the commissioning of independent productions that will be included in an on-demand programme service but which they wish to count towards meeting the duty under paragraph 7(1).”;
- (c) in sub-paragraph (4), after paragraph (g) insert—
  - “(h) that such information about the application of the code as OFCOM consider appropriate is given to persons who make independent productions that are to be commissioned in accordance with the code.”

## SCHEDULE 2

Section 22

### PART 1: FURTHER AMENDMENTS

#### *Broadcasting Act 1990*

- 1 The Broadcasting Act 1990 is amended as follows.
- 2 In section 24 (Channel 4 to be provided by Corporation as licensed service), in subsection (3), for “England, Scotland and Northern Ireland” substitute “the United Kingdom”.
- 3 In section 49 (licensing of additional services), omit subsection (1A).
- 4 In section 66 (requirements relating to transmission and distribution of services), in subsection (6)(b), for “England, Scotland and Northern Ireland” substitute “the United Kingdom”.
- 5 In Schedule 2 (restrictions on the holding of licences), in Part 2 (disqualification for holding licences), in paragraph 2 (disqualification of religious bodies)—
  - (a) omit sub-paragraph (1A)(d);
  - (b) in sub-paragraph (1B), omit the definition of “public teletext licence”.

#### *Broadcasting Act 1996*

- 6 The Broadcasting Act 1996 is amended as follows.
- 7 In section 2 (meaning of “qualifying service”), omit paragraph (f) (meaning of “the digital public teletext provider”).
- 8 In section 12 (conditions attached to multiplex licence), omit subsection (4)(a).
- 9 In section 24 (digital additional services)—
  - (a) in subsection (1)(c), omit “the digital public teletext service.”;
  - (b) in subsection (3A), in the definition of “relevant public service broadcaster”, omit paragraph (f).
- 10 In section 33 (review of digital television broadcasting), in subsection (1)(a)(ii), omit “the digital public teletext service.”.

- 11 In section 39 (interpretation of Part 1), in subsection (1), omit the definitions of—
  - (a) “digital public teletext service”;
  - (b) “public teletext provider”.
- 12 (1) Section 98 (categories of service) is amended as follows.
  - (2) Omit subsection (4).
  - (3) Omit subsections (5A) to (5D).
- 13 In section 99 (contract for exclusive right to televise listed event to be void)—
  - (a) in the heading, for “televise” substitute “show”;
  - (b) after subsection (4) insert—
    - “(5) In relation to contracts entered into after the commencement of paragraph 13 of Schedule 2 to the Media Act 2023, this section is to have effect as if—
      - (a) a reference in subsection (1) or (3) to a television programme provider included a reference to the provider of an internet programme service;
      - (b) a reference in subsection (1) or (3) to televising an event or part of an event for reception in an area included a reference to including coverage of an event or part of an event in an internet programme service that may be accessed by members of the public in an area.”
- 14 In section 100 (contract for televising listed event must specify category of service)—
  - (a) in the heading, for “televising” substitute “showing”;
  - (b) after subsection (2) insert—
    - “(3) In relation to contracts entered into after the commencement of paragraph 14 of Schedule 2 to the Media Act 2023, this section is to have effect as if—
      - (a) a reference in subsection (1) or (2) to a television programme provider included a reference to the provider of an internet programme service;
      - (b) the reference in subsection (1) to televising an event or part of an event for reception in an area included a reference to including coverage of an event or part of an event in an internet programme service that may be accessed by members of the public in an area;
      - (c) a reference in subsection (2) to a television programme service included a reference to an internet programme service.”
- 15 In section 102 (power of OFCOM to impose penalty)—
  - (a) in subsection (1)(a), after “this Act” insert “or the provider of an internet programme service other than the BBC or S4C”;
  - (b) in subsection (2), after “this Act” insert “or the provider of an internet programme service other than the BBC or S4C”.
- 16 In section 104 (code of guidance)—

- (a) in subsection (1)(b), for “television programme provider” substitute “person”;
- (b) in subsection (4)(d), after “this Act” insert “or the provider of an internet programme service (other than the BBC or S4C)”.
- 17 In section 104A (provision of information), in subsection (1), after “provider” insert “or a provider of an internet programme service”.
- 18 (1) Section 105 (interpretation of Part 4 and supplementary provisions) is amended as follows.
- (2) In subsection (1), in the definition of “Channel 4”, for “has” substitute “and “Channel 5” have”.
- (3) In subsection (1), at the appropriate place insert—
- ““a Channel 3 service” means a regional or national Channel 3 service;”;
- ““designated internet programme service” has the same meaning as in Part 3A of the Communications Act 2003 (see section 362AA(1));”;
- ““internet programme service” has the same meaning as in Part 3A of the Communications Act 2003 (see section 362AA(10));”;
- ““provide”, in relation to an internet programme service, has the same meaning as in Part 3A of the Communications Act 2003 (see section 362AZ8(2) to (5));”.
- 19 In section 130 (interpretation of Part 5), in subsection (1), in the definition of “licensed service”, omit paragraph (aa).

#### *Tobacco Advertising and Promotion Act 2002*

- 20 In section 12 of the Tobacco Advertising and Promotion Act 2002 (television and radio broadcasting), in subsection (3), omit paragraph (b) and the “and” preceding it.

#### *Communications Act 2003*

- 21 The Communications Act 2003 is amended as follows.
- 22 In section 3 (general duties of OFCOM), in subsection (4)(a), for “the purposes of public service television broadcasting in the United Kingdom” substitute “the public service remit for television in the United Kingdom (as defined in section 264)”.
- 23 In section 64 (must carry obligations), omit subsection (3)(f).
- 24 In section 198A (C4C’s functions in relation to media content), in subsection (3), for “objectives” substitute “requirements”.
- 25 Omit the italic heading before section 218.
- 26 In section 224 (meaning of initial expiry date), omit subsection (1)(c).
- 27 In the italic heading before section 225, omit “and teletext”.
- 28 Section 226 (application for review of financial terms in consequence of new obligations), in subsection (1)—

- (a) after paragraph (a), insert “or”;
  - (b) omit paragraph (c) and the “or” preceding it.
- 29 In section 227 (reviews under sections 225 and 226), in subsection (7), omit paragraph (b) and the “and” preceding it.
- 30 (1) Section 229 (report in anticipation of new licensing round) is amended as follows.
  - (2) In subsection (2), for “the purposes of public service television broadcasting in the United Kingdom” substitute “the public service remit for television in the United Kingdom”.
  - (3) In subsection (6), in the definition of “relevant licence”—
    - (a) after paragraph (a), insert “or”;
    - (b) omit paragraph (c) and the “or” preceding it.
- 31 In section 233 (services that are not television licensable content services), in subsection (2), omit paragraph (b) (but not the “or” following it).
- 32 In section 241 (television multiplex services), omit subsection (9)(f).
- 33 In section 243 (powers where frequencies reserved for qualifying services), omit subsection (7)(e).
- 34 (1) Section 263 (application of regulatory regimes) is amended as follows.
  - (2) In subsection (2)—
    - (a) omit “, in relation to the licensed service,”;
    - (b) for “that service” substitute “that holder’s licensed service”.
  - (3) In subsection (3)(a), for “4, for Channel 5 or for the public teletext service” substitute “4 or for Channel 5”.
- 35 In section 264 (OFCOM reports on the fulfilment of the public service remit)—
  - (a) in subsection (9)(a), omit “or service”;
  - (b) in subsection (12)—
    - (i) in paragraph (b), at the end insert “and”;
    - (ii) omit paragraph (d) and the “and” preceding it.
- 36 In section 265 (public service remits of licensed providers)—
  - (a) in subsection (1)—
    - (i) omit “, and for the public teletext service,”;
    - (ii) omit (in both places it occurs) “or service”;
  - (b) omit subsections (4) and (5).
- 37 Omit section 268 (statement of service policy by the public teletext provider).
- 38 Omit section 269 (changes of public teletext service policy).
- 39 (1) Section 270 (enforcement of public service remits) is amended as follows.
  - (2) In subsection (1)—
    - (a) omit “or the public teletext provider”;
    - (b) in paragraph (a), omit “or the public teletext service”.
  - (3) In subsection (3)(b)—

- (a) omit “or statements of service policy”;
  - (b) omit “or 268”.
- (4) In subsection (4)(a), omit “, or statement of service policy,”.
- (5) In subsection (6)—
- (a) in paragraph (a), omit “or the public teletext provider”;
  - (b) in paragraph (b), omit “or service”.
- (6) In subsection (7)—
- (a) in paragraph (a), for “269” substitute “267”;
  - (b) in paragraph (b)(i), for “service” substitute “channel”.
- (7) In subsection (8)(a)—
- (a) for “269” substitute “267”;
  - (b) for “service” substitute “channel”.
- (8) Omit subsection (10).
- 40 In section 271 (power to amend public service remits), in subsection (1)(a), omit “or for the public teletext service”.
- 41 In section 272 (must-offer obligations in relation to networks), omit subsection (1)(b) (but not the “and” following it).
- 42 In section 273 (must-offer obligations in relation to satellite services), omit subsection (1)(b) (but not the “and” following it).
- 43 In section 274 (securing reception of must-provide services in certain areas), omit subsection (1)(b) (but not the “and” following it).
- 44 In section 275 (must-provide services for the purposes of section 274), omit subsection (1)(f).
- 45 Omit section 276 (cooperation with the public teletext provider).
- 46 Omit section 284 (news provision on the public teletext service).
- 47 Omit section 289 (regional matters in the public teletext service).
- 48 Omit section 298 (conditions prohibiting interference with other services) and the italic heading before it.
- 49 Omit section 308 (assistance for the visually impaired with the public teletext service).
- 50 In section 310 (code of practice for electronic programme guides), omit subsection (4)(f).
- 51 In section 322 (supplementary powers relating to advertising), in subsection (1)—
- (a) omit paragraph (b);
  - (b) in paragraph (c), omit “other”.
- 52 In section 324 (setting and publication of standards), omit subsection (12)(a)(ii) (but not the “or” following it).
- 53 In section 335 (conditions securing compliance with international obligations), omit subsection (3)(d).

- 54 (1) Section 351 (changes of control of Channel 3 services) is amended as follows.
- (2) In subsection (4)—
- (a) omit paragraph (a)(i);
  - (b) after paragraph (a) insert—
    - “(aa) the extent to which the qualifying audiovisual content made available by the provider of the service includes a range of original productions and the duration (in total) of those productions;”;
  - (c) in paragraph (b), for “programmes of each of those descriptions” substitute “news programmes, current affairs programmes and original productions”.
- (3) In subsection (5)—
- (a) for paragraph (a) substitute—
    - “(aa) the extent to which the qualifying audiovisual content made in the United Kingdom that is made available by the provider of the service includes a range of Channel 3 programmes made outside the M25 area and the duration (in total) of those programmes;”;
  - (b) omit paragraph (b).
- (4) In subsection (6), in paragraph (c), for the words from “for the purposes of” to the end of the paragraph substitute “for the purposes of networking arrangements”.
- 55 (1) Section 353 (changes of control of Channel 5) is amended as follows.
- (2) In subsection (4)—
- (a) omit paragraph (a)(i);
  - (b) after paragraph (a) insert—
    - “(aa) the extent to which the qualifying audiovisual content made available by the provider of Channel 5 includes a range of original productions and the duration (in total) of those productions;”;
  - (c) in paragraph (b), for “programmes of each of those descriptions” substitute “news programmes, current affairs programmes and original productions”.
- (3) In subsection (5)—
- (a) for paragraph (a) substitute—
    - “(aa) the extent to which the qualifying audiovisual content made in the United Kingdom that is made available by the provider of Channel 5 includes a range of programmes made outside the M25 area and the duration (in total) of those programmes;”;
  - (b) omit paragraph (b).
- 56 (1) Section 362 (interpretation of Part 3) is amended as follows.
- (2) In subsection (1), at the appropriate place insert—
- ““audiovisual content”, in relation to a relevant audiovisual service, has the meaning given by section 264;”;
  - ““qualifying audiovisual content” has the meaning given by section 278B (and references to making available qualifying

- audiovisual content are to be construed in accordance with that section);
- ““qualifying audiovisual service” has the meaning given by section 278B;”;
- ““relevant audiovisual service” has the meaning given by section 264;”.
- (3) In subsection (1), omit the definitions of—  
“analogue teletext service”;  
“the digital public teletext service”; “the public teletext provider”;  
“the public teletext service”.
- (4) In subsection (2), omit paragraph (b) (public teletext service).
- 57 In section 405 (general interpretation), in subsection (1)—  
(a) in the definition of “programme service”, omit paragraph (b) (the public teletext service);  
(b) omit the definition of “purposes of public service television broadcasting”;  
(c) at the appropriate place insert—  
““the public service remit for television in the United Kingdom” has the meaning given by section 264;”.
- 58 Omit Schedule 10 (licensing the public teletext service).
- 59 In Schedule 12 (corresponding obligations of the BBC and Welsh Authority), omit paragraph 11 (co-operation with the public teletext provider) and the italic heading before it.

*Digital Economy Act 2010*

- 60 In the Digital Economy Act 2010, omit sections 27 and 28 (public teletext service).

## SCHEDULE 3

Section 23(3)

SCHEDULE TO BE INSERTED AS SCHEDULE 15ZA TO THE 2003 ACT

After Schedule 15 to the Communications Act 2003 insert—

## “SCHEDULE 15ZA

PROMINENCE ON TELEVISION SELECTION SERVICES: FINANCIAL PENALTIES

*Interpretation*

- 1 References in this Schedule to a penalty are to—  
(a) a penalty imposed by a confirmation decision (see section 362AX(8));  
(b) a penalty imposed by a penalty notice under section 362AZ1(2).

*Amount of penalties: principles*

- 2 (1) In determining the amount of a penalty to be imposed on a person, OFCOM must, in particular, take into account—
  - (a) any representations made, and evidence provided, by the person, and
  - (b) the effects of the failure or failures in respect of which the penalty is imposed.
- (2) In the case of a penalty imposed by a confirmation decision, OFCOM must also take into account any representations made, and evidence provided, by any other person to whom the provisional notice of contravention relating to the same matter was given.
- (3) OFCOM must also take into account—
  - (a) in the case of a penalty imposed by a confirmation decision, any steps taken by the person towards—
    - (i) complying with the duty or duties specified in the provisional notice of contravention given to the person, or
    - (ii) remedying the failure to comply with that duty or those duties;
  - (b) in the case of a penalty imposed by a penalty notice, any steps taken by the person towards—
    - (i) complying with the duty or duties specified in the confirmation decision given to the person, or
    - (ii) remedying the failure to comply with that duty or those duties.
- (4) A penalty must be of an amount that OFCOM consider to be—
  - (a) appropriate, and
  - (b) proportionate to the failure or failures in respect of which it is imposed.
- (5) See also section 392 (which requires OFCOM to produce guidelines about their determination of penalties that they impose).

*Maximum amount of penalties*

- 3 (1) Sub-paragraph (2) applies where—
  - (a) a penalty is imposed on a person in respect of a regulated television selection service that is or was at any time provided by that person, and
  - (b) that person has an accounting period.
- (2) The maximum amount of the penalty that may be imposed is whichever is the greater of—
  - (a) £250,000, and
  - (b) 5% of the person's qualifying worldwide revenue for the person's most recent complete accounting period.
- (3) In any case other than that described in sub-paragraph (1), the maximum amount of the penalty that may be imposed is £250,000.



- (4) If (in a case described in sub-paragraph (1)) the first accounting period of the person has not yet ended, sub-paragraph (2)(b) is to be read as referring to 5% of the amount that OFCOM estimate to be the person's likely qualifying worldwide revenue for that period.
- (5) If the duration of the accounting period by reference to which an amount of qualifying worldwide revenue is calculated is less than a year, the amount mentioned in sub-paragraph (2)(b) is to be increased proportionately.
- (6) If the duration of the accounting period by reference to which an amount of qualifying worldwide revenue is more than a year, the amount mentioned in sub-paragraph (2)(b) is to be decreased proportionately.
- (7) The amount of a person's qualifying worldwide revenue for an accounting period is, in the event of a disagreement between the person and OFCOM, the amount determined by OFCOM.
- (8) In this paragraph, "accounting period", in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in respect of that individual's business.

*Maximum amount of penalties: group of entities*

- 4 (1) This paragraph contains modifications of paragraph 3 where, in accordance with Schedule 15ZB, two or more entities are jointly and severally liable for a penalty.
- (2) Sub-paragraphs (3) to (5) of this paragraph apply instead of paragraph 3(1) to (4).
- (3) The maximum amount of the penalty for which the entities are liable is whichever is the greater of—
  - (a) £250,000, and
  - (b) 5% of the qualifying worldwide revenue of the group of entities that consists of—
    - (i) the entity to which the confirmation decision or the penalty notice relates ("entity E"), and
    - (ii) every other entity which (at the time the confirmation decision or the penalty notice is given) is a group undertaking in relation to entity E.
- (4) In sub-paragraph (3)(b), the reference to the qualifying worldwide revenue of a group of entities is to—
  - (a) the amount of the group's qualifying worldwide revenue for the most recent complete accounting period of the entities liable for the penalty, or
  - (b) if the first accounting period of the entities liable for the penalty has not yet ended, the amount that OFCOM estimate to be the group's likely qualifying worldwide revenue for that period.

- (5) In a case where the accounting periods of the entities liable for the penalty are different—
- (a) the reference in sub-paragraph (4)(a) to the accounting period of the entities is to be read as a reference to the accounting period of any of the entities (at OFCOM's discretion), and
  - (b) sub-paragraph (4)(b) is to apply as if—
    - (i) for “the first accounting period of the entities” there were substituted “the first accounting period of all the entities”, and
    - (ii) for “that period” there were substituted “the accounting period of any of the entities (at OFCOM's discretion)”.
- (6) Sub-paragraphs (5) to (7) of paragraph 3 are to be read with necessary modifications for the purposes of this paragraph.
- (7) In this paragraph—
- “accounting period”, in relation to an entity, means a period in respect of which accounts are prepared in relation to that entity;
  - “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006.
- (8) For the purposes of this paragraph, sections 1161(5) and 1162 of, and Schedule 7 to, the Companies Act 2006—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
  - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country or territory outside the United Kingdom.

#### *Power to amend paragraphs 3 and 4*

- 5 (1) The Secretary of State may by regulations amend any of the following provisions of this Schedule so as to substitute a different amount or a different percentage for the amount or percentage for the time being specified in that provision—
- (a) paragraph 3(2)(a);
  - (b) paragraph 3(2)(b);
  - (c) paragraph 3(3);
  - (d) paragraph 3(4);
  - (e) paragraph 4(3)(a);
  - (f) paragraph 4(3)(b).
- (2) A statutory instrument containing regulations under sub-paragraph (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

#### *Recovery of penalties*

- 6 (1) In England and Wales, a penalty is recoverable—

- (a) if the county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (2) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In Northern Ireland, a penalty is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.

*Qualifying worldwide revenue*

- 7 (1) For the purposes of this Schedule, OFCOM must produce a statement giving information about the amounts which it does, or does not, regard as comprising a person's "qualifying worldwide revenue".
- (2) The statement must include provision about the application of that term to a group of entities for the purposes of paragraph 4 of this Schedule.
- (3) The statement may make different provision in relation to different kinds of regulated television selection services.
- (4) Before producing the statement (including a revised or replacement statement), OFCOM must consult—
- (a) the Secretary of State,
  - (b) the Treasury, and
  - (c) such other persons as OFCOM considers appropriate.
- (5) OFCOM must keep the statement under review.
- (6) OFCOM must publish the statement (and any revised or replacement statement).
- (7) OFCOM must send a copy of the statement (and any revised or replacement statement) to the Secretary of State and the Secretary of State must lay it before Parliament."

SCHEDULE 4

Section 23(4)

SCHEDULE TO BE INSERTED AS SCHEDULE 15ZB OF THE 2003 ACT

After Schedule 15ZA to the Communications Act 2003 (as inserted by

Schedule 3) insert the following Schedule—

“SCHEDULE 15ZB

PROMINENCE ON TELEVISION SELECTION SERVICES: LIABILITY OF PARENT  
ENTITIES ETC

*Interpretation*

- 1 In this Schedule—
- “confirmation decision” means a notice under section 362AX;
  - “fellow subsidiary undertaking” has the meaning given by section 1161(4) of the Companies Act 2006;
  - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 of that Act;
  - “provisional notice of contravention” means a notice under section 362AW;
  - “penalty notice” means a notice under section 362AZ1.

*Joint provisional notices of contravention*

- 2 (1) This paragraph applies where—
- (a) OFCOM are satisfied that there are grounds for giving a person a provisional notice of contravention in respect of a regulated television selection service that is or was at any time provided by that person, and
  - (b) that person is an entity (E).
- (2) If there is an entity which is a parent undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity which is a parent undertaking in relation to E.
- (3) If there is an entity which is a subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity which is a subsidiary undertaking in relation to E.
- (4) If E is a subsidiary undertaking and there is an entity which is a fellow subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity that is a fellow subsidiary undertaking in relation to E.
- (5) If an individual or individuals control E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to the individual or individuals who control E.
- (6) For the purposes of sub-paragraph (5), an individual or individuals are to be taken to control E if that individual or those

individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act 2006 by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.

- (7) If a provisional notice of contravention is given jointly as mentioned in sub-paragraph (2)(b), (3)(b), (4)(b) or (5)(b), the statement under section 362AW(6)(a) must include, among the matters about which representations may be made to OFCOM, the matter of whether joint and several liability would be appropriate.

*Liability of parent entities for failures by subsidiary entities*

- 3 (1) This paragraph applies where—
- (a) OFCOM are satisfied that there are grounds for giving a person any of the following notices in respect of a regulated television selection service that is or was at any time provided by that person—
    - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
    - (ii) a penalty notice,
  - (b) that person is an entity (E), and
  - (c) there is another entity which is a parent undertaking in relation to E (a “parent entity”).
- (2) The confirmation decision or penalty notice may be given—
- (a) to E alone, or
  - (b) jointly to E and to a parent entity.
- (3) Before giving a penalty notice to a parent entity, or giving a confirmation decision to a parent entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
- (a) the matters contained in the penalty notice or confirmation decision, and
  - (b) whether joint and several liability would be appropriate.
- (4) OFCOM may not give a confirmation decision or a penalty notice to a parent entity (“P”) if—
- (a) P meets the condition in section 1162(2)(a) of the Companies Act 2006 in relation to E, and
  - (b) P makes representations to OFCOM, in pursuance of paragraph 2(7) or sub-paragraph (3), that satisfy OFCOM that P does not meet any condition in section 1162(2)(b), (c) or (d) or (4) of that Act in relation to E.
- (5) If a confirmation decision or a penalty notice is given to entities jointly under sub-paragraph (2)(b), those entities are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty imposed by the decision or notice.
- (6) See also paragraph 4 of Schedule 15ZA.

*Liability of subsidiary entities for failures by parent entities*

- 4 (1) This paragraph applies where—
  - (a) OFCOM are satisfied that there are grounds for giving a person any of the following notices in respect of a regulated television selection service that is or was at any time provided by that person—
    - (i) a confirmation decision which requires that person to take steps or imposes a penalty (or both), or
    - (ii) a penalty notice,
  - (b) that person is an entity (E),
  - (c) there is another entity which is a subsidiary undertaking in relation to E (a “subsidiary entity”), and
  - (d) OFCOM are satisfied that the other entity’s acts or omissions contributed to the failure to which the confirmation decision or penalty notice relates.
- (2) The confirmation decision or penalty notice may be given—
  - (a) to E alone, or
  - (b) jointly to E and to a subsidiary entity.
- (3) Before giving a penalty notice to a subsidiary entity, or giving a confirmation decision to a subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
  - (a) the matters contained in the penalty notice or the confirmation decision, and
  - (b) whether joint and several liability would be appropriate.
- (4) If a confirmation decision or penalty notice is given to entities jointly under sub-paragraph (2)(b), those entities are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty imposed by the decision or notice.
- (5) See also paragraph 4 of Schedule 15ZA.

*Liability of fellow subsidiary entities for failures by subsidiary entities*

- 5 (1) This paragraph applies where—
  - (a) OFCOM are satisfied that there are grounds for giving a person any of the following notices in respect of a regulated television selection service that is or was at any time provided by that person—
    - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
    - (ii) a penalty notice,
  - (b) that person is an entity (E),
  - (c) E is a subsidiary undertaking,
  - (d) there is another entity which is a fellow subsidiary undertaking in relation to E (a “fellow subsidiary entity”), and

- (e) OFCOM are satisfied that the acts or omissions of the fellow subsidiary entity contributed to the failure to which the confirmation decision or penalty notice relates.
- (2) The confirmation decision may be given—
  - (a) to E alone, or
  - (b) jointly to E and to a fellow subsidiary entity.
- (3) Before giving a penalty notice to a fellow subsidiary entity, or giving a confirmation decision to a fellow subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
  - (a) the matters contained in the confirmation decision or the penalty notice, and
  - (b) whether joint and several liability would be appropriate.
- (4) If a confirmation decision or penalty notice is given to entities jointly under sub-paragraph (2)(b), those entities are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty imposed by the decision or notice.
- (5) See also paragraph 4 of Schedule 15ZA.

*Liability of controlling individuals for failures by entities*

- 6 (1) This paragraph applies where—
  - (a) OFCOM are satisfied that there are grounds for giving a person any of the following notices in respect of a regulated television selection service that is or was at any time provided by that person—
    - (i) a confirmation decision which requires the person to take steps or imposes a penalty (or both), or
    - (ii) a penalty notice,
  - (b) that person is an entity (E), and
  - (c) an individual or individuals control E.
- (2) The confirmation decision may be given—
  - (a) to E alone, or
  - (b) jointly to E and to the individual or individuals who control E.
- (3) Before giving a penalty notice to an individual, or giving a confirmation decision to an individual who was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that individual an opportunity to make representations to OFCOM about—
  - (a) the matters contained in the confirmation decision or the penalty notice, and
  - (b) whether joint and several liability would be appropriate.
- (4) For the purposes of this paragraph, an individual or individuals are to be taken to control E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies

Act 2006 by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.

- (5) OFCOM may not give a confirmation decision or a penalty notice to an individual or individuals (P) if—
- (a) the condition by reason of which P controls E is the condition in section 1162(2)(a) of the Companies Act 2006, and
  - (b) P makes representations to OFCOM in pursuance of paragraph 2(7) or sub-paragraph (3) which satisfy OFCOM that P does not control E by reason of any condition in section 1162(2)(b), (c) or (d) or (4) of that Act.
- (6) If a confirmation decision or penalty notice is given jointly to E and to an individual or individuals under sub-paragraph (2)(b), E and that individual or those individuals are jointly and severally liable to comply with the requirements or (as the case may be) pay the penalty, imposed by the decision or notice.

*General*

- 7 In its application for the purposes of this Schedule, paragraph 4 of Schedule 7 to the Companies Act 2006 is to be read as if the reference to operating and financial policies were to policies relating to compliance with the regulatory requirements imposed by this Part.
- 8 For the purposes of this Schedule, sections 1161(4) and 1162 of, and Schedule 7 to, the Companies Act 2006—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
  - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country or territory outside the United Kingdom.”

SCHEDULE 5

Section 23(5)

PART 2: FURTHER AMENDMENTS

- 1 The Communications Act 2003 is amended as follows.
- 2 In section 198 (functions of OFCOM in relation to the BBC), in subsection (3), after paragraph (a) insert—  
“(aza) Part 3A,”.
- 3 In section 263 (application of regulatory regimes), in subsection (1), after “Chapter 5 of this Part” insert “and Part 3A”.
- 4 In section 341 (imposition of penalties on S4C), in subsection (1), before paragraph (a) insert—  
“(za) the requirements imposed by paragraphs 5A and 5B of Schedule 12 (designated internet programme services: content and must-offer obligations);”.



- 5 In section 394 (service of notifications and other documents), in subsection (2), in paragraph (a), after “this Act” insert “, other than Part 3A so far as relating to notifications by OFCOM”.
- 6 (1) Section 400 (destination of licence fees and penalties) is amended as follows.
- (2) In subsection (1), at the end insert—
- “(l) an amount paid to OFCOM in respect of a penalty imposed by a confirmation decision (see section 362AX(8));
- (m) an amount paid to OFCOM in respect of a penalty imposed by a penalty notice under section 362AZ1.”
- (3) Before subsection (4) insert—
- “(3B) Where OFCOM receive an amount mentioned in subsection (1)(l) or (m), it must be paid into the Consolidated Fund of the United Kingdom (and subsection (2) does not apply to it).”
- 7 In section 405 (general interpretation), in subsection (1), at the appropriate place insert—
- ““the agreement objectives” has the meaning given by section 362AZ8;”.
- 8 In Schedule 12 (corresponding obligations of the BBC and S4C), after paragraph 5 insert—

*“Designated internet programme services: content and must-offer obligations*

- 5A It is the duty of S4C to ensure that—
- (a) any designated internet programme service provided by S4C makes a significant contribution to the fulfilment of the public service remit of S4C, and
- (b) the content that fulfils S4C’s public service remit included in such a service is readily discoverable and is promoted by the service.
- 5B (1) It is the duty of S4C to ensure that any designated internet programme service provided by S4C is at all times offered as available (subject to the need to agree terms) to be, in relation to every regulated television selection service, included in the regulated television selection service.
- (2) It is the duty of S4C to do its best to secure that arrangements are entered into, and kept in force, that ensure that any designated internet programme service provided by S4C is, in relation to every regulated television selection service, included in the regulated television selection service.
- (3) It is the duty of S4C to act consistently with the agreement objectives when entering into such arrangements and while they are in force.”

SCHEDULE 6

Section 30

CHAPTER 2 OF PART 3: MINOR AND CONSEQUENTIAL AMENDMENTS

*Broadcasting Act 1990*

- 1 The Broadcasting Act 1990 is amended as follows.
- 2 (1) Section 56 (Welsh Authority to continue as Sianel Pedwar Cymru) is amended as follows.
  - (2) In subsection (1), omit the words after paragraph (b).
  - (3) In subsection (3), for “the Welsh Authority” substitute “S4C”.
- 3 (1) Section 60 (advertising on S4C) is amended as follows.
  - (2) In subsections (4) and (5), for “The Welsh Authority” substitute “S4C”.
  - (3) In subsection (4)(a), after “on S4C” insert “Digital”.
  - (4) In subsection (4)(a) and (aa), after “of S4C” insert “Digital”.
- 4 (1) Section 61 (funding of Welsh Authority) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “the Welsh Authority” substitute “S4C”;
    - (b) for “the Authority” substitute “S4C”;
    - (c) for paragraph (a) (including the “and” at the end) substitute—  
“(a) fulfilling S4C’s public service remit, and”;
    - (d) in paragraph (b), for “those services” substitute “content provided in fulfilling that remit”.
  - (3) In subsection (3)—
    - (a) for “the Welsh Authority” substitute “S4C”;
    - (b) for “the Authority” substitute “S4C”.
  - (4) In the heading, for “Welsh Authority” substitute “S4C”.
- 5 (1) Section 61A (Welsh Authority public service fund) is amended as follows.
  - (2) In subsection (2)—
    - (a) for “the Welsh Authority” substitute “S4C”;
    - (b) for “the Authority”, in the first place it occurs, substitute “S4C”;
    - (c) for the words from “their functions” to the end of the subsection substitute “fulfilling S4C’s public service remit”.
  - (3) In subsection (4)—
    - (a) for “The Welsh Authority” substitute “S4C”;
    - (b) for “television programme”, in the first place it occurs, substitute “audiovisual content”;
    - (c) for “television programme service”, in the first place it occurs, substitute “relevant audiovisual service”;
    - (d) for the words from “broadcast” to the end substitute “included in a relevant audiovisual service provided by S4C in fulfilling its public service remit.”

- (4) After subsection (4) insert—
- “(4A) In subsection (4), “audiovisual content” and “relevant audiovisual service” have the same meaning as in Part 3 of the Communications Act 2003 (see section 362 of that Act).”
- (5) In the heading, for “Welsh Authority” substitute “S4C”.
- 6 (1) Section 63 (government control over S4C) is amended as follows.
- (2) In subsections (1), (2), (3) and (4), for “the Welsh Authority” substitute “S4C”.
- (3) In subsections (1), (3) and (4), for “the Authority” substitute “S4C”.
- 7 (1) Section 64 (audience research by Welsh Authority) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Welsh Authority” substitute “S4C”;
- (b) in paragraphs (a) and (c), after “S4C” insert “Digital”.
- (3) In subsection (2)(a), for “the Welsh Authority” substitute “S4C”.
- (4) In subsection (2)(b), for “the Authority” substitute “S4C”.
- (5) In the heading, for “Welsh Authority” substitute “S4C”.
- 8 In section 66 (requirements relating to transmission and distribution of services), in subsection (7)—
- (a) for “the Welsh Authority” substitute “S4C”;
- (b) after “S4C” insert “Digital”;
- (c) for “Wales” substitute “the United Kingdom”.
- 9 In section 71 (interpretation of Part 1), in subsection (1), in the definition of “S4C” and “S4C Digital”—
- (a) omit ““S4C” and”;
- (b) omit “each”.
- 10 In section 176 (duty to provide advance information about programmes), in the table in subsection (7), in the entry relating to the public television services of the Welsh Authority—
- (a) in the first column, for “the Welsh Authority” substitute “S4C”;
- (b) in the second column, for “The Authority” substitute “S4C”.
- 11 In section 177 (orders proscribing unacceptable foreign satellite services), in subsection (6), in the definition of “foreign satellite service”, for “the Welsh Authority” substitute “S4C”.
- 12 In section 188 (power to give broadcasting bodies etc directions relating to international obligations), in subsection (2)(c), for “the Welsh Authority” substitute “S4C”.
- 13 In section 202 (general interpretation), in subsection (1)—
- (a) in the definition of “an S4C company”, for “the Welsh Authority”, in both places it occurs, substitute “S4C”;
- (b) before that definition insert—
- ““S4C”, except in the phrases “S4C company”, “S4C Digital”, “S4C entity” and “S4C subsidiary

undertaking”, means the body corporate given the name S4C (or Sianel Pedwar Cymru) by section 56(1);”.

- 14 In Part 2 of Schedule 2 (disqualification for holding licences), in paragraphs 3(1)(a) (disqualification of publicly-funded bodies for radio service licences) and 5(b) (disqualification of broadcasting bodies), for “the Welsh Authority” substitute “S4C”.
- 15 (1) Schedule 6 (the Welsh Authority: supplementary provisions) is amended as follows.
- (2) In the Schedule heading, for “The Welsh Authority” substitute “S4C”.
- (3) In paragraph 1(1) (S4C not exercising functions on behalf of the Crown), for “The Welsh Authority (in this Schedule referred to as “the Authority”)” substitute “S4C”.
- (4) In paragraph 1(2) (S4C’s power to do anything which is incidental or conducive to the carrying out of its functions) for “The Authority” substitute “S4C”.
- (5) Omit paragraphs 2 to 8 (membership).
- (6) In paragraphs 9(1) and (2) (employees), 10 (seal), 11 (documents), 12(1), (1A) and (4) (accounts and audit), 13 (annual reports) and 14 (advisory committees), and in the italic heading before paragraph 9—
- (a) for “the Authority”, in each place it occurs;
- (b) for “The Authority”, in each place it occurs;
- substitute “S4C”.
- (7) In paragraph 9 (employees), for sub-paragraph (3) substitute—
- “(3) If an employee of S4C—
- (a) participates in a pension scheme as an employee of S4C, and
- (b) becomes a member of the S4C Board,
- the employee’s service as a member of the S4C Board may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if it were service as an employee of S4C.”
- (8) In the italic heading before paragraph 10, for “Authority’s” substitute “S4C”.
- (9) In the italic heading before paragraph 11, for “Authority” substitute “S4C”.
- (10) In paragraphs 13(3)(b) and 14, for “the Authority’s” substitute “S4C’s”.

### *Broadcasting Act 1996*

- 16 The Broadcasting Act 1996 is amended as follows.
- 17 In section 2 (meaning of “qualifying service”), in subsection (2)(e)—
- (a) for “the Welsh Authority” substitute “S4C”;
- (b) for “205” substitute “204B”.
- 18 (1) Section 24 (digital additional services) is amended as follows.
- (2) In subsection (1)(c), for “the Welsh Authority” substitute “S4C”.

- (3) In subsection (3A), in the definition of “public television service of the Welsh Authority”—
- (a) for “the Welsh Authority” substitute “S4C”;
  - (b) in paragraph (b), for the words after “any television programme service” substitute “provided in digital form by S4C in fulfilling its public service remit”.
- (4) In subsection (3A), in paragraph (e) of the definition of “relevant public service broadcaster”, for “the Welsh Authority” substitute “S4C”.
- 19 Omit section 29(2) (application of the Broadcasting Act 1990 to S4C Digital).
- 20 In section 33(1)(a)(ii) and (3)(d) (review of digital television broadcasting), for “the Welsh Authority” substitute “S4C”.
- 21 In section 97 (listed events)—
- (a) in subsection (2) (before its substitution by section 299(1) of the Communications Act 2003) for “the Welsh Authority” substitute “S4C”;
  - (b) in subsection (2) (as substituted by section 299(1) of the Communications Act 2003) for “the Welsh Authority” substitute “S4C”.
- 22 In sections 99(2) (televising listed events), 103(3) (report to Secretary of State) and 104(4)(b) (code of guidance), for “the Welsh Authority” substitute “S4C”.
- 23 In section 130(1) (interpretation of Part 5), in the definition of “broadcasting body”, for “the Welsh Authority” substitute “S4C”.

#### *Tobacco Advertising and Promotion Act 2002*

- 24 In section 12(6) (television and radio broadcasting) of the Tobacco Advertising and Promotion Act 2002, for “the Welsh Authority referred to in” substitute “the body corporate so named by”.

#### *Communications Act 2003*

- 25 The Communications Act 2003 is amended as follows.
- 26 In section 12(9)(b) (OfCOM’s Content Board), for “and employees of the Welsh Authority” substitute “of the S4C Board and employees of S4C”.
- 27 In the Chapter heading of Chapter 1 of Part 3, for “the Welsh Authority” substitute “, S4C”.
- 28 (1) In section 203 (function of OfCOM), and in its heading, for “the Welsh Authority” substitute “S4C”.
- (2) In the italic heading before section 203, for “The Welsh Authority” substitute “S4C (Sianel Pedwar Cymru)”.
- 29 (1) Section 207 (finances) is amended as follows.
- (2) In subsection (3) for “the Welsh Authority” substitute “S4C”.
  - (3) In subsections (4) and (6), for “The Welsh Authority” substitute “S4C”.

- (4) In subsection (6), for “the Authority”, in both places it occurs, substitute “S4C”.
- (5) Omit subsections (8) and (9).
- (6) In the heading, for “Welsh Authority” substitute “S4C”.
- 30 In sections 211(1)(a) (regulation of independent television services) and 243(7)(d) (reserved frequencies), for “the Welsh Authority” substitute “S4C”.
- 31 In section 264 (OFCOM reports on the fulfilment of public service remits) for subsection (12)(b) substitute—
  - “(b) S4C;”.
- 32 In sections 277(11) (programming quotas for independent productions), 278(8) (programming quotas for regional productions) and 285(6)(c) (code relating to programme commissioning), for “the Welsh Authority” substitute “S4C”.
- 33 In sections 303(12)(a) (code relating to provision for people with disabilities), 305(2)(a) (relevant dates) and 324(3)(a) and (10)(c) (setting and publication of standards), for “the Welsh Authority” substitute “S4C”.
- 34 (1) In section 338 (corresponding rules), and in its heading, for “the Welsh Authority” substitute “S4C”.
- (2) In the italic heading before section 338, for “the Welsh Authority” substitute “S4C”.
- 35 (1) Section 339 (review of fulfilment of public service remits) is amended as follows.
  - (2) In subsection (1), for the words after “performance” substitute “by S4C of its duty to fulfil its public service remit.”
  - (3) In subsections (4) and (5), for “the Welsh Authority” substitute “S4C”.
  - (4) In the heading—
    - (a) for “Welsh Authority” substitute “S4C”;
    - (b) for “remits” substitute “remit”.
- 36 In the italic heading before section 339, for “the Welsh Authority” substitute “S4C”.
- 37 (1) Section 340 (directions to S4C to take remedial action) is amended as follows.
  - (2) In subsections (1), (2), (4) and (5), for “the Welsh Authority” substitute “S4C”.
  - (3) In subsection (2), for “the Authority” substitute “S4C”.
  - (4) In the heading, for “Welsh Authority” substitute “S4C”.
- 38 (1) Section 341 (imposition of penalties) is amended as follows.
  - (2) In subsections (1), (2) and (4), and in the heading, for “the Welsh Authority” substitute “S4C”.
  - (3) In subsection (2), for “the Authority” substitute “S4C”.
- 39 (1) Section 343 (provision of information) is amended as follows.

- (2) In subsections (1) and (2), for “the Welsh Authority” substitute “S4C”.
- (3) In the heading, for “Welsh Authority” substitute “S4C”.
- 40 In section 347(7) (statement of charging principles), for “the Welsh Authority” substitute “S4C”.
- 41 (1) Section 362 (interpretation of Part 3) is amended as follows.
- (2) In subsection (1)—
- (a) omit the definition of “S4C” and “S4C Digital”;
  - (b) in the definition of “S4C company”—
    - (i) for “the Welsh Authority” substitute “S4C”;
    - (ii) for “that Authority”, in both places it occurs, substitute “S4C”;
  - (c) after the definition of “S4C company” insert—
 

““S4C Digital” means the television programme service provided by S4C in digital form and originally known as S4C Digital but increasingly since April 2010 (date of digital switch-over in Wales) simply called S4C;”.
- (3) In subsection (3)—
- (a) in paragraph (c);
  - (b) in the words after that paragraph;
- for “the Welsh Authority” substitute “S4C”.
- 42 In section 368R(6) (interpretation of Part 4A), for “the Welsh Authority”, in both places it occurs, substitute “S4C”.
- 43 In section 393(3)(g) (restrictions on disclosure of information), for “the Welsh Authority” substitute “S4C”.
- 44 In section 405(1) (interpretation of Act), after the definition of “representation” insert—
- ““S4C” means the body corporate given the name S4C (or Sianel Pedwar Cymru) by section 56(1) of the 1990 Act;”.
- 45 (1) In the heading of Schedule 12 (corresponding obligations of the BBC and S4C), for “Welsh Authority” substitute “S4C”.
- (2) Part 2 of that Schedule (obligations of S4C) is amended in accordance with paragraphs 46 to 67.
- 46 In the heading of that Part, for “The Welsh Authority” substitute “S4C”.
- 47 (1) Paragraph 3 (public service remits) is amended as follows.
- (2) Omit sub-paragraphs (1) to (4).
- (3) In sub-paragraph (5), for “modify sub-paragraphs (2) and (3)” substitute “amend section 204A for the purpose of modifying S4C’s public service remit”.
- (4) For sub-paragraphs (6) and (7) substitute—
- “(6) Before making an order under sub-paragraph (5), the Secretary of State must consult—
- (a) S4C, and

- (b) OFCOM.
- (7) An order under sub-paragraph (5) must not contain provision inconsistent with a requirement that a substantial proportion of audiovisual content made available by S4C is in Welsh.
- (7A) In sub-paragraph (7) “audiovisual content” has the same meaning as in section 264.
- (7B) Subsection (13) of section 264 (interpretation of “made available”) applies for the purposes of sub-paragraph (7) as it applies for the purposes of that section.”
- (5) For the italic heading before paragraph 3 substitute “Modification of S4C’s public service remit”.
- 48 (1) Paragraph 4 (statements of programme policy) is amended as follows.
- (2) In sub-paragraphs (1) and (3) to (7), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (2)—
- (a) for “the Welsh Authority’s”, in both places it occurs, substitute “S4C’s”;
- (b) for paragraph (a) substitute—  
“(a) S4C’s public service remit is fulfilled; and”.
- (4) After sub-paragraph (2) insert—  
“(2A) Every such statement must—
- (a) state whether relevant audiovisual services other than S4C Digital will be used, during the following year, to fulfil S4C’s public service remit, and
- (b) if so, set out S4C’s proposals as to the contributions that S4C Digital and other relevant audiovisual services will make.”
- 49 (1) Paragraph 5 (duties regarding arrangements with networks) is amended as follows.
- (2) For “the Welsh Authority”, in each place it occurs, substitute “S4C”.
- (3) In sub-paragraphs (3)(b) and (4), for “the Authority’s” substitute “S4C’s”.
- (4) In sub-paragraph (7)(a), for “the Welsh Authority’s” substitute “S4C’s”.
- 50 In paragraph 6 (supply of services by satellite in certain areas), for “the Welsh Authority” substitute “S4C”.
- 51 (1) Paragraph 7 (programming quotas for independent productions) is amended as follows.
- (2) In sub-paragraphs (4), (6), (7), (8) and (10), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (7)(a), for “the Authority” substitute “S4C”.
- 52 (1) Paragraph 8 (programme quotas for original productions) is amended as follows.



- (2) In sub-paragraphs (8) and (12)(a), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (12)(b), for “the Authority” substitute “S4C”.
- 53 (1) Paragraph 9 (news and current affairs programmes) is amended as follows.
- (2) In sub-paragraphs (1), (2), (3), (4), (5)(a) and (9)(a), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraphs (5)(b) and (9)(b), for “the Authority” substitute “S4C”.
- (4) In sub-paragraph (7)—
- (a) omit paragraph (a);
  - (b) in paragraph (c)—
    - (i) for “the Welsh Authority’s” substitute “S4C’s”;
    - (ii) after “designated” insert “in writing by the Secretary of State”;
    - (iii) omit the words after “this paragraph”.
- 54 (1) Paragraph 10 (code relating to programme commissioning) is amended as follows.
- (2) In sub-paragraphs (1), (2), (3), (7), (8)(c) and (10), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (3)(d), for “the Authority” substitute “S4C”.
- (4) In sub-paragraphs (5) and (6), for “The Welsh Authority” substitute “S4C”.
- (5) In sub-paragraph (6)(b), for “that Authority” substitute “S4C”.
- (6) Omit sub-paragraph (10).
- 55 In paragraphs 12 (duty to observe programme standards), 13 (duty to comply with direction about complaints procedure) and 14(1) (duty to comply with directions about advertising), for “the Welsh Authority” substitute “S4C”.
- 56 In paragraph 13, for “the Authority” substitute “S4C”.
- 57 In paragraph 14(2)(a), for “the Authority’s” substitute “S4C’s”.
- 58 (1) Paragraph 15 (OFCOM action if S4C fails to perform duties) is amended as follows.
- (2) In sub-paragraphs (1)(a), (2), (4), (5) and (6), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (1)(b), for “the Authority’s” substitute “S4C’s”.
- (4) In sub-paragraph (5), for “the Authority” substitute “S4C”.
- 59 (1) Paragraph 16 (directions with respect to advertising) is amended as follows.
- (2) In sub-paragraph (1), for “the Welsh Authority” substitute “S4C”.
- (3) In sub-paragraph (2)(d), omit “S4C or”.
- 60 In paragraph 17 (fairness standards), for “the Welsh Authority” substitute “S4C”.

- 61 (1) Paragraph 18 (party political broadcasts) is amended as follows.
- (2) In sub-paragraphs (1) and (5), for “the Welsh Authority” substitute “S4C”.
  - (3) In sub-paragraph (2), for “The Welsh Authority” substitute “S4C”.
  - (4) In sub-paragraph (3), for “The Welsh Authority’s” substitute “S4C’s”.
  - (5) In sub-paragraph (6)—
    - (a) omit paragraph (a);
    - (b) in paragraph (c)—
      - (i) for “the Welsh Authority’s” substitute “S4C’s”;
      - (ii) after “designated” insert “in writing by the Secretary of State”;
      - (iii) omit the words after “this paragraph”.
- 62 (1) Paragraph 19 (publicising complaints procedures) is amended as follows.
- (2) In sub-paragraphs (1) and (2)(a), for “the Welsh Authority” substitute “S4C”.
  - (3) In sub-paragraph (2)(b), for “the Authority”, in each place it occurs, substitute “S4C”.
- 63 In paragraph 20(1) (monitoring of programmes), for “the Welsh Authority” substitute “S4C”.
- 64 (1) Paragraph 21 (compliance with international obligations) is amended as follows.
- (2) In sub-paragraph (1), for “the Welsh Authority” substitute “S4C”.
  - (3) In sub-paragraphs (2) and (3), for “the Authority” substitute “S4C”.
- 65 (1) Paragraph 22 (services for people with disabilities) is amended as follows.
- (2) For “the Welsh Authority” substitute “S4C”.
  - (3) For “the Welsh Authority’s” substitute “S4C’s”.
- 66 (1) Paragraph 23 (equality of opportunity) is amended as follows.
- (2) In sub-paragraphs (1), (2) and (5), for “the Welsh Authority” substitute “S4C”.
  - (3) In sub-paragraphs (1) and (2), for “the Authority” substitute “S4C”.
  - (4) In sub-paragraphs (3) and (4), for “The Welsh Authority” substitute “S4C”.
- 67 (1) Paragraph 24 (public services) is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) for “the Welsh Authority’s” substitute “S4C’s”;
    - (b) omit paragraph (a);
    - (c) for paragraph (c) substitute—
      - “(c) any other relevant audiovisual service provided by S4C in fulfilling its public service remit.”
  - (3) In sub-paragraph (2)—
    - (a) for “the Welsh Authority” substitute “S4C”;
    - (b) for “the Authority” substitute “S4C”.

(4) In the italic heading before paragraph 24, for “Welsh Authority’s” substitute “S4C’s”.

68 In Schedule 18 (transitional provisions), omit paragraph 27 and subparagraph (3) of paragraph 43.

*Equality Act 2010*

69 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities), in the entry for “The Welsh Authority (as defined by section 56(1) of the Broadcasting Act 1990)”, for “The Welsh Authority (as defined)” substitute “S4C (as named)”.

SCHEDULE 7

Section 31(6)

TIER 1 SERVICES: CHAPTER TO BE INSERTED AS CHAPTER 3 OF PART 4A OF THE 2003 ACT

Insert the following Chapter as Chapter 3 of Part 4A of the Communications Act 2003—

**“CHAPTER 3**

REGULATION OF TIER 1 SERVICES

*Meaning of Tier 1 service*

**368HA Meaning of Tier 1 service**

- (1) In this Act, a “Tier 1 service” means—
  - (a) an on-demand programme service that falls within subsection (2), and
  - (b) an on-demand programme service, or a non-UK on-demand programme service, that is a Tier 1 service by virtue of regulations under section 368HB.
- (2) An on-demand programme service falls within this subsection if it is an on-demand programme service that is being used by a public service broadcaster, other than the BBC, to contribute to the fulfilment of its public service remit.
- (3) In this section, “public service remit”—
  - (a) in relation to S4C, has the meaning given by section 204A;
  - (b) in relation to the provider of a Channel 3 service or Channel 5, has the meaning given by section 265(2);
  - (c) in relation to the provider of Channel 4, has the meaning given by section 265(3).

**368HB Power to specify Tier 1 services etc**

- (1) The Secretary of State may by regulations provide that an on-demand programme service, or a non-UK on-demand programme service, is a Tier 1 service if it is specified, or falls within a description specified, in the regulations.

- (2) The Secretary of State may make regulations under subsection (1) only if the Secretary of State is satisfied that it is appropriate for the providers of the services specified, or falling within a description specified, in the regulations to be subject to the duties imposed on providers of Tier 1 services.
- (3) Before making regulations under subsection (1) (but after considering any report prepared by OFCOM under subsection (4) or (5)), the Secretary of State must publish on a publicly accessible part of an official website of His Majesty's Government a list of the services, or descriptions, that the Secretary of State proposes to specify in the regulations.
- (4) Before making the first regulations under subsection (1), the Secretary of State must—
  - (a) request OFCOM to prepare a report on the operation of the market in the United Kingdom for on-demand programme services and non-UK on-demand programme services, and
  - (b) have regard to the contents of that report.
- (5) Where the Secretary of State is considering whether to make a second or subsequent set of regulations under subsection (1), the Secretary of State—
  - (a) may request OFCOM to prepare a further report on the operation of the market in the United Kingdom for on-demand programme services and non-UK on-demand programme services, and
  - (b) where a request is made, the Secretary of State must have regard to the contents of the report in deciding whether to make the regulations.
- (6) In preparing a report requested under subsection (4)(a) or (5)(a), OFCOM must deal with any matters specified by the Secretary of State in the request (as well as any other matters that they consider appropriate).
- (7) For the purposes of preparing a report requested under subsection (4)(a) or (5)(a), OFCOM may request any person who appears to be the provider of an on-demand programme service or a non-UK on-demand programme service to provide OFCOM with any information relating to that service that is specified in the request.
- (8) The power conferred by subsection (7) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (9) Information provided in response to a request by OFCOM may be shared by OFCOM with the Secretary of State but may not be further shared (whether by OFCOM or the Secretary of State).
- (10) A request under subsection (7) may—
  - (a) specify a period of time within which the information must be provided;
  - (b) specify the form and manner in which the information must be provided.

- (11) A person who is requested to provide information under subsection (7) must comply with that request.

*Duties relating to notification etc*

**368HC Notification to OFCOM**

- (1) A person who provides a Tier 1 service must give OFCOM a notification (a “Tier 1 notification”) to that effect.
- (2) Subsection (3) applies where—
- (a) regulations are made under section 368HB(1), and
  - (b) a non-UK on-demand programme service is specified or falls within a description specified in the regulations.
- (3) OFCOM must, for the purpose of assisting with compliance with subsection (1), inform the provider of that Tier 1 service of that fact.
- (4) A person who gives a Tier 1 notification must also notify OFCOM if the person ceases to provide a Tier 1 service.
- (5) A Tier 1 notification or a notification under subsection (4) must—
- (a) be sent to OFCOM in such manner as they may require, and
  - (b) include such information as they may require.

**368HD Lists of Tier 1 providers**

- (1) OFCOM must establish and maintain an up to date list of persons who have—
- (a) given a Tier 1 notification to OFCOM under section 368HC(1), and
  - (b) not given a further notification under section 368HC(4).
- (2) The list must include contact details which may be used by members of the public wishing to contact a Tier 1 service.
- (3) OFCOM must publish the list on a publicly accessible part of their website.

*Application etc of Chapter 2 to certain Tier 1 services*

**368HE Application etc of Chapter 2 to certain Tier 1 services**

- (1) Subsection (2) applies where a non-UK on-demand programme service is a Tier 1 service by virtue of regulations under section 368HB.
- (2) The following provisions of Chapter 2 apply in relation to the Tier 1 service as if any reference in those provisions to an on-demand programme service included a reference to the Tier 1 service—
- (a) section 368C, so far as relating to the duties of the appropriate regulatory authority in relation to section 368D;
  - (b) section 368D (duties of service providers), apart from section 368D(2)(ca);
  - (c) section 368E (harmful material);
  - (d) section 368F (advertising);
  - (e) section 368FA (advertising: less healthy food and drink);

- (f) section 368G (sponsorship);
  - (g) section 368H (prohibition of product placement and exceptions).
- (3) Section 368D(3)(zb) applies in relation to an on-demand programme service that is a Tier 1 service by virtue of section 368HA(1)(a) with the modification that the reference in that section to 60 days is to be read as a reference to 90 days.

*Standards code for Tier 1 services*

**368HF Standards code for Tier 1 services**

- (1) OFCOM must prepare and publish a code containing standards set by them for the content of programmes to be included in Tier 1 services.
- (2) The standards must be such as appear to OFCOM to be best calculated to secure the following objectives (“the standards objectives”)—
  - (a) that persons under the age of 18 are protected;
  - (b) that material likely to encourage or incite the commission of crime or to lead to disorder is not included in Tier 1 services;
  - (c) that news included in those services is presented with due impartiality;
  - (d) that news included in those services is reported with due accuracy;
  - (e) that the impartiality requirements described in section 368HG are met;
  - (f) that generally accepted standards are applied to the contents of those services so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material;
  - (g) that the proper degree of responsibility is exercised with respect to the content of religious programmes included in those services.
- (3) The standards included in the code to secure the objective described in subsection (2)(g) must, in particular, contain provision designed to secure that religious programmes do not involve—
  - (a) any improper exploitation of susceptibilities of the audience for such a programme, or
  - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (4) OFCOM may fulfil their duty to publish the code in such ways as OFCOM consider likely to bring the code to the attention of persons who are likely to be affected by it.
- (5) OFCOM—
  - (a) must keep the code under review,
  - (b) may from time to time revise the code, and
  - (c) where they do so, must publish the code as revised.

- (6) References in this Part to a code under this section are to be read, in relation to times after a revised code is published, as references to the code as revised.
- (7) In this section—
  - “news” means news in whatever form it is included in a service;
  - “programme” does not include an advertisement.

**368HG Tier 1 standards code: special impartiality requirements**

- (1) The impartiality requirements referred to in section 368HF(2)(e) are—
  - (a) the exclusion from programmes included in any Tier 1 services of all expressions of the views or opinions of the person providing that service on—
    - (i) matters of political or industrial controversy, or
    - (ii) matters relating to current public policy;
  - (b) the preservation of due impartiality on the part of the person providing the service as respects those matters.
- (2) Subsection (1)(a) does not require the exclusion of expressions of views or opinions relating to the provision of on-demand programme services or non-UK on-demand programme services.
- (3) A code under section 368HF must make provision about the application of the requirement in subsection (1)(b), including provision about the ways in which the requirement may be met.

**368HH Tier 1 standards code: matters to be taken into account**

- (1) In preparing or revising a code under section 368HF, OFCOM must, in particular and to such extent as appears to them to be relevant to securing the standards objectives, have regard to each of the matters set out in subsection (2).
- (2) Those matters are—
  - (a) the likely expectation of potential audiences as to the nature of the content of programmes included in particular Tier 1 services;
  - (b) the degree of harm or offence likely to be caused by the inclusion of any particular sort of content, whether in programmes generally or in particular kinds of programmes;
  - (c) the extent to which, and the ways in which, information about the nature of the content of particular kinds of programmes or of particular programmes can be given in a way that enables individuals to make choices about whether they (or others for whom they have responsibility) view or continue to view that content;
  - (d) the length of time for which particular programmes are included in Tier 1 services;
  - (e) the desirability of maintaining the independence of editorial control over programme content.
- (3) In preparing or revising a code under section 368HF, OFCOM must take account of such of the international obligations of the United

Kingdom as the Secretary of State may notify to them for the purposes of this section.

- (4) The Secretary of State may by regulations amend the list of matters in subsection (2).
- (5) Before making regulations under subsection (4), the Secretary of State must consult OFCOM.
- (6) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **368HI Tier 1 standards code: procedural requirements**

- (1) Before publishing a code under section 368HF, OFCOM must consult—
  - (a) persons who provide Tier 1 services;
  - (b) persons appearing to OFCOM to represent the interests of potential audiences of Tier 1 services;
  - (c) such other persons as appear to OFCOM to have an interest in the content of the code.
- (2) For the purposes of the consultation, OFCOM must publish a draft of the code.
- (3) After considering any views expressed by those persons, OFCOM may—
  - (a) publish the code in the terms of the draft published for the purposes of the consultation, or
  - (b) modify the draft and publish the code in the terms of the draft as modified.
- (4) Subsections (1) to (3) apply to a revision of a code under section 368HF as they apply to a code.

### *Duties of Tier 1 providers as regards Tier 1 standards code*

### **368HJ Duties of Tier 1 providers to comply with Tier 1 standards code**

- (1) A person who provides a Tier 1 service must observe the code for the time being published under section 368HF.
- (2) The duty under subsection (1) applies only on and after the end of the grace period that applies in relation to the service.
- (3) In subsection (2), “the grace period”, in relation to a Tier 1 service, means the period of six months beginning with whichever is the later of the following—
  - (a) the day on which the on-demand programme service, or non-UK on-demand programme service, became a Tier 1 service;
  - (b) the day when the first code under section 368HF was published.
- (4) Where regulations under section 368HB(1) provide that an on-demand programme service, or a non-UK on-demand programme service, specified in the regulations is a Tier 1 service, the regulations may also provide—



- (a) that subsections (2) and (3) do not apply in relation to the service, or
- (b) that those subsections apply in relation to the service as if the reference in subsection (3) to six months were a reference to such lesser period as may be specified in the regulations.

*Complaints etc relating to Tier 1 standards code*

**368HK Complaints etc relating to Tier 1 standards code**

- (1) OFCOM must establish and maintain procedures for the handling and resolution of complaints that a person who provides a Tier 1 service is failing, or has failed, to comply with section 368HJ(1).
- (2) A person who provides a Tier 1 service must establish and maintain procedures for the handling and resolution of complaints that the person is failing, or has failed, to comply with section 368HJ(1).
- (3) OFCOM may from time to time report to the Secretary of State on any issues which—
  - (a) have been identified by them in the course of carrying out their functions in relation to Tier 1 services, and
  - (b) appear to them to raise questions of general policy about the regulation of those services.

*Accessibility code for Tier 1 services*

**368HL Accessibility code for Tier 1 services**

- (1) OFCOM must prepare and publish a code imposing requirements on providers of Tier 1 services for the purpose of ensuring that such services are accessible to people with disabilities, including, in particular, people with disabilities affecting their sight or hearing, or both.
- (2) The code must include provision requiring providers of Tier 1 services to report annually to OFCOM about—
  - (a) the accessibility of their services to people with disabilities;
  - (b) the steps taken to secure the quality and usability of the means by which their services are made accessible to people with disabilities.
- (3) The code must include provision requiring every provider of a Tier 1 service to ensure that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.
- (4) The code must include provision requiring the provider of a Tier 1 service, from the second anniversary of the relevant date, to secure that, in the 12 month period beginning with that second anniversary and in the succeeding 12 month period—
  - (a) at least 40 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by subtitling;

- (b) at least 5 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by audio-description for the blind; and
  - (c) at least 2.5 per cent of the total catalogue hours of that service for that period consists of programmes that are presented in, or translated into, sign language.
- (5) The code must include provision requiring the provider of a Tier 1 service, from the fourth anniversary of the relevant date, to secure that, in the 12 month period beginning with the fourth anniversary and in each succeeding 12 month period—
  - (a) at least 80 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by subtitling;
  - (b) at least 10 per cent of the total catalogue hours of that service for that period consists of programmes that are accompanied by audio-description for the blind; and
  - (c) at least 5 per cent of the total catalogue hours of that service for that period consists of programmes that are presented in, or translated into, sign language.
- (6) A reference in any paragraph of subsections (4) and (5) to the total catalogue hours of a Tier 1 service for a period of time is a reference to the combined duration of the programmes available from the service within that period, other than those programmes excluded under subsection (7) in relation to the requirement in that paragraph.
- (7) The code must set out, in relation to each of the paragraphs of subsections (4) and (5), the descriptions of programmes that are excluded for the purposes of the requirement in that paragraph. This subsection does not restrict the provision which may be made under subsection (8).
- (8) The code may include provision under which Tier 1 services specified in the code are wholly or partly exempted from some or all of the requirements set out in subsections (4) and (5).
- (9) Provision in the code partly exempting a Tier 1 service may, in particular, provide for the exemption to apply in relation to particular methods, or particular descriptions of method, by which that service is accessed by members of the public.
- (10) Before including in the code such provision as is described in subsection (7) or (8) in relation to a Tier 1 service, OFCOM must have regard, in particular, to—
  - (a) the extent of the benefit which would be conferred if the provider of the service were to comply with the requirements set out in subsections (4) and (5);
  - (b) the size of the audience for the service;
  - (c) the number of persons who would be likely to benefit from compliance with those requirements and the extent of the likely benefit for each of those persons;
  - (d) the extent to which persons accessing the service are resident in places outside the United Kingdom;

- (e) the technical difficulty of compliance with those requirements; and
  - (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of compliance with those requirements.
- (11) The requirements that may be imposed by the code include, in particular—
- (a) requirements as to lesser levels of assistance that apply before the date on which the requirements set out in subsection (4) or (5) fall to be complied with;
  - (b) requirements as to the provision of assistance for disabled people, or a description of disabled people, in the case of a Tier 1 service that is exempted or partly exempted.
- (12) The code must also give guidance as to—
- (a) the extent to which Tier 1 services should promote the understanding and enjoyment by people with disabilities (in particular, people with disabilities affecting their sight or hearing, or both) of the programmes to be included in Tier 1 services; and
  - (b) the means by which such understanding and enjoyment should be promoted.
- (13) OFCOM—
- (a) must keep the code under review,
  - (b) may from time to time revise the code, and
  - (c) where they do so, must publish the code as revised.
- (14) OFCOM must publish the code, and every revision of it, in such manner as they consider appropriate, having regard to the need to make the code or revision accessible to people with disabilities, including, in particular, people with disabilities affecting their sight or hearing, or both.
- (15) References in this Part to a code under this section are to be read, in relation to times after a revised code is published, as references to the code as revised.
- (16) In this section, “programme” does not include an advertisement.

### **368HM Meaning of “relevant date”**

- (1) The relevant date, in relation to a Tier 1 service, is the later of—
- (a) the day on which the on-demand programme service, or non-UK on-demand programme service, became a Tier 1 service, and
  - (b) the day on which the first code under section 368HL was published.
- (2) OFCOM may determine that a service provided by a person is to be treated for the purposes of section 368HL and this section as a continuation of a service previously provided by that person.

### **368HN Power to modify requirements in section 368HL**

- (1) Where it appears to the Secretary of State, in the case of Tier 1 services of a particular description, that the requirement specified in

any paragraph of section 368HL(4) has been or is likely to be fulfilled in their case before the anniversary specified in section 368HL(4), the Secretary of State may by regulations modify section 368HL so as to do one or both of the following—

- (a) increase the percentage so specified in relation to services of that description;
  - (b) substitute the first anniversary for the anniversary specified in section 368HL(4) in the case of services of that description.
- (2) The Secretary of State may by regulations modify section 368HL so as to do one or both of the following—
- (a) substitute a later anniversary for the anniversary specified in section 368HL(5);
  - (b) substitute a higher percentage for the percentage for the time being specified in any paragraph of section 368HL(5).
- (3) The provision that may be made by regulations under this section includes—
- (a) modifications for requiring the code to set out additional requirements to be fulfilled once the requirements previously required to be set out in the code have been fulfilled; and
  - (b) savings for the requirements previously set out in the code.
- (4) Before making regulations under this section the Secretary of State must consult OFCOM.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

### **368HO Tier 1 accessibility code: procedural requirements**

- (1) Before publishing a code or a revised code under section 368HL, OFCOM must consult—
  - (a) such persons appearing to OFCOM to represent the interests of people with disabilities as OFCOM think fit; and
  - (b) such persons providing Tier 1 services as OFCOM think fit.
- (2) For the purposes of the consultation, OFCOM must publish a draft of the code.

### **368HP Duty to comply with Tier 1 accessibility code**

A provider of a Tier 1 service must comply with such of the requirements of the code under section 368HL as apply to that provider.

### *Reports to Secretary of State*

### **368HQ Reports to Secretary of State**

OFCOM may from time to time report to the Secretary of State on any issues which—

- (a) have been identified by them in the course of carrying out their functions in relation to Tier 1 services, and
- (b) appear to them to raise questions of general policy about the regulation of those services.

*Application of Chapter 3*

**368HR Application of Chapter 3**

The duties of providers of Tier 1 services under or by virtue of this Chapter apply in relation to those services only so far as they are made available for use by members of the public in the United Kingdom.”

SCHEDULE 8

Section 31(7)

TIER 1 SERVICES: FURTHER AMENDMENTS OF PART 4A OF THE 2003 ACT

- 1 Part 4A of the Communications Act 2003 is amended as follows.
- 2 Before section 368I insert—

**“CHAPTER 4**

ENFORCEMENT: GENERAL”.

- 3 (1) Section 368I (enforcement of sections 368CB and 368D) is amended as follows.
  - (2) For the heading substitute “Enforcement of service providers’ principal duties”.
  - (3) In subsection (1), in the words before paragraph (a), after “section 368D” insert “, or that a provider of a non-UK on-demand programme service that is a Tier 1 service is contravening or has contravened section 368D,”.
  - (4) After subsection (1) insert—
 

“(1A) Where OFCOM (as the appropriate regulatory authority) determine that a provider of a Tier 1 service is contravening or has contravened section 368HC, 368HJ(1), 368HK(2) or 368HP, they may do one or both of the following—

    - (a) give the provider an enforcement notice under this section;
    - (b) impose a financial penalty on the provider in accordance with section 368J.”
  - (5) In subsection (2)—
    - (a) after “subsection (1)” insert “or (1A)”;
      - (b) after “section 368D” insert “or (as the case may be) section 368HC, 368HJ(1), 368HK(2) or 368HP”.
  - (6) In subsection (3)—
    - (a) after “subsection (1)” insert “or (1A)”;
      - (b) after “section 368D” insert “or (as the case may be) section 368HC, 368HJ(1), 368HK(2) or 368HP”.
  - (7) In subsection (10)—
    - (a) after “an on-demand programme service” insert “, or a non-UK on-demand programme service that is a Tier 1 service,”;
    - (b) after “subsection (1)” insert “, (1A)”.

- 4 In section 368IA (enforcement of section 368E(4)), in subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “, or a non-UK on-demand programme service that is a Tier 1 service,”.
- 5 (1) Section 368K (suspension or restriction of service for contraventions or failures) is amended as follows.
  - (2) In subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (3) After subsection (1) insert—

“(1A) OFCOM (as the appropriate regulatory authority) must serve a notice under subsection (2) on a provider of a Tier 1 service if they are satisfied—

    - (a) that the provider is in contravention of section 368HC, 368HJ(1), 368HK(2) or 368HP,
    - (b) that the imposition of one or more financial penalties or enforcement notifications under section 368I has not resulted in the remedying of the contravention, and
    - (c) that the giving of a direction under this section would be appropriate and proportionate to the seriousness of the contravention.”
  - (4) In subsection (2)—
    - (a) in paragraph (a), after “subsection (1)” insert “or (1A)”;
    - (b) in paragraph (b), after “subsection (1)” insert “or (1A)”;
    - (c) in paragraph (c), after “subsection (1)(a)” insert “or (1A)(a)”.
  - (5) In subsection (3)—
    - (a) in the words before paragraph (a), after “subsection (1)(c)” insert “or (1A)(c)”;
    - (b) in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 6 (1) Section 368L (suspension or restriction of service for inciting crime or disorder) is amended as follows.
  - (2) In subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (3) In subsection (3), in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (4) In subsection (5), in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 7 (1) Section 368M (supplementary provisions about directions) is amended as follows.
  - (2) In subsection (2), after “any on-demand programme service” insert “, or to any non-UK on-demand programme service that is a Tier 1 service,”.

- (3) After subsection (2) insert—
- “(2A) A direction has effect in relation to a non-UK on-demand programme service that is a Tier 1 service only so far as the service is made available for use by members of the public in the United Kingdom.”
- 8 In section 368N (enforcement of directions under section 368K or 368L), in subsection (1), in the words before paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 9 Before section 368NA insert—

**“CHAPTER 5**

SUPPLEMENTARY”.

- 10 (1) Section 368NA (fees) is amended as follows.
- (2) In subsection (2), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- (3) After subsection (8) insert—
- “(8A) The authority may also repay some or all of a fee paid to them by a person under subsection (2) if—
- (a) the person has ceased to provide a Tier 1 service at some time during the period to which the fee relates,
  - (b) the Tier 1 service in question was a non-UK on-demand programme service,
  - (c) the person gave a notification under section 368HC(4) that the person had ceased to provide the Tier 1 service, and
  - (d) the person did not cease to provide the Tier 1 service following a direction given by the appropriate regulatory authority under section 368K or 368L.
- (8B) The authority may repay some of a fee paid to them by a person under subsection (2) if—
- (a) the person has ceased to provide a Tier 1 service at some time during the period to which the fee relates,
  - (b) the Tier 1 service in question was an on-demand programme service that the person continues to provide, and
  - (c) the person gave a notification under section 368HC(4) that the person had ceased to provide the Tier 1 service.”
- 11 (1) For section 368O (power to demand information) substitute—

**“368O Power to require information**

- (1) The appropriate regulatory authority may by notice require a person within subsection (5) to provide them with any information that they require for the purpose of carrying out their functions under this Part.
- (2) OFCOM may by notice require a person within subsection (5) to provide them with any information that they require for the purpose

of carrying out their functions under Part 5 of the 1996 Act, so far as relating to Tier 1 services.

- (3) The power conferred by subsection (1) or (2) includes power to require a person within subsection (5) to obtain or generate information.
- (4) The power conferred by subsection (1) or (2) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.
- (5) The persons within this subsection are—
  - (a) a provider of an on-demand programme service or a non-UK on-demand programme service;
  - (b) a person who was a provider of an on-demand programme service or a non-UK on-demand programme service at a time to which the required information relates;
  - (c) a person who is not within paragraph (a) or (b) but who appears to the appropriate regulatory authority to have, or to be able to obtain or generate, information required by them as mentioned in subsection (1).
- (6) The information that the appropriate regulatory authority may require under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—
  - (a) the purpose of determining whether a person is a provider of an on-demand programme service or a non-UK on-demand programme service;
  - (b) the purpose of determining whether a person is a provider of a Tier 1 service;
  - (c) the purpose of determining whether there has been any change of circumstances that may affect a determination mentioned in paragraph (a) or (b);
  - (d) the purpose of assessing compliance with any duty imposed on a provider of an on-demand programme service by or by virtue of Chapter 2;
  - (e) the purpose of assessing compliance with any duty imposed on a provider of a Tier 1 service by or by virtue of Chapter 3;
  - (f) the purpose of an investigation being carried out by the authority to determine whether a contravention of section 368BA, 368CB or 368D has occurred or is occurring;
  - (g) the purpose of an investigation being carried out by the authority to determine whether there has been a failure to take an appropriate measure for the purpose mentioned in section 368E(4) or a failure to implement such a measure effectively;
  - (h) the purpose of an investigation being carried out by the authority to determine whether a contravention of section 368HC, 368HJ(1), 368HK(2) or 368HP has occurred or is occurring;
  - (i) the purpose of ascertaining or calculating applicable qualifying revenue under section 368J;
  - (j) the purpose of determining the appropriate fee that a provider is required to pay under section 368NA.



- (7) A notice under subsection (1) or (2) (an “information notice”) must—
  - (a) specify or describe the information to be provided,
  - (b) specify why the information is required,
  - (c) specify the form and manner in which the information must be provided, and
  - (d) contain information about the consequences of not complying with the notice.
- (8) An information notice must specify when the information must be provided which may be—
  - (a) on or by a specified date, or
  - (b) within a specified period.
- (9) The power conferred by subsection (1) or (2) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (10) A person to whom an information notice is given must provide the information in accordance with any requirements included in the notice (subject to subsection (11)).
- (11) The duty under subsection (10) does not require a disclosure of information if that disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, that duty is to be taken into account).
- (12) In this section—
  - (a) “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
  - (b) “information” includes technical information and material such as videos, audiovisual commercial communications, screenshots and archived material.

### **368OZA Information powers: supplementary**

- (1) Any power to require the provision of information under section 368HB, 368O or 368OB includes power to require the provision of information held outside the United Kingdom.
- (2) In the following provisions of this section, a “Part 4A information duty” means—
  - (a) the duty under section 368HB(11);
  - (b) the duty under section 368O(10);
  - (c) the duty under section 368OB(9).
- (3) Sections 368I and 368K apply in relation to a failure by a provider of an on-demand programme service, or a non-UK on-demand programme service that is a Tier 1 service, to comply with a Part 4A information duty as if that failure were a contravention of section 368D.
- (4) Section 368I applies in relation to a failure by a person other than one described in subsection (3) to comply with a Part 4A information duty falling within subsection (2)(a) or (b) as if that failure were a contravention of section 368D.

- (5) Where section 368I applies in accordance with subsection (4)—
- (a) references in section 368I or 368J to a provider of an on-demand programme service are to be read as references to the person who has failed to comply with the Part 4A information duty, and
  - (b) section 368J(1) applies as if, for the words “5 per cent. of the provider’s applicable qualifying revenue or £250,000, whichever is the greater amount”, there were substituted “£250,000”.
- (2) In consequence of the amendment made by sub-paragraph (1), in section 368D, in subsection (3)(b), for “section 368O(2) or (3)” substitute “section 368O(2) or (6)”.
- 12 (1) Section 368R (interpretation of Part 4A) is amended as follows.
- (2) In subsection (1), in the definition of “children’s programme”, in paragraph (a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (3) In subsection (2), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (4) In subsection (3), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
  - (5) In subsection (5), after “an on-demand programme service” insert “or a non-UK on-demand programme service”.

## SCHEDULE 9

Section 31(8)

## TIER 1 SERVICES: AMENDMENTS OF OTHER LEGISLATION

- 1 In section 93 of the Representation of the People Act 1983 (broadcasting of local items during election period), in subsection (6), in the definition of “relevant services”, in paragraph (b), at the end insert “or services that are Tier 1 services within the meaning given by section 368HA of the Communications Act 2003”.
- 2 (1) The Broadcasting Act 1996 is amended as follows.
- (2) In section 107 (preparation by OFCOM of code relating to avoidance of unjust or unfair treatment etc)—
- (a) in subsection (1), in paragraph (a), for “this section” substitute “subsection (5)”;
  - (b) after subsection (1) insert—
 

“(1A) OFCOM must also draw up, and from time to time review, a code giving guidance as to the principles to be observed, and practices to be followed, in connection with the avoidance of—

    - (a) unjust or unfair treatment in any programme that is included in a Tier 1 service (within the meaning given by section 368HA of the Communications Act 2003), or

- (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.
  - (1B) Subsection (1A) applies in relation to a Tier 1 service only so far as the service is made available for use by members of the public in the United Kingdom.”;
  - (c) in subsection (3), for “the code” substitute “a code under this section”;
  - (d) in subsection (4), for “the code” substitute “a code under this section”;
  - (e) in subsection (5), for “This section” substitute “This subsection”.
- (3) In section 110 (general functions of OFCOM in relation to complaints), in subsection (3), for “the code” substitute “the codes”.
- (4) In section 111 (complaints of unfair treatment etc)—
- (a) in subsection (4), after “in a licensed service” insert “or a Tier 1 service”;
  - (b) after subsection (4) insert—
    - “(4A) OFCOM must not entertain, or proceed with the consideration of, a fairness complaint relating to the inclusion of a programme in a Tier 1 service unless it appears to them that the programme—
    - (a) was first included in the service after the end of the grace period, or
    - (b) if first included before then, either remained included or was again included after the end of that period.
  - (4B) In subsection (4A), “the grace period”, in relation to a Tier 1 service, means the period of six months beginning with whichever is the later of the following—
    - (a) the day on which the on-demand programme service, or non-UK on-demand programme service, became a Tier 1 service;
    - (b) the day when the first code under section 107(1A) was published.
  - (4C) Where regulations under section 368HB(1) of the Communications Act 2003 provide that an on-demand programme service, or a non-UK on-demand programme service, specified in the regulations is a Tier 1 service, the regulations may also provide—
    - (a) that subsections (4A) and (4B) do not apply in relation to the service, or
    - (b) that those subsections apply in relation to the service as if the reference in subsection (4B) to six months were a reference to such lesser period as may be specified in the regulations.”;
  - (c) in subsection (5), after “in a licensed service” insert “or a Tier 1 service”;
  - (d) in subsection (6), after “in a licensed service” insert “or a Tier 1 service”.

- (5) In section 115 (consideration of fairness complaints), in subsection (9)—
- (a) omit the “and” at the end of paragraph (a);
  - (b) at the end of paragraph (b) insert “, and
  - (c) in a case where the relevant programme was included in a Tier 1 service, the person who provides that service.”
- (6) In section 119 (publication of OFCOM’s findings)—
- (a) after subsection (7C) insert—

“(7D) Where the relevant person is a provider of a Tier 1 service, the following provisions of the Communications Act 2003 apply in relation to a contravention of the duty under subsection (6) as they apply in relation to a contravention of the duty under section 368HJ(1) of that Act—

    - (a) section 368I(1A)(b) (power to impose a financial penalty in accordance with section 368J) and section 368J;
    - (b) section 368K (suspension or restriction of services).”;
  - (b) in subsection (8), in paragraph (c), for the words from “by a broadcasting body” to “licensed service” substitute “by a relevant person”;
  - (c) in subsection (11A), omit the “and” at the end of paragraph (a);
  - (d) in that subsection, at the end of paragraph (b) insert “; and
  - (c) in a case where the relevant programme was included in a Tier 1 service, the person who provides that service.”
- (7) In section 120 (reports on action taken voluntarily in response to findings on complaints)—
- (a) after subsection (3) insert—

“(3A) Where the relevant programme was included in a Tier 1 service, the provider of that service shall send to OFCOM a report of any supplementary action taken by—

    - (a) the provider, or
    - (b) any other person appearing to the provider to be responsible for the making or provision of the relevant programme.”;
  - (b) in subsection (4), for “or (3)” substitute “, (3) or (3A)”.
- (8) In section 130 (interpretation of Part 5), in subsection (1), insert at the appropriate place—

““Tier 1 service” has the same meaning as in the Communications Act 2003 (see section 368HA of that Act);”.

- 3 (1) The Communications Act 2003 is amended as follows.
- (2) In section 361 (meaning of “available for reception by members of the public”), in subsection (2), at the end insert “or a non-UK on-demand programme service that is a Tier 1 service (see section 368HA)”.
  - (3) In section 368Z14 (prohibition of paid-for advertising of less healthy food and drink), in subsection (3)(b)—

- (a) after “in on-demand programme services” insert “or in non-UK on-demand programme services that are Tier 1 services”;
  - (b) in the words in brackets, for “section 368FA” substitute “sections 368FA and 368HE(2)(e)”.
- (4) In section 405 (general interpretation), in subsection (1), insert at the appropriate places—
- ““non-UK on-demand programme service” has the meaning given by section 368AA(1);”;
  - ““Tier 1 service” has the meaning given by section 368HA;”.
- (5) In Schedule 11A (restrictions on product placement), in paragraph 3(2)(a), after “an on-demand programme service” insert “or a non-UK on-demand programme service that is a Tier 1 service”.
- 4 (1) Section 9A of the Wireless Telegraphy Act 2006 (notice to satellite uplinkers) is amended as follows.
- (2) In subsection (3), in the words before paragraph (a), after “an on-demand programme service” insert “, or a non-UK on-demand programme service that is a Tier 1 service,”.
- (3) In subsection (6)—
- (a) in the definition of “on-demand programme service”, after “on-demand programme service” insert “, “non-UK on-demand programme service” and “Tier 1 service” each”;
  - (b) in the words in brackets, for “section 368A” substitute “sections 368A, 368AA and 368HA”.

## SCHEDULE 10

Section 34

## OTHER AMENDMENTS OF PART 4A OF THE 2003 ACT

- 1 Part 4A of the Communications Act 2003 is amended as follows.
- 2 In section 368BZA (list of providers), in subsection (1), for “providing an on-demand programme service” substitute “who have—
- (a) given a notification to OFCOM under section 368BA(1) of their intention to provide an on-demand programme service, and
  - (b) not given a further notification under section 368BA(2)(b) of their intention to cease to provide it.”
- 3 In section 368BB (enforcement of section 368BA), after subsection (6) insert— “(7) Subsection (6) applies whether or not the provider is in the United Kingdom.”
- 4 Omit the cross-heading preceding section 368BC.
- 5 (1) Omit sections 368BC and 368BD (accessibility for people with disabilities).
- (2) In consequence of the amendment made by sub-paragraph (1), in section 402 (power of Secretary of State to make orders and regulations), in subsection (2)(a), omit “or regulations under section 368BC”.

- 6 Omit section 368CA (code on accessibility for people with disabilities).
- 7 In section 368D (duties of service providers), in subsection (3)(zb), for “forty-two days” substitute “60 days”.
- 8 In section 368I (enforcement of sections 368CB and 368D), after subsection (8) insert—  
“(8A) Subsection (8) applies whether or not the provider is in the United Kingdom.”
- 9 In section 368IA (enforcement of section 368E(4)), after subsection (8) insert—  
“(8A) Subsection (8) applies whether or not the person is in the United Kingdom.”
- 10 In section 368J (financial penalties), in subsection (1), omit “, 368BD”.
- 11 In section 368K (suspension or restriction of service for contraventions or failures), in subsection (1)—  
(a) in paragraph (a), omit “, or of regulations under section 368BC”;  
(b) in paragraph (b), omit “, 368BD”.
- 12 In section 368O (power to demand information), in subsection (2)(a), omit “, or of regulations under section 368BC”.
- 13 (1) Before section 368R insert—

**“368QA Service of notices by OFCOM**

Section 362AZ6 (notices) applies in relation to a notice that may or must be given by OFCOM under any provision of this Part as it applies in relation to a notice that may be or must be given by them under any provision of Part 3A.”

- (2) In consequence of the amendment made by sub-paragraph (1), in section 394 (services of notifications and other documents), in subsection (2)(a) (as amended by paragraph 5 of Schedule 5), after “Part 3A” insert “or Part 4A”.

SCHEDULE 11

Section 44

AMENDMENTS RELATED TO THE UK’S WITHDRAWAL FROM THE EU

PART 1

AMENDMENTS OF THE BROADCASTING ACTS

- 1 In section 202 of the Broadcasting Act 1990 (general interpretation), in subsection (1), omit the definition of “the Audiovisual Media Services Directive”.
- 2 In section 105 of the Broadcasting Act 1996 (interpretation of Part 4), in subsection (1), in the definition of “the Audiovisual Media Services Directive”, at the end insert “as it has effect in EU law from time to time”.

PART 2

AMENDMENTS OF THE COMMUNICATIONS ACT 2003

- 3 The Communications Act 2003 is amended as follows.
- 4 (1) Section 335B (maintenance of list of providers) is amended as follows.
- (2) In subsection (1), for the words after paragraph (b) substitute “which are subject to regulation by OFCOM as a result of one of the provisions listed in subsection (1A)”.
- (3) After subsection (1) insert—
- “(1A) The provisions are—
- (a) section 198 (regulation of the BBC by OFCOM);
- (b) section 203 (regulation of S4C by OFCOM);
- (c) section 211 (regulation of independent television services).”
- (4) Omit subsection (2).
- (5) For subsection (3) substitute—
- “(3) OFCOM must publish the up to date list on a publicly accessible part of their website.”
- (6) In subsection (4)—
- (a) after “subsection (1)” insert “(other than any service provided by the BBC or S4C)”;
- (b) for the words from “the determination of jurisdiction” to the end substitute “whether or not the service falls to be regulated by OFCOM under section 211”.
- 5 (1) Section 368BZA (maintenance of list of providers) is amended as follows.
- (2) Omit subsection (2).
- (3) For subsection (3) substitute—
- “(3) OFCOM must publish the up to date list on a publicly accessible part of their website.”
- 6 In section 368BA (advance notification to appropriate regulatory authority), in subsection (4), for the words from “the determination” to the end substitute “whether or not paragraphs (e) and (f) of section 368A(1) are satisfied”.
- 7 In section 368CB (quota for European works)—
- (a) in subsection (7), in the definition of “European works”, after “Services Directive” insert “as it has effect in EU law as amended from time to time”;
- (b) in subsection (8), at the end insert “as amended from time to time”.
- 8 In section 368D (duties of service providers), in subsection (2)(ca), for the words from “under the jurisdiction” to the end substitute “subject to regulation by the appropriate regulatory authority as a result of section 368A(1)(e) and (f)”.
- 9 (1) Section 368E (harmful material) is amended as follows.

(2) Before subsection (3)(za) insert—

“(zza) material the inclusion of which in an on-demand programme service would be an offence under section 1 of the Terrorism Act 2006 (encouragement of terrorism).”

(3) In subsection (3)(za)—

- (a) for “would be conduct” substitute “is conduct of a kind that, immediately before IP completion day, would have been”;
- (b) omit sub-paragraph (i).

10 For section 368OA (co-operation with member States and the European Commission) substitute—

**“368OA Co-operation with EEA States**

OFCOM may co-operate with EEA States which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes—

- (a) facilitating the carrying out by OFCOM of any of their functions under this Part, or
- (b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to on-demand programme services under the Directive as it has effect in EU law as amended from time to time.









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