



Communications Act 2003

2003 CHAPTER 21

[^{F1}PART 3A

PROMINENCE ON TELEVISION SELECTION SERVICES

Textual Amendments

F1 Pt. 3A inserted (24.5.2024 for specified purposes) by [Media Act 2024 \(c. 15\)](#), ss. **28(1)**, 55(1)(a)

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 designated by OFCOM as described in [paragraph \(b\)](#).
- (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—

Status: Point in time view as at 24/05/2024.

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- (i) a significant contribution to the fulfilment of the public service remit for that licensed public service channel, or
 - (ii) in a case where the provider of the service is, in relation to two or more licensed public service channels, either the provider of, or a person associated with the provider of, the channels, a significant contribution to the fulfilment of the public service remit for at least one of those licensed public service channels; 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 material 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 an internet programme service provided by a person other than the BBC satisfies the conditions in [subsection \(3\)](#), [\(4\)](#) or [\(5\)](#) that apply to it, OFCOM must have regard to any statement for the time being published by OFCOM under [section 362AC](#).
- (7) 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 any such 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 the internet programme service will make towards fulfilling the public service remit for its 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) in relation to any such public service broadcaster whose public service remit content is included in the internet programme service, how effective and efficient is the broadcaster’s monitoring of its performance so far as relating to the fulfilment of the public service remit for its licensed public service channel or (as the case may be) S4C’s public service remit.

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- (8) 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.
- (9) Before designating an internet programme service, OFCOM must consult—
- (a) the provider of the service;
 - (b) such other persons as OFCOM consider appropriate.
- (10) In this Part, a reference to an internet programme service is a reference to—
- (a) an on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet,
 - (b) a non-UK on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet, or
 - (c) a service which satisfies the requirements in [subsection \(11\)](#).
- (11) The requirements are—
- (a) that the principal purpose of the service is the provision of programmes,
 - (b) that the programmes viewed by a user of the service are accessed by the user by means of the internet, and
 - (c) that the programmes it provides to a user of the service are contained in—
 - (i) such on-demand programme service as is described in [subsection \(10\)\(a\)](#) or such non-UK on-demand programme service as is described in [subsection \(10\)\(b\)](#), and
 - (ii) another service which is, or two or more other services each of which is, such an on-demand programme service, such a non-UK on-demand programme service, or a service (other than those kinds of service) that consists of, or has as its principal purpose the provision of, programmes.
- (12) 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

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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—
 - (a) if the person is associated with only one public service broadcaster, that public service broadcaster, or
 - (b) if the person is associated with more than one public service broadcaster, all of those public service broadcasters.
- (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 [subsection \(3\)\(a\)](#), [subsection \(4\)\(a\)](#) or (as the case may be) [subsection \(5\)\(a\)](#) of [section 362AA](#),
 - (b) the content included in the service which is of the description referred to in [subsection \(3\)\(b\)](#), [subsection \(4\)\(b\)](#) or (as the case may be) [subsection \(5\)\(b\)](#) of [section 362AA](#) 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.

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- (6) In considering whether there are reasonable grounds for believing the matter in paragraph (a), (b) or (c) of subsection (2) or whether they are satisfied as to that matter, OFCOM must have regard to any statement for the time being published by OFCOM under section 362AC.
- (7) OFCOM must revoke a designation of an internet programme service under section 362AA(2) if the person providing the service requests them to do so.

362AC Statement relating to designation functions

- (1) OFCOM must prepare and publish a statement providing—
 - (a) information about the methods applied in determining the matters in sections 362AA(3), (4) and (5) and 362AB(2), and
 - (b) such other information relating to the determination of those matters as OFCOM consider appropriate.
- (2) OFCOM may revise or replace a statement published under this section and, where they do so, must publish the revised or replacement statement.

362AD 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 person 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

362AE 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 or the dissociable section of 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—

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- (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) The person, and the only person, who is to be treated for the purposes of this Part as providing a television selection service is 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 under [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.

362AF Meaning of “regulated television selection service”

- (1) In this Part, “regulated television selection service” means a television selection service which—
- (a) is for the time being designated by regulations made by the Secretary of State, or
 - (b) is of a description specified in regulations made by the Secretary of State.
- (2) The Secretary of State may not exercise the power under [subsection \(1\)\(a\)](#) so as to cause a television selection service to become a regulated television selection service unless 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 under [subsection \(1\)\(b\)](#) may, in particular, frame a description of television selection services by reference to—
- (a) a television selection service being used, or being used in a manner specified in the regulations, by no fewer than such number of members of the public in the United Kingdom as may be specified in the regulations;
 - (b) the date on which a television selection service is first made available to members of the public in the United Kingdom;

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- (c) the functions that a television selection service is capable of carrying out or may be made capable of carrying out.
- (4) Before making regulations under [subsection \(1\)\(a\)](#) or [\(b\)](#), the Secretary of State must have received a report under [section 362AG](#) relating to the television selection service or description of television selection services in question.

362AG Advice from OFCOM

- (1) OFCOM may prepare reports making recommendations about the exercise of the power under [section 362AF\(1\)\(a\)](#) or [\(b\)](#).
- (2) Where—
 - (a) the Secretary of State proposes to make regulations under [section 362AF\(1\)\(a\)](#) 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 the exercise of the power under [section 362AF\(1\)\(a\)](#) or [\(b\)](#) in relation to that service or services of that description.
- (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 362AF\(1\)\(a\)](#) must include OFCOM's assessment of—
 - (a) the number of members of the public in the United Kingdom using that service and whether that number is significant;
 - (b) the manner in which that service is used by such persons;
 - (c) whether that service is capable of functioning as a regulated television selection service and the modifications, if any, that are needed to make it so capable;
 - (d) such matters as OFCOM consider likely to affect the matters referred to in paragraphs [\(a\)](#) to [\(c\)](#).
- (5) A report under [subsection \(1\)](#) or [\(3\)](#) relating to the exercise of the power under [section 362AF\(1\)\(b\)](#) must include OFCOM's assessment of—
 - (a) which television selection services are likely to fall within the description of television selection services in question;
 - (b) such matters as OFCOM consider relevant to the assessment described in paragraph [\(a\)](#).
- (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 362AF\(1\)\(a\)](#) 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 prepare and publish a statement about the principles and methods applied by OFCOM in preparing a report under [subsection \(1\)](#) or [\(3\)](#).

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- (10) OFCOM may revise or replace a statement published under this section and, where they do so, must publish the revised or replacement statement.

Notification by providers of television selection services

362AH 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 362AF\(1\)\(b\)](#).
- (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 362AF\(1\)\(b\)](#), 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

362AI 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

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

- (1) The provider of a designated internet programme service must at all times offer the service 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) The provider of a designated internet programme service must do its best to secure that, in relation to every regulated television selection service, arrangements are entered into, and kept in force, that ensure that the service is included in the regulated television selection service.
- (3) The provider of a designated internet programme service must act consistently with the agreement objectives when entering into such arrangements and while they are in force.
- (4) Subsections (1) to (3) do not apply where the provider of a designated internet programme service is the BBC.

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362AK 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 [362AT](#) to [362AY](#).

362AL Guidance as regards agreement objectives

- (1) OFCOM must prepare and publish guidance about how providers of designated internet programme services and providers of regulated television selection services may act consistently with the agreement objectives.
- (2) The reference in [subsection \(1\)](#) to acting consistently with the agreement objectives is to be treated, in relation to the BBC, as a reference to carrying out any duty of the BBC under the BBC Charter and Agreement that is comparable to the duty of providers of designated internet programme services other than the BBC under [section 362AJ\(3\)](#).
- (3) OFCOM may revise and replace any guidance published under this section and, where they do, 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) In exercising or deciding whether to exercise any of their powers under sections [362AU](#) to [362AX](#), OFCOM must have regard to any guidance for the time being published under this section.

362AM Meaning of “the agreement objectives”

- (1) In sections [362AJ](#) to [362AL](#) “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, in a case where a designated internet programme service contributes to—
 - (i) the fulfilment of the public service remit for a licensed public service channel,
 - (ii) the fulfilment of S4C’s public service remit, or
 - (iii) the promotion of one or more of the BBC’s public purposes,the arrangements made between the provider of that designated internet programme service and the provider of a regulated television selection service do not adversely affect the ability of the provider of that channel to fulfil the public service remit for that channel, the ability of S4C to fulfil S4C’s public

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- service remit or (as the case may be) the ability of the BBC to promote its public purposes;
- (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.
- (2) The reference in [subsection \(1\)\(a\)](#) 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 included in that designated internet programme service, so far as the prominence of that content or channel is capable of being affected by the operation of the regulated television selection service.
- (3) 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 use by members of the public;
 - (b) any Channel 3 service;
 - (c) Channel 4;
 - (d) Channel 5;
 - (e) S4C Digital.

Duties relating to a designated internet programme service

362AN Duties relating to a designated internet programme service

- (1) The provider of a designated internet programme service must ensure that—
- (a) the service makes such contribution as is described in [subsection \(3\)\(a\)](#), [subsection \(4\)\(a\)](#) or (as the case may be) [subsection \(5\)\(a\)](#) of [section 362AA](#), and
 - (b) such material included in the service as is described in [subsection \(3\)\(b\)](#), [subsection \(4\)\(b\)](#) or (as the case may be) [subsection \(5\)\(b\)](#) of [section 362AA](#) is readily discoverable and is promoted by the service.
- (2) [Subsection \(1\)](#) does not apply where the provider of a designated internet programme service is the BBC.

Duties relating to a regulated television selection service

362AO 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.

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- (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—
 - (a) material that is public service remit content or contributes to the promotion of one or more of the BBC’s public purposes included in that designated internet programme service, and
 - (b) any listed channel included in that designated internet programme service, so far as the prominence of that material 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)).

362AP Code of practice

- (1) OFCOM must issue a code of practice describing actions that OFCOM recommend 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 362AO](#).
- (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.

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362AQ 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 362AO\(1\)](#) 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 [362AT](#) to [362AY](#) (references of disputes to OFCOM), and
 - (b) sections [362AZ](#) to [362AZ5](#) (enforcement).

362AR Issuing a code of practice

- (1) Before issuing a code of practice under [section 362AP](#), 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) 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.

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Power to require information

362AS 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 an internet programme service;
 - (c) a provider of a television selection service;
 - (d) a person who provides an ancillary service in relation to an internet programme service or a television selection service;
 - (e) a manufacturer of apparatus that is, or in combination with other apparatus is, internet television equipment;
 - (f) a person who creates or provides software used in association with such apparatus;
 - (g) a person who was within any of paragraphs (a) to (f) at a time to which the required information relates;
 - (h) a person who is not within any of paragraphs (a) to (g) 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 [section 362AD\(1\)](#) (duty to notify OFCOM where cease to be associated with a public service broadcaster);
 - (c) the purpose of preparing a report under [section 362AG](#) (advice from OFCOM about the designation of television selection services etc);
 - (d) the purpose of assessing compliance with [section 362AH](#) (duty of providers of television selection services to notify OFCOM);
 - (e) the purpose of assessing compliance with any duty of a provider of a designated internet programme service under [section 362AJ](#) or [362AN](#) (must-offer and content of designated internet programme services obligations);
 - (f) the purpose of assessing compliance with any duty of the BBC under the BBC Charter and Agreement that is comparable to any duty of a provider of a designated internet programme service under [section 362AJ](#) or [362AN](#);
 - (g) the purpose of assessing compliance with any duty of a provider of a regulated television selection service under [section 362AK](#) or [362AO](#) (must-carry and prominence obligations);
 - (h) the purpose of preparing or reviewing a code of practice under [section 362AP](#) (code of practice relating to duties under [section 362AO](#));

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- (i) the purpose of OFCOM’s functions under sections 362AT to 362AY (dispute resolution);
 - (j) the purpose of assessing compliance with any requirements imposed by a confirmation decision under section 362AZ1;
 - (k) the purpose of determining the appropriate fee that a provider is required to pay under section 362AZ6;
 - (l) the purpose of OFCOM’s monitoring role under section 362AZ9;
 - (m) 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 16A.
- (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 (subject to subsection (10)).
- (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)(d), a service is an “ancillary service” in relation to an 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, a reference to the functions of OFCOM under this Part includes a reference to their functions under Schedules 16A and 16B, so far as relating to this Part.
- (13) 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

362AT 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—

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- (a) the arrangements that should be made between them in order to give effect to the prominence duties that relate to them, or
 - (b) the operation of arrangements made between them in order to give effect to those duties.
- (2) For the purposes of [subsection \(1\)](#)—
- (a) the prominence duties relating to the provider of a designated internet programme service are—
 - (i) in the case of a provider other than the BBC, the duties under [section 362AJ](#);
 - (ii) in the case of the BBC, any duties of the BBC under the BBC Charter and Agreement that are comparable to the duties of other providers under [section 362AJ](#);
 - (b) the prominence duties relating to the provider of a regulated television selection service are the duties under sections [362AK](#) and [362AO\(1\)](#).
- (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.

362AU Action by OFCOM on reference of dispute

- (1) This section applies where—
- (a) a dispute is referred to OFCOM under [section 362AT\(3\)](#), and
 - (b) any requirements imposed by OFCOM under [section 362AT\(5\)](#) 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 362AT\(1\)\(a\)](#) (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.

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- (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 for 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.

362AV Interim measures

- (1) This section applies where—
 - (a) OFCOM decide under [section 362AU\(2\)](#) whether or not it is appropriate for them to handle a dispute, or
 - (b) a dispute is referred back to OFCOM under [section 362AU\(6\)](#).
- (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) In other respects, 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.

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- (6) In the case of a dispute referred back to OFCOM under [section 362AU\(6\)](#), 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 362AY\(4\)](#)).
- (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 362AY\(4\)](#));
 - (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 362AY\(4\)](#)).

362AW Procedure for resolving disputes

- (1) This section applies where—
 - (a) OFCOM decide under [section 362AU\(2\)](#) that it is appropriate for them to handle a dispute, or
 - (b) a dispute is referred back to OFCOM under [section 362AU\(6\)](#).
- (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 362AU\(6\)](#), 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 362AU\(2\)](#) 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 362AU\(6\)](#), 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 362AY\(4\)](#).
- (8) OFCOM must—

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- (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.

362AX Resolution of referred disputes

- (1) This section applies where OFCOM make a determination for resolving a dispute under [section 362AW\(2\)](#).
- (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 362AU\(6\)](#)—
- (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.

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- (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 362AT\(3\)](#), or referred back to them under [section 362AU\(6\)](#), binds the parties to the dispute.

362AY Effect of referrals on legal proceedings

- (1) This section applies where—
 - (a) a dispute is referred to OFCOM under [section 362AT\(3\)](#), or
 - (b) a dispute is referred back to OFCOM under [section 362AU\(6\)](#).
- (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 362AV\(2\)](#) 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 362AX\(8\)](#), and
 - (b) any agreement to the contrary binding the parties in dispute.

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Enforcement

362AZ 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—
 - (a) any duty under [section 362AD](#), [362AJ](#) or [362AN](#) (duties of providers of designated internet programme services under this Part), or
 - (b) any duty under [section 362AH](#), [362AK](#) or [362AO](#) (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 362AS\(9\)](#).
- (3) A provisional notice of contravention must—
 - (a) specify the duty as regards 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.

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- (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 362AZ1](#) having been given to the person in respect of that failure.
- (10) OFCOM may give a provisional notice of contravention to—
- (a) a person who was but is no longer a provider of a regulated television selection service, or
 - (b) a person who was but is no longer a provider of a designated internet programme service,
- if that person was a provider of a regulated television selection service or (as the case may be) a designated internet programme service at the time of the failure to which the notice relates.

362AZ1 Confirmation decisions: general

- (1) This section applies where—
- (a) OFCOM have given a provisional notice of contravention 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 the notified duty or (as the case may be) one or more of the notified duties.
- (4) For the purposes of this section and sections [362AZ2](#) and [362AZ3](#), 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.

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- (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 362AZ\(7\)](#)) 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 362AZ\(5\)\(b\)](#).
- (10) OFCOM may give a confirmation decision to—
- (a) a person who was but is no longer a provider of a regulated television selection service, or
 - (b) a person who was but is no longer a provider of a designated internet programme service,
- if that person was a provider of a regulated television selection service or (as the case may be) a designated internet programme service at the time of the failure to which the notice relates.

362AZ2 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 362AZ1\(7\)](#).
- (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.

362AZ3 Confirmation decisions: penalties

- (1) This section applies where a confirmation decision imposes one or more penalties (see [section 362AZ1\(8\)](#)).
- (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,

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- (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 16A](#) contains further provision about the imposition of a penalty by a confirmation decision.

362AZ4 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 362AZ1\(7\)](#)), 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 16A](#) contains further provision about the imposition of a penalty by a penalty notice.

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362AZ5 Enforcement: guidance

- (1) OFCOM must prepare and publish guidance about the exercise of their powers under sections [362AZ](#) to [362AZ4](#) and [Schedule 16B](#) (so far as relating to this Part).
- (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 362AZ1](#) or a penalty notice under [section 362AZ4](#), 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 [362AZ](#) to [362AZ4](#) and [Schedule 16B](#) (so far as relating to this Part), OFCOM must have regard to any guidance for the time being published under this section.

Supplemental provisions of Part 3A

362AZ6 Fees

- (1) OFCOM may require a person other than the BBC or S4C who is—
 - (a) a provider of a designated internet programme service, or
 - (b) a provider of a regulated television selection service,
 to pay to OFCOM a fee of an amount determined by OFCOM.
- (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—
 - (i) by the BBC under [section 198\(4\)](#), or
 - (ii) 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.

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- (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 [subsection \(1\)](#) 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—
 - (i) by the BBC under section 198(4), or
 - (ii) 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 designated internet programme service, 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 362AH\(2\)](#) or [\(3\)](#) in accordance with [section 362AH\(4\)](#) 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, a reference to the functions of OFCOM under this Part includes a reference to their functions under [Schedules 16A](#) and [16B](#), so far as relating to this Part.
- (11) In this section, “financial year” means a period of 12 months ending on 31 March.

362AZ7 Non-payment of fee

- (1) This section applies if—

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- (a) the provider of a designated internet programme service or regulated television selection service is liable to pay a fee to OFCOM under [section 362AZ6](#), and
 - (b) in OFCOM's opinion, the provider has not paid the full amount of the fee that the provider is liable to pay.
- (2) OFCOM may give the provider a notice under this subsection specifying—
 - (a) the outstanding amount of the fee that OFCOM consider the provider is due to pay to them under [section 362AZ6](#), and
 - (b) the period within which the provider must pay it.
- (3) A notice under [subsection \(2\)](#)—
 - (a) may relate to fees required on different occasions;
 - (b) may also state that OFCOM propose to impose a penalty on the provider.
- (4) The provider may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice.
- (5) [Subsection \(6\)](#) applies if—
 - (a) the notice under [subsection \(2\)](#) stated that OFCOM propose to impose a penalty,
 - (b) the period allowed for representations has expired, and
 - (c) OFCOM are satisfied that an amount of the fee or fees is still due to them.
- (6) OFCOM may give the provider a penalty notice under this subsection requiring the provider to pay to OFCOM a penalty of an amount in sterling determined by OFCOM.
- (7) The penalty may consist of any of the following—
 - (a) a single amount;
 - (b) an amount calculated by reference to a daily rate;
 - (c) a combination of a single amount and an amount calculated by reference to a daily rate.
- (8) The penalty notice may impose a penalty of a different kind, of a greater amount or (in the case of a penalty calculated by reference to a daily rate) payable over a longer period than that proposed in the notice about the proposed penalty.
- (9) See [section 362AZ8](#) for information which must be included in notices under this section.
- (10) Nothing in this section affects OFCOM's power to bring proceedings (whether before or after the imposition of a penalty by a notice under [subsection \(6\)](#)) for the recovery of the whole or part of an amount due to OFCOM under [section 362AZ6](#).
- (11) But OFCOM may not bring such proceedings unless a provider has first been given a notice under [subsection \(2\)](#) specifying the amount due to OFCOM.

362AZ8 Information to be included in a notice under [section 362AZ7](#)

- (1) A notice under [section 362AZ7\(2\)](#) stating that OFCOM propose to impose a penalty must—
 - (a) state the reasons why OFCOM propose to impose the penalty,

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- (b) state whether OFCOM propose that the penalty should consist of a single amount, an amount calculated by reference to a daily rate, or a combination of the two,
 - (c) indicate the amount of the proposed penalty, including (in relation to an amount calculated by reference to a daily rate) the daily rate and how the penalty would be calculated,
 - (d) in relation to an amount calculated by reference to a daily rate, specify or describe the period for which OFCOM propose that the amount should be payable,
 - (e) state the reasons for proposing a penalty of that amount, including any aggravating or mitigating factors that OFCOM propose to take into account, and
 - (f) specify the period within which representations in relation to the proposed penalty may be made.
- (2) A penalty notice under [section 362AZ7\(6\)](#) must—
- (a) give OFCOM’s reasons for their decision to impose the penalty,
 - (b) state whether the penalty consists of a single amount, an amount calculated by reference to a daily rate, or a combination of the two, and how it is calculated,
 - (c) in relation to a single amount, state that amount,
 - (d) in relation to an amount calculated by reference to a daily rate, state the daily rate,
 - (e) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
 - (f) specify a reasonable period within which the penalty must be paid, and
 - (g) 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).
- (3) A penalty notice under [section 362AZ7\(6\)](#) must also specify the amount of the fee that is (in OFCOM’s opinion) due to be paid to OFCOM.
- (4) The period specified under [subsection \(2\)\(f\)](#) for the payment of a single amount must be at least 28 days beginning with the day on which the penalty notice is given.
- (5) [Subsection \(6\)](#) applies in relation to a penalty notice under [section 362AZ7\(6\)](#) that includes a requirement to pay an amount calculated by reference to a daily rate.
- (6) Such a notice must—
- (a) state the date from which the amount begins to be payable, which must not be earlier than the day after the day on which the notice is given;
 - (b) provide for the amount to continue to be payable at the daily rate until—
 - (i) the date on which the full amount of the fee (as specified in the penalty notice) has been paid to OFCOM, or
 - (ii) an earlier date specified in the penalty notice.
- (7) [Schedule 16A](#) contains further provision about the imposition of a penalty by a penalty notice under [section 362AZ7\(6\)](#).

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362AZ9 Monitoring role for OFCOM

OFCOM have 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 362AF](#);
- (c) deciding whether to take enforcement action under this Part and Schedule 16B (so far as relating to this Part).

362AZ10 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 or Schedule 16B (so far as relating to 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 a 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—
 - (a) its principal office in the United Kingdom, or
 - (b) 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.

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- (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.

362AZ11Application of Part 3A

- (1) A duty imposed on a provider of a television selection service by or under this Part applies in relation to that service only so far as it is made available for use by members of the public in the United Kingdom.
- (2) 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).
- (3) References in this Part to an internet programme service include such a service provided from outside the United Kingdom (as well as such a service provided from within the United Kingdom).
- (4) 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.
- (5) Section [362AZ2\(4\)](#) (requirements enforceable in civil proceedings against a person) applies whether or not the person is in the United Kingdom.

362AZ12Interpretation of Part 3A

- (1) In this Part—
- “the agreement objectives” has the meaning given by [section 362AM](#);
- “BBC company”, “C4 company” and “S4C company” have the same meaning as in Part 3 (see [section 362](#));
- “designated internet programme service” has the meaning given by [section 362AA](#);
- “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 by [section 362AS](#);

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- “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 362AM](#);
- “programme” means such programme as is described in [section 368ZA](#);
- “provision”—
- (a) in relation to an internet programme service, is to be construed in accordance with [subsection \(2\)](#);
 - (b) in relation to a television selection service, is to be construed in accordance with [section 362AE\(5\)](#);
- “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 362AF](#);
- “television selection service” has the meaning given by [section 362AE](#).
- (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,
 - (b) non-UK on-demand programme services, and
 - (c) services that fall within [section 362AA\(10\)\(c\)](#),
 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 if, and only if—
 - (a) P is a body corporate which is controlled by the public service broadcaster; or
 - (b) where the public service broadcaster is the provider of a Channel 3 service or Channel 5, P and the public service broadcaster are bodies corporate which are both controlled by the same person.

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- (7) In [subsection \(6\)](#) “controlled” has the same meaning as in Part 1 of Schedule 2 to the 1990 Act.
- (8) 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.
- (9) 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.
- (10) The services that are to be taken for the purposes of this Part to be available for use by members of the public include any service which—
 - (a) is made available for use only by 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.]

Status:

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