



# Media Act 2024

## 2024 CHAPTER 15

PROSPECTIVE

### 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

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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 \(5\)](#) and itself satisfies the requirement in [subsection \(6\)](#).

(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) comprises a public service for the dissemination of information and for the provision of education and entertainment, which includes what appears to OFCOM to be—
  - (i) a sufficient quantity of audiovisual content that 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, and
  - (ii) a sufficient quantity of audiovisual content that 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,
  - (ii) is of an educational nature, and
  - (iii) 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) The requirement in this subsection is that the range of genres of audiovisual content made available by the public service broadcasters (taken together) constitutes an appropriate range of genres.

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- (7) Particular audiovisual content made available by a public service broadcaster is not to be taken into account for the purpose of determining the extent to which the public service remit for television in the United Kingdom is fulfilled unless the broadcaster has taken steps to ensure that the audiovisual content in question may be received or accessed in accordance with [subsection \(8\)](#) by so much of the broadcaster's intended audience as is reasonably practicable.
- (8) 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.
- (8A) 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 \(8\)](#).
- (8B) Particular audiovisual content made available by a public service broadcaster by means of an on-demand programme service or a non-UK on-demand programme service is not to be taken into account for the purpose of determining the extent to which the public service remit for television in the United Kingdom is fulfilled unless the audiovisual content in question is available for a period of not less than 30 days beginning with the day on which that content is first made available for viewing.
- (8C) Subsection [\(8B\)](#) does not apply to news programmes or programmes containing coverage of sporting events that are made available by a public service broadcaster by means of an on-demand programme service or a non-UK on-demand programme service.
- (8D) The Secretary of State may by regulations amend [subsection \(8B\)](#) so as to substitute a different period for the period for the time being specified there.
- (8E) 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.
- (8F) 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 \(8E\)](#) and any conclusions they have arrived at in relation to those findings; and

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- (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) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) an on-demand programme service;
- (e) a non-UK on-demand programme service;
- (f) a service, other than a service referred to in any of paragraphs (a) to (e), which falls within [subsection \(11A\)](#).

(11A) A service falls within this subsection if it is a service, or a dissociable section of a service, which has the following characteristics—

- (a) its principal purpose is the provision of programmes,
- (b) the programmes which it provides are accessed by viewers by means of the internet,
- (c) there is a person who has general control over which programmes are comprised in the service or the dissociable section of the service (whether or not the person has control of the content of individual programmes or the distribution of the service), and
- (d) the service or the dissociable section of the service is available for use by members of the public in all or part of the United Kingdom.

(11B) The services that are to be taken for the purposes of [subsection \(11A\)\(d\)](#) to be available for use by members of the public include any service which—

- (a) is made available for use 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 otherwise requesting its provision, is offered or made available to members of the public.”

(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

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(b) it is provided by means of a relevant audiovisual service provided by another person, under arrangements made between the broadcaster and that other person.

(14) In the case of a service falling within [subsection \(11\)\(f\)](#), the person, and the only person, who is to be treated for the purposes of this section as providing the service is the person described in [subsection \(11A\)\(c\)](#); and section 362(3) applies in relation to such a service as it applies in relation to a service referred to in section 362(2).

(15) In this section, a reference to the provision of an on-demand programme service or a non-UK on-demand programme service is to be read in accordance with section 368R(5) and (6).

(16) In this section—

“audiovisual content” means the programmes, other than advertisements, 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;

“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;

“programme” means any programme (with or without sounds) which consists of moving or still images or of legible text or of a combination of those things;

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

#### Commencement Information

**II** S. 1 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

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## 2 OFCOM reports: wider review and reporting obligations

- (1) Section 264A of the Communications Act 2003 (OFCEOM reports: wider review and reporting obligations) is amended as follows.
- (2) In subsection (1), for “public service objectives” substitute “public service requirements”.
- (3) In subsection (2)(b) and (c), for “objectives” substitute “requirements”.
- (4) 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.”
- (5) In subsection (5), in the definition of “media services”, after paragraph (b) (and before the “and” following it) insert—
  - “(ba) non-UK on-demand programme services.”.

### Commencement Information

**I2** S. 2 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 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) For subsection (2) (public service remit for Channel 3 services and Channel 5) substitute—
  - “(2) The public service remit for every Channel 3 service and for Channel 5 is to make available a range of high quality and diverse audiovisual content—
    - (a) which is all capable of being taken into account for the purpose of determining the extent to which the public service remit for television in the United Kingdom is fulfilled (see section 264(7) to (8C)), and
    - (b) which, considered as a whole, constitutes an adequate contribution to the fulfilment of that remit.”
- (3) For subsection (3) (public service remit for Channel 4) substitute—
  - “(3) The public service remit for Channel 4 is to make available a broad range of high quality and diverse audiovisual content—
    - (a) which, in particular—
      - (i) demonstrates innovation, experiment and creativity in the form and content of programmes,
      - (ii) appeals to the tastes and interests of a culturally diverse society,

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- (iii) includes a significant quantity and range of programmes of an educational nature and other programmes of educative value, and
  - (iv) exhibits a distinctive character,
  - (b) which is all capable of being taken into account for the purpose of determining the extent to which the public service remit for television in the United Kingdom is fulfilled, and
  - (c) which, considered as a whole, constitutes an adequate contribution to the fulfilment of that remit.”
- (4) After subsection (5) insert—
- “(6) In this section, a reference to making available audiovisual content, in relation to a licensed public service channel, is a reference to the provider of that channel making available audiovisual content.
  - (7) Section 264(13) applies for the purposes of this section as it applies for the purposes of section 264.”

#### Commencement Information

**I3** S. 3 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 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) to (6)”.

#### Commencement Information

**I4** S. 4 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 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,



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would”.

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**I5** S. 5 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

### 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” before 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” before 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.”

#### Commencement Information

**I6** S. 6 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

### 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 (8C)).”;

(b) omit paragraph (c).



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## Commencement Information

I7 S. 7 not in force at Royal Assent, see s. 55(3)(a)

### *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) Omit subsection (10).

(9) After subsection (12) insert—

“(12A) If a draft of a statutory instrument containing an order under this section would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.”

(10) 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;”

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(b) omit the definition of “programming budget” and the word “and” before it.

(11) After subsection (13) insert—

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

#### Commencement Information

**18** S. 8 not in force at Royal Assent, see s. 55(3)(a)

## 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).”

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### Commencement Information

**19** S. 9 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## **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) subsection (3) 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) 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.
- (5) 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.
- (6) Before making regulations under [subsection \(1\)](#), the Secretary of State must consult the following persons about their content—
  - (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.

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- (7) 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.
- (8) See also sections [278B](#) and [278C](#) (which make further provision for the interpretation of this section etc).”

#### Commencement Information

**I10** S. 10 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 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) that content is provided by—
    - (i) the person, or
    - (ii) a person associated with the person, under arrangements made between the person and that associated person,
 by means of a qualifying audiovisual service provided by the person or (as the case may be) that associated 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\(8B\)](#) unless it is excepted by section [264\(8C\)](#).
- (3) Where the period described in section [264\(8B\)](#) 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) Section [362AZ12\(6\)](#) (meaning of references to a person associated with a public service broadcaster) applies for the purposes of [subsection \(2\)\(a\)](#) as it applies for the purposes of Part 3A.
- (5) Subsection [\(8A\)](#) of section 264 applies for the purposes of [subsection \(2\)\(b\)](#) as it applies for the purposes of [subsection \(8\)](#) of that section.
- (6) For the purposes of this Part, the following are qualifying audiovisual services—
- (a) television broadcasting services;

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- (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.
- (7) 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).
- (8) Before making regulations under subsection (6)(c), the Secretary of State must consult OFCOM.
- (9) A statutory instrument containing regulations under subsection (6)(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.
- (10) In this section, “designated internet programme service” has the same meaning as in Part 3A (see section 362AZ12).”

#### Commencement Information

**III** S. 11 not in force at Royal Assent, see s. 55(3)(a)

## 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(4) (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);

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- (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.”

#### Commencement Information

**I12** S. 12 not in force at Royal Assent, see s. 55(3)(a)

### 13 Quotas: independent productions: commissioning code

- (1) Section 285 of the Communications Act 2003 (code relating to programme commissioning) is amended as follows.

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- (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).”

#### Commencement Information

I13 S. 13 not in force at Royal Assent, see s. 55(3)(a)

## 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



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- 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—

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“(6) See also sections [278B](#) and [278C](#) (which make further provision for the interpretation of this section etc).”

**Commencement Information**

**I14** S. 14 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

**15 Networking arrangements for Channel 3**

(1) Section 290 of the Communications Act 2003 (proposals for arrangements) is amended in accordance with subsections (2) to (4).

(2) In subsection (4)—

- (a) in paragraph (b), for “available for broadcasting in all regional Channel 3 services” substitute “, in relation to each holder of such a licence, available for inclusion in one or more qualifying audiovisual services provided by that holder or a person associated with that holder”;
- (b) in paragraph (c), for the words from “regional Channel 3 services” to the end of the paragraph substitute “holders of such licences and persons associated with any of those holders 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) [Section 362AZ12\(6\)](#) (meaning of references to a person associated with a public service broadcaster) applies for the purposes of subsection (4)(b) and (c) as it applies for the purposes of Part 3A.”

(4) After subsection (5) (inserted by [subsection \(3\)](#)) insert—

“(6) See also section [278B](#) (which makes further provision for the interpretation of this section).”

(5) In section 293 of that Act (review of approved networking arrangements etc), in subsection (3), for “one year” substitute “five years”.

**Commencement Information**

**I15** S. 15 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

**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).

**Commencement Information**

**I16** S. 16 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

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## 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.

### Commencement Information

I17 S. 17 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

### 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 198B to 198D,
  - (b) sections 263 to 294 and Schedule 11, and
  - (c) 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,

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- (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) 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.
- (8) OFCOM may not use the power conferred by [subsection \(1\)](#) to require the BBC to provide, obtain or generate information.
- (9) 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.
- (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—
  - “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—

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- (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.”

#### Commencement Information

**I18** S. 18 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

#### *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, non-UK 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

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- (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 or a non-UK 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) in section 19(2) and (6), references to a Channel 3 service were references to the television programme service,
    - (b) in section 19(2), (4) and (6), references to the holder of a Channel 3 licence were references to the provider of the television programme service, and
    - (c) in section 19(2) and (6), the words “of the licence holder” were omitted.
  - (5) Section [362AZ12\(6\)](#) of the Communications Act 2003 (meaning of references to a person associated with a public service broadcaster) applies for the purposes of this section as it applies for the purposes of Part 3A of that Act.
  - (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 362AZ12](#) of that Act), and
    - (b) the person who provides an on-demand programme service or a non-UK 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 362AZ12\(1\)](#));
    - “on-demand programme service” and “non-UK on-demand programme service” have 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.”

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(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 [\(3\)](#) of this Act).”

(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.”

#### Commencement Information

**I19** S. 19 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

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

## **20 Categories of relevant service**

(1) Section 98 of the Broadcasting Act 1996 (categories of service) is amended as follows.

(2) For subsections (1) and (2) substitute—

“(1) For the purposes of this Part, relevant services are divided into two categories as follows—

- (a) those relevant services which for the time being fall within [subsection \(1A\)](#) or [\(2A\)](#), and
- (b) all other relevant services.

(1A) A television programme service falls within this subsection if it is—

- (a) a service provided by the BBC or a BBC company otherwise than with a view to generating a profit,
- (b) a Channel 3 service, Channel 4 or Channel 5,
- (c) S4C Digital, or
- (d) 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 Channel 4 company, S4C company or body corporate controlled by the provider of a Channel 3 service or Channel 5,

and it satisfies the conditions in [subsection \(2\)](#).

(2) The conditions in this subsection are—

- (a) that the television programme service may be received free of charge;



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- (b) that, in the case of a service described in [subsection \(1A\)\(d\)](#), 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) A relevant service falls within this subsection if—
- (a) it is or forms part of a designated internet programme service,
  - (b) where it is a service that forms part of a designated internet programme service, it satisfies the conditions in [subsection \(2B\)](#), and
  - (c) it and the programmes included in it may be accessed free of charge.
- (2B) The conditions are—
- (a) that the relevant service is provided by—
    - (i) the BBC or a person associated with the BBC otherwise than with a view to generating a profit,
    - (ii) the provider of a Channel 3 service, Channel 4 or Channel 5,
    - (iii) S4C, or
    - (iv) a person associated with a broadcaster mentioned in [sub-paragraph \(ii\)](#) or [\(iii\)](#);
  - (b) that, where it is provided by the BBC or a person associated with the BBC, the service contributes to the promotion of one or more of the BBC’s public purposes;
  - (c) that, where it is provided by a broadcaster referred to in [paragraph \(a\)\(ii\)](#) or [\(iii\)](#) or a person associated with such a broadcaster, the broadcaster’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.
- (2C) Where a relevant service would satisfy the conditions 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 relevant services for the purposes of this Part.
- (2D) [Section 362AZ12\(6\)](#) of the Communications Act 2003 (meaning of references to a person associated with a public service broadcaster) applies for the purposes of [subsection \(2B\)](#) as it applies for the purposes of Part 3A of that Act.”
- (3) In subsection (3) (disregard of TV licence fee), after “subsection (2)(a)” insert “, [\(2A\)](#) or [\(2C\)](#)”.

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(4) At the end insert—

“(7) In this Part, “relevant service” means—

- (a) a television programme service;
- (b) an on-demand programme service;
- (c) a non-UK on-demand programme service;
- (d) a service, or a dissociable section of a service, which has the following characteristics—

- (i) its principal purpose is the provision of programmes;
- (ii) the programmes it provides are accessed by means of the internet;
- (iii) there is a person who has general control over what programmes are included in the service or the dissociable section of the service (see [subsection \(8\)](#));
- (iv) it is made available by that person for use by members of the public;
- (v) the members of the public who use the service, or the dissociable section of the service, are or include members of the public in the United Kingdom;
- (vi) it is not a television programme service, on-demand programme service or non-UK on-demand programme service;
- (vii) it is not a service of the kind described in [section 362AA\(10\)\(c\)](#) of the Communications Act 2003 (internet programme services which provide programmes by means of an on-demand programme service or non-UK on-demand programme service and at least one other service).

(8) The person by reference to whom the requirement in [subsection \(7\)\(d\)\(iii\)](#) is satisfied need not have control of the contents of individual programmes or of the distribution of the service.

(9) In this section, “programme” means such programme as is described in [section 368ZA](#) of the Communications Act 2003.”

#### Commencement Information

**I20** S. 20 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 21 Contracts relating to coverage of listed events

(1) Section 99 of the Broadcasting Act 1996 (contract for exclusive right to televise listed event to be void) is amended as set out in [subsections \(2\)](#) and [\(3\)](#).

(2) For subsection (1) substitute—

“(1) Any contract entered into on or after the day on which [section 21](#) of the Media Act 2024 comes into force which grants rights to include in a relevant service live coverage of the whole or any part of a Group A event for reception in, or in order to be accessed by members of the public in, the United Kingdom or any area of the United Kingdom is void so far as it purports—

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- (a) in relation to the whole or any part of the event, or
  - (b) in relation to reception, or access by means of the internet, in the United Kingdom or any part of the United Kingdom,
- to grant those rights exclusively.”

(3) For subsection (3) substitute—

“(3) For the purposes of this section, rights for a relevant service (“the first service”) to include live coverage of all or part of a Group A event in that service for reception in, or in order to be accessed by members of the public in, the United Kingdom or any area of the United Kingdom are granted exclusively if the person granting them—

- (a) has not granted such rights to include live coverage of the whole or, as the case may be, that part of the event in one or more other relevant services as are sufficient to authorise, in accordance with [section 101\(2\)](#) or [\(3\)](#) or, as the case may be, [section 101\(4\)](#), the inclusion in the first service of the live coverage in question, and
- (b) is precluded by the terms of the contract from doing so.”

(4) Section 100 of the Broadcasting Act 1996 (contract for televising listed event must specify category of service) is amended as set out in subsections [\(5\)](#) and [\(6\)](#).

(5) For subsection (1) substitute—

“(1) Any contract entered into on or after the day on which [section 21](#) of the Media Act 2024 comes into force is void so far as it purports to grant rights to include live coverage of the whole or any part of a listed event in a relevant service for reception in, or in order to be accessed by members of the public in, the United Kingdom, or any area of the United Kingdom, unless the contract complies with subsection (2).”

(6) In subsection (2)—

- (a) for “the television programme provider” substitute “the provider of the relevant service”;
- (b) in paragraph (a), for “television programme service” substitute “relevant service”;
- (c) in paragraph (b), for “television programme service” substitute “relevant service”.

#### Commencement Information

**I21** S. 21 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 22 Restriction on showing live coverage of listed events

For section 101 of the Broadcasting Act 1996 (restriction on televising of listed event) substitute—

### “101 Restriction on showing live coverage

(1) A provider of a relevant service who—

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- (a) is providing a relevant service (“the first service”) falling within either category, and
  - (b) is providing it with a view to its being available to members of the public in the United Kingdom or in any area of the United Kingdom,
- must not include live coverage of a listed event in that service unless it is authorised by subsection (2), (3), (4), (5) or (6).
- (2) Live coverage of a listed event is authorised by this subsection if—
- (a) identical rights to include live coverage of the event in a relevant service other than the first service (“the second service”) have been acquired, and
  - (b) the second service—
    - (i) is provided by a person other than the provider of the first service,
    - (ii) falls into a different category from the first service,
    - (iii) is not a relevant service other than the first service only because section 98(2C) applies to it, and
    - (iv) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.
- (3) Live coverage of a listed event is authorised by this subsection if—
- (a) rights to include live coverage of the event in two or more relevant services other than the first service (“the second and further services”) have been acquired,
  - (b) those rights, taken together, constitute identical rights to include live coverage of the event in the second and further services,
  - (c) each of the second and further services—
    - (i) is provided by a person other than the provider of the first service,
    - (ii) falls into a different category from the first service,
    - (iii) is not a relevant service other than the first service only because section 98(2C) applies to it, and
    - (iv) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.
- (4) Live coverage of a listed event is authorised by this subsection if—
- (a) the event is a sporting event that involves different sports,
  - (b) rights to include live coverage of the event in two or more relevant services other than the first service (“the second and further services”) have been acquired,
  - (c) that additional coverage, taken as a whole, is adequate live coverage of the event,
  - (d) at least two of the second and further services are television programme services, and
  - (e) each of the second and further services—
    - (i) is provided by a person other than the provider of the first service,
    - (ii) falls into a different category from the first service,
    - (iii) is not a relevant service other than the first service only because section 98(2C) applies to it, and

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- (iv) is provided for an area that consists of or includes all or almost all of the area for which the first service is provided.
- (5) Live coverage of a listed event is authorised by this subsection if OFCOM have consented in advance to inclusion of that coverage in the first service.
- (6) Live coverage of a listed event is authorised by this subsection if—
- (a) the listed event is a Group B event,
  - (b) rights to provide coverage of the event have been acquired by one or more persons in addition to the provider of the first service,
  - (c) that additional coverage constitutes adequate alternative coverage of the event, and
  - (d) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made under section 104ZA for the purposes of this paragraph.
- (7) Subsections (1) to (6) apply in relation to the coverage of a part of a listed event as they apply in relation to the coverage of the whole of that event.
- (8) OFCOM may revoke any consent given by them for the purposes of subsection (5).
- (9) Failure to comply with subsection (1) does not affect the validity of any contract.
- (10) Subsection (1) does not have effect where the person providing the first service is exercising rights acquired before the commencement of section 22 of the Media Act 2024.
- (11) References in this section to a category of service are to a category of service set out in section 98(1).”

#### Commencement Information

I22 S. 22 not in force at Royal Assent, see s. 55(3)(a)

### 23 Regulations about coverage of listed events

- (1) Section 104ZA of the Broadcasting Act 1996 (regulations about coverage of listed events) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a)—
    - (i) for “televising” substitute “coverage”;
    - (ii) after “live” insert “coverage”;
  - (b) after paragraph (a) insert—
    - “(aa) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate live coverage for the purposes of section 101(4)(c);”;
  - (c) in paragraph (b), after “coverage” insert “for the purposes of section 101(6)(c)”;

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(d) in paragraph (c), for “section 101(1C)(d)” substitute “[section 101\(6\)\(d\)](#)”.

(3) In subsection (2), for ““live”” substitute ““live coverage””.

(4) After subsection (2) insert—

“(2A) Regulations made by virtue of subsection (1)(aa) may, in particular—

- (a) describe what represents the provision of adequate live coverage by reference to—
  - (i) the duration of the live coverage (whether expressed as a percentage of the duration of the proceedings or otherwise),
  - (ii) the numbers of relevant services of particular descriptions in which the live coverage is included (subject to [section 101\(4\)\(d\)](#)), or
  - (iii) a combination of those matters;
- (b) provide for live coverage not to be taken into account if the provider of the service is unable to select what parts of the proceedings are covered.

(2B) When making regulations by virtue of subsection (1)(aa), OFCOM must have regard to—

- (a) the forms of live coverage that OFCOM consider are likely to satisfy the interest of members of the public in the United Kingdom or an area of the United Kingdom in listed events of the sort to which section 101(4)(c) relates;
- (b) the desirability of facilitating the making of arrangements under which rights to include live coverage of sporting events that involve different sports are acquired by providers of relevant services in both of the categories of relevant service set out in section 98(1).”

#### Commencement Information

**I23** S. 23 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 24 Provision of information

(1) Section 104A of the Broadcasting Act 1996 (provision of information) is amended as set out in subsections (2) to (4).

(2) Renumber subsection (2) as subsection (12).

(3) Before subsection (12) (as renumbered by [subsection \(2\)](#)) insert—

“(2) OFCOM may by notice (an “information 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 relating to listed events.

(3) The power conferred by [subsection \(2\)](#) includes power to require a person within [subsection \(5\)](#) to obtain or generate information.

(4) The power conferred by [subsection \(2\)](#) must be exercised in a way that is proportionate to the use to which the information is to be put by OFCOM.



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- (5) The persons within this subsection are—
- (a) a provider of a relevant service;
  - (b) a person who was a provider of a relevant 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 OFCOM to have, or to be able to obtain or generate, information required by them as mentioned in [subsection \(2\)](#).
- (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 \(2\)](#) to require the provision of information includes power to require the provision of information held outside the United Kingdom.
- (9) The power conferred by [subsection \(2\)](#) 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).”
- (4) After subsection (12) (as renumbered by [subsection \(2\)](#)) insert—
- “(13) In this section, “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).”
- (5) After that section insert—

#### **“104B Penalties for failure to provide information**

- (1) This section applies if—
- (a) OFCOM have given an information notice under section 104A(2) to a person within section 104A(5), and
  - (b) OFCOM have determined, after giving the person an opportunity to make representations, that there are reasonable grounds for believing



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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.
- (9) Where OFCOM receive an amount payable to them by virtue of [subsection \(8\)](#), that amount is to be paid into the Consolidated Fund.
- (10) An amount payable by a person to OFCOM by virtue of [subsection \(8\)](#) is recoverable by OFCOM as a debt due to OFCOM from that person.”

#### Commencement Information

**I24** S. 24 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## 25 Sections 20 to 24: further provision

- (1) An amendment made by sections 20 to 23 or paragraphs 12 to 19 of [Schedule 2](#) does not affect the validity of a contract entered into before sections 20 to 23 come into force or the exercise of rights acquired under such a contract.
- (2) On the date on which [section 21](#) comes into force, the Secretary of State must revise the list maintained for the purposes of Part 4 of the Broadcasting Act 1996 in order to allocate each event which is a listed event on that date either to Group A or Group B.

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- (3) Where—
- (a) the events listed in the list in force immediately before the Secretary of State revises it under [subsection \(2\)](#) are treated, for any of the purposes of the code in force under section 104 of the Broadcasting Act 1996 at that time, as divided into two categories, and
  - (b) the Secretary of State’s revision under [subsection \(2\)](#) makes the same division, section 97(2) of the Broadcasting Act 1996 is not to apply in relation to that revision of the list.
- (4) OFCOM must draw up a code under section 104 of the Broadcasting Act 1996 as soon as practicable after [paragraph 18](#) of [Schedule 2](#) to this Act (amendments of section 104) comes into force.
- (5) The code drawn up by OFCOM in accordance with [subsection \(4\)](#) is not to have effect in relation to any time before [section 22](#) of this Act comes into force.
- (6) Regulations under [section 55\(5\)](#) (transitional, transitory or saving provision in connection with commencement) may provide for the old section 104 code to continue to have effect in relation to cases specified in the regulations after the coming into force of the code drawn up by OFCOM in accordance with [subsection \(4\)](#).
- (7) In this section—
- “OFCOM” means the Office of Communications;
  - “the old section 104 code” means the code drawn up under section 104 of the Broadcasting Act 1996 which is continued in effect by [paragraph 51\(2\)](#) of [Schedule 18](#) to the Communications Act 2003.

**Commencement Information**

**I25** S. 25 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

*Public teletext service*

**26 Public teletext service**

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

**Commencement Information**

**I26** S. 26 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

*Further amendments*

**27 Further amendments relating to public service television**

[Schedule 2](#) contains further amendments relating to this Part.

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### Commencement Information

**I27** S. 27 not in force at Royal Assent, see [s. 55\(3\)\(a\)](#)

## PART 2

### PROMINENCE ON TELEVISION SELECTION SERVICES

#### 28 Prominence on television selection services

(1) In the Communications Act 2003, 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 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—
    - (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

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- 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);

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(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—

(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.

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- (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) 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



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- (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) 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

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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;
  - (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;

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- (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).
- (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.

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### *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.

#### **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.

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- (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 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.

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### *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.
- (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.

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- (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.

### **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.



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- (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.

### *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;

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- (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](#));
  - (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—

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- (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—
- (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—

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- (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.
- (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,

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- (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.
- (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.

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- (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,

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- (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 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 \(a\)](#).

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- (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 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.

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### **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,
  - (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,

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- (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.

### **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—



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- (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.
- (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—



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- (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—
- (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)

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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,
  - (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).

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- (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\(6\)](#).

### **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.

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- (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.
- (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.

### **362AZ11 Application 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.

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- (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.

### **362AZ12 Interpretation 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](#);

“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](#).

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- (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.
- (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—

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- (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.”
- (2) [Schedule 3](#) contains further amendments relating to prominence on television selection services.

#### Commencement Information

**I28** S. 28 in force at Royal Assent for specified purposes, see [s. 55\(1\)\(a\)](#)

PROSPECTIVE

## PART 3

### PUBLIC SERVICE BROADCASTERS

#### CHAPTER 1

##### C4C

#### 29 Sustainability duty of C4C

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

##### “23A Sustainability duty of Corporation

- (1) 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) to maintain or increase the amount of activity that is done in pursuance of their primary functions, and
  - (b) to be securely in a position to meet costs incurred in the carrying out of their primary functions.
- (2) In this section, “primary functions” has the same meaning as in section 199(1) of the Communications Act 2003.”
- (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).”



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### Commencement Information

**I29** S. 29 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

## 30 C4C’s duties in relation to commissioning programmes

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 198A insert—

### “198AA C4C’s duties in relation to commissioning programmes

- (1) C4C must take steps to enable competition for commissions from C4C to make programmes, other than advertisements, for inclusion in services provided by C4C that fall within [subsection \(2\)](#).
  - (2) A service falls within this subsection if it is—
    - (a) a television broadcasting service,
    - (b) a television licensable content service,
    - (c) a digital television programme service,
    - (d) an on-demand programme service that is or forms part of a designated internet programme service, or
    - (e) a non-UK on-demand programme service that is or forms part of a designated internet programme service.
  - (3) C4C must put in place and adhere to procedures that facilitate fair competition for such commissions, including procedures for referring disputes with C4C to mediation.
  - (4) In this section, “designated internet programme service” has the same meaning as in Part 3A (see [section 362AZ12](#)).”
- (3) In section 198B (statement of media content policy)—
- (a) in the heading—
    - (i) for “Statement” substitute “Statements”;
    - (ii) at the end insert “and commissioning policy”;
  - (b) after subsection (1) insert—

“(1A) C4C must prepare a statement of commissioning policy at the same time as they prepare a statement of media content policy.”;
  - (c) in subsection (2), after “policy” insert “or commissioning policy”;
  - (d) after subsection (3) insert—

“(3A) A statement of commissioning policy must—

    - (a) set out C4C’s proposals for securing that, during the following year, they will discharge their duties under [section 198AA](#), and
    - (b) include a report on their performance in carrying out the proposals contained in the previous statement.”;
  - (e) in subsection (4), for “the statement” substitute “a statement of media content policy or commissioning policy”;

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- (f) in subsection (5), after “policy” insert “or commissioning policy”.
- (4) In section 198C (OFCOM reports on C4C’s media content duties)—
- (a) in the heading, at the end insert “and commissioning duties”;
  - (b) in subsection (1), in paragraph (a), for “section 198A” substitute “sections 198A and 198AA”.
- (5) In section 198D (directions in relation to C4C’s media content duties)—
- (a) in the heading, at the end insert “and commissioning duties”;
  - (b) in subsection (1), in paragraph (a)—
    - (i) after “198A” insert “, 198AA”;
    - (ii) for “198B(1), (3)” substitute “198B(1), (1A), (3), (3A)”;
  - (c) in subsection (2)(a), after “policy” insert “or (as the case may be) commissioning policy”;
  - (d) in subsection (3)(a), after “policy” insert “or (as the case may be) commissioning policy”.
- (6) In section 271A (remedying failure by C4C to perform media content duties)—
- (a) in subsection (1)(a), after “198A” insert “or 198AA”;
  - (b) in subsection (2), after “198A” insert “or 198AA”.

#### Commencement Information

**I30** S. 30 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

### 31 Involvement of C4C in programme-making

- (1) In the Communications Act 2003, omit section 295 (which restricts C4C’s involvement in programme-making).
- (2) Subsections (3) and (4) apply if, after the coming into force of [subsection \(1\)](#), C4C or a body corporate controlled by C4C engage in the making of one or more programmes with a view to their being broadcast on Channel 4.
- (3) In carrying out a review under section 264 of the Communications Act 2003 in relation to the relevant report period, OFCOM must consider whether and to what extent the making of programmes by C4C or a body corporate controlled by C4C with a view to their being broadcast on Channel 4 has affected the fulfilment of the public service remit for television in the United Kingdom.
- (4) The report on that review must set out the findings of OFCOM on their consideration of the matter mentioned in [subsection \(3\)](#) and any conclusions that they have arrived at in relation to those findings.
- (5) For the purposes of this section—
  - (a) the relevant report period is the first report period to end on or after the relevant day, and
  - (b) the relevant day is the third anniversary of the first day on which, following the coming into force of [subsection \(1\)](#), C4C or a body corporate controlled by C4C engages in the making of a programme with a view to its being broadcast on Channel 4.

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(6) In this section—

- “broadcast” has the same meaning as in the Communications Act 2003;
- “C4C” means the Channel Four Television Corporation;
- “Channel 4” has the same meaning as in Part 1 of the Broadcasting Act 1990;
- “controlled” has the same meaning as in Part 1 of the Broadcasting Act 1990;
- “OFCOM” means the Office of Communications;
- “programme” means a television programme (within the meaning of the Communications Act 2003) other than an advertisement;
- “the public service remit for television in the United Kingdom” has the meaning given by section 264 of the Communications Act 2003;
- “report period” means a period selected by OFCOM for the purposes of section 264(1)(b) of the Communications Act 2003.

#### Commencement Information

**I31** S. 31 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

## CHAPTER 2

### S4C

#### 32 S4C’s powers and public service remit

- (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 principal powers and public service remit

- (1) S4C may make available any audiovisual content.
- (2) S4C’s public service remit is to make available a broad range of high quality and diverse audiovisual content—
  - (a) a substantial proportion of which is in Welsh,
  - (b) which is all capable of being taken into account for the purpose of determining the extent to which the public service remit for television in the United Kingdom is fulfilled (see section 264(7) to (8C)), and
  - (c) which, considered as a whole, constitutes an adequate contribution to the fulfilment of that remit.
- (3) S4C must exercise the power in [subsection \(1\)](#) to fulfil its public service remit.
- (4) S4C may do anything it considers appropriate in association with anything it does in exercise of the power in [subsection \(1\)](#).
- (5) In this section “audiovisual content” has the same meaning as in section 264.

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- (6) 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.
- (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;

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(d) for a charge.”

#### Commencement Information

**I32** S. 32 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

### 33 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

Section 56A

#### 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;

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- (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 BBC.
  - (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.

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- (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



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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.

#### Commencement Information

I33 S. 33 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

### 34 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.

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- (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).

#### Commencement Information

**I34** S. 34 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

### 35 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

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(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”.

#### Commencement Information

**I35** S. 35 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

### 36 Chapter 2 of Part 3: minor and consequential amendments

[Schedule 4](#) contains minor and consequential amendments relating to this Chapter.

#### Commencement Information

**I36** S. 36 not in force at Royal Assent, see [s. 55\(3\)\(c\)](#)

PROSPECTIVE

## PART 4

### ON-DEMAND PROGRAMME SERVICES

#### 37 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

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(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 5](#) (regulation of Tier 1 services).

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- (7) [Schedule 6](#) contains further amendments of Part 4A in connection with Tier 1 services (within the meaning of that Part).
- (8) [Schedule 7](#) contains amendments of other legislation in connection with Tier 1 services (within the meaning of Part 4A of the Communications Act 2003).

#### Commencement Information

**I37** S. 37 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

### 38 Audience protection reviews

- (1) 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;

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- (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.”
- (2) In section 393 of that Act (general restrictions on disclosure of information), in subsection (6), after paragraph (aa) insert—
- “(ab) limits the information that may be published by OFCOM under [section 368OB](#);”.

#### Commencement Information

**I38** S. 38 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

### 39 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.

#### Commencement Information

**I39** S. 39 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

### 40 Other amendments of Part 4A of the 2003 Act

- (1) [Schedule 8](#) contains other minor amendments of Part 4A of the Communications Act 2003.
- (2) In consequence of amendments made by [Schedule 8](#), omit section 93 of the Digital Economy Act 2017.

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### Commencement Information

**I40** S. 40 not in force at Royal Assent, see [s. 55\(3\)\(d\)](#)

PROSPECTIVE

## PART 5

### REGULATION OF RADIO SERVICES

#### 41 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 with 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);



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- (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 103A (renewal of national licences), in subsection (9)—
  - (a) after paragraph (b) insert “and”;
  - (b) omit paragraph (d) and the “and” before it.
- (9) In section 111 (power to revoke licences)—
  - (a) omit subsection (4) (procedure where national service ceases to be provided);
  - (b) in subsection (6), omit “, (4)”.
- (10) 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.”

#### Commencement Information

**141** S. 41 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

## 42 Licensing and 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), and
      - (c) the alternative condition in [subsection \(4ZB\)](#) below is met instead.

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(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 it is reasonably 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 paragraph (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 is reasonably 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).

#### Commencement Information

142 S. 42 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

### 43 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”;

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- (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).

#### Commencement Information

**I43** S. 43 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

## 44 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 in accordance with subsections (3) to (8).
- (3) For the heading substitute “Local news and information in local sound broadcasting services”.
- (4) For subsection (1) substitute—
- “(1) A local sound broadcasting licence must contain such conditions as OFCOM consider appropriate for—
- (a) requiring the licensed local sound broadcasting service to include, and regularly broadcast, programmes that consist of or include local news and information, and
  - (b) requiring that local news to consist of or include locally-gathered news.”
- (5) For subsection (1A) substitute—
- “(1A) But subsection (1) does not apply in the case of a local sound broadcasting service if OFCOM consider it is appropriate for it not to apply in that case.”
- (6) In subsection (2)—
- (a) in paragraph (a), for “the requirements of subsection (1)(a) and (b) should be satisfied” substitute “the providers of local sound broadcasting services may act consistently with conditions contained in licences in accordance with subsection (1)”;
  - (b) in paragraph (b), for “in relation to local sound broadcasting services” substitute “under subsection (1)”.
- (7) 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—

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““locally-gathered”, in relation to news broadcast on a local sound broadcasting service, means—

- (a) news gathered in the coverage area of a local radio multiplex service that to a significant extent includes the coverage area of the local sound broadcasting service by persons who gather news in the course of an employment or business, or
- (b) if there is no local radio multiplex service with such a coverage area, news 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;

and for this purpose the coverage area for a local radio multiplex service or local sound broadcasting service is the area determined by OFCOM to be the area in the United Kingdom within which the service is capable of being received at a level satisfying such technical standards as may have been laid down by them for the purposes of this section;”;

- (d) omit the definition of “material”.

(8) Omit subsections (9) to (11).

(9) 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) The Secretary of State must consult OFCOM before making regulations under this section.
- (4) The power in section 402(3)(c) for regulations under this section to make consequential provision includes power to make provision which amends any enactment.
- (5) 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;

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(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.”

(10) In section 402 (orders and regulations made by the Secretary of State), in subsection (2A), before paragraph (za) (and after paragraph (zza) inserted by section 46) insert—

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

#### Commencement Information

I44 S. 44 not in force at Royal Assent, see s. 55(3)(e)

## 45 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.”

*Status: This version of this Act contains provisions that are prospective.*

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#### Commencement Information

**I45** S. 45 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

### 46 Licensing of non-UK digital sound programme services

- (1) Section 245 of the Communications Act 2003 (regulation of independent radio services) is amended in accordance with subsections (2) and (3).
- (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.”
- (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.”
- (4) In section 402 of the Communications Act 2003 (power of Secretary of State to make orders and regulations), in subsection (2A) (affirmative resolution procedure), before paragraph (za) insert—
  - “(zza) regulations under section 245(3C) (specification of country or territory as a “qualifying country”);”.

#### Commencement Information

**I46** S. 46 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

### 47 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);

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- (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), for “timetables” substitute “timetable”;
    - (ii) also in paragraph (b), omit “and (d)”;
    - (iii) at the end of paragraph (c) insert “and”;
    - (iv) 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)—
    - (i) for “timetables” substitute “timetable”;
    - (ii) 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).



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- (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.

#### Commencement Information

**I47** S. 47 not in force at Royal Assent, see [s. 55\(3\)\(e\)](#)

PROSPECTIVE

## PART 6

### REGULATION OF RADIO SELECTION SERVICES

#### 48 Regulation of radio selection services

- (1) After [section 362AZ12](#) of the Communications Act 2003 (inserted by [section 28](#)) insert—

#### “PART 3B

### REGULATION OF RADIO SELECTION SERVICES

#### *Designated 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—
- (a) to make a selection between internet radio services provided by different providers, 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 amend this section so as to alter the definition of “radio selection service”.
- (3) The amendments that may be made by virtue of [subsection \(2\)](#) include—

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- (a) amendments adding, removing or altering a thing that a radio selection service is to enable a user to do, and
  - (b) amendments adding, removing or altering a way in which a radio selection service may be caused to operate.
- (4) The power in section 402(3)(c) for regulations under [subsection \(2\)](#) to make consequential provision includes power to make provision which amends any enactment.
- (5) Before making regulations under [subsection \(2\)](#), the Secretary of State must consult OFCOM.
- (6) 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 “designated radio selection service”**

- (1) For the purposes of this Part, a “designated radio selection service” is a radio selection service designated by the Secretary of State by regulations.
- (2) The Secretary of State may designate a radio selection service under [subsection \(1\)](#) only if the Secretary of State considers that the level of use of the service in the United Kingdom to listen to internet radio services is significant (and the Secretary of State may consider the level of use to be significant if the Secretary of State considers it to be significant in certain circumstances, such as while in a vehicle).
- (3) Before making regulations under [subsection \(1\)](#), the Secretary of State must have received a report under [section 362BC](#) relating to the radio selection service in question.
- (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 radio selection services;
  - (b) persons who appear to the Secretary of State to represent providers of internet radio services;
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) The Secretary of State may by regulations amend this section so as to add or remove a condition that must be satisfied before a radio selection service may be designated under [subsection \(1\)](#) or to alter such a condition.
- (6) [Subsection \(4\)](#) applies in relation to the making of regulations under [subsection \(5\)](#) as it applies in relation to the making of regulations under [subsection \(1\)](#).
- (7) The power in section 402(3)(c) for regulations under [subsection \(5\)](#) to make consequential provision includes power to make provision which amends any enactment.
- (8) A statutory instrument containing regulations under [subsection \(5\)](#) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

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### 362BC Advice from OFCOM

- (1) OFCOM may prepare reports making recommendations about the exercise of the power under [section 362BB\(1\)](#).
- (2) Where—
  - (a) the Secretary of State proposes to make regulations under [section 362BB\(1\)](#), 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 exercising the power under [section 362BB\(1\)](#) in relation to that service or those services.
- (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\(1\)](#) must include OFCOM’s assessment, in relation to each radio selection service in question, of—
  - (a) the number of members of the public using the service;
  - (b) the manner in which the service is used by those persons;
  - (c) whether the level of use of the service is significant;
  - (d) such matters as OFCOM consider likely to affect the matters referred to in [paragraph \(a\), \(b\) or \(c\)](#).
- (5) Where OFCOM prepares a report under [subsection \(1\)](#) or [\(3\)](#), OFCOM must—
  - (a) give it to the Secretary of State, and
  - (b) publish it.
- (6) If the Secretary of State exercises the power under [section 362BB\(1\)](#) in a manner which differs 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 of the reasons for doing so.
- (7) 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 reports under [subsection \(1\)](#) or [\(3\)](#).
- (8) OFCOM must publish the statement and any revised statement.

### 362BD Revocation of designation of radio selection service

- (1) The Secretary of State may by regulations revoke the designation of a designated radio selection service.
- (2) The provider of a designated radio selection service may request the Secretary of State to revoke its designation.
- (3) The Secretary of State must revoke the designation of a designated radio selection service by regulations under [subsection \(1\)](#) if the Secretary of State

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considers that the level of use of the service in the United Kingdom to listen to internet radio services is not significant.

- (4) Before revoking the designation of a designated radio selection service, the Secretary of State must have received a report from OFCOM making recommendations about the exercise of the power under [subsection \(1\)](#) in relation to that service.
- (5) Where the Secretary of State requests OFCOM to prepare a report making recommendations about the exercise of the power under [subsection \(1\)](#) in relation to a designated radio selection service, OFCOM must—
  - (a) prepare such a report in relation to that service as soon as practicable,
  - (b) give it to the Secretary of State, and
  - (c) publish it.

### **362BE List of designated radio selection services etc**

- (1) OFCOM must establish and maintain an up to date list of designated radio selection services and their providers.
- (2) A provider of a designated radio selection service must give notice to OFCOM if the service ceases to be provided.
- (3) 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.
- (4) OFCOM must publish the 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, or a dissociable section of a service, 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).
- (2) In this section, “ancillary service”, in relation to an internet radio service, means a service which is provided by the provider of that internet radio service and consists in the provision of a service (other than advertising) which—
  - (a) is ancillary to the programmes included in that internet radio service and is directly related to their contents, or
  - (b) relates to the promotion or listing of such programmes.

### **362BG Meaning of “relevant internet radio service”**

- (1) In this Part, “relevant internet radio service” means an internet radio service for the time being included in the list maintained by OFCOM under [subsection \(2\)](#).

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- (2) OFCOM must establish and maintain an up to date list of the internet radio services in relation to which the conditions in subsections (3) and (5) are satisfied and their providers.
- (3) The condition in this subsection is that, in the opinion of OFCOM, the provider of the service has in place an effective system or process for securing that the service corresponds to a UK radio service that is provided by the provider of the internet radio service.
- (4) For the purposes of subsection (3), an internet radio service corresponds to a UK radio service if, disregarding advertisements, all of the programmes included in the internet radio service are broadcast on the UK radio service at the same time as they are provided by the internet radio service.
- (5) The condition in this subsection is that the provider of an internet radio service—
  - (a) has given notice to OFCOM requesting that the service be included in the list, and
  - (b) has not since then given notice to OFCOM under subsection (6) or (7).
- (6) The provider of an internet radio service included in the list may give notice to OFCOM requesting that the service be removed from the list.
- (7) The provider of an internet radio service included in the list must give notice to OFCOM if—
  - (a) that person ceases to be the provider of the service,
  - (b) that person ceases to be the provider of the UK radio service to which it relates, or
  - (c) the service ceases to be provided.
- (8) 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.
- (9) OFCOM must take appropriate steps to keep the list up to date, including by carrying out further assessments of whether a provider of an internet radio service has in place such system or process as is described in subsection (3).
- (10) OFCOM must publish the list on a publicly accessible part of their website.
- (11) In this section—
  - “digital sound programme service” has the same meaning as in Part 2 of the 1996 Act (see section 40 of that Act);
  - “restricted service” has the same meaning as in section 245;
  - “short-duration restricted service” means a restricted service authorised to be provided by a licence under Part 3 of the 1990 Act where the period specified in the licence as the period for which the licence is in force is less than 12 months;
  - “sound broadcasting service” has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);
  - “UK radio service” means—

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

### **362BH Sections 362BF and 362BG: power to amend**

- (1) The Secretary of State may by regulations—
  - (a) amend section 362BF so as to alter the definition of “internet radio service”;
  - (b) amend section 362BG so as to alter the definition of “relevant internet radio service”.
- (2) The amendments that may be made by virtue of subsection (1)(a) include amendments adding or removing a condition that must be satisfied in relation to a service or altering such a condition.
- (3) The amendments that may be made by virtue of subsection (1)(b) include amendments adding or removing a condition that must be satisfied in relation to an internet radio service or altering such a condition.
- (4) The conditions for which provision may be made by virtue of subsection (3) include conditions preventing or restricting charging for allowing the internet radio service in question to be played.
- (5) The power in section 402(3)(c) for regulations under subsection (1) to make consequential provision includes power to make provision which amends any enactment.
- (6) Before making regulations under subsection (1), the Secretary of State must consult—
  - (a) OFCOM,
  - (b) persons who appear to the Secretary of State to represent providers of radio selection services,
  - (c) persons who appear to the Secretary of State to represent providers of internet radio services, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (7) 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 each House of Parliament.

### *Regulation of radio selection services*

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

- (1) The provider of a designated radio selection service must take all reasonable steps to secure that users of the service—
  - (a) are able, within a reasonable period beginning with the inclusion of an internet radio service in the list under section 362BG—



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- (i) to select that internet radio service, and
  - (ii) to cause that service to play,
- by giving spoken commands as described in [section 362BA\(1\)](#), and
- (b) are able to continue to do so while that internet radio service is included in the list.
- (2) The provider of a designated radio selection service must take all reasonable steps to secure that, where the service is used as described in [subsection \(1\)](#)—
- (a) no items are played before the selected service is caused to play, other than—
    - (i) a brief identification of the selected service,
    - (ii) if the service employs another service (or other services) provided by means of the internet to cause the selected service to play, a brief identification of that other service (or one of those other services), and
    - (iii) if the provider of the selected service agrees, one or more advertisements, and
  - (b) the playing of the selected service is not interrupted.

This subsection is subject to [subsection \(5\)](#).

- (3) [Subsection \(4\)](#) applies if the provider of a relevant internet radio service requests the provider of a designated radio selection service to secure that the service employs a particular method as regards that relevant internet radio service when complying with [subsection \(1\)](#) (for example, a method that involves the service employing another service provided by means of the internet to cause that relevant internet radio service to play).
- (4) Where this subsection applies, the provider of the designated radio selection service must take all reasonable steps to secure that, on an occasion when the service is being used as described in [subsection \(1\)](#) in relation to that relevant internet radio service, the service employs that method, subject to [subsection \(5\)](#).
- (5) Subsections (2) and (4) are not to be taken to require the provider of a designated radio selection service to override the preferences of a user of the service as to the way in which the service operates.
- (6) A provider of a designated radio selection service—
  - (a) must not charge a provider of a relevant internet radio service for doing what that provider of a designated radio selection service is required to do by [subsection \(1\)](#), (2) or (4) in relation to that relevant internet radio service, and
  - (b) must not enter into an agreement that provides for the payment by a provider of a relevant internet radio service of charges, which would breach, or are capable of breaching, the prohibition in [paragraph \(a\)](#).

### **362BJ Further provision about access to relevant internet radio services**

- (1) The provider of a designated radio selection service must draw up a statement about how the provider intends to comply with the duties and prohibition in [section 362BI](#).



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- (2) The provider must keep the statement under review and, if appropriate, revise it.
- (3) The provider must publish the statement and any revised statement.

### **362BK 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 designated radio selection service operates complies with the duties and prohibition in [section 362BI](#).
- (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 designated radio selection services;
  - (b) actions relating to particular descriptions of relevant internet radio services.

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

- (1) The provider of a designated radio selection service is to be treated as complying with a duty or prohibition in [section 362BI](#) if the provider takes the actions described in the code of practice which are recommended for the purpose of complying with that duty or prohibition.
- (2) A failure by the provider of a designated 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.

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- (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 [362BR](#) to [362BW](#) (enforcement).

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

- (1) Before issuing a code of practice under [section 362BK](#), 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 internet radio services;
    - (iii) persons who appear to OFCOM to represent providers of 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.

### **362BN Complaints procedures**

The provider of a designated 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 duty or prohibition in [section 362BI](#).

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

### **362BO Power to modify regulation**

- (1) The Secretary of State may by regulations amend this Part so as to add to the duties and prohibitions imposed on providers of radio selection services or to alter or remove such a duty or prohibition.
- (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 and cause to play any relevant internet radio service of a particular

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- sort (for example, a service characterised by the nature of its contents or the identity of its provider);
- (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) The power in section 402(3)(c) for regulations under [subsection \(1\)](#) to make consequential provision includes power to make provision which amends any enactment.
- (4) Before making regulations under [subsection \(1\)](#), the Secretary of State must have received a report of a review under [section 362BP](#).
- (5) 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 internet radio services;
  - (b) persons who appear to the Secretary of State to represent providers of radio selection services;
  - (c) such other persons as the Secretary of State considers appropriate.
- (6) 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 each House of Parliament.

### **362BP Review by OFCOM**

- (1) OFCOM may prepare reports that review the adequacy of the regulation of radio selection services by this Part.
- (2) Where—
  - (a) the Secretary of State proposes to make regulations under [section 362BO\(1\)](#), 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 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.

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### *Power to require information*

#### **362BQ 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 radio selection service;
  - (b) a provider of an internet radio service;
  - (c) a person who provides a relevant ancillary service in relation to a radio selection service or an internet radio 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 a radio selection service);
  - (b) the purpose of preparing a report under [section 362BD](#) (advice from OFCOM about revoking the designation of a radio selection service);
  - (c) the purpose of assessing compliance with [section 362BE\(2\)](#) (duty of providers of radio selection services to notify OFCOM);
  - (d) the purpose of assessing whether a service is a relevant internet radio service (see sections [362BF](#) and [362BG](#));
  - (e) the purpose of assessing compliance with [section 362BG\(7\)](#) (duty of providers of certain services to notify OFCOM);
  - (f) the purpose of assessing compliance with a duty or prohibition under [section 362BI](#) or [362BJ](#) (access duties of providers of designated radio selection services etc);
  - (g) the purpose of preparing or reviewing a code of practice under [section 362BK](#) (code of practice relating to duties and prohibition under [section 362BI](#));
  - (h) the purpose of assessing compliance with the duty under [section 362BN](#) (duty to establish and maintain complaints procedures);
  - (i) the purpose of preparing a report under [section 362BP](#) (reports reviewing adequacy of the regulation of designated radio selection services by this Part);

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- (j) the purpose of assessing compliance with any requirements imposed by a confirmation decision under [section 362BS](#);
  - (k) the purpose of determining the appropriate fee that a provider is required to pay under [section 362BX](#);
  - (l) the purpose of OFCOM’s monitoring role under [section 362BZ1](#);
  - (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 \(4\)\(c\)](#), a service is a “relevant ancillary service” in relation to a radio selection service or an internet radio 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).

### *Enforcement*

#### **362BR 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

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for believing that the person has failed, or is failing, to comply with any duty or prohibition under section 362BE, 362BG, 362BI, 362BJ or 362BN.

- (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 362BQ(9).
- (3) A provisional notice of contravention must—
  - (a) specify the duty or prohibition 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 prohibition, 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 duties and prohibition (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,



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- (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 362BS](#) 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 designated radio selection service, or
- (b) a person who was but is no longer a provider of a relevant internet radio service,

if that person was a provider of a designated radio selection service or (as the case may be) a relevant internet radio service at the time of the failure to which the notice relates.

### **362BS 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 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 the notified duty or one or more of the notified duties.
- (4) For the purposes of this section and sections [362BT](#) and [362BU](#), 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



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of [section 362BR\(7\)](#)) 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 362BR\(5\)\(b\)](#).
- (10) OFCOM may give a confirmation decision to—
- (a) a person who was but is no longer a provider of a designated radio selection service, or
  - (b) a person who was but is no longer a provider of a relevant internet radio service,

if that person was a provider of a designated radio selection service or (as the case may be) a relevant internet radio service at the time of the failure to which the decision relates.

#### **362BT 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 362BS\(7\)](#).
- (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.

#### **362BU Confirmation decisions: penalties**

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

### **362BV 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 362BS\(7\)](#)), 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.

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- (7) [Schedule 16A](#) contains further provision about the imposition of a penalty by a penalty notice.

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

- (1) OFCOM must prepare and publish guidance about the exercise of their powers under sections [362BR](#) to [362BV](#) 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 362BS](#) or a penalty notice under [section 362BV](#), 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 [362BR](#) to [362BV](#) 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 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 designated 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;

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- (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 [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 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 designated radio selection service—
  - (a) the Secretary of State has revoked the designation of a designated 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 362BE\(2\)](#) in accordance with [section 362BE\(3\)](#) 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.

### **362BY Non-payment of fee**

- (1) This section applies if—

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- (a) the provider of a relevant internet radio service or a designated radio selection service is liable to pay a fee to OFCOM under [section 362BX](#), 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 362BX](#), 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 362BZ](#) 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 362BX](#).
- (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.

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### **362BZ Information to be included in a notice under [section 362BY](#)**

- (1) A notice under [section 362BY\(2\)](#) stating that OFCOM propose to impose a penalty must—
  - (a) state the reasons why OFCOM propose to impose the penalty,
  - (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 362BY\(6\)](#) 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 362BY\(6\)](#) 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 362BY\(6\)](#) 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;



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- (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 362BY\(6\)](#).

### **362BZ1 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 a radio selection service (see sections [362BB](#) and [362BD](#));
- (b) deciding whether to take enforcement action under this Part and Schedule 16B (so far as relating to this Part).

### **362BZ2 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 designated 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 a designated 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;



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(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.

(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.

### **362BZ3 Application of Part 3B**

- (1) A duty or prohibition imposed on a provider of a designated radio 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 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).
- (3) 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.
- (4) Section [362BT\(4\)](#) (requirements enforceable in civil proceedings against a person) applies whether or not the person is in the United Kingdom.

### **362BZ4 Interpretation of Part 3B**

(1) In this Part—

“ancillary service”, in relation to an internet radio service, has the meaning given by [section 362BF](#) (except in the expression “relevant ancillary service”);

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“designated radio selection service” has the meaning given by [section 362BB](#);

“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 362BQ](#);

“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](#);

“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 includes a reference to providing its ancillary services (if any).”

- (2) [Schedule 9](#) contains further amendments relating to regulation of radio selection services.

#### Commencement Information

**I48** S. 48 not in force at Royal Assent, see [s. 55\(3\)\(f\)](#)

## PART 7

### MISCELLANEOUS AND GENERAL

PROSPECTIVE

#### *Amount of penalties etc*

#### **49 Penalties under Parts 3A and 3B of the Communications Act 2003**

- (1) The Communications Act 2003 is amended as follows.
- (2) After section 392 insert—

*“Penalties under Parts 3A and 3B etc*

#### **392A Amount of penalties etc**

[Schedule 16A](#) contains provision about the amount of penalties that OFCOM may impose under Part 3A or 3B, and makes further provision about such penalties.”

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Media Act 2024 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) After Schedule 16 insert (as [Schedule 16A](#)) the Schedule set out in [Schedule 10](#) (penalties imposed by OFCOM under Parts 3A and 3B).

(4) After [section 392A](#) (inserted by [subsection \(2\)](#)) insert—

**“392B Liability of parent entities etc**

[Schedule 16B](#) contains provision for the purposes of Parts 3A and 3B 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.”

(5) After [Schedule 16A](#) (as inserted by [subsection \(3\)](#)) insert (as [Schedule 16B](#)) the Schedule set out in [Schedule 11](#) (Parts 3A and 3B: liability of parent entities etc).

**Commencement Information**

**I49** S. 49 not in force at Royal Assent, see [s. 55\(3\)\(g\)](#)

PROSPECTIVE

*Publishers of news-related material*

**50 Awards of costs**

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

**Commencement Information**

**I50** S. 50 in force at 24.7.2024, see [s. 55\(2\)](#)

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Media Act 2024 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

PROSPECTIVE

*Amendments related to the UK's withdrawal from the EU*

**51 Amendments of broadcasting legislation: UK's withdrawal from EU**

[Schedule 12](#) 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.

**Commencement Information**

**I51** S. 51 not in force at Royal Assent, see [s. 55\(3\)\(h\)](#)

*General*

**52 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 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 (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.
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

**I52** S. 52 in force at Royal Assent, see [s. 55\(1\)\(b\)](#)

**53 Financial provisions**

There is to be paid out of money provided by Parliament any increase attributable to the Act in the sums payable under any other Act out of money so provided.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Media Act 2024 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

#### Commencement Information

**I53** S. 53 in force at Royal Assent, see [s. 55\(1\)\(b\)](#)

### 54 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 repealed.
- (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.

#### Commencement Information

**I54** S. 54 in force at Royal Assent, see [s. 55\(1\)\(b\)](#)

### 55 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 [52](#) to [54](#), this section and [section 56](#).
- (2) [Section 50](#) 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 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 49](#) and [Schedules 10](#) and [11](#);
  - (h) [section 51](#) and [Schedule 12](#).
- (4) Different days may be appointed for different purposes.

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Media Act 2024 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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) The power to make regulations under [subsection \(5\)](#) includes power to make different provision for different purposes.
- (7) Regulations under this section are to be made by statutory instrument.

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**Commencement Information**

**I55** S. 55 in force at Royal Assent, see [s. 55\(1\)\(b\)](#)

**56 Short title**

This Act may be cited as the Media Act 2024.

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**Commencement Information**

**I56** S. 56 in force at Royal Assent, see [s. 55\(1\)\(b\)](#)

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

Media Act 2024 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- s. 50 coming into force by [2024 c. 15 s. 55\(2\)](#)