



# Channel 4 Schedule 9 Arrangements Statement

Statement

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## Section 1

# Executive Summary

- 1.1 Under Schedule 9 of the Communications Act (“The Act”) 2003 Channel 4 Corporation (“C4C”) has an obligation to submit to Ofcom a set of Arrangements which propose to secure, as far as reasonably possible, that all significant risks from C4C’s “other activities” to the carrying out of its “primary functions” (as defined in the Act) are identified, evaluated and properly managed.
- 1.2 The existing arrangements were approved by Ofcom in 2006 (the “2006 Arrangements”) and in each of its annual reviews of the 2006 Arrangements since 2006, Deloitte, the external auditor, has found C4C to have complied with them in all material respects.
- 1.3 The Digital Economy Act (“DEA”) in 2010 amended the definition of C4C’s “primary functions”. As a result the 2006 Arrangements needed to be updated in order to remain fit for purpose.
- 1.4 In accordance with our obligations under the 2003 Act, therefore, we gave C4C a notification on 23 March 2011 requiring them to submit proposals for new arrangements to secure that C4C’s amended functions are appropriately safeguarded. In addition we asked C4C to provide a statement to explain how its proposals will secure compliance with the statutory requirements.
- 1.5 The 2003 Act requires Ofcom to consider C4C’s proposals for revising the arrangements and, if we are satisfied with the proposals, to approve them. Alternatively Ofcom may require the proposals to be modified for the purpose of approving them or it may require C4C to submit revised proposals.
- 1.6 Having considered C4C’s proposals for new arrangements (“the Proposed Arrangements”) we issued a consultation in November 2011 explaining that we considered that the Proposed Arrangements were likely to be fit for purpose and that they adequately met the Schedule 9 requirements, but that we were seeking views from stakeholders before reaching a final decision.
- 1.7 In this statement we set out that we have decided to approve C4C’s Proposed Arrangements. Ofcom is required to publish the approved Arrangements and they can be found on Ofcom’s website at <http://stakeholders.ofcom.org.uk/consultations/c4-arrangements> and also on C4C’s website.
- 1.8 Under paragraph 6 of Schedule 9 C4C has a duty to act in accordance with the approved Arrangements. Consequently, with immediate effect, C4C is required to comply with the approved Arrangements. C4C’s compliance with the Arrangements will continue to be audited on an annual basis in line with the Schedule 9 requirements.

## Section 2

# Introduction

## Background

- 2.1 Channel 4 is a publicly owned and commercially funded broadcaster.
- 2.2 The key pieces of regulation relating to C4C are set out in the Broadcasting Act 1990 and the 2003 Act, as amended by the DEA 2010.
- 2.3 Under Schedule 9 of the 2003 Act, C4C is required to have in place arrangements to ensure that any risks from C4C's commercial activities (those activities that do not comprise its primary functions which are defined in section 199(2) of the 2003 Act, as amended) are properly managed so that they do not have an adverse effect on C4C's primary functions.
- 2.4 In particular Schedule 9 states that C4C must submit proposals to Ofcom for the arrangements it is required to have in place and Ofcom must consider the proposals with a view to deciding whether or not to approve them. Ofcom may require the proposals to be modified for the purpose of approving them or it may require C4C to submit revised proposals.
- 2.5 The current arrangements have been in place since 2006. C4C's primary functions were amended following the DEA 2010 and as a result C4C was required to submit to Ofcom proposals for new arrangements to secure that C4C's amended functions were appropriately safeguarded and that C4C continued to meet the requirements of Schedule 9.
- 2.6 In November 2011 C4C provided Ofcom with its proposals for revised arrangements along with an explanatory statement. These were published in November 2011 alongside our consultation<sup>1</sup>. In our consultation we explained that we considered that C4C's Proposed Arrangements were likely to be fit for purpose and that they adequately met the Schedule 9 requirements, but that we were seeking views from stakeholders before reaching a final decision.

## Structure of Document

- 2.7 Section 3 provides the statutory context to Schedule 9 and explains the changes made by the DEA 2010 and how these impact on the 2006 Arrangements.
- 2.8 Section 4 provides an overview of C4C's Proposed Arrangements and sets out our decision to approve them.

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<sup>1</sup> See link: <http://stakeholders.ofcom.org.uk/consultations/c4-arrangements>

## Section 3

# Channel 4's statutory requirements

## Introduction

3.1 In this section we:

- outline the statutory context to Schedule 9 of the 2003 Act in relation to C4C's primary functions and the historical background to the 2006 Arrangements;
- explain the changes made by the DEA 2010 in relation to C4C's primary functions under the 2003 Act; and
- set out the requirements of Schedule 9 and explain how C4C has complied with these requirements since 2006 and the need for C4C to have new arrangements as a result of the DEA 2010.

## C4C Activities

3.2 Section 199(1) of the 2003 Act states:

*The activities that C4C are able to carry on include any activities which appear to them:*

- (a) to be activities that it is appropriate for them to carry on in association with the carrying out of their primary functions; and*
- (b) to be connected, otherwise than merely in financial terms, with activities undertaken by them for the carrying out of those functions.*

3.3 Prior to the changes brought about by the DEA 2010, C4C's primary functions under section 199(2) required it (a) to secure the continued provision of Channel 4; and (b) to fulfil the public service remit under section 265.

3.4 C4C's "primary functions" were defined, therefore, solely by reference to its provision of the Channel 4 service ("Channel 4"), but section 199(1) has enabled C4C to engage in other activities providing they do not have an adverse effect on the performance of its primary functions.

3.5 Until the DEA 2010 came into force, these "other activities" included, for example, the provision of C4C's digital channels as well as Box Television Ltd and Taste Festivals Ltd. Many of these other activities have been carried out by 4Ventures Limited, a wholly-owned subsidiary of C4C, or by one of 4Ventures' subsidiaries or associated companies.

## 2010 Digital Economy Act

3.6 The DEA 2010 amended the 2003 Act regarding C4C's primary functions. Accordingly, section 199(2) was amended to include C4C's media content functions which were introduced into a new section 198A of the 2003 Act. Section 199(2) of the 2003 Act now describes C4C's primary functions as:

*(za) the performance of C4C's duties under section 198A;*

*(a) securing the continued provision of Channel 4; and*

*(b) the fulfilment of the public service remit for that Channel under section 265.*

- 3.7 C4C's new duties under section 198A relate to the making, broadcasting and distribution of relevant media content and films. "Relevant media content" is defined in section 198A(6) of the 2003 Act and refers to material, other than advertisements, included in services on digital platforms, in on-demand programme services or in other services provided by means of the internet where there is a person who exercises editorial control over the material included in the service.
- 3.8 Under section 198A(1), C4C's media content duties require it to participate in:
- (a) the making of a broad range of relevant media content of high quality that, taken as a whole, appeals to the tastes and interests of a culturally diverse society,*
  - (b) the making of high quality films intended to be shown to the general public at the cinema in the United Kingdom, and*
  - (c) the broadcasting and distribution of such content and films.*
- 3.9 In particular, C4C is required under section 198A(2) to invest in or otherwise procure:
- (a) the making of relevant media content that consists of news and current affairs,*
  - (b) the making of relevant media content that appeals to the tastes and interests of older children and young adults,*
  - (c) the broadcasting or distribution by means of electronic communications networks of feature films that reflect cultural activity in the United Kingdom (including third party films), and*
  - (d) the broadcasting or distribution of relevant media content by means of a range of different types of electronic communications networks.*
- 3.10 Sections 198A(3) to (5) set out the requirements C4C must comply with in performing their new duties.

## **Schedule 9 of the 2003 Act**

- 3.11 Schedule 9 of the 2003 Act requires C4C to submit proposals to Ofcom for the arrangements under which they are proposing to secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out of their primary functions are identified, evaluated, and properly managed.
- 3.12 Under Schedule 9 C4C's proposals must be considered and approved by Ofcom. Ofcom may decide to approve the proposals without modification or to approve them with such modifications as it may notify to C4C. Ofcom may also require C4C to submit revised proposals. If Ofcom decides that modifications are required for the purpose of approving the proposals or if it requires C4C to submit revised proposals, it must consult C4C before doing so.
- 3.13 In the table below we have set out the statutory wording in the 2003 Act of these key requirements and the corresponding paragraph numbers from Schedule 9.

**Table 1: The key requirements of Schedule 9 in the 2003 Act**

Requirements	Relevant sections in the 2003 Act
1) Securing Primary Functions – paragraph 2(2)	The arrangements must “ <i>secure, so far as reasonably practicable, that all significant risks that their other activities will have an adverse effect on the carrying out, during the relevant licence period, of their primary functions are:</i> <i>(a) identified;</i> <i>(b) evaluated; and</i> <i>(c) properly managed.”</i>
2) Transparency Objectives – paragraph 2(4)	The arrangements should ensure: <i>a) “an appropriate financial and organisational separation between the activities of C4C that relate to the carrying out of their primary functions and their other activities; and</i> <i>b) an appropriate degree of transparency in financial and other reporting where resources are shared between separated activities or where there is some other financial or practical connection between otherwise separated activities.”</i>
3) Specific Arrangements – paragraph 2(5)	The procedures and practices in the arrangements may include: <i>(a) the initiation and management of new ventures;</i> <i>(b) the exercise of particular powers;</i> <i>(c) the assessment of risks;</i> <i>(d) the imposition of charges; and</i> <i>(e) the keeping of records.”</i>
4) Compliance – paragraph 2(7)	<i>“The arrangements proposed by C4C must contain provision for compliance with the arrangements to be checked regularly by a person appointed [in accordance with the relevant provision]”</i>

## The 2006 Arrangements

- 3.17 The existing arrangements were approved by Ofcom in January 2006. The 2006 Arrangements are set out in full on C4C’s website.<sup>2</sup>
- 3.18 Since 2006 Deloitte has performed five annual audits to review C4C’s compliance with the 2006 Arrangements. In each report Deloitte has found that C4C has complied with the arrangements under Schedule 9 of the 2003 Act, in all material respects.

<sup>2</sup> See Channel 4 website:

[http://www.channel4.com/media/documents/corporate/C4\\_arrangements.pdf](http://www.channel4.com/media/documents/corporate/C4_arrangements.pdf)

## **The Proposed Arrangements**

- 3.19 In light of the revised definition of “primary functions” following the DEA 2010 we notified C4C to request them to review and, where necessary update the 2006 Arrangements with a view to submitting proposals for new arrangements to secure that C4C’s amended functions are appropriately safeguarded. In addition we asked C4C to provide a statement to explain how its proposals will secure compliance with the statutory requirements.
- 3.20 C4C submitted its Proposed Arrangements and explanatory statement in November 2011. These were published alongside our consultation on the Ofcom website.
- 3.21 The following section of this statement provides an overview of C4C’s proposals and sets out our decision to approve them.

## Section 4

# Approval of the Proposed Arrangements

## The Proposed Arrangements

- 4.1 C4C submitted its Proposed Arrangements in November 2011. The Proposed Arrangements broadly retained the same format as the 2006 Arrangements with Part 1 of the Proposed Arrangements dealing with the Statutory Framework and Part 2 dealing with areas such as Corporate Governance Systems and Investment Procedures.
- 4.2 The Proposed Arrangements incorporated changes which reflected the DEA 2010 and also changes that had been made to the Corporation's Board Structure and its Investment Approval procedures. The main changes to the Proposed Arrangements compared to the 2006 Arrangements were as follows:
- a) Revised Primary Functions: The statutory definition of "primary functions" in Part 1 has been updated to reflect C4C's widened primary functions set out in the DEA 2010;
  - b) Investment Decisions: Part 2 has been updated, to specify that all investments now follow the same investment approval process, which involves ranking investments by risk category (high, medium, and low); and
  - c) Board Structure: Part 2 has been updated to incorporate changes to the Board structure and reflect the discontinuation of the Budget Committee and New Business Board.
  - d) C4C will identify which of its activities form part of the primary functions.
- 4.3 In its commentary paper C4C explained that it believed that the Proposed Arrangements would continue to meet the Schedule 9 requirements. C4C believed that the risks to the primary functions had been reduced. As the DEA 2010 amended significantly C4C's primary functions, many of the activities carried out by C4C which were formerly classified by Schedule 9 as "other activities" now fall within the "primary functions". As a result, C4C believed that there was a significant reduction in the scope of those other activities and consequently in the amount of risk they posed for the primary functions.
- 4.4 Following our review of the Proposed Arrangements it was not clear to us whether the risks to the primary functions had been reduced. We did not therefore use this point to support our view on the adequacy of the Proposed Arrangements.
- 4.5 C4C also pointed to the following measures in the Proposed Arrangements which C4C believed would continue to secure the Transparency Objectives:
- The annual financial results of 4Ventures Limited and its trading subsidiaries will be reported separately in their own statutory financial statement.
  - Segmental financial information in the C4C Annual Report and Accounts and financial statements will highlight the performance of the main business operations of 4Ventures Limited. Where 4Ventures Limited carries out a range of activities, some of which are "primary functions" and some of which are "other

activities”, the segmental reporting will assist identification of the relevant information.

- Costs and revenues will be appropriately allocated across different business areas.
- “Other activities” (i.e. activities not forming part of the primary functions) will be accounted for as part of 4Ventures Limited.

4.6 C4C did not propose any significant changes to the measures addressing the requirements relating to the Specific Arrangements and Compliance. C4C believed that these continued to satisfy the Schedule 9 requirements.

## Ofcom Review of the Proposed Arrangements

### Summary of Ofcom review

4.7 Schedule 9 of the Act states that Ofcom has a duty to consider the Proposed Arrangements with a view to approving them.

4.8 In our consultation we assessed the Proposed Arrangements against the requirements of Schedule 9 as set out in Table 1. This analysis is set out again below.

#### *Securing Primary Functions*

4.9 In Part 1 C4C updated the statutory definition of “primary functions” to include the revised definition from the DEA 2010. We believed that this correctly reflected the amended wording in section 199(2) of the 2003 Act.

4.10 In Part 2 C4C updated the details of the organisational separation between Channel 4 and 4Ventures Limited to recognise that the primary functions will to some extent be fulfilled by 4Ventures Limited, in addition to Channel 4 itself. C4C also stated that it will identify which activities form part of the primary functions. We observed that C4C’s Proposed Arrangements reflect the change in structure of the Board, the discontinuation of the New Business Board and Budget Committee, and the updated Investment Approval procedures.

4.11 On this basis, we considered that the Proposed Arrangements, incorporating the changes set out above, appeared to meet the “Securing Primary Functions” requirement.

#### *Transparency Objectives*

4.12 Although we did not consider that the relevant changes in the DEA 2010 had any direct impact on the Transparency objectives, we noted from an organisational perspective that some activities which were formerly classified as “other activities” now came within C4C’s amended “primary functions”.

4.13 We considered that the measures set out in relation to securing the Transparency obligations would continue to ensure that C4C met those obligations. For example, the separate reporting of Channel 4 and 4Ventures Ltd in the Statutory Accounts, the separate segmental reporting of Channel 4 and 4Ventures Ltd in the Annual Report, and the appropriate cost allocation between Channel 4 and 4Ventures Ltd.

- 4.14 We also noted C4C's new accountability and reporting framework, which C4C had also revised following the changes made by the DEA 2010. This framework aims to increase transparency about C4C's activities across its portfolio of channels. This includes the new "Combined Statement of Programme and Media Content Policy" where C4C is required to report investment in content and services across its portfolio.
- 4.15 Ofcom has issued guidance to C4C for completing the Combined Statement of Programme and Media Content Policy<sup>3</sup> and C4C is expected to consult with Ofcom before preparing the statement each year.
- 4.16 In relation to C4C's Combined Statement of Programme and Media Content Policy (which in 2010 C4C included within its Annual report) we note that the House of Commons Culture, Media and Sport Committee made certain recommendations in its December 2011 report<sup>4</sup> relating to, for example, C4C's disclosure of its investment in key public service genres and hours of first run originations. Ofcom will take these recommendations into account when C4C consults with it before publishing its next Combined Statement of Programme and Media Content Policy.

#### *Specific Arrangements and Compliance*

- 4.17 The relevant changes in the DEA 2010 did not appear to have any impact on these requirements. C4C explained that no significant changes from the measures set out in the 2006 Arrangements had been made in the Proposed Arrangements in relation to these requirements. We agreed with C4C that the existing measures continued to meet the requirements.

#### *View of Deloitte*

- 4.18 We consulted with Deloitte, who informed us that it would be possible to carry out a review of the Corporation's compliance with the Proposed Arrangements in accordance with International Standard on Assurance Engagements 3000.

### **Proposed conclusion**

- 4.19 Following our analysis we proposed to conclude that the Proposed Arrangements met all the Schedule 9 requirements. However, we sought views from stakeholders before reaching a final decision on approving the proposals.

### **Responses to our consultation**

- 4.20 We received one response to our consultation from the advertising trade body ISBA, which was supportive of our proposal to approve the Proposed Arrangements.

### **Decision to approve the Proposed Arrangements**

- 4.21 We have therefore decided to approve the Proposed Arrangements. Ofcom is required to publish the approved Arrangements and they can be found on Ofcom's website at <http://stakeholders.ofcom.org.uk/consultations/c4-arrangements> and also on C4C's website.

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/c4c-guidance-note.pdf>

<sup>4</sup> House of Commons Culture, Media and Sport Committee: Channel 4 Annual report. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomeds/1175/1175.pdf> Page 9

- 4.22 Under paragraph 6 of Schedule 9 C4C has a duty to act in accordance with the approved Arrangements. Consequently, with immediate effect, C4C is required to comply with the approved Arrangements. C4C's compliance with the Arrangements will continue to be audited on an annual basis in line with the Schedule 9 requirements