



## Annual Plan 2011/12

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## Section 1

# Executive summary

## Our work programme for 2011/12

- 1.1 This Annual Plan presents our strategic purposes, our priorities and our work programme for the twelve months from 1 April 2011 to 31 March 2012.
- 1.2 Our plan has been developed following consultation with stakeholders. A range of issues were raised in consultation responses. These have been responded to in the plan itself and also in more detail in the annex. Alongside this plan we have published a table on our website<sup>1</sup> that sets out our programme of work.
- 1.3 Ofcom's principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 1.4 This principal duty is embodied in our five strategic purposes. These are to:
- Promote effective and sustainable competition.
  - Promote the efficient use of public assets.
  - Help communications markets to work for consumers.
  - Provide appropriate assurances to audiences on standards.
  - Contribute to and implement public policy defined by Parliament.
- 1.5 It is important that we are able to assess our progress against these strategic purposes. Therefore we have identified clear and positive outcomes that we are seeking to secure for citizens and consumers.

## Wider economic challenges

- 1.6 The government has set out its plans in the *2010 Spending Review* to address the UK's public finances. We are required to reduce our spending over the next four years with the majority of savings made in the first year. By 2014/15 we will deliver a 28.2% real-terms saving on Ofcom's current annual funding cap of £143m.
- 1.7 We have reviewed how we deliver effective and targeted regulation while striving to maintain value for money. We have begun delivering our proposals for reducing expenditure and providing greater organisational effectiveness. These proposals allow us to provide high quality sector-specific regulation and fulfil our strategic purposes within the financial constraints set by government.
- 1.8 Ofcom is well prepared to implement the necessary savings, albeit from a base that does not provide easy opportunities to reduce our spending. We will therefore stop

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<sup>1</sup> <http://www.ofcom.org.uk/files/2011/03/Programme-of-Work-2011-12.pdf>

certain activities and will deliver our objectives through different approaches which offer material efficiency gains.

- 1.9 These include our plan to make significant changes to our governance structure and supporting advisory bodies that will allow us to make savings and refine our decision-making process. However, some of these measures will depend on legislative changes in the Public Bodies Bill.
- 1.10 We believe these changes can ensure that we meet our financial objectives without undermining our strategic purposes and priorities. Inevitably, there will be more difficult choices to make in relation to resource allocation than at any point in Ofcom's history. In making these choices we will be guided by our strategic purposes and our core duty to promote the interests of the citizen and consumer.

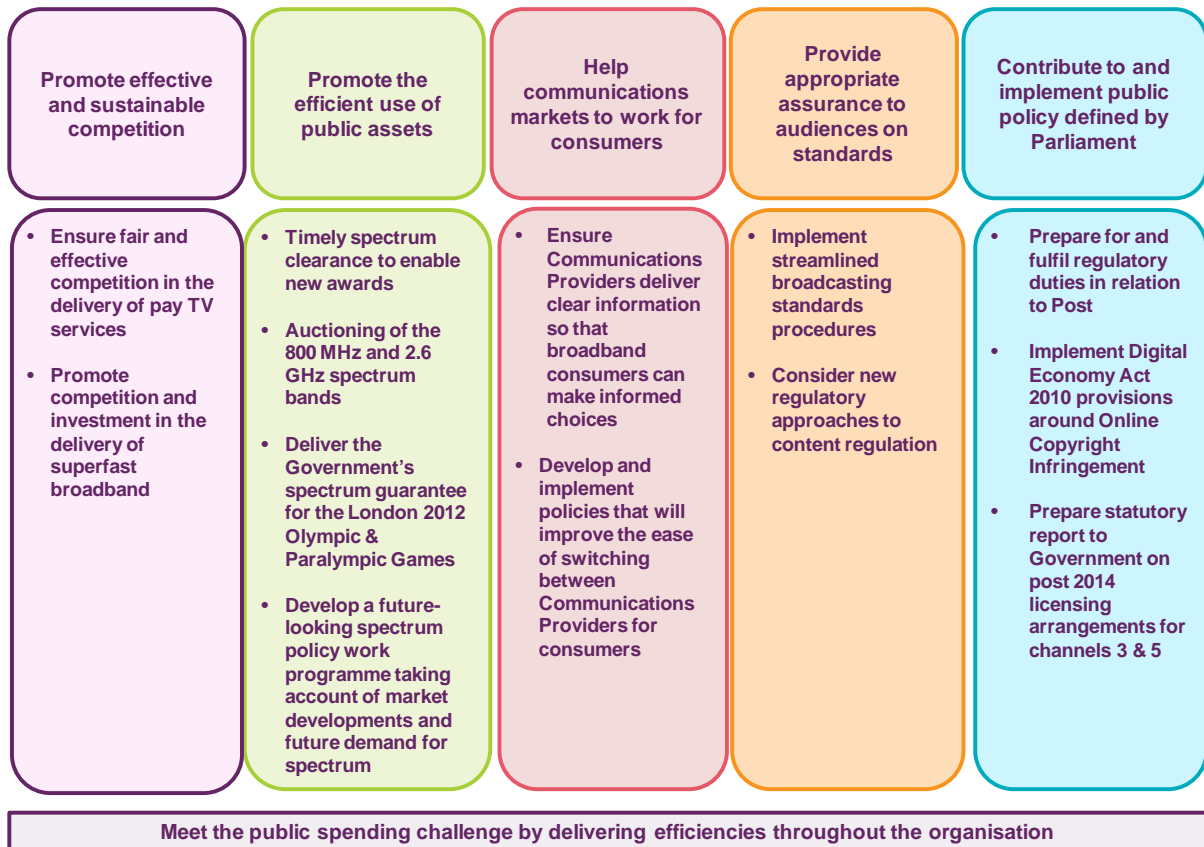
### **New or revised duties**

- 1.11 There are amendments to UK legislation, implemented or proposed by government, that will change our duties. Some of these will enable us to reduce our costs while others will require us to undertake new responsibilities. They include:
- Implementing the provisions in the Digital Economy Act 2010 aimed at addressing online copyright infringement.
  - The Public Bodies Reform Bill, through which the government has proposed to reduce Ofcom's duties in some areas; for example, the frequency of the media ownership review and the public service broadcasting review.
  - The proposed transfer of the regulation of postal services to Ofcom from Postcomm, in the Postal Services Bill.
- 1.12 There are also requirements for Ofcom to comply with specific provisions of the revised European Communications Framework. These include:
- Revising our General Conditions and Universal Service Conditions.
  - Changes to the dispute resolution and enforcement processes.
  - Amendments to our market review processes; for example, the requirement for market reviews in certain markets to be conducted every three years.
- 1.13 We will continue to engage with the European Commission (EC) on its Radio Spectrum Policy Programme, where we will support proposals that are consistent with the UK's Digital Switchover (DSO) and spectrum clearance timetable.

### **Our priorities for 2011/2012**

- 1.14 Our priorities for the coming year are based on our strategic purposes, in the context of our programme of budget reductions and efficiencies, and take into account our consultations and stakeholder events. The priority issues that we have identified for the next financial year will be our primary focus, and for each priority we have identified the outcome we would like to achieve.

## Annual Plan 2011/12 priorities



- 1.15 In addition to these priorities, we will continue to deliver important services to consumers and other stakeholders, as well as a number of other major work areas which are an important part of our 2011/12 work programme.
- 1.16 We will remain responsive to new developments such as emerging market failures or new issues for consumers across the UK, as well as government requests for Ofcom's technical expertise.

## Section 2

# Delivering our duties and value for money

## Ofcom, like all public bodies, is contributing to meet the public spending challenge

- 2.1 In the face of the deficit in the public finances the government set out its plans in the October 2010 Spending Review. Public bodies, including Ofcom, are required to make substantial savings.
- 2.2 We are responding to the challenge and have reviewed how we deliver effective and targeted regulation, while maintaining value for money. We have considered how best to deliver our goals within the financial constraints set by government.
- 2.3 In addition to the economic context we are responding to changes in UK and European legislation. We have taken on duties in relation to online copyright infringement and (subject to legislation) will take on responsibility for regulating the postal services sector. Our duties may also be changed in other areas as a result of the Public Bodies Bill. The European Communications Framework will also make a number of significant changes once it is transposed in May 2011.

## We are significantly reducing our spending

- 2.4 Ofcom is already delivering its duties with resources that are 27% lower, in real terms on a like-for-like basis, than those of its predecessors. Our target is to further reduce our spending over the next four years and the majority of savings will be made in the first year. By 2014/15 this will deliver a 28.2% real-terms saving on Ofcom's current funding cap, set by the Treasury, of £143m.
- 2.5 In order to meet that challenge we prepared a detailed plan to reduce expenditure while achieving greater strategic focus and organisational effectiveness.
- 2.6 Some of our savings will come from efficiency initiatives that were already under way before our detailed spending review. These include:
  - A pay freeze across the organisation, for the second consecutive year.
  - The ceasing of future accruals to Ofcom's two inherited legacy defined-benefit pension plans.
  - A re-tender of outsourced facilities management.
  - The appointment of a managed service provider for temporary and agency staff.
  - Completing the transition of outsourced ICT services to a newly appointed partner following an OJEU procurement process.
  - The implementation of framework agreements to streamline the OJEU procurement process, while maintaining strict compliance with procurement regulations.

- 2.7 We are also implementing a number of new initiatives to reduce our spending in 2011/12. These include:
- Introducing a simplified governance structure which will see a reduction in our panels and committees and allow for shared membership between them (these changes are dependent on the Public Bodies Bill).
  - Following government agreement, ending our involvement in specific activities such as digital participation.
  - Reviewing and prioritising our market research activity.
  - Re-focusing our technical studies.
  - Reviewing the way we run projects to further improve efficiency.
  - Rationalising and simplifying programmatic activities.
  - Further reducing our administration costs.
  - Reviewing Ofcom's major suppliers.
  - Rationalising our ICT server estates to reduce our costs and carbon footprint.
- 2.8 We have reduced our headcount. Approximately 170 roles have become, or will become, redundant, with the majority of those posts becoming redundant before 31 March 2011. Our new organisational structure will be in place for 2011/12.
- 2.9 We are proposing changes to our governance structure. Dependent on the Public Bodies Bill, there are likely to be changes to Ofcom's various Boards, Panels and Committees. The Advisory Committee on Older and Disabled Consumers will cease to exist as a distinct body and we also propose the closure of the Advisory Committee for England. We will, however, continue to represent English citizens and older and disabled consumers at the Nations Committee. We will consider the detail of other changes following the implementation of the Public Bodies Bill which will give us the necessary discretion over these aspects of our governance structure.
- 2.10 As a result of these proposals, the Advisory Committees for Northern Ireland, Wales and Scotland will also take on more responsibility for representing all consumers, including specifically older and disabled people. This will allow us to continue to understand the particular issues of concern in the nations as well as providing a forum for advice to be provided on issues specific to older or disabled consumers.
- 2.11 These changes will enable us to deliver further savings as well as streamline our decision-making process. However, they will depend on legislative change delivered by the enactment of the Public Bodies Bill. During 2011/12 a major task for Ofcom will be to manage the transition in governance structures such that we can build on the good work done by our advisory bodies to date.
- 2.12 Although they are not without risk, we believe that these changes in our structure and approach will allow us to deliver high-quality regulatory outcomes that meet our strategic purposes and annual plan priorities within our new budget.



## **We are also taking on new duties and implementing proposed changes to existing legislation**

- 2.13 We are implementing the provisions of the Digital Economy Act 2010, aimed at addressing online copyright infringement. We are also preparing for other changes to our responsibilities as a result of new legislation in the coming year:
- Under the Public Bodies Bill, the government has proposed to amend or remove Ofcom's duties in areas such as the frequency of the media ownership review and the public service broadcasting review. As noted earlier, the Public Bodies Bill may also enable us to simplify our governance, allowing us to streamline our structure with corresponding savings. Should the Bill become law these changes will be enacted through secondary legislation, although it remains unclear whether they will come into force during 2011/12.
  - The government has announced its intention, in the Postal Services Bill, to transfer the regulation of postal services from Postcomm to Ofcom. We are working to ensure that integration with Postcomm is managed effectively, while providing regulatory certainty for consumers and industry.
- 2.14 The Department for Business, Innovation and Skills (BIS)<sup>2</sup> has consulted on the Framework transposition and we will work with it to implement the resulting changes. In particular, Ofcom must revise a number of General and Universal Service Conditions by May 2011. Where the revised Framework contains new permissive powers we will keep the need to apply such powers under review.
- 2.15 Following our expenditure review process, the development of the initiatives detailed above and the additional demands placed on Ofcom through new duties, we have set a budget for 2011/12 of £115.8m. This budget is £26.7m lower in cash terms and 22.5% lower in real terms than the 2010/11 budget of £142.5m. As a result we will deliver the majority of our spending review objective in 2011/12.

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<sup>2</sup> In January 2011 the government announced that responsibility for competition and policy issues relating to media, broadcasting, digital and telecoms sectors would move from the Department for Business, Innovation and Skills (BIS), to the Department of Culture, Media and Sport (DCMS). This includes responsibility for implementation of the EU Framework.

## Section 3

# Priorities for 2011/12

## Our priorities flow from our strategic purposes and reflect the consumer, economic and legislative environment

3.1 In response to market developments, economic constraints and changes to legislation, our priorities balance new work with important ongoing commitments. They have been aligned to our five strategic purposes:

- Promote effective and sustainable competition.
- Promote the efficient use of public assets.
- Help communications markets to work for consumers.
- Provide appropriate assurances to audiences on standards.
- Contribute to and implement public policy defined by Parliament.

## Strategic Purpose 1: Promote effective and sustainable competition

3.2 We believe that there is a need for an ongoing *ex ante* regulatory framework to respond to the pace and dynamics of our regulated sectors. Our priorities for 2011/12 respond to market developments and are intended to deliver significant benefits to citizens and consumers.

### Ensure fair and effective competition in the delivery of pay-TV services

3.3 Following three consultations on the pay-TV market, we published a statement setting out our decision in March 2010 that Sky Sports 1 and 2 (standard definition and high definition) should be offered to retailers on platforms other than Sky's, at prices set by Ofcom for the standard definition service.

3.4 We will continue to monitor consumer take-up of the new services resulting from this remedy and investigate any complaints relating to its implementation. Meanwhile we will be defending our decision against appeals brought against it.

3.5 We have also made a market investigation reference to the Competition Commission under the Enterprise Act 2002 on the subscription film sector, particularly subscription video-on-demand services. The Competition Commission is now carrying out this investigation, and we shall contribute as requested.

### Promote competition and investment in the delivery of superfast broadband

3.6 Ofcom published a Statement in October 2010 setting out the conclusions of the *Wholesale Local Access (WLA)* market review. This review required BT to offer virtual unbundled local access (VULA) to its next-generation fibre infrastructure and to open up access to the ducts and poles in its local access network. Our priority is to ensure that these remedies are effective.

- 3.7 This will involve working closely with BT, the Office of the Telecoms Adjudicator (OTA) and industry stakeholders, to ensure that BT's wholesale products are appropriately specified and to resolve any issues related to product design, pricing and delivery. These are new obligations which will have an important role in facilitating competition and investment in superfast broadband services.
- 3.8 Over the course of 2011/12 we also expect to produce further guidance for industry on the regulatory environment for investment in the next-generation access infrastructure. In addition we will consider how the new provisions on infrastructure sharing in the European Communications Framework might be applied, and provide support as required for the government's broadband initiatives, including through Broadband Delivery UK (BDUK).

## **Strategic Purpose 2: Promote the efficient use of public assets**

- 3.9 Ofcom is responsible for ensuring the optimal use of the electro-magnetic spectrum. Given the potential value to citizens and consumers of services that are enabled by spectrum resources, managing spectrum is a significant responsibility. Assessing how spectrum is used, and, if appropriate, taking steps to enable its use to change, are important in delivering the best outcomes for citizens and consumers.

### **Preparing for auctioning of the 600 MHz, 800 MHz and 2.6 GHz spectrum bands**

- 3.10 The digital switchover (DSO) of television services presents the opportunity to release significant amounts of spectrum below 1 GHz (the digital dividend) in frequency bands that are particularly suitable for broadcasting and wireless broadband applications. The key spectrum bands that we hope to auction are the 800 MHz and 2.6 GHz bands, and the 600 MHz band thereafter in 2012/13.
- 3.11 We aim to start the auction for awarding the licences to use the 800 MHz and 2.6 GHz bands by the end of 2011/12 or early in 2012/13. To achieve this we will:
- consult on our assessment of future competition in mobile markets and our consequent proposals for the design of the combined auction;
  - publish our final decisions on these matters;
  - consult on and make auction regulations (secondary legislation), and publish an Information Memorandum, and
  - finalise software to run the auction and train prospective bidders in its use.
- 3.12 While it is possible that the auctions for the 800 MHz and 2.6 GHz bands will be completed within the financial year 2011/12, we are likely to issue the relevant licences in the first half of the financial year 2012/13. We expect the 600 Mhz auction to be held in 2012 after the combined 800 Mhz/2.6 GHz auction.

### **Timely spectrum clearance**

- 3.13 To be able to hold the awards for spectrum in the 800 MHz and 2.6 GHz bands, we are undertaking significant work to clear the spectrum. We are moving services that currently use the 800 MHz band – digital terrestrial television, and programme making and special events – to other spectrum.

- 3.14 We are assessing the impact that the launch of mobile broadband in the 800 MHz and 2.6 GHz bands could have on adjacent services, including television multiplex operators (close to 800 MHz) and radar in the 2.7 GHz band (also known as S-band) and, where necessary and appropriate, taking steps to mitigate that impact. This will include consulting on arrangements to protect existing digital television services from interference from mobile broadband.
- 3.15 We will complete our assessment of the impact of mobile services on users in adjacent bands, in time for the Information Memorandum referred to above.
- 3.16 In 2011/12, we will continue our work to move existing users from the 800 MHz band:
- From March 2011, we will start making payments under the funding scheme to help programme-making and special events (PMSE) users move out of channel 69, at the top of the 800 MHz band. The scheme will run until the end of 2012/13.
  - Throughout 2011/12 we will continue to work with multiplex operators, Digital UK and Arqiva, to clear Digital Terrestrial Television (DTT) from channels 61 and 62 at the bottom of the 800 MHz band, assessing applications and making payments related to the reasonably-incurred costs of carrying out this work.
- 3.17 We will also continue working closely with the Civil Aviation Authority (CAA), the Ministry of Defence and industry to define the necessary programme of upgrades required to remediate S-band radars to emissions from 2.6 GHz and 3.4 GHz spectrum users.

### **Deliver the government's guarantee of wireless spectrum for the London 2012 Olympic Games and Paralympic Games**

- 3.18 Ofcom is responsible for organising a full spectrum plan for the London 2012 Games; licensing wireless users; and managing any cases of interference. Our contribution to the success of the event will be ensuring that spectrum is used effectively, with the least disruption to existing users.
- 3.19 During 2011/12 we will:
- Publish a final version of the spectrum plan for the Games.
  - Recruit and train the additional spectrum experts that we will need during the Games.
  - Undertake technical assignments of spectrum for Games users and co-ordinate these with assignments for non-Games users.
  - Operate licensing processes which meet the needs of the Games organisers and participants, and issue the majority of the licences needed by Games users.
  - Monitor spectrum use in key locations to ensure that frequencies are free of harmful interference. We will also test the direction-finding equipment that will be used to pinpoint any harmful interference to Games users.
  - Design and test a process for pre-commissioning, testing and tagging wireless equipment to ensure that it complies with the conditions for use in Games venues.

- Implement the necessary links between Ofcom and government agencies to ensure the timely reporting of spectrum matters and resolution of any problems.

### **Develop a medium-term spectrum policy work programme, taking account of market developments**

3.20 In Ofcom's last *Spectrum Framework Review* we described our spectrum vision:

- Spectrum should be free of technology and usage constraints as far as possible. Policy constraints should be used only where they can be justified.
- It should be simple and transparent for licence holders to change the ownership and use of spectrum.
- Rights of spectrum users should be clearly defined and users should feel comfortable that these rights will not be changed without good cause.

3.21 Ofcom will continue to be guided by these principles, taking account of our experiences since publishing the Review and the *Spectrum Framework Review: Implementation Plan* in 2005. We will also develop our understanding of the likely demand for spectrum beyond currently planned releases, taking a longer-term view of developments affecting spectrum use.

### **Strategic Purpose 3: Help communications markets work for consumers**

3.22 Communications markets are developing quickly, and sector-specific regulation continues to be required to address the demand-side market failures that consumers face.

### **Develop and implement policies that will improve the ease of switching between communications providers**

3.23 A priority for Ofcom is to continue to make significant progress in ensuring the effectiveness of switching procedures. Ofcom is undertaking a review of switching processes across fixed and mobile telecommunications, broadband and pay TV.

3.24 We are focusing on delivering two key outcomes:

- An easy and convenient consumer experience of switching, both now and in the future. We want to ensure that there are no undue process barriers to switching for single services and for bundles.
- Ensuring that switching processes do not get in the way of providers competing to deliver benefits to all consumers, in terms of lower prices, greater choice and innovation, and value for money.

3.25 Our view, which we consulted on in September 2010, is that in the fixed and broadband sectors, gaining provider-led (GPL) processes will be preferable to both losing provider-led (LPL) processes and consumer co-ordinated switching. We believe that GPL processes normally perform better than LPL processes in terms of consumer and competition outcomes. This is based on evidence and analysis, which suggests that GPL processes are easier for consumers to navigate, and deliver lower prices as well as greater innovation and choice.

- 3.26 We are working with industry via our Switching Working Group to consider how this applies to current switching processes in fixed voice and broadband services over the Openreach network. We are developing options and cost estimates for GPL and LPL to feed into the next consultation document.
- 3.27 We plan to issue a second consultation in summer 2011, if necessary setting out detailed proposals for reform of the current GPL and LPL switching processes in fixed-line and broadband services. Subject to consultation, we expect to publish a statement by the end of 2011/early 2012.

#### *Automatic renewable contracts (ARCs)*

- 3.28 We are concerned about the existence of automatically renewable contracts (ARCs or 'rollovers') to residential and small business consumers. In particular we are concerned about the potential impact of rollovers on the competitive process and the risk that these types of contracts will become more common. Our evidence to date demonstrates that ARCs are potentially harmful to the competitive process and so to consumers as a whole. We are considering how to protect consumers and markets.
- 3.29 In March 2011 we published a document setting out Ofcom's approach to ARCs and proposed modifications to Condition 9 to prohibit ARCs. Our objective is to ensure that efficient switching and competition are not constrained by ARCs.

#### *Additional charges in contracts for communications services*

- 3.30 Ofcom concluded the first stage of its work under the Additional Charges Enforcement Programme in the fixed voice sector in June 2010, having previously published sector-specific guidance on the application of the Unfair Terms in Consumer Contracts Regulations 1999. Following constructive discussions with stakeholders, and our update to the guidance in November 2010, we are now continuing work in the fixed voice and voice plus broadband sectors. We have extended this work into 2011/12 in order to consider other sectors. As part of our enforcement action, we may initiate separate investigations of named providers.

### **Ensure that communications providers deliver clear information so that broadband consumers can make informed choices**

- 3.31 Ofcom has commenced initiatives aimed at ensuring that consumers have access to reliable information on broadband speeds<sup>3</sup>. There are two strands to our broadband speeds work, which will continue through 2011/12:
- ensuring compliance with the newly revised Code of Practice<sup>4</sup> (tested through mystery shopping); and
  - publishing two comparative broadband speeds reports for consumers.
- 3.32 Following the transposition of the European Communications Framework in May 2011, Ofcom will acquire new powers in relation to traffic management and net neutrality. We believe that greater transparency of traffic management practices is a

<sup>3</sup> <http://consumers.ofcom.org.uk/2010/11/get-the-most-out-of-your-broadband/>

<sup>4</sup> <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop-2010/code-of-practice/>

necessary part of a well-functioning broadband market. We will work with industry, and prepare our own analysis, to determine how this is best provided. We will continue to consider market developments that result from an increased use of traffic management and will be providing further guidance in Summer 2011 on circumstances in which we might consider further action. We will also take an active role in BEREC's work programme on net neutrality and traffic management.

## **Strategic Purpose 4: Provide appropriate assurance to audiences on standards**

- 3.33 While the media landscape continues to evolve, providing appropriate assurances to audiences on standards remains an essential part of our role. We are considering the current framework for this and future requirements for content regulation.

### **Implement streamlined standards procedures**

- 3.34 The assessment of complaints about, and investigations into, possible breaches of broadcasters' licence requirements play a crucial role in ensuring that the public is protected. This is particularly the case in areas such as the protection of under-18s, harmful or offensive material, unfair treatment and infringements of privacy.
- 3.35 It is vital that our procedures for conducting these investigations and, where necessary, imposing sanctions, are as effective as possible.
- 3.36 We have consulted on proposed revisions to our procedures for:
- investigating breaches of broadcast licences;
  - investigating fairness and privacy complaints; and
  - considering statutory sanctions.
- 3.37 These revised procedures are intended to make our investigations faster and to deliver greater value to our stakeholders. Following our consultation, we intend to implement any revised procedures in 2011.

### **Where appropriate, consider new regulatory approaches to content regulation**

- 3.38 We will continue to review our wider regulatory approach to content regulation, to ensure that it remains fit for purpose, continues to serve the interests of citizens and consumers, and is clear for stakeholders.
- 3.39 There will be a number of challenges in this area. Changes in technology, including the emergence of mass-market IPTV services in the UK, will challenge the existing regulatory structures, which were designed predominantly for linear broadcasting. We will continue to work with our co-regulators, such as ATVOD, to develop these regulatory structures. We will consider how regulatory approaches to content regulation might further evolve to remain fit for purpose and proportionate.

## **Strategic Purpose 5: Contribute to and implement public policy defined by Parliament**

- 3.40 Ofcom has led or contributed to a number of public policy issues at the request of Parliament and government. We expect that this will continue, where Parliament identifies a clearly-defined role for Ofcom.

### **Prepare for and fulfil regulatory duties in relation to post**

- 3.41 Following publication of the Postal Services Bill, Postcomm and Ofcom are working to secure the transition of regulatory responsibility with minimal disruption for industry, users and staff. In the period leading up to the transfer of regulatory responsibility, Postcomm and Ofcom will work together as far as practicable to maintain regulatory stability for postal users and operators.
- 3.42 The Bill is subject to Parliamentary approval. Following Royal Assent, the date for the transfer of regulatory responsibility for postal services from Postcomm to Ofcom will be set by the Secretary of State for Business, Innovation and Skills.
- 3.43 Ofcom will have responsibility for implementing a new regulatory framework when the Bill comes into effect. For example, the Bill proposes to replace the existing licensing regime for providers of postal services with a general authorisation system, subject to regulatory conditions imposed by Ofcom, such as already applies to communications providers. In the meantime, Postcomm remains the regulator for the postal sector and continues to be the contact for postal industry stakeholders.

### **Implement Digital Economy Act 2010 online copyright infringement provisions**

- 3.44 Ofcom will take forward its responsibilities for implementing a number of provisions under the Digital Economy Act 2010 (DEA). Under the DEA, the implementation and regulation of these obligations must be set out in a code. In the absence of an approved code drawn up by industry, Ofcom has a duty to make a code in accordance with the requirements of the DEA. We will also consult on a tariff for the processing of copyright infringement reports by ISPs and on establishing an independent body to hear subscribers' appeals against reports.
- 3.45 In preparing for Ofcom's reporting duties, we will look to engage with stakeholders about how we can identify and capture relevant information. This includes information that relates to the development and promotion of lawful services, initiatives to raise public awareness of copyright and online infringement, and enforcement actions taken by copyright owners against alleged infringers. We are required to report quarterly on estimated levels of online copyright infringement, with the first report covering the first full quarter after implementation. Separately, we will report annually on a broader range of measures, as required by the Act.

### **Prepare statutory report for government on licensing arrangements for channels 3 and 5 after 2014**

- 3.46 Under the Communications Act, Ofcom must prepare and submit a channel 3/5 licensing report to the Secretary of State, no later than June 2012, ahead of the expiry of the current licences in December 2014.
- 3.47 In that report Ofcom must give its opinion on the effect of the arrangements for renewal and the relevant licence conditions. This will consider the capacity of each



licensee to contribute to the purposes of public service broadcasting at a commercially sustainable cost.

- 3.48 The report should also include any recommendations Ofcom may have on whether the Secretary of State should make an order preventing renewal of certain specified licences. In the light of opinions and any recommendations from Ofcom, the Secretary of State can make an order providing that one or more of the specified licences should not be renewed.

## We have considered the outcomes for these priorities

- 3.49 It is important that we can assess the successful delivery of our priorities. To achieve this, we have identified positive citizen and consumer outcomes for each of our priorities and we will assess our progress towards delivering them.

- 3.50 We have divided our outcomes into *interim* and *final* outcomes.

- *Interim* outcomes are events in the market that result from a decision taken by Ofcom; for example, enabling third parties access to a particular network or service. These play a part in delivering final outcomes.
- *Final* outcomes describe wider benefits arising in the market for citizens and consumers; for example, a consumer being able to choose from a range of competitive and innovative retail offerings. Final outcomes should arise as a result of Ofcom's decisions, but will also be influenced by wider market developments.

## Interim outcomes for 2011/12 priorities

Promote effective and sustainable competition	Promote the efficient use of public assets	Help communications markets to work for consumers	Provide appropriate assurance to audiences on standards	Contribute to and implement public policy defined by Parliament
<ul style="list-style-type: none"> <li>• Wholesale offer made to third parties and associated processes in place for premium Pay TV sports channels</li> <li>• Availability of competing retail pay TV offer</li> <li>• Significant availability of superfast broadband (from at least two providers)</li> <li>• Successful launch of BT Ducts and Poles products in summer 2011</li> <li>• Wholesale superfast broadband products taken up by 3rd parties</li> </ul>	<ul style="list-style-type: none"> <li>• Availability of spectrum for alternative services by end 2013 – Channels 61, 62, &amp; 69 cleared and users compensated</li> <li>• Conclude efficient and effective auction by mid 2012</li> <li>• New licences for use of 800MHz and 2.6GHz spectrum granted by end July 2012</li> <li>• Build out and launch of next generation mobile broadband networks (by 2014)</li> <li>• Everything necessary to deliver Ofcom's responsibilities for the Games is in place and tested</li> </ul>	<ul style="list-style-type: none"> <li>• Increased transparency in advertising and consumer awareness of broadband speed &amp; quality</li> <li>• Clearer incentives for broadband providers to improve quality</li> <li>• Resolution of review of automatically renewable contracts</li> <li>• Improved fixed telecoms switching process</li> </ul>	<ul style="list-style-type: none"> <li>• Implement new procedures for investigations to ensure faster, more responsive decision making</li> <li>• Inform our own and wider understanding of what models of content protection and assurance are appropriate for the future</li> <li>• Establish research base for determining future regulation model</li> </ul>	<ul style="list-style-type: none"> <li>• Timely introduction of the OCI scheme incl. tariffs, appeals body, code and reporting process</li> <li>• Establish clear PSB requirements for next licence period for C3/C5</li> <li>• Successful integration of postal regulation into Ofcom (subject to legislation)</li> </ul>

## Final outcomes for 2011/12 priorities

Promote effective and sustainable competition	Promote the efficient use of public assets	Help communications markets to work for consumers	Provide appropriate assurance to audiences on standards	Contribute to and implement public policy defined by Parliament
<ul style="list-style-type: none"> <li>• A variety of pay-TV services available in the market</li> <li>• Innovation around core premium pay TV channels</li> <li>• Increasing superfast broadband take-up and widespread availability</li> <li>• Consumers able to access a variety of competitive superfast broadband offers</li> </ul>	<ul style="list-style-type: none"> <li>• A range of new innovative wireless services</li> <li>• Effective mobile broadband competition, with internationally benchmarked prices</li> <li>• High quality mobile broadband services widely available to consumers</li> <li>• Successful delivery of Government's spectrum guarantee for the London 2012 Olympic &amp; Paralympic Games</li> </ul>	<ul style="list-style-type: none"> <li>• Consumers better informed of differences between products available on market</li> <li>• Improved quality of service from broadband providers</li> <li>• Greater ease and lower barriers for consumers switching between communication providers</li> <li>• Monitor levels of switching in the communications sector</li> </ul>	<ul style="list-style-type: none"> <li>• High levels of confidence in the assurance provided to audiences through broadcasting standards</li> <li>• Efficient and effective broadcasting standards enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Viable and fair OCI framework for consumers and industry</li> <li>• Clear measurement of infringement and evaluation of industry initiatives</li> <li>• Contributing to Government objective to reduce levels of copyright infringement</li> <li>• Sustainable model for commercial public service broadcasting</li> <li>• Effective delivery of commercial public service broadcasting objectives</li> </ul>

## Section 4

# Other major work areas for 2011/12

## In addition to our priorities we will undertake other work

- 4.1 We have planned for a number of major work areas for 2011/12, based on our strategic purposes, which are in addition to our annual priorities.

### Strategic Purpose 1: Promote effective and sustainable competition

#### Implement proposals in relation to mobile termination rates

- 4.2 The current rules that set wholesale call termination charges expired on 31 March 2011. We published our conclusions on appropriate remedies, including charge controls, on 15 March.

#### Implement changes to facilitate mobile number portability (MNP)

- 4.3 We published a final statement on the MNP process in July 2010. We reduced the time taken to port a number to a new mobile provider from two business days to one. We also set out rules requiring providers to give a Porting Authorisation Code (PAC) to customers who ask for it, either immediately over the phone, or by SMS within two hours. The changes proposed are aligned with the revised EU framework that requires one-day porting across the EU. We have been working with industry and consumers to secure, and raise awareness of, the new regulatory scheme that will come into effect in April 2011.
- 4.4 In February 2011, we published a consultation document on all the changes necessary to implement the new EU Framework.<sup>5</sup> There are two proposed changes on mobile portability: the first requires one-business-day porting for bulk mobile<sup>6</sup>; and the second requires compensation arrangements to be put in place for faulty or delayed ports. Our consultation closes on 7 April 2011 and we will finalise the changes by 25 May 2011, the deadline for transposition into national law.<sup>7</sup>

#### Establish new charge controls for local loop unbundling (LLU) and wholesale line rental (WLR)

- 4.5 Current controls on charges for local loop unbundling (LLU) and wholesale line rental (WLR) expire in 2011. The charge controls are currently under review, and our proposals for new controls are expected to be published by the end of March 2011. Following consultation, we expect the new controls to be in place by summer 2011 and to run to 2014.

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<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/summary/gc-usc.pdf>

<sup>6</sup> More than 25 mobile phone numbers processed under one PAC

<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/gc-usc/summary/gc-usc.pdf>

## **Charge control on the wholesale broadband access (WBA) services (Market 1)**

- 4.6 We will complete our work on the proposed charge control on wholesale broadband access (WBA) services supplied by BT in Market 1 exchange areas.
- 4.7 Market 1 consists of exchanges where BT is the only network provider of WBA services; this covers 11.7% of UK premises. BT was found to have significant market power (SMP) in the market in the WBA market review statement published in December 2010. The proposed charge control will protect consumers of broadband services by ensuring that BT's charges for the wholesale services purchased by ISPs in Market 1 are not excessive.

## **Simplify regulation of non-geographic services**

- 4.8 Ofcom is concerned that the current market for non-geographic call number ranges is failing consumers and the providers of the services. We consider that there is a strong case for regulatory reform.
- 4.9 In early 2011/12 Ofcom will complete a strategic review of the market and begin implementing the policy outcomes of the consultation. This will be based on expected changes to the Communications Act in 2011 as a consequence of the amendments to the European Communications Framework. These will clarify Ofcom's powers to intervene in this area for the purposes of consumer protection.

## **Conduct reviews of the business connectivity market and the leased lines charge control**

- 4.10 During 2011/12, Ofcom will make substantial progress on the next business connectivity market review (BCMR) and the associated leased lines charge control. The review will assess the extent to which competitive conditions have changed in the UK markets for leased lines, and whether the regulatory obligations applied to BT and KCOM in these markets should be amended.
- 4.11 If the market review finds a continuing need for a leased lines charge control, which applies to the wholesale services (partial private circuits and Ethernet services) provided by BT in the markets in which it has significant market power, we will undertake a specific review of that control. We plan to complete both the market review and, if required, the charge control before the end of September 2012, when the current charge control is due to expire.

## **Determine price control for BT's ISDN30 services**

- 4.12 The review of retail and wholesale ISDN30 markets found that Openreach had significant market power in the market for the provision of wholesale ISDN30 services and that the price was above the competitive level. We will publish our statement in summer 2011.
- 4.13 The ISDN30 price control project will:
- investigate Openreach's profitability for wholesale ISDN30 services;
  - assess whether there is a relevant risk of Openreach fixing and maintaining prices at an excessive level; and

- determine the form and level of any price control deemed to be appropriate to impose on these services.

### **Review cost orientation guidance**

- 4.14 Following a market review, Ofcom has, in a number of cases, imposed a cost orientation requirement on operators found to have significant market power. We intend to review our existing guidance and expect to consult on the findings of this review.

### **Consider regulation of TV advertising**

- 4.15 In 2011-12 Ofcom will undertake a programme of work focusing on TV advertising and the regulation of TV advertising. We will undertake a review of the operation of the UK's TV advertising market, looking at the way TV advertising is bought and sold.
- 4.16 The review will seek to assess whether the current method prevents, distorts or restricts competition, and whether this has a detrimental effect on consumers. We will also undertake an assessment of the underlying rationale for the regulation of TV advertising and consider how best Ofcom can take account of the economic and public interest arguments in this area.

### **Resolve disputes and investigate complaints under the Competition Act and impose penalties where appropriate**

- 4.17 We will continue our work on competition investigations and disputes, and address any new issues emerging in 2011/12. We are under a statutory obligation to perform this function and will make adequate resources available to ensure that it is fulfilled in a timely manner.
- 4.18 Over the past two years Ofcom has seen an increase in appeals, litigation and disputes brought by some stakeholders, particularly in the telecoms sector. This can mean a delay in implementing our decisions (and the consumer benefits they will bring). It also presents us with an additional operational and financial challenge in defending our decisions in what is often a prolonged and detailed appeals process.
- 4.19 We are currently consulting on changes to the dispute resolution process that aim to improve both its efficiency and its effectiveness. These changes are due to be implemented in early 2011.

## **Strategic Purpose 2: Promote the efficient use of public assets**

### **Ensure availability of geographic telephone number ranges to communications providers, and promote their efficient and effective allocation**

- 4.20 Ofcom is responsible for administering fixed-line telephone numbers whose dialling codes begin with 01 and 02 (geographic numbers) and for ensuring that sufficient numbers are available to communications providers (CPs) to enable them to provide a choice of services to consumers.
- 4.21 Ofcom has consulted on proposed changes to how we would manage geographic numbers in the future. The proposals are designed to maintain Ofcom's ability to meet CPs' future requirements for geographic numbers in all areas of the UK. For the avoidance of doubt, we have not proposed changing any existing phone numbers.

- 4.22 Ofcom plans to publish an interim statement and carry out further consultation during summer 2011 and to publish a final statement later in 2011. This will be followed by a final policy decision in 2012. Ofcom also intends to help the industry to implement plans to create new supplies of geographic numbers where needed.

### **Spectrum trading**

- 4.23 We consulted in September 2009 on changes to make the trading of spectrum simpler and more dynamic, including amendments to the European Communications Framework that allow for a new way to trade called 'spectrum leasing'. We announced in April 2010 our intention in principle to proceed with these changes and we plan to do so, possibly in the second half of 2011.

### **Review spectrum used by fixed-link services**

- 4.24 Following Ofcom's consultation on the framework for spectrum pricing in March 2010, we published a Statement on 17 December in which we outlined that we had received considerable support for reviewing the fees charged for licences in the spectrum bands used by fixed links. We anticipate that we will gather evidence to help inform and scope this review in the course of 2011/12.

### **'White space' devices**

- 4.25 White space is the name given to bands of spectrum that are unused by the licence holder in a particular location. Ofcom recently concluded its consultation on proposals for implementing a framework to enable devices to access white space on a licence-exempt basis.
- 4.26 In 2011/12, we plan to continue our work on enabling white space devices:
- In the second quarter of 2011, we will publish the outcomes of our consultation on implementing a geolocation-based approach to white space access;
  - Throughout 2011/12 we intend to work closely with stakeholders and potential service providers on the specification, implementation and testing of geolocation databases. We will work with existing licensees to ensure that the introduction of white space devices does not cause harmful interference to their services.
  - We will also continue our proactive involvement in European regulatory bodies to develop a common approach to enabling white space access.

### **Offering more e-services to our stakeholders**

- 4.27 Ofcom is planning to improve access for consumers and licensees through an improved web portal. As part of our website improvements, we will launch an e-services initiative aimed at encouraging consumers and licensees towards a 'web first' or self-serve strategy. This will apply to telecoms complaints, licensing applications and enquiries, renewals, payments and general enquiries.

### **Develop a stable international framework to support our spectrum agenda**

- 4.28 Ofcom will continue to participate in international fora at bilateral, European and international levels, to ensure a stable international framework to underpin our spectrum awards and to co-ordinate our spectrum use. We will continue to be active

in CEPT and ITU and in particular, will participate in European preparations for the next World Radio Conference.

### **Ensuring compliance with European policy objectives**

- 4.29 Ofcom has delegated powers under the Communications Act, and Ministerial Directions, to represent the government at the Radio Spectrum Committee (RSC) and Radio Spectrum Policy Group (RSPG).
- 4.30 We are also involved in EU spectrum policy, including those where we do not have explicit delegated powers, but where our input is important to ensure the best possible outcome for UK citizens and consumers. In 2011/12 we will focus on a number of specific activities:
- The Radio Spectrum Policy Programme (RSPP), as a result of new provisions in the amended European Communications Framework, will set a path for spectrum management in the EU for the next four to five years. This draft legislation is progressing through the co-decision process and is likely to be a key area of focus for Ofcom through 2011.
  - The implementation of the revised European Communications Framework; Ofcom will implement new spectrum management practices (e.g. spectrum leasing) and will amend existing ones (e.g. all licences must be reviewed within a five-year period to ensure consistency with new provisions on technology and service neutrality).
  - Preparations for and attendance at the World Radio Conference taking place in January/February 2012 (WRC-12). Ofcom will actively engage in preparations for WRC-12 and input to the development of European Common Positions to ensure that they reflect UK interests.

### **Spectrum enforcement**

- 4.31 Ofcom's work on spectrum enforcement encompasses:
- confiscating unauthorised equipment and prosecuting installers and owners where appropriate (including in relation to illegal broadcasting);
  - adopting a new approach to illegal broadcasting, working with other agencies, such as local authorities, housing associations and the police to minimise harmful interference and related anti-social behaviour;
  - making additional efforts to address online sales of illegal apparatus, including targeting, educating and informing stakeholders and taking measures against deliberate non-compliance;
  - providing advice and assistance in cases of interference, in particular in cases not resolved by the BBC under its Charter obligations; and
  - increasing our focus on instances of unlicensed use of business radio spectrum, and clamping down on licensees who fail to pay their licence fees on time.

## **Strategic Purpose 3: Help communications markets to work for consumers**

### **Ensure the adequate provision of services for consumers with hearing and/or speech difficulties**

- 4.32 As part of our duty to have regard to the needs of disabled and older people, we will complete our review of relay services, which help consumers with hearing and speech impairments to make and receive telephone calls. The existing text relay service is currently provided under the universal service obligation, and we are looking at the possibility of enhanced or additional relay services.
- 4.33 We will publish a consultation in the spring. This will include proposals for improvement where we identify gaps in provision and areas for enhancement.

### **Protection from, and enforcement against, unfair terms and practices by communications providers**

- 4.34 Ofcom will work towards ensuring that appropriate consumer protection regulations and mechanisms are in place, taking enforcement action against communications providers where necessary.
- 4.35 We will make progress on ensuring that consumers are protected from the potential for mis-selling and slamming of fixed-line voice services, including our work with the Office of the Telecommunications Adjudicator to address problems of consumers being switched in error. We will continue our work on unfair terms relating to additional charges in consumer contracts, focusing on early termination charges. We will also step up enforcement work on silent calls, which can cause consumers considerable concern and anxiety. We will focus on using our new policy, and increased fining powers, to prevent repeat silent calls.
- 4.36 Following the introduction of new rules on complaint handling in January 2011, we will ensure compliance with these rules to reduce anxiety and harm caused by CPs' failure to deal with consumer problems satisfactorily.
- 4.37 We will also consider viewers' complaints to Ofcom relating to a number of areas such as the protection of under-18s, harm and offence, fairness and privacy, and impartiality and accuracy in news. New issues may emerge during the year and we will respond to these effectively.

### **Conduct and publish consumer and market research to inform our work**

- 4.38 We are committed to evidence-based decision-making. This requires us to understand consumer attitudes and market developments, which we achieve through a comprehensive programme of market research and through gathering and analysing market intelligence.

### **Continue to promote investment that will address mobile phone 'not-spots'**

- 4.39 Mobile coverage issues are important to consumers and will continue to raise wider public policy issues due to the reliance society places on mobile phones. This issue has been raised by the Advisory Committees for the Nations as a particular concern for consumers who live in less densely populated areas. We are building on our



research and moving towards practical solutions that are within the scope of our duties and powers.

- 4.40 As devices become 'smarter', offering new applications, expectations about the availability of mobile services will rise further. We will monitor this issue, and focus specifically on mobile coverage issues in the following areas:
- *Considering the need to improve coverage information:* We will look at how coverage information is provided to consumers, how accurate it is, how consumers use it and its impact on them. Our longer-term goal is to explore how better consumer information can make switching easier, which may increase competition between operators to provide greater coverage.
  - *Examining scope to facilitate coverage on the move:* We are seeking to help facilitate an improvement in coverage for UK consumers as they travel, an issue that particularly affects business consumers. We will extend our Devon research<sup>8</sup> to measure mobile signal strength on key arterial roads in the UK. We will also explore, in the context of wider industry issues, ways to improve mobile coverage on the rail network.
  - *Continuing to engage with government:* Where market developments are less likely to address not-spots, we will continue to advise government and the devolved administrations in support of their public policy goals. For example, our first infrastructure report under the Digital Economy Act is due in summer 2011 and will include high-level findings about mobile coverage. We will use this report to develop practical recommendations where there are coverage issues which may be more relevant for the government, rather than Ofcom, to consider.
  - *Taking forward spectrum release:* Following the government's Direction, we will progress the release of spectrum suitable for next-generation mobile broadband services.
- 4.41 In addition we will be taking forward a new strand of work to better understand the costs and benefits of more comprehensive solutions to existing voice not-spots, and to assess the different mechanisms available to us to bring these about. Options which we will consider as part of this work include, for example, variations to existing licences possibly combined with amendments to spectrum licence fees. More information can be found in our *Consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues*<sup>9</sup>.
- 4.42 The outcomes from Ofcom's mobile coverage work are likely to be realised over a longer period of time than 2011/12, as they will depend on actions taken by mobile operators, following commercially or publicly-incentivised investment.

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<sup>8</sup> We are undertaking a pilot study to measure mobile signal strength in one rural region of the UK – Devon - to measure mobile 2G and 3G signal strength by operator across a sample of roads in the region. This should allow us to compare actual coverage levels with those reported by the operators in their postcode coverage checkers.

<sup>9</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/combined-award/summary/combined-award.pdf>

## **Ensuring the effectiveness of consumer complaints handling by ADR bodies**

- 4.43 All consumers have the right to take unresolved complaints about their provider to an Ofcom-approved dispute resolution scheme. Ofcom is reviewing the performance of the two schemes it has approved (Otelco and CISAS) to ensure that their operations, structure and rules are meeting consumers' needs.

## **Promoting the availability of easily-usable apparatus**

- 4.44 Ofcom has a duty under Section 10 of the Communications Act to promote the development and availability of easy-to-use consumer equipment. The recently revised Universal Service Directive also places an obligation on Member States to encourage the availability of terminal equipment offering the necessary services and functions in order to be able to adopt and implement specific arrangements for disabled end-users.
- 4.45 The Department of Business, Innovation and Skills (BIS) has indicated that this obligation should be discharged through Ofcom's duty under Section 10 (although this refers to usability in a wider sense than accessibility for disabled end-users) and the BIS e-accessibility forum. We will continue to engage with the Forum and other organisations to promote usability and accessibility.

## **Strategic Purpose 4: Provide appropriate assurance to audiences on standards**

### **Ensure efficient and effective programme standards enforcement, in particular in relation to the protection of minors**

- 4.46 We will continue to ensure that the Broadcasting Code remains fit for purpose in the context of the developing broadcast environment, taking into account the relevant statutory criteria including: the need to ensure appropriate audience protection; the views and needs of citizens and consumers; and our duty to reduce regulatory burdens on broadcasters.
- 4.47 Ofcom will continue to apply the Broadcasting Code by assessing and identifying compliance issues across television and radio services and, where appropriate, investigating and taking enforcement action.
- 4.48 In particular, we will ensure a strong enforcement focus on:
- Audience protection – especially in relation to the protection of minors and other audiences from potential harm.
  - Consumer protection – ensuring the compliance of the new regulatory regime for commercial references in television and radio programming, and keeping under review the emerging television product placement market.
  - Compliance – ensuring that core protections for audiences are rigorously enforced for all channels.

### **Work with co- and self-regulatory bodies e.g. ASA, ATVOD and UKCCIS**

- 4.49 Ofcom will continue to work with the work of co- and self-regulatory bodies. This will include continuing our relationship with the ASA in relation to its oversight of

broadcast advertising and in its new role overseeing advertising on video-on-demand services. We will also work with ATVOD as it moves into its first full year of work regulating editorial content on video-on-demand services and will continue to support the work of the UK Council for Child Internet Safety.

### **License television and radio services in the UK (potentially including new local TV services)**

- 4.50 Ofcom will continue to license television and radio services which come under UK jurisdiction, to provide consumers with a range of services. This will include inviting applications for a third round of licensing of community radio stations. The first regions will be Wales and South West England, with other parts of the UK to follow.
- 4.51 We will also work with the government to develop a new licensing regime for local television services.
- 4.52 We will review our focus on compliance issues, particularly for higher-risk channels.

### **Engagement with Channel 4 on its new framework**

- 4.53 The Digital Economy Act 2010 established a new framework for the regulation of Channel 4 Corporation (C4C), including a new remit and the *Statement of Media Content Policy*. The new remit emphasises new priorities for Channel 4, including feature films, content for older children and young adults, and developing talent within the media industry.
- 4.54 Ofcom is responsible for reviewing the performance of Channel 4 under this new framework, and in 2011/12 we will engage with Channel 4 on the content of its *Statement of Media Content Policy*, the first of which will be published in May 2011.

## **Strategic Purpose 5: Contribute to and implement public policy defined by Parliament**

### **Implement new regulatory responsibilities including those arising from the revised European Communications Framework**

- 4.55 Much of Ofcom's detailed work in telecoms and spectrum management takes place within rules laid out in the 2002 European Communications Framework. The Framework was revised in 2009, and the resulting changes must be implemented in UK law by May 2011. The primary responsibility for implementation rests with the government, but Ofcom will contribute to this process in specific areas.
- 4.56 Ofcom must complete its revision of a number of General Conditions (obligations directed to electronic communications networks and services providers) by May 2011, in order to bring them into line with the revised Framework. In addition, there are a number of other areas in which the revised Framework grants Ofcom new or altered powers, such as in relation to the enforcement of regulatory obligations, the imposition of penalties for breaches of regulatory obligations, and dispute resolution procedures. Ofcom intends to either consult on or publish revised guidelines ahead of the May implementation deadline on these areas. Where the revised Framework contains new permissive powers, Ofcom intends to keep under review the need to apply such powers.

- 4.57 One area in particular in which the revised Framework introduces new powers for Ofcom, and new obligations on public communications providers, is security and resilience. Affected providers will be required to take steps to maintain the security and availability of their networks and services, and to report significant failures to Ofcom. We will publish high-level guidance ahead of these new provisions explaining how the new requirements will be interpreted and setting reporting thresholds.

### **Conduct first infrastructure review, in accordance with the Digital Economy Act 2010**

- 4.58 The Digital Economy Act 2010 gives Ofcom a new duty to report to the Secretary of State every three years on the state of the UK's communications infrastructure. The first report will be delivered in August 2011. The Act specifies a number of reporting areas, including the use of spectrum for wireless telegraphy, the capacity, availability and coverage of networks and services, the degree of infrastructure sharing and wholesale access, and operator risk assessments and emergency response plans.
- 4.59 We will report on the most widely-available and commonly-used voice, data and digital broadcasting networks and services, with a particular focus on mobile and broadband coverage. We will also seek to capture developments in important emerging technologies such as next-generation fixed and mobile broadband access. The report will draw on existing Ofcom data, supplemented with new data from operators where appropriate.

### **Provide technical support and advice to government on policy implementation**

#### *Provide technical advice for the delivery of local TV*

- 4.60 The government has set out its intentions to secure ten to 20 local TV stations by the end of 2015. Ofcom has provided technical advice and assistance to the government as it formulates its policy.
- 4.61 We will continue to assist the government in its policy development by advising on the feasibility of different delivery models, including the use of interleaved spectrum. In addition, depending on the model of local TV chosen, Ofcom may be required to begin the implementation of government policy.

#### *Support the development of the digital audio broadcasting (DAB) platform*

- 4.62 The government, via the Digital Radio Action Plan, has asked Ofcom to play a technical supporting role in developing government policy and working towards the digitisation of broadcast radio. Specifically, we have been asked to report annually on the digital radio market, and to lead a planning process for the build-out of DAB coverage to required levels. This work is ongoing in 2011/2.
- 4.63 We propose to publish the second annual *Digital Progress Report for Radio* in the first quarter of 2011/12. We will consult on our approach to the coverage planning before presenting our final report to government with recommendations for technical transmission planning to increase DAB coverage levels. We may be required to take on a longer-term role relating to DAB coverage and spectrum planning, if government and industry continue progress towards switchover.
- 4.64 The government's Digital Radio Action Plan also asks Ofcom to consider and identify future uses for any vacated MW and FM spectrum in the event of radio switchover; we expect to begin work on this during 2011/12.

- 4.65 In our recent statement on the duration of local commercial analogue radio licences, we identified a need to review this policy in the event of significant developments. The outcome of current discussions between government and the radio sector around the future direction of DAB switchover policy – in addition to a Communications Bill green paper, as announced in the DCMS Structural Reform Plan – will inform a review in early 2012.

### **Support the government’s universal service commitment (USC)**

- 4.66 We are providing support to the government in its goal to make Britain’s superfast broadband network the best in Europe and ensure a basic broadband service available to virtually every home. This programme is being led by DCMS<sup>10</sup>. We are providing support by sharing our technical knowledge where required.

### **Representation of the nations**

- 4.67 We will continue to work towards promoting greater availability and more effective use of communications services for consumers across the UK. In doing so we will continue to monitor the take-up and availability of services in the devolved nations, especially where this differs from the average UK experience. This is reflected in a number of our priorities and work areas. For example, our work in relation to mobile not-spots will consider the availability disparities of some communications services.

### **Understanding and promoting the interests of older and disabled consumers**

- 4.68 As part of Ofcom’s duties, we are required to have regard to the needs of disabled and older people, in carrying out our work. This includes promoting the availability of appropriate communications services.
- 4.69 In 2011/12, as noted earlier, Ofcom will complete its review of relay services that help consumers with hearing and speech impairments to make and receive telephone calls. Ofcom will also continue to promote the usability and accessibility of consumer equipment, as well as carry out an in-depth research programme to investigate the extent of media literacy in the UK.

### **Support for the digital TV switchover**

- 4.70 Ofcom will continue to support digital TV switchover in 2011/12. Ofcom has statutory duties to: amend broadcaster licences; manage the radio spectrum; and ensure that statutory TV coverage requirements are met. Ofcom will work with Digital UK, the UK government, broadcasters, the Digital Television Group and other stakeholders.

### **Support for the digital radio switchover**

- 4.71 Ofcom will complete its work leading a coverage planning process to report to government on how DAB coverage can be increased to reach FM equivalence. This work will feed in to the government’s considerations of any future radio switchover. Ofcom will also continue to support the government’s Digital Radio Action Plan, working with broadcasters, Digital Radio UK and Arqiva.

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10 <http://interactive.bis.gov.uk/comment/bduk/>

## Engaging with European and wider international policy development

- 4.72 We will engage with the development of international regulatory frameworks within which the UK, Ofcom and our stakeholders operate, to ensure that they are practical, proportionate and serve the interests of UK citizens and consumers.
- 4.73 An important change has been the replacement of the European Regulators' Group (ERG) by the Body of European Regulators in Electronic Communications (BEREC), a stronger network with a wider set of functions and a formal role in the implementation of the revised European Communications Framework. Ofcom will work to ensure the success of BEREC and its work programme for 2011.
- 4.74 Ofcom will work with communications regulators in other European countries and around the world, both bilaterally and through regulatory networks such as BEREC, the Radio Spectrum Policy Group (RSPG), and the European Platform of Regulatory Authorities (EPRA), to pursue a coherent and coordinated approach to international communications services regulation. We will also engage with the CEPT and the ITU.
- 4.75 We will liaise with the European institutions, as the Commission develops its European Digital Agenda, and contribute in areas in which we can add value or which directly affect us and our stakeholders.

## Report on climate change adaptation in accordance with the Climate Change Act 2008

- 4.76 Under the Climate Change Act 2008 public bodies and statutory undertakers can be required to report to the Secretary of State for the Environment, Food and Rural Affairs on the impact of climate change on their functions and how they are planning to adapt. Ofcom has been directed to prepare its first report by 30 September 2011.

## Media literacy

- 4.77 We will continue our research programme to investigate the extent of media literacy in the UK and to identify emerging media literacy issues. We also aim to promote our research widely to ensure that it is used to best effect and to avoid duplication. Our data are frequently sought both by private and public sector organisations and are widely quoted nationally and internationally. They directly inform and support the work of bodies such as UKCCIS, Get Safe Online and Race Online 2012.

## Communications Bill

- 4.78 The government has indicated that it intends to present a new Communications Bill for enactment by the end of the current Parliament. We will contribute to this work where appropriate.

## Other ongoing work that supports Ofcom's duties and objectives

- 4.79 In addition to the work areas above, we will undertake other projects as appropriate:
- We will conduct BBC market impact assessments as required, working closely with the BBC Trust.
  - We will work with the Office of Fair Trading (OFT) and stakeholders to ensure that we understand the potential benefits associated with local newspaper mergers, conducting local media assessments as appropriate.

4.80 Supporting our overall work programme, we will also work to develop a clear view on:

- How the communications sectors are likely to evolve over time.
- What implications this will have for consumers and citizens, both positive and negative.
- What implications these developments will have for regulation.

## Section 5

# Services to stakeholders

## Ofcom delivers a number of essential services for consumers and other stakeholders

- 5.1 We have a wide range of responsibilities which we fulfil by undertaking specific projects or by offering services to consumers.

### Responding to consumers enquiries and complaints from the public

- 5.2 Ofcom's Operations team deals with enquiries and complaints from consumers about telecommunications services, TV and radio services, and use of the radio spectrum. We aim to help consumers resolve their enquiries and complaints by directing them to useful advice and by liaising with service providers.
- 5.3 People often complain to us directly about TV and radio programmes. We consider complaints relating to a number of areas such as protection of under-18s, harm and offence, fairness and privacy, and impartiality and accuracy in news. We also deal with complaints about programme sponsorship and alleged commercial influence.
- 5.4 Ofcom's Advisory Team (OAT) provides early warning of consumer concerns. New areas of concern arise all the time and these create unexpected increases in the number of complaints we receive.

### Keeping the radio spectrum free from interference

- 5.5 We monitor the radio spectrum and take appropriate action to prevent harmful spectrum interference. Increasing demand for, and use of, spectrum leads to a corresponding increase in the risk of interference. Ofcom continues to modernise its resources to prevent interference and to mitigate it when it occurs.
- 5.6 Our Spectrum Engineering and Enforcement team handles around 5,000 cases per year, taking action to:
- protect safety-of-life communications, including emergency services and air traffic control;
  - prevent illegal use of the radio spectrum;
  - enable legitimate use of spectrum, for example by providing advice and assistance to spectrum users; and
  - ensure that non-compliant equipment is removed from the market

### Licensing access to the radio spectrum

- 5.7 Ofcom controls access to the radio spectrum by issuing, renewing and revoking licences. Where necessary, we make frequency assignments, perform site clearances and coordinate the use of spectrum internationally. In the past year we have issued around 18,000 spectrum licences, (excluding renewals) covering satellite, fixed link, private business radio, amateur, maritime and other users.



## **Providing information services**

- 5.8 Ofcom provides information to the public about use of the radio spectrum. This is an important contribution to the efficient coordination of spectrum use. Ofcom also facilitates the trading of spectrum licences by stakeholders.

## **Publishing market research and communications market reports**

- 5.9 We publish research on the communications sector and the attitudes of citizens and consumers. This includes the *Communications Market Reports*; the *PSB Annual Report*; the *Digital Radio* annual report; and the *Business and Consumer Experience* reports.
- 5.10 We also publish research in support of Ofcom's projects and publications. Our approach to research ensures that we are able to gather evidence that allows us to deliver our statutory obligations to promote equality. We also comply with the Statistics Act by making our research and market statistics available in a timely way.

## **Adopting sustainable practices**

- 5.11 Ofcom seeks to adopt sustainable practices and, following an initial carbon audit in 2007, we have set ourselves a target to reduce carbon emissions by 25% by 2012/13. We have already achieved a 15% reduction and in 2011/12 we will continue to work towards the last 10%. This will be based on making savings by using greener data centres, reviewing printing use and promoting sustainable travel.

## **Corporate responsibility**

- 5.12 Ofcom is committed to being not only a responsible employer but also to managing its impact on the wider community. Our corporate responsibility purposes are:
- To treat all colleagues with dignity and respect in an inclusive and fair working environment.
  - To promote equality of opportunity for all, not only within Ofcom but also in the sectors we regulate.
  - To reduce our carbon footprint, and ensure that Ofcom's practices are environmentally sustainable.
  - To engage, inspire and develop colleagues while proactively seeking to support our local community.
- 5.13 We have made good progress in achieving the objectives we set ourselves in our Single Equality Scheme. In 2011/12 we will set additional targets where necessary, to take the new Equality Act 2010 into account.
- 5.14 We continue to run our popular reading scheme for Ofcom volunteers to support local primary school children, and in 2011/12 we will explore the opportunity to use volunteering to support further colleague development and team effectiveness.

## Section 6

# Ofcom's approach to regulation

## We seek to minimise regulatory burdens

6.1 In fulfilling our duties and meeting our strategic purposes, we follow a defined set of regulatory principles. They are:

### When we regulate

- Ofcom will operate with a bias against intervention, but with a willingness to intervene promptly and effectively where required.
- Ofcom will intervene where there is a specific statutory duty to work towards a goal that markets alone cannot achieve.

### How we regulate

- Ofcom will always seek the least intrusive regulatory methods of achieving its objectives.
- Ofcom will strive to ensure that interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.
- Ofcom will regulate with a clearly articulated and publicly reviewed Annual Plan, with stated priorities.

### How we support regulation

- Ofcom will research the communications market and will aim to remain at the forefront of technological understanding.
- Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation on a market.

6.2 We aim to regulate only where necessary. Where intervention is required we will act quickly and decisively, but recognise that unnecessary intervention could distort or stifle the development of competitive and innovative markets.

6.3 Section 6 of the Communications Act 2003 ('Section 6') places a duty upon Ofcom not to impose burdens that are unnecessary or maintain burdens that have become unnecessary. Section 6 also requires Ofcom to publish a statement showing how we fulfil this duty, which we have done so through the *Simplification Plan* presented in our *Draft Annual Plan* for 2011/12 published in January 2011<sup>11</sup>.

## Our approach to regulation is designed to minimise burdens

6.4 In addition to our regulatory principles, there are several themes that are important to our work. These will remain important throughout 2011/12:

<sup>11</sup> <http://stakeholders.ofcom.org.uk/consultations/draftap1112/>

- Considering how our work and how outcomes relate to each nation of the UK. Ofcom's work is increasingly influenced by the implications of institutional changes and differences in the nations.
  - Adhering to Ofcom's consumer interest toolkit as a way of ensuring that Ofcom identifies and addresses consumer interests across its work.
- 6.5 Section 7 of the Communications Act 2003 says that Ofcom must carry out and publish an Impact Assessment where it appears to us that our proposal is important. We carry out Impact Assessments in relation to the vast majority of our decisions. They provide a way of identifying the problems to be addressed, considering different options (including not regulating) and then selecting the option which maximises expected benefits and minimises the costs of intervention.
- 6.6 We fulfil our duties in a manner consistent with the principles of Better Regulation. This requires regulatory intervention to be evidence-based, transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed.
- 6.7 Targeted and proportionate regulation has had a key role in the delivery of positive outcomes for UK citizens and consumers. Although the imposition of burdens on regulated companies is inherent in the practice of regulation, we believe that interventions are justified where the cost of these burdens are outweighed by the overall benefits that result from their implementation.
- 6.8 We apply the principle of proportionality to our approach and so focus on the most significant costs and benefits and seek to avoid spending disproportionate effort on relatively minor costs and benefits. The amount of information we request from stakeholders to carry out our analysis must also be proportionate.
- 6.9 When assessing options for intervention, we consider a range of solutions. These include no regulation, industry self-regulation (without formal oversight or regulatory back-stop powers), co-regulation (where the government or the regulator does have back-stop powers and a degree of oversight), and full statutory intervention.
- 6.10 Throughout 2009 and 2010 Ofcom has developed internal project management guidance to ensure that every project manager understands and considers impact assessments, equality impact assessments, risk, co- and self-regulation, and defining metrics of success, and so tailors their approach to address each area of concern.

### **We regularly review regulation to examine whether it is still fit-for-purpose and to remove burdens that are no longer justified**

- 6.11 Once regulation is in place, we subject it to periodic review to take account of changing market conditions, stakeholder needs and statutory requirements to conduct formal reviews. We also evaluate major interventions against the outcomes that they were intended to achieve. Reviews and evaluations allow us to determine whether current regulations and their associated burdens are still justified.
- 6.12 Since its inception Ofcom has sought to take a strategic approach to regulation, publishing wide-ranging sectoral reviews. While these can result in administrative burdens on stakeholders through information requests and the consultation process, they are necessary for us to assemble an evidence base for analysis. On the other hand, a strategic approach to regulation reduces the likelihood of the imposition of multiple unnecessary burdens.

## Annex 1

# Summary of consultation responses

## Introduction

- A1.1 We received 38 consultation responses from stakeholders, including private individuals, advocacy groups, consumer interest organisations, companies and trade bodies. We also held events across the UK to share our proposed work programme, at which we received questions and feedback.
- A1.2 Overall we received broad support for our priorities and work programme, but some stakeholders raised issues on particular aspects of our proposed work programme for 2011/12. Where possible we have summarised these issues and our responses in this annex, but it is not possible for us to respond to all detailed questions.

## General comments on the Draft Annual Plan

### Annual Plan process

- A1.3 Some stakeholders requested earlier publication of the Annual Plan and a longer consultation period.
- A1.4 *The Draft Annual Plan consultation is timed to give stakeholders the opportunity to comment on our work programme for the following year, but also to allow us to meet our statutory deadline to publish the final Annual Plan ahead of the new financial year. This year's Draft Annual Plan was published slightly later than normal to reflect the significant consequences for Ofcom of the government's Spending Review.*
- A1.5 Several stakeholders asked that Ofcom provide additional information in future Draft Annual Plans, including budget information, more detail on projects, and to set out the activities Ofcom proposed to reduce or stop.
- A1.6 *Where it is clear that we will be reducing or stopping work we will communicate it, as we have done with digital participation in this document. Budgetary information is included in our Tariff Tables and our Annual Report, which gives details of our performance against the prior year's budget. More detail on specific projects can be found in our Programme of Work, published alongside this Annual Plan [here](#).*
- A1.7 One industry stakeholder requested more information on Ofcom's new structure and reporting lines.
- A1.8 *On 1 February we published our new structure on our website. It can be found [here](#).*

### Budget reductions and their impact on Ofcom's ongoing work

- A1.9 A number of stakeholders commented on the reduction in Ofcom's budget as a result of the Spending Review. Stakeholders wished to know whether Ofcom would still be able to discharge its duties to citizens and consumers, while taking on new responsibilities in online copyright infringement and post.

- A1.10 Stakeholders also commented on the importance of our research into the needs of citizens and consumers and requested that this be reflected in our budgeting process.
- A1.11 *Changes to our spending and governance have been planned to allow us to continue to deliver high quality regulatory decisions and fulfil all our statutory duties. We will monitor the impact of our decisions to ensure that we continue to discharge our duties in the interests of citizens and consumers across the UK.*
- A1.12 Some stakeholders suggested ways in which Ofcom could achieve savings or prioritise activities in the context of its reduced budget. These included:
- Ring-fencing the budget for telecoms projects to allow for the efficiencies in telecoms projects to be passed back to stakeholders in the form of lower administrative charges. *Our administrative charges are set to reflect the scope and nature of our overall programme of work. More detail can be found in our Tariff Table published [here](#) and our Statement of Charging Principles [here](#).*
  - Prioritising the market review programme and reducing regulation. *We will continue to deliver our programme of market reviews and follow our regulatory principle to deregulate where possible and deliver effective regulation where we cannot.*
  - Seeking efficiencies from international travel and engagement. However, several stakeholders emphasised the importance of the international engagement we undertake, and urged us to continue to engage across spectrum and non-spectrum issues. *Our involvement in international fora is an important part of our work, particularly in relation to spectrum harmonisation. When we do engage we do so in a cost-efficient way.*

## **Purposes and priorities**

- A1.13 We received a number of general comments on our purposes and priorities. These included:
- A telecoms stakeholder welcomed our new purposes, but expressed disappointment that Ofcom did not consult on them
  - Several stakeholders felt that the number of priorities in the Annual Plan risked a lack of strategic focus
  - A mobile operator asked that we present the priorities in order of relative importance
- A1.14 *We have not consulted on our purposes, but instead consulted on the priorities and work areas for 2011/12. This allows us to gather feedback on the specific projects we will be undertaking. The number of priorities reflects the wide range of work that Ofcom undertakes across the communications sector. Ofcom sets out priorities and work areas as part of our overall work plan to highlight their importance to fulfilling our duties.*
- A1.15 A number of stakeholders requested more detail on the outcomes of Ofcom's work and how we would assess progress against them.

- A1.16 *In this Annual Plan we have more detail on our outcomes on pages 16 and 17. Our Annual Report for 2011/12 will present more information at the end of the year.*
- A1.17 Two industry stakeholders expressed concern that the interests of business consumers were not sufficiently represented in the Draft Annual Plan.
- A1.18 *Ofcom's responsibilities are to both residential and business customers and we note this concern. Our work programme for 2011/12 includes projects that relate to business consumers, e.g. our Business Connectivity Market Review and leased lines charge control on page 19. We are also undertaking work that will benefit businesses and consumers, including promoting investment in superfast broadband and in relation to mobile not-spots.*

## **Governance**

- A1.19 Some stakeholders requested more information about proposals to close some of our governance bodies. They also wished to know how advocacy for consumers, and older and disabled consumers in particular, will be maintained.
- A1.20 *The Advisory Committees for the Nations and the Nations Committee will be responsible for these issues. The membership of these Committees will be formed so that there is appropriate expertise in these areas to advise Ofcom.*
- A1.21 Several stakeholders were interested in how we will engage with issues in the devolved nations and England, particularly in the context of our proposals to close the Advisory Committee for England.
- A1.22 *The Nations Committee and the Advisory Committees for the Nations will work with devolved Administrations. Through our stakeholder meetings and research Ofcom will continue to obtain the views of citizens and consumers living in England.*
- A1.23 One stakeholder expressed concern that the proposed changes to our governance structure contravened our duties under Sections 3, 4 and 16, 20 and 21 of the Communications Act 2003.
- A1.24 *Some of the changes to our governance structure and supporting advisory bodies will depend on legislative change as a result of the Public Bodies Bill.*

## **Promote effective and sustainable competition**

### **General competition responses**

- A1.25 We received a number of comments from stakeholders on general and specific competition issues. In particular the Advisory Committee for Older and Disabled Consumers argued that competition and market-led solutions do not always cater effectively for minority groups and that they should be factored more explicitly into Ofcom's view of competition and markets.
- A1.26 *We will take on board specific issues and address them where appropriate within our programme of work.*

## **Promoting competition and investment in the delivery of superfast broadband**

- A1.27 We received several responses on our priority in relation to superfast broadband. These focused on delivery of broadband in rural areas and where the market might otherwise not deliver.
- A1.28 One stakeholder expressed the view that government investment is needed to deliver the universal service commitment for broadband and NGA networks.
- A1.29 The Advisory Committee for England proposed that Ofcom should focus on the needs of rural users when carrying out work in relation to superfast broadband. Another stakeholder was concerned that focusing on BT's infrastructure through the WLA remedies neglected local next generation access networks, which they consider also to hold significant market power. The stakeholder was also surprised that the Draft Annual Plan did not mention Ofcom's engagement with BDUK, which it saw as a key element of the government's broadband objectives.
- A1.30 *We have previously acknowledged (in our March 2009 statement on superfast broadband) that local investment initiatives could lead to the emergence of local monopolies, and that in those circumstances it will be important to ensure the availability of wholesale products, capable of supporting effective competition at the retail level. We have also indicated that, in the course of the year, we intend to consider how the new infrastructure sharing powers provided by the revised EU framework should be applied.*
- A1.31 *The question of public funding for network deployment remains a matter for government. We will continue to work actively with BDUK in support of the government's broadband initiatives and reflect this in our work plan for 2011/12, in particular on page 9 and page 28 in relation to the universal service commitment.*

## **Wholesale local access (WLA)**

- A1.32 We received comments on our work on WLA. One telecoms stakeholder strongly disagreed with the grouping of VULA and PIA under the one heading of the WLA market review. Other industry stakeholders expressed concern that wholesale access on next generation access networks was reliant on the use of the VULA product.
- A1.33 *We are aware of specific issues for particular communications providers and will address these within our programme of work where appropriate.*

## **Leased lines**

- A1.34 One respondent argued that deregulation in the leased-line market would enable it to meet consumer needs and improve its ability to compete. It also highlighted that the leased lines review has links to other markets, as bundled services for businesses include leased-line products. It urged Ofcom to conclude the PPC replicability review as soon as possible.
- A1.35 A telecoms respondent suggested that Ofcom should consider BT's Ethernet pricing, supported the remedy on BT following the WLA review, and wanted to see the same remedy applied to leased lines.
- A1.36 *We value stakeholder observations on the review we are undertaking and will consider them within the review where appropriate.*

## Numbering

- A1.37 There was a range of concerns among industry stakeholders about our work on non-geographic numbering. One MNO questioned whether our focus on non-geographic numbering was justified by our consumer research. The same stakeholder was concerned that the proposed work on non-geographic numbers did not address wholesale termination. Another MNO expressed concern that the potential remedies identified by Ofcom in non-geographic numbering would be complex and expensive.
- A1.38 *Our review began in response to substantial consumer concerns about the operation of non-geographic numbers and the effectiveness of existing regulation. We are aware of the wholesale and network issues, but will need to consider the required consumer/retail outcomes before we can assess what, if any, wholesale changes may be needed.*

## Cost orientation

- A1.39 Some stakeholders asked whether Ofcom would be conducting further work on cost orientation.
- A1.40 *We have provided further information on page 20 on this work.*

## Promoting the efficient use of public assets

### Spectrum clearance and awards

- A1.41 We received considerable interest from stakeholders in our spectrum clearance and awards priority. Several stakeholders asked for more information on the potential uses and timing of the release of 600 MHz spectrum.
- A1.42 The Advisory Committee for Scotland commented on the clearance and release of spectrum. They asked that Ofcom be mindful that interleaved spectrum is likely to be used for DTT and NGA in Scotland. They feel this is particularly relevant to packaging spectrum, as DTT usually requires blocks of 8 MHz, whereas mobile broadband generally use 5 MHz channels.
- A1.43 *We have updated the Annual Plan with more information on the 600 MHz clearance and awards process. We appreciate the Advisory Committee for Scotland's comments and will include them within our programme of work where appropriate.*
- A1.44 A PMSE stakeholder asked when PMSE users must vacate spectrum at 790-862MHz. This respondent suggested that the 2.6 GHz band should continue to be available for PMSE use after the auction, until the spectrum is occupied by its new users.
- A1.45 *Temporary access to 2.6 GHz is on a three-month rolling notice period which will be triggered at the point when we invite applications for the 2.6 GHz award. The exception will be in those areas where the 2012 London Olympics are taking place, as the 2.6 GHz band will be made available for wireless cameras during the 2012 Games. These frequencies will be withdrawn for PMSE use in those areas as soon as the 2012 Games have concluded.*
- A1.46 A telecoms company suggested that, given the increased demand for mobile services, Ofcom should examine related regulatory issues, such as the possibility of



wholesale access to mobile networks, and that this should take place before the planned spectrum auctions.

- A1.47 *Mandatory wholesale access is an intervention that Ofcom is considering as part of its assessment of future competition in mobile markets, in preparation for the award of the 800 MHz and 2.6 GHz bands.*
- A1.48 One MNO argued that the liberalisation of incumbent MNOs' 900 MHz holdings will distort long-term competition, and requested that Ofcom address this through its competition assessment and auction design processes.
- A1.49 *Ofcom's assessment of future competition in mobile markets, in preparation for the award of the 800 MHz and 2.6 GHz bands, takes full account of the holding of other mobile suitable spectrum by existing licensees.*
- A1.50 A consumer body asked that Ofcom consider how to manage the release of the digital dividend to provide communications services to rural communities.
- A1.51 *Ofcom is concerned about the disparity in the availability of mobile services in different parts of the country. Last year we undertook research to better understand the nature, reasons and impacts of mobile not-spots. The award of new licences represents a potential opportunity to address some of these issues. Our proposals in this regard will be published as part of our consultation on the award of the 800 MHz and 2.6 GHz bands.*

### **White space**

- A1.52 A number of stakeholders urged Ofcom to conduct further work on spectrum white space.
- A1.53 *We have included the work we will be doing on white space on page 21.*

### **Simplifying spectrum trading and leasing**

- A1.54 We received a range of responses on spectrum trading and leasing. One stakeholder cautioned against allowing spectrum trading to interfere with existing procedures, and said that any benefits might be outweighed by implementation costs. However, another stakeholder suggested that Ofcom should encourage a secondary spectrum market so that there would be less need for Ofcom to use the primary spectrum market as a longer-term planning and management tool.
- A1.55 *We appreciate these stakeholder submissions and will respond to these within our programme of work as appropriate.*

### **International spectrum harmonisation**

- A1.56 An industry trade body raised concerns that public sector spectrum was not harmonised across Europe. It also asked Ofcom to pay particular attention to the Radio Spectrum Policy Plan, and called for EU-coordinated identification of spectrum below 1 GHz for harmonised public protection and disaster relief (PPDR) broadband services.
- A1.57 *Ofcom will play a full and active role in addressing the proposals outlined in the Radio Spectrum Policy Plan (RSPP). Ofcom is aware that, as the RSPP reflects, additional spectrum may be required for public protection and disaster relief and, to*

*address this, Ofcom will participate in the relevant ECC Working Groups that will support that work. In addition, Ofcom will continue to support UK interests in relation to the World Radio Conference (WRC).*

## **Spectrum enforcement and addressing interference**

A1.58 Stakeholders commented on the importance of addressing interference, and supported Ofcom's activities which include tackling illegal broadcasting, interference investigations and planning work to avoid or mitigate interference issues. In particular stakeholders raised concerns in regards to equipment, amateur radio, broadcasting and 4G mobile services and the interference to microwave services from wind turbines.

A1.59 *We recognise that this is an important issue for stakeholders and this will be reflected within our specific activities as appropriate.*

## **Help communications markets to work for consumers**

### **Develop and implement policies that will improve the ease of switching between communications providers for consumers**

A1.60 The majority of respondents expressed support for our work on switching and a gaining-provider-led process. Several respondents said that they perceived low levels of switching in the market. Other issues raised included:

- That we look at switching across the retail communications market, rather than on a sectoral basis, and proposed co-ordinated action by regulators across sectors to address switching.
- That Ofcom should support, and provide oversight to, a self-regulatory industry approach.
- The standardisation of broadband switching processes across technologies.
- That mobile switching processes had been de-prioritised, and should be a priority in 2011/12.

A1.61 Automatically renewable contracts were also commented on. One private individual proposed that notification of approaching contract end-dates should be made compulsory, while an industry stakeholder suggested that automatic renewable contracts may harm competition, especially when combined with minimum contract periods with early termination charges.

A1.62 *Switching is a priority issue for Ofcom in the year ahead and our strategic review encompasses switching across the UK communications markets: fixed and mobile telecommunication, broadband and pay-TV. We are initially prioritising fixed-line and broadband switching because this is where we have identified the greatest problems. We propose to consider changes to the mobile number portability process following our initial considerations.*

A1.63 *Ofcom intends to consult in the summer on a preferred switching process for fixed telecommunications and broadband using the Notification of Transfer (NoT) and Migrations Authorisations Code (MAC) processes. This consultation will consider options that are being developed in our Switching Working Group.*

A1.64 *Ofcom also believes that harmonised switching processes, particular in relation to single services, could provide significant additional benefits to consumers, as they could help to reduce confusion about which process is required.*

### **Ensure that communications providers deliver clear information so that broadband consumers can make informed choices**

A1.65 A broadcasting stakeholder argued that transparent consumer information for broadband services is important and that ISPs should provide clear statements about their quality of service and traffic management policies.

A1.66 A mobile operator believed that the self-regulatory code on the promotion of mobile broadband has built consumer confidence and that this will be strengthened in 2011/12 by greater transparency regarding traffic management.

A1.67 A trade union respondent said that relying on the market to deliver net neutrality is not adequate, and that further action is desirable.

A1.68 *Ofcom believes that consumers should have clear information about how their broadband services operate, including how traffic is managed. As set out in our Annual Plan, we will conduct research and work with industry to ensure that this is provided; we have provided more detail our work on page 13 with more detail. We are reviewing our powers under the European Communications Framework and will act where necessary to prevent consumer harm.*

### **Ensure the adequate provision of services for consumers with hearing impairments**

A1.69 We received a wide range of comments from industry and consumer stakeholders on relay services in general, and the age and functionality of the current text relay service in particular. These included:

- The potential benefits of video relay services (VRS), and that Ofcom should promote VRS.
- The importance of competition and choice in relay service providers.
- That it may be desirable to make the development of terminal equipment for users with disabilities mandatory.
- The role of accessibility in mobile and cordless handsets, in particular hearing aid-compatible handsets, and whether the UK could adopt US standards to make a wider range of products available.
- BT proposed that the current Text Relay Obligation was inequitable, and that it should be required to supply only its own retail customers

A1.70 *Our review of relay services, on page 23, is a major work area for Ofcom in 2010/11. It will assess the current arrangements for the provision of relay services, identifying gaps in provision in achieving equivalence and considering proportionate solutions.*

A1.71 Several stakeholders emphasised the importance of research to understand consumers' needs before Ofcom makes any intervention. They suggested that in some cases take-up of services may be low, and that consumers may use alternative mechanisms to communicate, such as SMS.

A1.72 *Ofcom's recent market research helps us understand the gaps in the market, and to place the telecommunications needs of those with hearing and/or speech difficulties in the context of other technologies and services. The research highlights that those with hearing and/or speech difficulties make use of a wide variety of communications such as SMS and email, but also value the text relay service. There might be other improvements that could be made, as there is demand for additional relay services including captioned telephony and video relay for British Sign Language users.*

### **Easily-useable apparatus**

A1.73 A consumer body said that it would like to see the UK/EC moving towards proportionate availability of mainstream mobile and cordless phones that are suitable for hearing aid users, using EC-agreed methods of testing if necessary.

A1.74 *Any such legislation would be a matter for the EU, as 'manufactured goods' are regulated at a European level. Ofcom will continue to work with others to achieve progress in the area of accessible end-use equipment.*

A1.75 A consumer campaign group called for the provision of easily-usable terminal equipment to be mandatory.

A1.76 *Ofcom has no powers under the Communications Act in relation to end-use equipment. The revised Universal Service Directive requires Member States to encourage the availability of terminal equipment offering the necessary services and functions. The UK government has announced its intention of discharging this obligation through its e-Accessibility forum. We will continue to work with other organisations where possible to achieve progress in this area.*

### **Continue to promote investment that would address broadband and mobile not-spots**

A1.77 A range of stakeholders commented on our mobile coverage work. The Advisory Committee for Northern Ireland reiterated their concern about the level of mobile coverage across Northern Ireland.

A1.78 *This issue remains important to Ofcom and is a major work area for us. We have received the findings from the Devon study and are considering them at present and have further work underway as explained on page 23*

A1.79 One industry trade body argued for mandated national roaming between mobile networks.

A1.80 *Mobile operators are already free to enable roaming arrangements on a commercial basis if they wish to do so. Mandating national roaming has been suggested by stakeholders in the past, for more information see our published update on mobile not-spots [here](#).*

### **999 SMS**

A1.81 We received several comments on 999 SMS, which was not included within the draft Annual Plan. Two stakeholders asked why there was no mention of our work on emergency SMS implementation, while one MNO questioned why the 999 SMS service was made mandatory when the existing voluntary approach was working.

A1.82 *Ofcom is consulting on its proposal to mandate emergency SMS for hearing and speech-impaired people in the light of our new duties under the European regulatory framework. Our view is set out in our consultation [here](#) is that the trial scheme has demonstrated the importance of a service which is robust, consistent and entirely dependable. Even a small risk of a MNO withdrawing from the service could bear a grave cost for vulnerable users who have come to depend on the service.*

## **Provide appropriate assurance to audiences on standards**

### **Commercial radio**

A1.83 A number of stakeholders asked that we review the decision concerning analogue licensing in 2011/12 and broaden the scope of the review to include the whole licensing process. While supporting recent changes to the Broadcasting Code, they argued for greater flexibility in regard to sponsorship, commercial references and commercial arrangements around music selection.

A1.84 *We have provided more information on our programme of work on page 26. Beyond this, we have expressed the intention to review our recent licensing decisions in our Broadcasting Code Review [here](#).*

### **Protection of minors**

A1.85 An MNO argued that self-regulation of standards for the protection of minors has been successful and wished to understand Ofcom's reasons for being more active in this regard.

A1.86 *We have a statutory duty to take particular account of the vulnerability of children when determining what constitutes adequate protection from potential harm.*

### **Community radio**

A1.87 A community radio respondent asked that Ofcom issue more licences for community radio, to enable their station to broadcast local content to the community.

A1.88 *We have provided updated information in the Annual Plan, page 26, as we will be inviting applications for the third round of community radio licensing. The first region will be Wales and South West England. Other parts of the UK will follow.*

## **Contribute to and implement public policy as defined by Parliament**

### **Implement Digital Economy Act 2010 provision on online copyright infringement**

A1.89 Several stakeholders asked for clarity on Ofcom's work in relation to the DEA, including timelines and stakeholder engagement. There were also specific concerns in relation to protecting the rights and interests of consumers, proportionate reporting requirements and suggestions on the funding of the provisions.

A1.90 *We have concluded our consultation process on the proposed Initial Obligations Code and expect soon to be in a position to publish the draft Code. This will be submitted by the UK Government to the European Commission for consideration and then to the UK Parliament. Ofcom will confirm a revised timetable when there is*

*clarity on the passage of the draft Initial Obligations Code through the European Commission and then through the UK Parliament.*

- A1.91 *The Act envisages that Ofcom will report on a wide range of measures, including measures taken by copyright owners to encourage the take-up of lawful services. The apportionment of costs is a matter for government, rather than for Ofcom.*

### **Prepare statutory report to government on licensing arrangements for Channels 3 & 5 after 2014**

- A1.92 The Advisory Committee for England asked how the report would consider regional programming and news. Another stakeholder requested that ITV news for Wales be considered as a national news requirement for Wales, rather than a regional service in the Channel 3 licence after 2014.
- A1.93 *In preparing our report, we will give full consideration to the contribution of obligations relating to the nations and regions to the purposes of public service broadcasting in the next licence period.*

### **National infrastructure report**

- A1.94 Several industry respondents asked that Ofcom takes account of the importance of spectrum in relation to the UK national infrastructure.
- A1.95 *As part of our duty to report on UK infrastructure under the DEA, we intend to report on the use of spectrum using the Frequency Allocation Table and Ofcom licensing data. This includes spectrum licensed for securing the performance and safety of the UK national infrastructure.*
- A1.96 The Welsh Assembly Government asked that we share the findings of our infrastructure report with the devolved governments in the UK to assist in their public policy making.
- A1.97 *The Digital Economy Act requires Ofcom to provide a report to the Secretary of State. It also requires us to publish a report as soon as practicable after it has been submitted to the Secretary of State and, where appropriate, bring it to the attention of persons who are likely to have an interest in it.*

### **Prepare for and fulfil regulatory duties in relation to post**

- A1.98 Some stakeholders have highlighted the limited discussion of the postal sector in the Draft Annual Plan, and have raised a number of regulatory issues in relation to post.
- A1.99 *As Ofcom's duties in relation to the postal sector are subject to ongoing legislation, it would be inappropriate to discuss postal regulation until after Royal Assent of the Postal Services Bill. We are preparing, where appropriate, as outlined on page 15.*

### **International policy implementation**

- A1.100A telecoms stakeholder stated that it would expect consultations on many of the implications of the revised EU directives and new powers coming to Ofcom.
- A1.101 *On 24 February Ofcom published a consultation on its proposals to amend the General Conditions and Universal Service Conditions required in order to implement the revised EU Electronics Communication Framework European Framework. Where*

*the EU Framework contains new permissive powers, Ofcom intends to keep the need to apply such powers under review from May onwards.*

## **Media literacy**

A1.102 The Advisory Committees for Scotland, Northern Ireland and Older and Disabled Consumers, as well as other stakeholders, noted the importance of our research to monitor market developments, and in particular in media literacy.

A1.103 *In 2011/12, we will continue to carry out the children's and adults' media literacy research, publish audit reports and will focus our efforts to ensure that our surveys support and inform the work of stakeholders.*

## **Local TV**

A1.104 The Advisory Committee for Scotland advocated a joined-up approach to broadcasting and broadband policy to ensure take-up of local content. They also argued for a differentiated approach to local news and media provision across the nations and regions, particularly in Scotland, due to plurality concerns around Scottish news services. The Advisory Committee for England warned against a potential gap in content, in the event that ITV winds down regional programming before local TV services are fully established.

A1.105 *Local TV is a matter for government and is being led by DCMS. Ofcom is providing technical and regulatory advice.*

## **Other responses**

A1.106 While the majority of responses received related to the areas of the Annual Plan, respondents also commented on other areas of work.

## **Co-regulation**

A1.107 One trade body believed that Ofcom should support a co-regulatory body to bring together industry and regulatory groups in networks and services.

A1.108 *Ofcom actively supports the use of self-regulation and co-regulation where it can be effective. We note a proposal that industry should take the lead in setting up a co-regulatory forum and will follow developments with interest.*

## **Grounding of telegraph wires**

A1.109 One respondent highlighted the absence in the Draft Annual Plan of plans to place telephone wires and cables in national parks underground, and called for joint and public support from Ofcom and Ofgem.

A1.110 *Ofcom welcomes infrastructure sharing initiatives of this kind. We may take account of the potential for such schemes when carrying out our work on the implementation of remedies and on the application of our new infrastructure sharing powers under the revised EU framework for telecoms regulation.*