



Department for
Digital, Culture,
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Dear Jeremy

Thank you for your letter of 5 June setting out the Ofcom Board's response to proposals for information to be exempt from the duty on Ofcom to share information with Government at least 24 hours in advance of publication. Following the statutory consultation with Ofcom, which has now concluded, I am writing to inform you of my final decision.

I also wanted to take this opportunity to thank you and the Ofcom Board for your continued engagement with DCMS throughout the development of these regulations. The Government is fully committed to Ofcom's independence, and have put in safeguards that prohibits representations being made to Ofcom before publication.

To formalise the duty, which was introduced under section 24A of the Communications Act 2003 (as inserted by the Digital Economy Act 2017), I must specify exemptions from the duty. I can now confirm that the descriptions of information which will be specified in regulations as being exempt are as follows:

- Broadcasting content standards enforcement
- Broadcasting licensing enforcement
- Corporate functions

Ofcom will be required to share all other types of information falling outside of these exemptions at least 24 hours before publication, unless there are exceptional circumstances or prior agreement is reached between DCMS and Ofcom.

I firmly believe that this final list of exemptions both protects Ofcom's continued independence and fundamentally delivers on what is set out in legislation.

In your letter of the 5 June, you agreed with our proposal to exempt broadcasting content standards enforcement and broadcast licensing enforcement information. You also proposed a wider category of exclusion in relation to media regulation information to include, for example, updates to the Broadcasting Code, to ensure a clear separation between Government and Ofcom. Broadcast content standards enforcement and broadcast licencing enforcement information will be exempt from the duty specifically to maintain the separation of regulator and Government and I can confirm that information falling within those categories already includes any changes to the Broadcasting Code. It is only media/broadcast publications which relate to wider questions of public policy, for example the Public Service Broadcasting Review, that Ofcom will be required to disclose once the duty has commenced. I encourage Ofcom to continue liaising with DCMS officials as the regulations are being drafted and to share examples of media/broadcast publications to ensure descriptions for information are clearly defined.

You again raise concerns that enforcement information relating to telecoms, post and spectrum would not be exempt in the same way under these regulations. However, I continue to believe that it is important for Ministers to have advance sighting of important information relating to these sectors, given Ofcom now has a statutory duty, under the Statement of Strategic Priorities, to have regard for the policy priorities I designate when carrying out regulatory functions in these areas. This is so Ministers, and officials acting on their behalf, feel able to assess any wider policy implications caused by information published by Ofcom.

You propose sharing enforcement decisions with Government at the same time as companies affected shortly before publication. However, this would not fulfil the primary purpose of the duty which is to ensure Government is kept well informed of Ofcom's expertise, research and key policy decisions in a timely manner to give sufficient opportunity for officials to prepare accordingly. Therefore non-broadcast enforcement information should be shared with government, according to the sharing arrangements which will be set out in the agreed Memorandum of Understanding (MoU). The additional arrangements for highly market sensitive information will see that such information only has to be shared once UK markets have closed (which may be less than 24 hrs before publication), to provide necessary assurances to the companies Ofcom regulates.

This new duty will not, nor does it seek to, interfere with Ofcom's investigations or decision making; nor will it impact the companies you regulate. The statutory limitations on what Ministers, and officials acting on behalf of Ministers, can do with information shared by Ofcom already provides sufficient safeguards, including the prohibition on making any representations to Ofcom on any information disclosed and strict limitations on who information can be shared with within Government before publication.

Finally, in response to your concerns about the different approaches between Ofcom and the Competition and Markets Authority (CMA), with whom you exercise competition law functions, again I would like to emphasise the statutory limitations placed on the information being shared by Ofcom. The information sharing duty does not impact how Ofcom or the CMA carries out its duties, or the companies that they regulate. Notwithstanding this, it is clear that in enacting section 24A of the Communications Act 2003, Parliament intended sharing arrangements to be in place for Ofcom.

Next Steps

I will table a Written Ministerial Statement to inform Parliament of my decision before the Summer recess. This will be in advance of the making of the regulations to commence the duty, which we expect to lay in the autumn. We will also publish this correspondence on the pre-disclosure duty to ensure full transparency. My officials will continue to liaise with yours on the appropriate timetable, and we ask that you do not consult with stakeholders until after Parliament has been appropriately notified.

My officials will also send a further iteration of the MoU to Ofcom and BEIS officials to finalise and agree on processes before the duty comes into force.

I have sent a copy to the Secretary of State for Business, Energy and Industrial Strategy.

Yours ever



Rt Hon Jeremy Wright QC MP
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