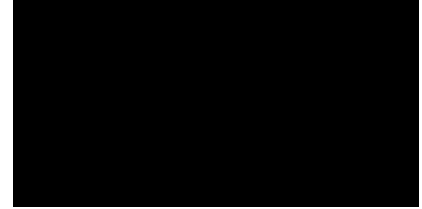


Rt Hon Jeremy Wright QC MP
Secretary of State for Digital, Culture, Media and Sport
Department for Digital, Culture, Media and Sport CMS
100 Parliament Street
London SW1A 2BQ

Lord Burns GCB
Chairman



5 June 2019

Dear Secretary of State,

I am writing in response to the letter of 14th May from Ben Dean, Deputy Director for Media Policy, in which he sets out your intention to make regulations under s.24A(4) of the Communications Act 2003 and requests the Ofcom Board's views on the proposed list of exempt publications. I am replying on behalf of the Ofcom Board, which has now considered the proposal.

The Board welcomes the opportunity to comment formally on the proposals before the regulations are made. The Board was, however, disappointed to see that some particularly sensitive categories of publication have not been included in the exemptions, despite our previous correspondence on the issue. This letter sets out the Board's remaining concerns, and we ask you to reflect on these before making the regulations.

We understand that you propose to bring into force the requirement in s.24A on Ofcom to provide you, at least 24 hours in advance, with any information that we propose to publish. You propose that only information in the following categories should not be provided in advance of publication:

- Broadcasting content standards enforcement
- Broadcasting licensing enforcement
- Corporate functions (expenses, job advertisements, etc.)

You have also agreed that documents containing certain categories of sensitive information, in particular market sensitive information, should be provided less than 24 hours in advance of publication.

We are grateful for the work that DCMS officials have done with Ofcom in drafting a Memorandum of Understanding to govern the process for disclosure of information under s.24A. The practical measures that officials have agreed to put in place about the treatment of this information – particularly market sensitive information – should help to provide reassurance to the companies we regulate that when their information is shared with Government it will be protected. Colleagues from the Ofcom executive will continue to work with your officials to finalise the MoU.

We note the safeguards in the legislation which prohibit Ministers from seeking changes to Ofcom's publications during the period before publication. Notwithstanding these, we remain concerned that there are some areas in which the provision of information by the regulator to

Government ahead of publication could be particularly sensitive. There are three points in particular that we ask you to reflect on further before making the regulations.

Regulation of the broadcast media is a particularly sensitive area, in which it is clearly important to guard against any perception of undue Government influence or interference. We believe that you are right to exclude enforcement information on content standards and broadcast licensing for this reason. However, since these proposed exemptions are defined with reference to the narrow category of enforcement, they would not cover other sensitive information relating to media regulation (for example, updates to the Broadcasting Code). We believe a wider category of media is needed to ensure a clear separation between the Government and the regulator on media matters. Ofcom would be happy to provide further information on the types of information we publish in this area to your officials if it would be helpful.

The Board was particularly disappointed to see that you are not proposing that information about Ofcom's enforcement decisions on telecoms, spectrum or post should be exempt from the duty in s.24A. Ofcom would therefore be required to disclose those decisions to the Government in advance of publication, which would often mean that the Government would receive these decisions before they are disclosed to the companies who are the subject of the decisions. It seems to us that those companies might well argue that this is unfair. We therefore suggest that, should telecoms, spectrum and post enforcement decisions remain in scope of the duty in s.24A, the MoU should make clear that these publications will be sent to DCMS at the same time that they are sent to the companies affected, which may be shortly before publication.

We also remain extremely concerned that the inclusion of these non-broadcast enforcement decisions would create a difference in approach between Ofcom and the Competition and Markets Authority, with whom we exercise competition law functions concurrently. We encourage you to reconsider establishing a regime that treats telecoms companies differently from those in other sectors.

The letter from Ben Dean indicates that the Government considers Ofcom best placed to notify the companies we regulate about these changes. We assume you will write to us with your final decision, before you set out your plans in a Written Ministerial Statement. Once we have received your final letter, we will proceed to make our stakeholders aware of the changes and, in accordance with our usual practice of transparency, we will publish our exchange of correspondence on the matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Burns', with a small flourish at the end.

TERRY BURNS
Chairman