



Proposals for a co-regulatory system for training and the development of skills in television and radio

Consultation

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Summary

- S.1. The Communications Act 2003 has placed increased obligations upon Ofcom to promote training above and beyond previous legislation. The Act also broadens Ofcom's oversight responsibility across the industry with regard to training, by not just including terrestrial television broadcasters as before, but now effectively adding radio and cable/ satellite companies with more than twenty staff. In addition, the BBC through its revised Agreement and S4C through the Act have been given obligations for training equivalent to those placed on licensed commercial broadcasters.
- S.2. Earlier this year the industry, Skillset (the Sector Skills Council for the Audio Visual Industries), and Ofcom formed a working group to design a system of co-regulation which would allow Ofcom to meet its statutory requirements under the Act, while at the same time giving greater responsibility to the industry itself for delivering on its obligations. A separate sub-group of industry participants also met to agree a framework for funding freelance training.
- S.3. Ofcom now wishes to consult publicly on the proposals put forward by these groups which are outlined below and which have been endorsed by the Ofcom board. Views are particularly sought from interested parties other than those involved in drawing up the proposals.
- S.4. Effective arrangements for training and the development of skills are vital for the health of the television and radio sectors and for the quality of services which viewers and listeners receive.
- S.5. With its expert knowledge, the television and radio industry is in a better position to identify needs, both in the short and medium term, and tackle gaps together. It alone can use this understanding to operate a system where the effectiveness of training is the measure of performance rather than simply monies spent on training. The system proposed below capitalises on this expertise while balancing industry views with independent oversight and the backstop powers of Ofcom.
- S.6. The co-regulatory system would perform five functions:
- Assessing skills gaps and the state of training provision in the industry
 - Setting objectives for the industry and its sub-sectors
 - Facilitating industry-wide reporting and sharing of information on best practice
 - Monitoring and assessing broadcasters' performance against objectives
 - Reporting to the industry and external parties
- S.7. Four groups would be actively involved in co-regulation:
- **Industry:** Participants would commit to be a member of the new system and be bound by its decisions and practices. Individual broadcasters would set their own corporate objectives for training. For television, where there are significant sector-wide issues such as freelance training which need to be addressed, broadcasters

would come together to set higher level objectives, facilitated by Skillset. For radio the need for sector-wide objectives is less certain and will be reviewed after the co-regulatory board has been operating for an initial period (two years). In annual reports using a comparable format companies would outline to the co-regulatory body their performance against both company plans and their contribution to sector objectives. The television and radio industry would fund the co-regulatory body and actively engage with Skillset.

- **Skillset:** Would aid in the setting of industry objectives by providing the research on skills gaps and, in the case of television, an existing framework for decision making. It would also analyse broadcasters' returns on behalf of the co-regulatory body for the purpose of allowing industry and sector-wide trends to be identified and addressed.
- **The co-regulatory body:** Made up of three independent (including Chair) and two industry participants, this new body would comment on industry objectives, monitor and audit individual company performance against objectives and oversee disputes as well as reporting to industry and external parties. It would ensure adequacy of funding by taking responsibility for budgets and liaise with Ofcom on matters regarding the functioning of the co-regulatory system.
- **Ofcom:** Would initiate the system by a review of the state of training in the industry and thereafter report on industry performance under the new system at periodic (three year) intervals. It would ensure that the co-regulatory system was accountable, transparent and equitable in its dealings. It would use its backstop powers for sanctions as required. It would act as agent for the co-regulatory body in collecting funding.

S.8. The main advantages of the system as described in the following pages are that, with its emphasis on addressing skills gaps and disseminating best practice, the system is performance and delivery based rather than input based. It enables broadcasters to set training objectives which are appropriate for their needs and resources rather than reacting to targets or requirements set by the regulator, with a thorough audit of a selected number of industry participants each year and separately gathered useful industry-wide information. It also ensures a strong independent element in checking objectives and monitoring broadcasters' performance and it ensures fair representation of all industry sub-sectors.

S.9. The design of the system also ensures transparency and accountability in decision making and fair and equitable treatment of all industry groups which are subject to regulation.

S.10. The main challenges to the success of the new system are commercial radio and cable/satellite companies becoming fully engaged with the process as outlined, so that their voices are represented in all decision making. The co-regulatory body must acknowledge the small size of many companies in these sectors of the industry. Additionally, Skillset itself must be willing and prepared to assume – and fulfil successfully -the wider role envisaged throughout the life of the co-regulatory body.

S.11. Participants would be responsible for funding the system (estimated at approximately £300,000 p.a.), and costs will be allocated in a similar apportionment to total Ofcom costs. This will ensure that the burden does not fall unduly on smaller

companies. However, while the overall cost of regulation is not high, this excludes the cost of complying with the more onerous training obligations themselves which arise from the Communications Act 2003. For participants from the cable and satellite and radio sectors especially, the need to fund the co-regulatory body will be a new cost element as will be the requirement to report on training.

- S.12. Ofcom should review both the system and training landscape periodically in order to judge the overall performance of the system. If it found that the system was not working properly when judged against a range of agreed criteria, it could ultimately replace co-regulation with regulation.
- S.13. The training of the freelance workforce is recognised as an important issue for the television industry and a concerted industry-wide effort is the best way of addressing the requirement. The most effective way of meeting needs is, at the outset, for the industry to agree where the skills gaps and shortages lie, and a plan for addressing them. A review will be required specifically for this purpose, and should be commissioned by the co-regulatory body.
- S.14. The cost of implementing the plan for freelance training would be funded collectively by the television industry under the agreed mechanism which is outlined below. Skillset would work together with industry to provide information for identifying skills gaps and make proposals for addressing them. Monitoring the implementation and progress of the plan would be, as with other objectives, the role of the co-regulatory body.
- S.15. In the case of radio where currently the use made of freelancers differs from that in television, the co-regulatory body, upon the advice of the radio industry, should in due course consider whether future industry-wide training arrangements are desirable. Any future arrangements required would be funded by and for radio separately.
- S.16. Subject to the outcome of this consultation and to further discussion with the industry and Skillset as appropriate, Ofcom intends to bring the new co-regulatory system into operation by spring/summer 2005.

Section 1

Introduction

- 1.1 Effective arrangements for training are vital, both for the health of the television and radio industry and for the quality of the services which viewers and listeners receive.
- 1.2 This consultation document sets out proposals for a new way of ensuring that such arrangements are made: by transferring the main responsibility from Ofcom to the industry itself but with a significant degree of independent supervision and with Ofcom retaining backstop powers to intervene if co-regulation is seen not to be working.
- 1.3 The proposals have been prepared by a group (hitherto referred to as the Design Group) drawn from television and radio, Skillset (the Sector Skills Council for the Audio Visual Industries) and Ofcom, with an independent Chair. A separate sub-group was formed to advise on financial issues, in particular possible mechanisms for co-ordinating investment in training and skills development. Care was taken to ensure balanced representation on these two groups of the different sectors of the industry: terrestrial television, cable/satellite and radio. Although for practical reasons it was not possible for every broadcaster to be represented on the groups, efforts have been made to consult as widely as possible among broadcasters in the process of drawing up these proposals which represent a consensus of their views.

Section 2

Background

- 2.1 The Communications Act 2003 places requirements for training on all broadcasters licensed by Ofcom above a certain threshold. Only those which employ, either individually or as a group, 20 individuals or less, or provide a service which is authorised to broadcast for 31 days a year or less, are exempt. Ofcom is given discretion to decide how the training obligation should be fulfilled. The Act also places a general duty on Ofcom to promote training and requires the Welsh Authority to provide training in connection with its services. Relevant extracts from the Act are attached (Annex 4). The BBC is not covered by the Communications Act in this respect. However, its Agreement with the Secretary of State, which was amended in December 2003, contains equivalent obligations to those placed on commercial broadcasters.
- 2.2 In 2003 the Secretary of State asked Skillset to set up a Task Force to advise Ofcom on how these statutory requirements should be met. This Task Force reported in October 2003. The report contained various recommendations, the objectives of which were to strengthen training provision, make it more forward looking and more closely allied to business needs, and develop common reporting and measurement systems across the industry.
- 2.3 The Ofcom board very much supported these objectives and suggested that a co-regulatory approach be explored along the lines of that being considered for advertising. This was approved in principle at a meeting of broadcasters, Skillset and Ofcom on 12 February 2004 when it was decided to set up a design group with an independent chairman and a finance sub-group.

Section 3

Skillset

- 3.1 As the Sector Skills Council (SSC) for the Audio Visual Industries, Skillset is employer-led and covers broadcasting, film, video, interactive media and photo imaging. It has a staff of around 70 and is especially active in terms of research, data collection, developing skills strategies, establishing skills standards, providing careers advice and managing a range of funding programmes across these sectors. While wholly owned and managed by the industry, as a SSC Skillset is also officially recognised by government under a five year licence. It is one of four SSCs to “pathfind” Sector Skills Agreements (SSA). An outline of the role of SSCs and SSAs is attached (Annex 5).
- 3.2 Skillset is well established and has many years of experience in training and skills development. Its remit goes considerably wider than the broadcasting sector. It also offers a firm base of existing co-operation within the industry, as demonstrated by the cross-industry panels which have been established in Scotland, Wales, Northern Ireland and nine English regions. While the proposed system which this consultation document outlines offers a greater role for Skillset it also presents two principal challenges. The first is to engage more fully with the radio and cable/satellite portions of the industry. The second is that Skillset must demonstrate to the satisfaction of the industry and the co-regulatory body that it is willing, and prepared to assume – and fulfil successfully - this wider role.

Section 4

Rationale for co-regulation

- 4.1 In recent years government policy has increasingly encouraged co-regulation and self-regulation where these will best achieve regulatory objectives. This has led to Ofcom being given a general duty to promote self-regulation (see attached extract from Act) and to the development of a co-regulatory system for broadcast advertising.
- 4.2 To date, existing self-regulatory/co-regulatory systems - such as those dealing with press and display advertising, editorial content of newspapers and magazines, illegal material on the internet and premium rate telecommunication services - have the protection of consumers from various forms of harm as their central objective. They are designed to ensure that the organisations **avoid doing** certain things.
- 4.3 The co-regulatory system proposed here would have a very different purpose: it would be designed to ensure that broadcasters **do** certain things i.e. make effective arrangements for training which it is thought in turn will benefit the industry with positive implications for the consumer i.e. viewers and listeners.
- 4.4 Co-regulation of training is able to offer direct benefits. This is because:

- i. **Primary responsibility for training in the industry would lie where there is both the knowledge and resources to identify needs and take steps to respond most effectively, ensuring better targeted training**

Industry is in a far better position to take effective decisions on training than the regulator. Most broadcasters have (or will have) arrangements in place for identifying internal training needs as part of the normal process of reviewing staff performance and business planning. Better co-ordination across the industry and more involvement of the industry in planning, measuring progress and responding to needs should lead to improved provision of training at all levels with less duplication of effort. An evolutionary approach should be possible, expanding training provision gradually and consistently, rather than in “stops and starts”.

- ii. **Industry would come together to tackle problems and highlight best practice**

Co-regulation would build on the considerable degree of co-operation which already exists through Skillset and as demonstrated through previous initiatives such as the Audio Visual Industries Training Group which reported in 2002 and the Skillset Task Force referred to above. This joint, industry-wide approach to addressing training reflects the intention of the 2003 Act which applies the same basic requirements to all broadcasters and the reality of broadcasting where no one sector or platform operates in isolation. It enables structural issues affecting the industry as a whole to be properly addressed and ideas of best practice to

be shared. One important example of an industry-wide issue is the increasing use of freelancers and independent producers, in television in particular. Another may be the identification of potential and upcoming skills shortages and gaps.

iii. **The television and radio industry can be more forward-looking**

While some training needs are short term (e.g. to handle new equipment or address particular weaknesses), others are medium and long term (e.g. to introduce new production processes). The setting of objectives to address these needs, and keeping them under review, will be a vital part of the new system. By assuming the greater responsibility entailed in co-regulation, broadcasters will also be able to demonstrate a forward looking approach rather than reacting to targets or requirements set by the regulator. In this way the industry should be in a stronger position to prevent or anticipate skills shortages and gaps rather than being obliged to respond to these in a crisis manner, as they arise.

- 4.5 Other options, apart from co-regulation, have been considered: the obvious ones are full self-regulation by broadcasters or full regulation by Ofcom. The first would have certain advantages (e.g. avoid the cost of setting up and servicing a new organisation) but it is unlikely to be an effective or credible way of fulfilling the requirements for training in the Act. The second option would be feasible but, as noted already, Ofcom is not in the best position to decide what arrangements should be made for training. (The cost of the proposed co-regulatory system compared with the cost of regulation by Ofcom is discussed later in the regulatory impact assessment.)

Question 1: *Please give your views on the above assessment of the benefits of co-regulation. Are the arguments in favour of co-regulation convincing in your view? Or are there disadvantages which you feel have not been properly taken into account?*

Section 5

Proposed co-regulatory system

Overriding objective

- 5.1 The overriding objective of the new co-regulatory system should be to ensure that broadcasters fulfil their statutory obligations to make arrangements for training and retraining. In the process of achieving this objective it is hoped to provide more relevant higher quality training within the sector.

Question 2: *Is this objective appropriately expressed in your view? If not, how do you feel it might be better expressed?*

Key principles

- 5.2 It is vital that the new system, if it is to win wide support and lead to delivery of the Task Force objectives, outlined above, should be based on the following key principles:

- Independence combined with industry expertise
- Adequate and secure funding
- Universal participation by broadcasters balanced with equitable treatment of all industry groupings
- Clear division of responsibilities between co-regulatory body and Ofcom
- Transparency and accountability
- Cost-effectiveness

- 5.3 The above principles are consistent with the requirements of the Act and the criteria set by Ofcom in the document Promoting Effective Self-Regulation, published last year. Section 6.3 of the Act specifically requires Ofcom, when determining whether a self-regulatory system is effective, to consider in particular whether (a) the procedures are administered sufficiently independently of the industry being regulated, and (b) adequate arrangements are in force for funding the system.

Question 3: *Do you feel that there is anything missing from these principles which should be included or anything which should be changed?*

Functions

- 5.4 The functions which are to be performed in the new system and the responsibilities of the different parties will need to be set out clearly in an agreement between the industry, Skillset, the co-regulatory body and Ofcom. This will also be necessary to complete the formal transfer of Ofcom responsibilities, referred to below. The Design Group identified the following functions:

- i. **Assessing overall training needs and the state of provision within the industry and different sectors.** Once overall industry needs are more fully identified, companies will always be in a stronger position to decide where their training investment should be devoted. This assessment should be forward looking and focus especially on medium term issues such as the impact of technology changes, and trends in the domestic labour market. Due to its importance to the industry, skills gaps in the freelance sector will be specifically assessed. A total assessment should be done annually and will be essential background to the next function.
- ii. **Setting objectives, both higher level objectives for the industry as a whole and specific objectives for individual broadcasters or broadcasting groups.** The issue of how objectives should be set is discussed below but it is clear that the primary responsibility for this should rest with **industry** and that specific objectives for individual broadcasters should be set by the **broadcasters themselves**. Objectives should cover the short, medium and long term and the processes which need to be put in place, as well as the types of training to be provided, both internally in each company and externally in relation to independent producers and colleges for example. Industry has agreed that financial objectives will also be set for the training of freelancers in the television industry.
- iii. **Facilitating industry-wide reporting and sharing of information on best practice.** Facilitating active communication between broadcasters is an important part of this process, as is the dissemination of examples of good practice and useful initiatives. Reporting on performance on a comparable basis across the industry will be required and it is recognised that broadcasters, especially smaller companies, may need support in setting out their plans and performance reports.
- iv. **Monitoring, assessing and commenting on broadcasters' performance against the objectives set, giving praise where due but highlighting any shortcomings.** This is the key regulatory function. It is here that consideration will be given to whether the arrangements made by broadcasters for training are adequate and to what remedies need to be put in place if weaknesses are identified.
- v. **Reporting to the industry as a whole and Ofcom** periodically on general progress against objectives and making recommendations for change at industry and sector level.

Question 4: *Is this list of functions accurate and comprehensive or are there changes which you would like to propose?*

Structure and operation

5.5 Three key issues which the Design Group considered carefully in deciding how the above functions and responsibilities should be carried out have been:

- how to move to a system based on measuring training performance (or output) from one which has historically focussed on inputs,

- how best to balance industry ownership of the training obligation with the independent element which is an essential prerequisite under the Act, and
 - how to create a system which is not unduly complex or costly to operate.
- 5.6 Some of the functions are already being carried out or facilitated by Skillset in its role as Sector Skills Council. The regular census and other surveys which Skillset's research department administer are designed to provide full and detailed information on the workforce and talent base in the industry in order to identify skills gaps and training needs. Skillset has also established a mixed Television Skills Strategy Committee, consisting of broadcasting and independent production companies as employers and other senior figures representing employees, whose remit is to help identify training and development needs; and is considering ways of engaging more fully with commercial radio in order to develop a better understanding of the specific needs of the radio sector. We believe, therefore, that Skillset is the best equipped body to carry out the first of the five functions listed above (assessment of skills gaps and training provision).
- 5.7 Facilitating the formulation of higher level objectives (the second function) is also a function where the Skillset framework has much to contribute. As currently envisaged, the Television Skills Strategy Committee will draw on census and other research data and put forward proposals for objectives which will be signed off by the main Skillset board. A concern with this arrangement is that objectives for the television industry would be set by those who had no stake in achieving those objectives – such as members from the film industry. It is proposed, therefore, that a subset of the board consisting only of television broadcasters should sign off the objectives. This subset needs to have balanced representation of the different sectors of industry and therefore it should consist of three terrestrial television broadcasters and three from cable/satellite (BSkyB, Satellite & Cable Broadcasters Group (SCBG) and other cable/satellite licensees).
- 5.8 For radio, sector-wide issues such as the use made and training needs of freelancers need to be analysed more fully. It is proposed, therefore, that this should be done during the first two years of the new system and at the end of that period the co-regulatory board (see below) should review, together with the industry, the need for higher level objectives for radio and, as necessary, agree a mechanism for setting these. This review will also have the benefit of two years' worth of individual company reports on training as outlined below.
- 5.9 Broadcasters' specific objectives are best set by the individual broadcasters themselves, since only they will have full knowledge of the people they employ and their business needs. These broadcaster-specific objectives should be set out in plans which should be seen by broadcasters as a useful internal exercise rather than a piece of form filling to satisfy the regulator. There should be some core elements common to all broadcasters' plans which enable industry-wide statistics to be gathered for use in future industry objective setting. Additionally companies should be able to show how their actions contribute to the higher level objectives of the sector or industry. While work needs to be done to agree the format, an overriding principle is that the format should be flexible to reflect the wide variation in circumstances. Plans for smaller companies would not be expected to be as long or as detailed as those for larger ones.

- 5.10 Skillset staff also have the experience to provide advice and support to broadcasters in producing their plans. It may be possible for them to produce a standard “toolkit” which broadcasters can use but individual support should also be made available, especially to smaller cable/satellite and radio companies. Industry groups such as the Commercial Radio Companies Association (CRCA) and SCBG will also have a role in providing practical support.
- 5.11 The arrangements outlined so far make maximum use of the work already underway at Skillset, its existing structure for involving broadcasters, and the experience and expertise of Skillset staff. Not to do this would mean setting up a new body to carry out these functions resulting in unnecessary duplication and expense. It is essential that the industry is actively engaged in and leads this work since it is they who are accountable to Ofcom.
- 5.12 However, this approach is open to criticism that it lacks independence. It is proposed, therefore, that a small co-regulatory board should be established with three independent members, including the chairman, who would have no connection with the audio visual industry, and two industry members. The first chairman would be appointed by Ofcom and he or she would appoint other independent members in order to achieve a combination of skills (financial, business, professional training). The two industry members would come from the broadcasting subset of the Skillset board and rotate to provide regular representation of the different sectors.
- 5.13 This co-regulatory board would have four main functions. First, the independent members would provide oversight to the industry group setting higher level objectives for television by commenting on these objectives before they are finalised, and would do the same for radio if such objectives are set. The aim here would be not to take responsibility for objectives-setting away from the industry but rather to provide an independent check that a transparent, accountable and representative process had been followed and that the objectives seem credible for an industry of this size. This would be done annually. In commenting on objectives the board would be guided by the need to:
- sustain and enhance standards and business effectiveness; and
 - ensure the quality of television and radio output.
- 5.14 Another function of the co-regulatory board would be to ensure effective monitoring, assessing and reporting on industry performance. At the end of each year broadcasters would provide a report on their training activities which would be compared against their objectives. We do not believe that it would be either practical or effective for the board to scrutinise every one of these (expected to number between 250 – 280 separate reports). Instead, it should perform an in-depth audit of a sample of returns and give the broadcasters concerned comments highlighting any weaknesses and areas for improvement. The choice of which broadcasters to audit should be made by the independent members of the board subject to normal sampling techniques. In addition the board should ask Skillset to analyse on behalf of the board all reports taken together for the sole purpose of identifying trends and developments in the different sectors and industry as a whole. This would assist the assessment of skills gaps and training needs.

- 5.15 As with broadcasters' plans, the length of the reports and amount of detail in them will vary according to the size of company. Broadcasters' plans and annual reports should be separate documents initially, produced at the beginning and end of the first year of the new system but then it should be possible to combine them into one document, part of which would be retrospective and the other part forward looking.
- 5.16 Another function of the co-regulatory body would be to take responsibility for compliance and dispute resolution. This is described later in the section entitled Powers of the Co-regulatory Body.
- 5.17 Finally, the last function of the board would be to ensure adequacy of funding of the co-regulatory body by annually presenting and agreeing budgets.
- 5.18 The functions of different bodies and key outputs of this structure are shown in the table below.

Table One: How co-regulation works

Participant	Function	Activity
Industry	Sets industry-wide objectives (television only initially) both financial and operational while companies set their own objectives and report to co-regulatory body on performance. Abides by decisions of and funds co-regulatory body.	Is represented on Skillset Television Skills Strategy Committee and subset of Skillset board for setting objectives. Files annual plans and reports on training activities, funds freelance training as appropriate. Submits to audit as required. Elects two industry members to co-regulatory board. Pays co-regulatory fees along with Ofcom licence fee.
Skillset	Provides the framework for television industry objectives setting. Under an outsourcing contract, funded by co-regulatory body, provides research as required into television and radio training needs, and analyses industry wide trends.	Provides support to Skillset board subset, and to Television Skills Strategy Committee. Houses staff of co-regulatory body under outsourcing agreement. Provides industry information on skills gaps and shortages, and analyses industry reports for industry-wide trends on behalf of co-regulatory body.
Co-regulatory body	Reviews objectives set by industry for reasonableness and equitable treatment. Monitors and assesses industry performance. Reports to Ofcom and industry on performance. Handles disputes. Ensures transparency, fairness and balance in decision making and adequacy of funding of system.	Receives and comments on reports from industry on their annual objectives. Receives company performance reports and selects sample for audit, while directing Skillset to analyse reports for industry trends. Board meets four times per year. Publishes notes of meetings and reports annually to Ofcom. Liaises regularly with broadcasters and interested parties. Reviews budget annually and reports to Ofcom on adequacy of funding.
Ofcom	Promotes training by overseeing smooth functioning of system and providing backstop powers in cases of	Reviews training landscape at inception to establish benchmark. Receives annual reports from co-regulatory body. Assesses performance in periodic three yearly studies.

	specific disputes. Requires all companies to belong to and fund co-regulatory body.	Collects funding on behalf of co-regulatory body. Appoints chair and independent members of co-regulatory body. Reports annually to external stakeholders on training.
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5.19 The advantages of this structure, and the challenges it faces, can be summarised as follows:

Advantages

- With its emphasis on addressing training needs and disseminating best practice, the system is output and performance based with less focus on input.
- The system emphasises a comprehensive annual audit of a limited number of broadcasters and gathers useful information on industry-wide trends and developments to assess performance and progress.
- It provides a strong independent element in checking objectives and in monitoring broadcasters' performance.
- It ensures fair representation of the voices of all industry sub-sectors (terrestrial, cable/satellite and radio as appropriate) both in the composition of the objectives setting group for television as well as the composition of the co-regulatory board with its independent members and a balance of rotating industry members.
- It makes clear where responsibility for checking broadcasters' compliance with statutory obligation lies.
- It piggy backs on the existing framework and activities of Skillset and uses the existing expertise of Skillset staff with attendant cost savings. It also enhances Skillset's ability to attract investment in training by government, for the benefit of the industry.
- The cost of setting up co-regulation will not be any greater than the cost of regulation by Ofcom.

Challenges to success of the new system

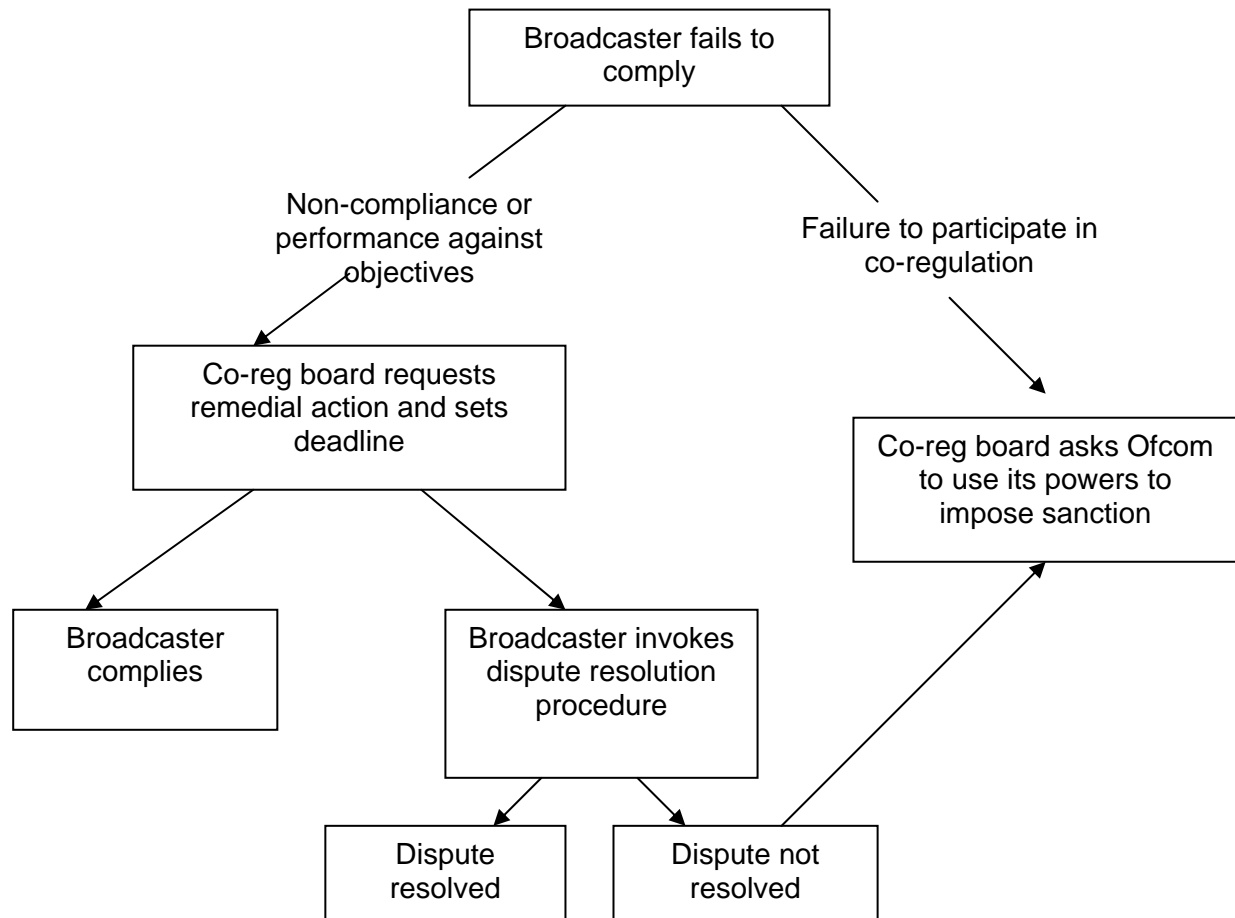
- Success depends on cable/satellite and radio stations engaging fully with Skillset and participating in objectives-setting as necessary.
- Similarly, Skillset must demonstrate to the satisfaction of industry and the co-regulatory body that it is willing, prepared to assume and fulfil successfully this wider role.
- It creates another regulatory body in addition to Ofcom.
- A new layer of costs for training regulation will be borne by participants – who will be separately funding the co-regulatory board, Ofcom (albeit for general regulatory oversight) and Skillset (for research, assistance in objectives setting and other support, as appropriate).

Question 5: *Does this structure and method of operation seem workable? Are there any changes which you feel should be made in order for the system to work more effectively?*

Powers of co-regulatory body

- 5.20 The powers of the co-regulatory body to act against industry participants derive from compulsory membership by industry participants and their agreement to comply with the body's decisions. Ofcom would provide its backstop powers as required, but it is envisaged that these would be exercised in a limited number of circumstances. Two such examples are: if funding of the co-regulatory body was put in jeopardy due to non-payment of fees by member(s) and if the co-regulatory body had exercised all of its powers to influence behaviour of a member without success and the offence was deemed to be serious.
- 5.21 Specifically, all broadcasters would be expected to commit to participate in, and between them fund, the new system and to accept compliance decisions of the co-regulatory board. If co-regulation fails to work effectively, Ofcom will need to institute the recovery programme outlined below and consider bringing in a system of regulation in the form of specific licence conditions.
- 5.22 However, disagreements may arise between the co-regulatory body and individual broadcasters and it is important that ways of resolving these should exist so that they do not derail the whole system. Two different types of disputes may arise. If for example a broadcaster became unwilling to supply plans or annual reports, or refused to respond constructively to recommendations for change, this is the type of dispute which relates to non-compliance or lack of performance against objectives. On the other hand, if a broadcaster refused to participate in the membership or funding of the co-regulatory body this type of dispute relates to the framework of the co-regulatory system itself and would be treated differently.
- 5.23 In the first instance, initially the board could set a deadline for the broadcaster to take remedial action. This could be up to a year depending on the seriousness of the issue. Where appropriate, practical support to assist the broadcaster could also be offered.
- 5.24 It is also proposed that in the last instance, broadcasters should be offered a dispute resolution procedure. In other words, the matter would be referred to an independent third party who would be paid a retainer and a fee for each adjudication. However, to guard against mischievous appeals or delaying tactics, the broadcaster concerned should be expected to share the fee with the co-regulatory body on a fifty-fifty basis.
- 5.25 In the second instance, that is a dispute relating to the framework of the co-regulatory system, Ofcom would be notified directly if a satisfactory result could not be achieved by the board. This would ensure a speedy reaction to complaints by broadcasters against the co-regulatory body itself.
- 5.26 In the last resort if disputes cannot be resolved the board could call on Ofcom to use its power to impose sanctions which are the same under the Act as for any other failure to meet licence conditions.

- 5.27 These sanctions do not apply to the BBC or S4C. However, the BBC has accepted that it will report to Ofcom as well as the BBC Governors on its training investment and its effectiveness. S4C has given a similar undertaking.

Table Two: Compliance Process

Question 6: Does this arrangement give the co-regulatory body the authority which it will need if the system is to work effectively? Does the division of responsibilities between the co-regulatory body and Ofcom seem sensible?

Independence of co-regulatory body

- 5.28 The co-regulatory board would take over the responsibility for ensuring compliance with the statutory requirements for training which would otherwise be exercised by Ofcom. The chairman of the board would be the person to whom Ofcom would look to ensure in day to day terms that the statutory requirements are being met. If the system functions well, we would expect that intervention by Ofcom would prove rare. Indeed, Ofcom should undertake not to interfere in the day to day decisions and activities of the board and this should be clearly stated in the agreement at inception.

Recovery programme

- 5.29 Ofcom should review both the system and the training landscape periodically in order to judge the overall performance of the system. In the first year this review would be limited to the training landscape and would provide a benchmark against which to measure performance in the subsequent, say, three years. Subsequently, if it concluded that the system was not working properly, it could ask the co-regulatory body to make changes and carry out a further review in a year's time. If the position then was still not satisfactory, Ofcom could introduce specific licence conditions and replace co-regulation with regulation. Broadcasters should be informed as soon as possible of any concerns which might result in measures of this kind. Even after co-regulation came into effect, therefore, Ofcom would retain the power to exercise its statutory functions at any time.
- 5.30 Key performance indicators should be set to judge whether the co-regulatory system is performing effectively. Three in particular would be:
- assessment of the amount and effectiveness of training provision, and whether these are adequate in the context of the requirements for training which are judged to exist;
 - assessment of the level of industry satisfaction with the co-regulatory body in carrying out its functions and exercising its responsibilities. Factors to be taken into account would be promptness and clarity in responding to questions from broadcasters, and fairness in treatment of different industry sectors, accountability to broadcasters and transparency in decision making; and
 - assessment of the level of satisfaction among external stakeholders, particularly in the areas of transparency and accountability

Question 7: *Is the proposal for regular reviews by Ofcom sensible? Are the examples of key performance indicators appropriate and are there others which you would like to suggest?*

Transparency, accountability and fair and equitable treatment of all industry groups

- 5.31 The board should publish notes on its meetings and an annual report on its activities with data showing the effectiveness of the arrangements which are being made by broadcasters.
- 5.32 The board should have regular meetings with broadcasters and other interested parties (e.g. PACT and trade unions) to inform them about its activities and to listen to any concerns.
- 5.33 Broadcasters themselves are required by the Act to publish their "observations" on the operation and effectiveness of their training arrangements and this must be done at least annually. Their reports to the board or summaries of these should be designed to serve this purpose rather than duplicating paperwork.

Method of funding the co-regulatory system

- 5.34 The approach taken to calculating Ofcom licence fees would seem the most appropriate method of funding the co-regulatory body. The cost should be recovered by Ofcom as part of the licence fee rather than by setting up a separate collecting mechanism which would be expensive to administer and might result in the money being taken out of broadcasters' training budgets.

Question 8: *Does this method of funding seem sensible?*

Funding freelance training

- 5.35 The Finance Sub-group concluded that collective arrangements would need to be maintained to secure adequate funding of freelance training within the television sector. The co-regulatory body should arrange for a survey to be carried out to identify the specific training needs of the freelance community. Skillset would appear to be the appropriate organisation to do this in the first instance, in consultation with the industry. The proposals to emerge from the survey should form the basis of a five year plan for addressing the needs identified and be separately costed. The plan should be presented to the co-regulatory body for approval. The co-regulatory body should also monitor and manage the delivery of the approved plan to ensure that training is delivered to freelancers within the agreed overall levels of funding.
- 5.36 All television licensees should make some contribution towards the cost of freelance training. This "freelance training fee" should not be overly burdensome for any particular broadcaster but the aggregate amount should make a significant contribution towards freelance training costs. A contribution should also continue to be sought from independent production companies to reflect the general benefits which they derive from having a skilled freelance pool.
- 5.37 However, the main burden of funding freelance training would need to be borne by the larger television companies and should be shared in proportion to the extent to which they benefit from the use of freelancers as estimated by reference to their commissioned programme spend, subject to some adjustment to take account of other relevant training initiatives carried out by broadcasters and in-house production operations which already involve a training contribution.
- 5.38 Less use is made of freelancers in radio than in television. However, the co-regulatory body should arrange for a review to better understand the specific training requirements of freelancers within radio. Depending on the results of this review, it might be appropriate to establish a separate collective fund for the training of radio freelancers. Such a fund would be paid for by radio, for radio.

Question 9: *Do you have any views either on the general principle of a collective fund for training freelancers or on the proposed mechanism for this? Do you feel that it is appropriate to address the issue of freelance training in radio in the way outlined above?*

Section 6

Implementation

- 6.1 The Design Group's report was considered and endorsed by the Ofcom board in July 2004. This present consultation is intended in particular to give parties such as PACT, the trade unions and any other interested bodies both inside (such a smaller cable/satellite companies which have not been represented in this process) and outside the industry an opportunity to comment. Firm decisions would be taken at the end of 2004. The formal agreement could then be negotiated
- 6.2 The Design Group received initial legal advice that the transfer of responsibilities by Ofcom to a co-regulatory body will probably involve formal contracting out under the 1994 Deregulation and Contracting Out Act (DCOA) requiring an order approved by both Houses of Parliament and formal authorisation by Ofcom. An order under DCOA has a maximum duration of ten years but may be renewed.
- 6.3 If formal contracting out of Ofcom powers is required, this could happen in early 2005, depending on the parliamentary timetable. Preparatory work could also be carried out during this period to establish the co-regulatory body and agree any necessary legally binding contracts. Formal appointments of board members and staff could take place in the first half of 2005.
- 6.4 The general aim would be to have the new system in operation by spring/summer 2005.

Section 7

Regulatory Impact Assessment

- 7.1 This section represents a Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003. You should send any comments on this RIA to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- 7.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally we have to carry out RIAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.
- 7.3 As noted already, the regulation of broadcasters' arrangements for training is a statutory requirement. "No regulation" is therefore not an option. However, regulation by Ofcom would be a realistic alternative to co-regulation. Indeed, this was the approach taken by the ITC until the end of 2003 albeit in relation to many fewer licensees (ITV, Channel 4, Five and digital programme services). This option merits serious consideration therefore.
- 7.4 The benefits of co-regulation have already been explained above. They can be summarised as:
- Placing responsibility for training where the knowledge of training needs and expertise in meeting these lie;
 - Providing a framework for the industry to work together on this issue, share best practice and find cross-industry solutions where these are needed;
 - Emphasising a forward-looking, business-oriented approach rather than merely responding to requirements set by Ofcom; and
 - Including an independent element to ensure fair play and compliance with statutory requirements.
- 7.5 The main benefits of regulation by Ofcom are:
- Avoiding the creation of another regulatory body and the costs associated with this; and
 - Providing greater certainty in that there will no longer be reliance on Skillset and broadcasters working together and the latter co-operating with the co-regulatory body to ensure effective delivery of training. Instead requirements would simply be set by Ofcom and enforced in the same way as other licence conditions.

- 7.6 The start up costs of co-regulation (office equipment, legal costs, recruitment of independent members and staff) are likely to be modest, at around £25,000. This assumes co-location of the co-regulatory body with Skillset which the latter has confirmed would be feasible.
- 7.7 Staff salaries will be the single largest element of ongoing costs. The Design Group estimated that two staff would be needed to carry out the functions identified above. This depends to some extent on the number of broadcasters or broadcasting groups which will be submitting annual reports. Precise data on this is not yet available but it is likely to be between 250 and 280. One member of staff would be part of Skillset's research team and paid for by the co-regulatory body under an outsourcing agreement while the other would provide support for the co-regulatory board. This level of staffing might cost around £80,000. Other cost elements such as remuneration of board members, travel, subsistence and research would bring total ongoing costs of co-regulation to around £300,000 p.a.
- 7.8 The cost of regulation by Ofcom may not be very different from the cost of co-regulation. While there would be savings as a result of not having a co-regulatory board, other costs such as research may be higher if Ofcom is unable to use Skillset's resources and expertise. Staffing requirements, assuming the same basic functions will need to be carried out, are likely to be similar.
- 7.9 On this basis – that the costs of the two options are likely to be broadly the same – the choice will be determined by the balance of benefits. Both the Design Group (supported by an industry-wide consensus) and Ofcom consider that co-regulation offers significant benefits over regulation by Ofcom and should be given a chance to work. While there are risks attached to co-regulation – that the various parties will fail to work together and that the system will fail to deliver training effectively or be more expensive than envisaged – these are outweighed by the potential benefits. Regulation by Ofcom will remain a possible fall-back position.
- 7.10 It should also be noted that the cost of co-regulation is small in the context of the amount which the industry invests in training – over £65 million by terrestrial broadcasters in off-the-job training alone and a great deal more if other broadcasters, on-the-job training and government investment in education are taken into account.

Section 8

Responding to this consultation

How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Thursday 4 November**.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to michael.johnson@ofcom.org.uk.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Johnson
Content & Standards
5th floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3806

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Michael Johnson on 020 7981 3870.

Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.

Please also note that copyright in responses will be assumed to be assigned to Ofcom unless specifically retained.

Next steps

Following the end of the consultation period, Ofcom intends to publish final versions of the code and regulations in early 2005.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3585
Fax: 020 7981 3333
E-mail: philip.rutnam@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A1.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A1.3 We will be clear about who we are consulting, why, on what questions and for how long.

A1.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A1.5 We will normally allow ten weeks for responses, other than on dispute resolution. However, in this instance, given that the proposed changes from the existing code are minor, we have decided to shorten the consultation period to five weeks.

A1.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A1.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A1.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Main Heading

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

Annex 3

Consultation questions

Question 1: Please give your views on the above assessment of the benefits of co-regulation. Are the arguments in favour of co-regulation convincing in your view? Or are there disadvantages which you feel have not been properly taken into account?

Question 2: Is this objective appropriately expressed in your view? If not, how do you feel it might be better expressed?

Question 3: Do you feel that there is anything missing from these principles which should be included or anything which should be changed?

Question 4: Is this list of functions accurate and comprehensive or are there changes which you would like to propose?

Question 5: Does this structure and method of operation seem workable? Are there any changes which you feel should be made in order for the system to work more effectively?

Question 6: Does this arrangement give the co-regulatory body the authority which it will need if the system is to work effectively? Does the division of responsibilities between the co-regulatory body and Ofcom seem sensible?

Question 7: Is the proposal for regular reviews by Ofcom sensible? Are the examples of key performance indicators appropriate and are there others which you would like to suggest?

Question 8: Does this method of funding seem sensible?

Question 9: Do you have any views either on the general principle of a collective fund for training freelancers or on the proposed mechanism for this? Do you feel that it is appropriate to address the issue of freelance training in radio in the way outlined above?

Annex 4

Extracts from Communications Act 2003

Employment in
broadcasting

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Training and equality of opportunity

(1) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting the development of opportunities for the training and retraining of persons-

(a) for employment by persons providing television and radio services; and

(b) for work in connection with the provision of such services otherwise than as an employee.

(2) It shall be the duty of OFCOM to take all such steps as they consider appropriate for promoting equality of opportunity in relation to both-

(a) employment by those providing television and radio services; and

(b) the training and retraining of persons for such employment.

Equal opportunities
and training

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Promotion of equal opportunities and training

(1) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, equality of opportunity-

(a) between men and women; and

(b) between persons of different racial groups.

(2) That regime includes conditions requiring the licence holder to make arrangements for promoting, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

(3) The regulatory regime for every service to which this section applies includes the conditions that OFCOM consider appropriate for requiring the licence holder to make arrangements for the training and retraining of persons whom he employs, in or in connection with-

(a) the provision of the licensed service; or

(b) the making of programmes to be included in that service.

(4) The conditions imposed by virtue of subsections (1) to (3) must contain provision, in relation to the arrangements made in pursuance of those conditions, requiring the person providing the service in question-

(a) to take appropriate steps to make those affected by the arrangements aware of them (including such publication of the arrangements as may be required in accordance with the conditions);

(b) from time to time, to review the arrangements; and

(c) from time to time (and at least annually) to publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements.

(5) The conditions imposed by virtue of this section may include provision for treating obligations to make the arrangements mentioned in subsections (1) to (3), or to do anything mentioned in subsection (4), as discharged where a member of a group of companies to which the licence holder belongs-

(a) has made the required arrangements in relation to employment with the licence holder; or

(b) has done anything required by subsection (4) in relation to those arrangements.

(6) This section applies to a service if-

(a) it is a service the provision of which is authorised by a Broadcasting Act licence; and

(b) the requirements of both subsections (7) and (8) are satisfied in the case of that service.

(7) The requirements of this subsection are satisfied in the case of a service provided by a person if-

(a) that person employs, or is likely to employ, more than the threshold number of individuals in connection with the provision of licensed services; or

(b) the threshold number is exceeded by the aggregate number of individuals who are, or are likely to be, employed in that connection by members of a group of companies comprising that person and one or more other bodies corporate.

(8) The requirements of this subsection are satisfied in the case of a service if the licence authorising the provision of that service authorises either that service or another service authorised by that licence to be provided on a number of days in any year which exceeds the threshold number of days (whether or not the service is in fact provided on those days).

(9) In this section-

"disabled" has the same meaning as in the Disability Discrimination Act 1995 (c. 50);

"licensed service", in relation to an employee or likely employee of a person, means a service the provision of which-

(a) by that person, or

(b) by a body corporate which is a member of the same group of companies as that person,

is authorised by a Broadcasting Act licence;

"racial group" has the same meaning as in the Race Relations Act 1976 (c. 74) or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6));

"the threshold number" means-

(a) in relation to individuals, twenty; and

(b) in relation to days, thirty-one.

(10) For the purposes of this section a person is a member of a group of companies to which a person licensed to provide a service belongs if, and only if, both of them are bodies corporate and either-

(a) one of them is controlled by the other; or

(b) both of them are controlled by the same person.

(11) In subsection (10) "controlled" has the same meaning as in Part 1 of Schedule 2 to the 1990 Act.

(12) The Secretary of State may, by order-

(a) amend subsection (1) by adding any other form of equality of opportunity that he considers appropriate;

(b) amend the definition of "the threshold number" in subsection (9).

(13) No order is to be made containing provision authorised by subsection (12) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

*General duties
in carrying out
functions*

3 General duties of OFCOM

(1) It shall be the principal **duty** of **OFCOM**, in carrying out their functions-

(a) to further the interests of citizens in relation to communications matters; and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

(4) **OFCOM** must also have regard, in performing those **duties**, to such of the following as appear to them to be relevant in the circumstances-

(a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;

(b) the desirability of promoting competition in relevant markets;

(c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;

6 Duties to review regulatory burdens

(1) **OFCOM** must keep the carrying out of their functions under review with a view to securing that regulation by **OFCOM** does not involve-

(a) the imposition of burdens which are unnecessary; or

(b) the maintenance of burdens which have become unnecessary.

(2) In reviewing their functions under this section it shall be the **duty** of **OFCOM**-

(a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and

(b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.

(3) In determining for the purposes of this section whether procedures for self-regulation are effective **OFCOM** must consider, in particular-

(a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and

(b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.

Annex 5

Role of Sector Skills Councils and Sector Skills Agreements

A5.1 SSCs are employer-led bodies with a strategic responsibility to identify and tackle skills, productivity and employability issues for the sectors they represent.

A5.2 Every SSC is charged by government with four key goals:

- Reducing skills gaps and shortages;
- Improving productivity, business and public service performance;
- Increasing opportunities to boost the skills and productivity of everyone in the sector's workforce, including action on equal opportunities;
- Improving learning supply, including apprenticeships, higher education and national occupational standards.

A5.3 In return for employer support of and investment in their SSC, government has promised that, through SSCs, employers will be able to influence education and skills policy and public sector spending on learning and skills through Sector Skills Agreements (SSA).

A5.4 The concept of SSAs was introduced in the government's National Skills Strategy, published in July this year. They provide the vehicle for identifying and articulating how industries are going to address skills issues – and are the key to unlocking the influence promised to Sector Skills Councils.

A5.5 The relevant public agencies are expected to help develop SSAs and to prioritise their existing funding to meet sector identified needs.

A5.6 The government and industry are also working together to develop Corporate Social Responsibility policies and practices. The Operating and Financial review redefining directors' duties and the Denise Kingsmill report for the DTI on Human Capital Accounting are recent examples of this. It is expected that reporting on policies and practices for training will form part of these overall developments. The co-regulatory system proposed in this report will enable "joining up" and support for the training aspects of Corporate Social Responsibility.

Annex 7