

Public service broadcasting

Consultation document

Statements of programme policy and self-assessment reviews.

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Section 1

Summary

This consultation seeks views on Ofcom's draft guidance notes to broadcasters for the completion of public service broadcasting "statements of programme policy", and "self-assessment reviews".

The guidance notes are at the heart of the revised system for regulation and delivery of PSB. Under the Communications Act 2003 (Section 266) each licensed public service channel must set out its proposals for securing the fulfilment of public service remits, and report on how it delivered its PSB remit in the preceding year.

There are three guidance notes in this consultation. One is for network broadcasters; another for national and regional services; and a third for public teletext. Drafts of these guidance notes are published in full as sections 2, 3 and 4 below.

In addition to licensed services, the Welsh Authority must 'consider' the guidance in relation to S4C. The BBC Agreement provides that the Corporation must "consider how far [Ofcom] guidance contains anything of relevance", in preparing its own annual statements and reviews.

The notes seek to balance the legitimate freedom of broadcasters to set and review their own achievements, against the aim of ensuring there is a firm framework for citizen-consumers, and the regulator, to assess the delivery of public service broadcasting "taken together".

Annex 3 of this consultation document suggests a number of questions that stakeholders, and other interested parties, may wish to consider. Ofcom is particularly keen to hear views on whether the guidance notes are successful in balancing consideration of broad PSB objectives, and the more detailed genre-related objectives specified in section 264(6) of the Communications Act.

An appendix to each guidance note sets out the criteria Ofcom will use in considering whether a channel's statement of programme policy contains a "significant change" to the nature of its output. Views are invited on Ofcom's reading of this aspect of the Act.

Section 2

The draft guidance note for TV networks

1. Introduction

Television networks are asked to provide both a statement of programme policy for the coming year, and a review of how their channel fulfilled its public service remit in the past year. The statement and the review should be separate documents, but submitted together. This note sets out guidance on the completion of both documents, as informed by the Communications Act (the Act).

Section 266 of the Act spells out the obligation on licensed services to produce the annual statements, which must:

- (a) set out how the public service remit for the channel will be fulfilled
- (b) set out how the various requirements in sections 265 and 277-296 (programme quotas, news provision, programme commissioning etc) will be fulfilled
- (c) contain a performance review.

The channel provider must:

- (a) have regard to Ofcom guidance
- (b) take account of Ofcom annual factual and statistical reports and PSB reviews; and special account of the most recent ones
- (c) publish the statement as soon as possible after it is complete, having regard to Ofcom guidance about the manner of publication.

The purpose of this guidance note is to ensure that Ofcom, and citizen-consumers, are provided with clear and consistent reports from the public service broadcasters. Consistency is important in understanding how different channels, with different remits, fit into the public service environment as a whole. The note will be for general guidance only, and will not be intended to fetter Ofcom's discretion. Separate notes will be issued for ITV1 regional, and Teletext. Ofcom will, as required by the Act, keep the guidance notes under review.

Most of the guidance will apply to all services (with exceptions such as drama on GMTV). In all cases, it will be important that statements of policy in specific areas reflect the range and depth of a network's proposition, rather than simply set out hours/lists of programming. It is acknowledged that some programmes may contribute towards public service provision in a number of different ways, and may not fit easily within narrow genre definitions.

[NOTE: Statements must have particular regard to the purposes of public service broadcasting, as considered under Phase 1 of the PSB Review, on which Ofcom is currently consulting. The purposes will be finalised at the conclusion of the Review.]

2. Format for statements and reviews

The self-assessment review should follow the same general format as the statement of programme policy. It is anticipated that the statements of programme policy might

be around 10 pages long in the case of main networks; the review is likely to be about 15 pages.

The documents should set out details of how networks intend to meet their public service remit. It is suggested the following headings are used for statements/reviews.

3. Overall strategy/major themes for the year

Networks should set out in their statements, and subsequently review achievement against, the overall strategic aims for the service in terms of:

- (a) broad service and programming strategy
- (b) overall audience and any specific demographic targets
- (c) balance of output proposed
- (d) specific areas to be addressed
- (e) any specific key goals/objectives, and initiatives to address them.

The statement should include a description of the intentions behind the proposals, rather than merely promise to broadcast certain programmes. The range and depth of a programme offer are more important than the mere amount. The review should consider the achievement of strategic developments against the previous year's statement. It is expected that reviews will be duly self-critical, when appropriate.

The review should cite the past year's overall programme budget and audience share.

4. Significant changes

Any significant change which would make the service, as a whole, materially different in character should, in the case of licensed services, be approved by Ofcom, and should be flagged in the statement.

"Significant change" is defined in the Act as one where a channel would be materially different in character from in previous years. Provision is made for an accumulation of changes to be regarded as "significant", and for licensees to have regard to Ofcom guidance in determining whether a change is a significant change.

Licensees may wish Ofcom to consider issues of "significant change" at other points in the year, and not only at the point of preparation of the statement.

Appendix 1 sets out in greater detail what is meant by "significant change", and the responsibilities of the broadcaster in this regard.

5. Innovation, experiment and creativity

This section is required primarily for Channel 4, but may also be helpful to other networks in drawing attention to particular plans/achievements in this field.

6. Tier 2 arrangements

Statements should include an indication of how the network intends to meet or exceed statutory and/or agreed targets for programme production in the following areas:

- (a) programme quotas for independent productions (including an indication of the range and diversity of such productions; and confirmation of conformity with the code of practice in operation for the commissioning of independent productions)
- (b) programme quotas for original productions (including the split between peak viewing times and other times)
- (c) regional production for network transmission (including requirements relating to the range of programmes, and the range of production centres)
- (d) level of European production.

Reviews should set out how the network has achieved the statutory and/or agreed target for the same headings.

7. Programme offer

These guidelines are not intended to be a box ticking exercise, but to act as examples of how broadcasters can demonstrate they are fulfilling the public service broadcasting requirements, defined and laid out in the Communications Act.

Ofcom believes that regulation and self-assessment should reflect the main purposes of public service broadcasting. Four key purposes are identified in Phase 1 of Ofcom's PSB Review, and are currently subject to public consultation:

- (a) to inform, and to increase understanding of the world, through news, information and analysis of current events and ideas
- (b) to reflect and strengthen cultural identity, through high quality UK, national, and regional programming
- (c) to stimulate interest in, and knowledge of, arts, science, history and other topics, through content that is accessible, encourages personal; development, and promotes participation in society
- (d) to support a tolerant and inclusive society, through programmes which reflect the lives of different people and communities within the UK, encourage a better understanding of different cultures and, on occasion, bring the nation together for shared experiences.

Information on the Programme Offer in the statements and reviews should reflect these broad purposes, as finalised in Phase 3 of the PSB Review.

Ofcom recognises that some programmes do not fit readily into simple genre definitions. For that reason, networks are invited to describe any programming initiatives that fall outside such traditional programme forms. Nevertheless, the Act requires that an assessment of public service television broadcasting takes account of the key values and purposes of PSB set out in section 264 (4) of the Act, linked to specific programme areas (reflected in Section 264 (6) of the Act). These areas are:

- (a) News
- (b) Current affairs
- (c) Education and programmes of educational value
- (d) Schools programmes
- (e) Children's programmes
- (f) Science
- (g) Religion and other beliefs
- (h) Social issues
- (i) International coverage (outside of news and current affairs)

- (j) Drama
- (k) Comedy and Entertainment
- (l) Arts and Music
- (m) feature films (reflecting cultural activity in the UK)
- (n) Sport
- (o) Leisure interests.

For each of the programme areas identified, broadcasters should have regard to the manner in which the Act outlines how the stated purposes of public service television broadcasting may be fulfilled. For each of the programme areas, statements of programme policy, and self-assessment reviews should outline the channel's general strategy. They should also take account of Ofcom's guidance on the public service remit for particular types of programme. Not all channels will produce programmes in all categories. Where appropriate, statements/reviews should outline for the past year, and the coming year:

- (a) the quality of the provision
- (b) budgets (past year only; see item 10 below)
- (c) required hours (Tier 2 genres only)
- (d) the range of subject matter
- (e) the development of new talent in terms of writing, production and performance
- (f) any notably innovative, original, or challenging programmes
- (g) the split between original and acquired programming
- (h) the split between returning and new series.

Guidance follows on a number of key programme genres/objectives; similar considerations apply to all the programme areas listed above.

a) News

Public service television broadcasters should be able to demonstrate that their news budgets are sufficient to provide "high quality" news coverage around the clock.

Broadcasters should spell out the number of main news programmes they produce on weekdays and on weekends, and where they sit in the schedules, in accordance with Ofcom Tier 2 requirements.

Other matters to consider are:

- (a) arrangements for news gathering, including arrangements to cover news outside London and South-East England, and overseas
- (b) the range and balance of domestic stories and foreign news
- (c) the delivery of "authority" and the provision of in-depth analysis
- (d) the number of specialist correspondents
- (e) the reflection on screen of an appropriate mix of race, gender and other diversity.
- (f) ITV1 should indicate the arrangements in existence for an appointed news provider.

b) Current affairs

Current affairs programming should be of high quality and provide coverage of both national and international matters. It should contribute to a well informed debate and facilitate civic understanding. Current affairs programming should be "appropriately"

split between peak and other viewing times, and achievement in relation to Ofcom Tier 2 requirements should be indicated.

When assessing their output broadcasters should take account of the following aspects:

- (a) amount and scheduling of programmes
- (b) quality and depth
- (c) range of treatment and subject matter
- (d) split between national and international matters.

c) Religious programmes

Across the public service broadcasters there should be provision of programmes that deal with religion and belief. These should include a range of treatments and subjects including news programmes, historical programmes and programmes showing acts of worship or other ceremonies. Broadcasters should demonstrate how/if they have contributed to the following:

- (a) coverage of a diversity of faith and culture
- (b) range of treatment
- (c) range of subject matter
- (d) quality
- (e) scheduling.

d) Arts and music

Broadcasters should give examples of how they have dealt with the following issues in arts and music programming:

- (a) range of format
- (b) range of programming, including subject matter and the mix of high art and popular culture
- (c) manner in which programming reflects the diversity of the UK
- (d) how arts and music are scheduled.

e) Education

Taken together the public service broadcasters should provide a suitable range and quantity of programmes on educational matters, of an educational nature or of educative value. When reporting on their output broadcasters might indicate how the programming takes account of the following aspects:

- (a) the inclusion of advice and support from educational specialists
- (b) a range of topics and treatments
- (c) programming that stimulates the viewer to learn more about a subject
- (d) off-screen educational support materials
- (e) scheduling.

f) Schools (Channel 4 only)

If providing schools programming, broadcasters should consider how they will achieve or have achieved the following goals:

- (a) meeting the needs of schools throughout the UK

- (b) offered a range of treatment and subject matter
- (c) contributed to the enrichment of children's educational experiences within the relevant curriculum, and across the wider aspect of personal development
- (d) appropriate scheduling.

8. Additional matters

a) Cultural and other diversity

Section 264(4)(i) requires that public service broadcasters reflect the lives and concerns of different communities and cultural interests and traditions within the UK.

Broadcasters should give a separate indication of how their programmes will reflect the cultural diversity of the UK. Examples of how this could be demonstrated are:

- (a) through the level of use of on-screen and off-screen talent
- (b) the range of perspectives engaged
- (c) the depiction of different communities.

However, these representations should be underpinned by a qualitative sense of diversity that demonstrates an approach that goes beyond tokenism. In particular, therefore, broadcasters should point to: where their output reflects the contribution of various ethnic groups to British society; any innovative or creative ways of achieving that, across various genres; and what commissioning strategies have been instrumental in delivering diversity to the screen.

Another dimension here would be a review of the scheduling of culturally diverse programming, or programming targeted at different communities.

Other issues of diversity should also be given regard, such as age, sexual orientation, disability, etc.

b) Repeats

Statements and reviews should set out the network's policy on repeats, and set/report on targets for:

- (a) peak (1800-2230)
- (b) 0600-1800
- (c) 2230-0000.

c) Promotion of media literacy

Section 11 of the Act sets out the duties of Ofcom to promote media literacy.

Viewers need to have clear, accurate and timely information about the nature of content so that they can make informed choices. They also need a better understanding of the nature of programmes and the editorial decisions taken in their production. This is the key to viewers taking greater responsibility for their viewing and increased media literacy.

Statements should indicate how the broadcaster will contribute to the promotion of the media literacy of its audience. This could include programmes, items or

announcements. It could also include off screen activity related to programmes such as fact sheets and web pages related to generic programming.

Activity with schools and colleges may also make a valuable contribution to improved media literacy in young people.

9. Public input

Networks are encouraged to take account of public views in the formulation of programme policy, for example through audience research, advisory bodies and invitation of comment on-air and/or via web-sites. Information on how this has been used to inform statements and reviews should be included wherever possible. It is anticipated that networks will welcome viewer and interest-group comment in the months leading up to the formulation of the documents.

10. Publication of statements and reviews

Statements and reviews should be published “in such a manner, having regard to any guidance given by Ofcom, the provider considers appropriate”.

Consideration of any issues of “significant change” will be facilitated if all statements and reviews by licensees are sent to Ofcom prior to publication, i.e. in December each year. Any such issues will be considered by Ofcom in January; publication of the statements and reviews by broadcasters should occur soon afterwards. Dates may be agreed in consultation with Ofcom.

Ofcom regards transparency and openness as central to the process of self-assessment. However, it is accepted that some information – such as budgets – may be supplied in confidence to the regulator.

Appendix 1

Further guidance on “significant change”

This note is for general guidance only and is not intended to fetter Ofcom’s discretion to decide whether there has been a “significant change” in any particular case.

Provisions of Section 267 of the Communications Act

Sub-sections (1) and (2) state that any licensee proposing “a significant change” to its service must consult Ofcom before preparing the statement, and take account of any opinions expressed by Ofcom.

Sub-section (4) defines a significant change as one which would make the channel “materially different in character from in previous years”. Each public service broadcasting channel is deemed to have a “character”.

Sub-section (5) states that “a change occurring gradually, over a period of not more than three years” may also amount to “significant change”.

Criteria

Ofcom may consider a number of criteria in judging whether an alteration to programme policy might constitute a “significant change”. However, sub-section 4 points to two important factors – the “character” of a channel, and how it might “materially change”.

a) the “character” of a channel

Ofcom interprets this to mean its character as a public service broadcasting channel, which is linked to the channel’s individual public service mandate as set out in legislation. The most important elements would therefore include:

- (a) the range of genres and balance of time allocated to these
- (b) the mix of programmes in peak time and across the day and week as a whole
- (c) the range of audience being catered for, and the range of tastes and interests addressed
- (d) the mix of first-run programmes and repeats
- (e) the number of landmark programmes
- (f) overall programme quality

b) what constitutes a “material change”

Ofcom will exercise its discretion in determining what amounts to a “material change”. It will be guided by any evidence provided by the broadcaster – or any other evidence it has access to - in judging the likely impact.

A “material change” could be judged in various ways, including: whether or not a particular programme area is “under threat”; whether it has a special importance in terms of the channel’s contribution to public service broadcasting; whether the

programme area is under-served by other channels etc. Issues of “quality” may also be relevant.

Section 3

The draft guidance note for services in the nations and regions

1. Introduction

Services in and for the nations and regions are asked to provide both a statement of programme policy for the coming year, and a review of how the service fulfilled its public service remit in the past year. The statement and the review should be separate documents, but submitted together. This note sets out guidance for the completion of both documents, as informed by the Communications Act (the Act).

Section 266 spells out the obligation on licensed services to produce the annual statements, which must:

- (a) set out how the public service remit for the channel will be fulfilled
- (b) set out how the various requirements in sections 265 and 277-296 (programme quotas, news provision, programme commissioning etc) will be fulfilled
- (c) contain a performance review.

The service provider must:

- (a) have regard to Ofcom guidance
- (b) take account of Ofcom annual factual and statistical reports and PSB reviews; and special account of the most recent ones
- (c) publish the statement as soon as possible after it is complete, having regard to Ofcom guidance about the manner of publication.

The purpose of this guidance note is to ensure that Ofcom, and citizen-consumers, are provided with clear and consistent reports from the public service broadcasters. Consistency is important in understanding how different channels, with different remits, fit into the public service environment as a whole. The note is for general guidance only, and is not intended to fetter Ofcom's discretion. Ofcom will, as required by the Act, keep the guidance notes under review.

In all cases, it will be important that statements of policy in specific areas reflect the range and depth of a channel's proposition, rather than simply set out hours/lists of programming. It is acknowledged that some programmes may contribute towards public service provision in a number of different ways, and may not fit easily within narrow genre definitions.

[NOTE: Statements must have particular regard to the purposes of public service broadcasting, as considered under of Phase 1 of the PSB Review, on which Ofcom is currently consulting. The purposes will be finalised at the conclusion of the Review.]

2. Format for statements and reviews

The self-assessment review should follow the same general format as the statement of programme policy. It is anticipated that the statements of programme policy might be around 5 pages long; the review is likely to be about 8 pages.

It is suggested the following headings are used for statements/reviews.

3. Overall strategy/major themes for the year

Broadcasters should set out in their statements, and subsequently review achievement against, the overall strategic aims for the channel in terms of:

- (a) broad service and programming strategy
- (b) overall budget
- (c) overall audience and any specific demographic targets
- (d) balance of output proposed
- (e) any specific key goals/objectives, and initiatives to address them.

The statement should include a description of the intentions behind the proposals, rather than merely promise to broadcast certain programmes. The range and depth of a programme offer is more important than the mere amount. The review should consider the achievement of strategic developments against the previous year's statement. It is expected that reviews will be duly self-critical, when appropriate.

The review should cite the past year's national/regional programme budget and audience share for national/regional programmes.

4. Significant changes

Any significant change which would make the service, as a whole, materially different in character should, in the case of licensed services, be approved by Ofcom, and should be flagged in the statement.

Significant change is defined in the Act as one where the service would be materially different in character from in previous years. Provision is made for an accumulation of changes to be regarded as "significant", and for licensees to have regard to Ofcom guidance in determining whether a change is a significant change.

Licensees may wish Ofcom to consider issues of "significant change" at other points in the year, and not only at the point of preparation of the statement.

Appendix 1 sets out in greater detail what is meant by "significant change", and the responsibilities of the broadcaster in this regard.

5. Innovation, experiment and creativity

It would be helpful to draw attention to particular plans/achievements in this field.

6. Tier 2 arrangements

Statements should include an indication of how the service intends to meet statutory and/or agreed targets for programme production in the following areas:

- (a) independent productions (including an indication of the range and diversity of such productions; and confirmation of conformity to the code of practice in operation for the commissioning of independent productions)

- (b) original productions (including the split between peak viewing times and other times).

7. Programme offer

These guidelines are not intended to be a box ticking exercise, but to act as examples of how broadcasters can demonstrate they are fulfilling the public service broadcasting requirements, defined and laid out in the Act.

Ofcom believes that regulation and self-assessment should reflect the main purposes of public service broadcasting. Four key purposes are identified in Phase 1 of Ofcom's PSB Review, and are currently subject to public consultation:

- (a) to inform, and to increase understanding of the world, through news, information and analysis of current events and ideas;
- (b) to reflect and strengthen cultural identity, through high quality UK, national, and regional programming;
- (c) to stimulate interest in, and knowledge of, arts, science, history and other topics, through content that is accessible, encourages personal development, and promotes participation in society;
- (d) to support a tolerant and inclusive society, through programmes which reflect the lives of different people and communities within the UK, encourage a better understanding of different cultures and, on occasion, bring the nation together for shared experiences.

Information on the Programme Offer in the statements and reviews should reflect these broad purposes, as finalised in Phase 3 of the PSB Review.

Statements of programme policy, and self-assessment reviews, should outline a service's general strategy. Where appropriate, they should indicate for two past years, and the coming year:

- (a) the quality of the provision
- (b) budget (past year only; see item 10 below)
- (c) required hours
- (d) the range of subject matter
- (e) the split between returning and new series
- (f) audience share
- (g) average TVR.

Some particular types of programme are subject to more detailed, specific requirements.

a) News

National and regional broadcasters should be able to demonstrate that their news budgets are sufficient to provide "high quality" news coverage.

Broadcasters should spell out the number of main news programmes they produce on weekdays and on weekends, and where they sit in the schedules. This should have particular regard to the hours and split between peak, near-peak, and other times.

Other matters to consider are:

- (a) arrangements for news gathering, including numbers of any news gathering centres around the region and any specific provisions in place for delivering sub-regional news services
- (b) the range and balance of stories
- (c) the delivery of “authority” and the provision of in-depth analysis
- (d) the reflection on screen of an appropriate mix of race, gender and other diversity.

b) Current Affairs

Current affairs programming should be of high quality and provide coverage of a range of national/regional issues. It should contribute to a well informed debate and facilitate civic understanding.

When assessing their output, broadcasters may wish to take account of the following aspects:

- (a) amount and scheduling of programmes
- (b) quality and depth
- (c) range of treatments and subject matter.

c) Other programmes

In addition to news and current affairs, national and regional broadcasters should also aim to produce a range of other programmes. Broadcasters may want to take account of the following aspects:

- (a) the range and diversity of subject matter
- (b) how the programmes reflect the needs, tastes and interests of the societies they serve
- (c) any particular innovation, experiment, or creativity of approach
- (d) the variety of production approaches and the use and amount of co-productions/common formats/shared material
- (e) indications of scheduling both in and out of peak.

8. Additional matters

a) Cultural and other diversity

Section 264(4)(i) requires that public service broadcasters reflect the lives and concerns of different communities and cultural interests and traditions within the UK.

Broadcasters should give a separate indication of how their programmes will reflect the cultural diversity of the UK. Examples of how this could be demonstrated are:

- (a) through the level of use of on-screen and off-screen talent
- (b) the range of perspectives engaged
- (c) the depiction of different communities.

However, these representations should be underpinned by a qualitative sense of diversity that demonstrates an approach that goes beyond tokenism. In particular therefore, broadcasters should point to: where their output reflects the contribution of various ethnic groups to British society; any innovative or creative ways of achieving that, across various genres; and what commissioning strategies have been instrumental in delivering diversity to the screen.

Other issues of diversity should also be given regard, such as age, sexual orientation, disability, etc.

b) Repeats

Statements and reviews should set out the policy on repeats, and set/report on targets for:

- (a) peak (1800-2230)
- (b) 0600-1800
- (c) 2230-0000.

c) Promotion of media literacy

Section 11 of the Act sets out the duties of Ofcom to promote media literacy.

Viewers need to have clear, accurate and timely information about the nature of content so that they can make informed choices. They also need a better understanding of the nature of programmes and the editorial decisions taken in their production. This is the key to viewers taking greater responsibility for their viewing and increased media literacy.

Statements should indicate how the broadcaster will contribute to the promotion of the media literacy of its audience. This could include programmes, items or announcements. It could also include off screen activity related to programmes such as fact sheets and web pages related to generic programming.

Activity with schools and colleges may also make a valuable contribution to improved media literacy in young people.

9. Public input

Broadcasters are encouraged to take account of public views in the formulation of programme policy, for example through audience research, advisory bodies and invitation of comment on-air and/or via web-sites. Information on how this has been used to inform statements and reviews should be included wherever possible. It is anticipated that services will welcome viewer and interest-group comment in the months leading up to the formulation of the documents.

10. Publication of statements and reviews

Statements and reviews should be published “in such a manner, having regard to any guidance given by Ofcom, the provider considers appropriate”.

Consideration of any issues of “significant change” will be facilitated if all statements and reviews by licensees are sent to Ofcom prior to publication, i.e. in December each year. Any such issues arising will be considered by Ofcom in January; publication of the statements and reviews by broadcasters should occur soon afterwards. Dates may be agreed in consultation with Ofcom.

Ofcom regards transparency and openness as central to the process of self-assessment. However, it is accepted that some information – such as budgets – may be supplied in confidence to the regulator.

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This note is for general guidance only and is not intended to fetter Ofcom’s discretion to decide whether there has been a “significant change” in any particular case.

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Sub-section (5) states that “a change occurring gradually, over a period of not more than three years” may also amount to “significant change”.

Criteria

Ofcom may consider a number of criteria in judging whether an alteration to programme policy might constitute a “significant change”. However, sub-section 4 points to two important factors – the “character” of a channel, and how it might “materially change”.

a) the “character” of a channel

Ofcom interprets this to mean its character as a public service broadcasting channel, which is linked to the channel’s individual public service mandate as set out in legislation. The most important elements would therefore include:

- (a) the range of genres and balance of time allocated to these
- (b) the mix of programmes in peak time and across the day and week as a whole
- (c) the range of audience being catered for, and the range of tastes and interests addressed
- (d) the mix of first-run programmes and repeats
- (e) the number of landmark programmes
- (f) overall programme quality.

b) what constitutes a “material change”

Ofcom will exercise its discretion in determining what amounts to a “material change”. It will be guided by any evidence provided by the broadcaster – or any other evidence it has access to – in judging the likely impact.

A “material change” could be judged in various ways, including: whether or not a particular programme area is “under threat”; whether it has a special importance in terms of the channel’s contribution to public service broadcasting; whether the programme area is under-served by other channels etc. Issues of “quality” may also be relevant.

Section 4

The draft guidance note for the public teletext service

1. Introduction

Public Teletext (Teletext) is asked to provide both a statement of service content policy for the coming year, and a review of how the analogue and digital services separately fulfilled the public service remit in the past year.

The statement and review should be separate documents but submitted together. This note sets out guidance for the completion of both documents, as informed by the Communications Act (the Act).

Section 268 of the Act spells out the obligation to produce annual statements which must:-

- (a) set out how the public service remit for teletext will be fulfilled.
- (b) set out how the various requirements in sections 265, 284 and 289 (content guidance, news, regional matters, etc) will be fulfilled.
- (c) contain a performance review.

Teletext must:

- (a) have regard to Ofcom guidance
- (b) take account of Ofcom annual factual and statistical reports and PSB reviews and special account of the most recent ones.
- (c) publish the statement as soon as possible after it is complete, having regard to Ofcom guidance about the manner of publication.

The purpose of this guidance note is to ensure that Ofcom, and citizen-consumers, are provided with clear and consistent reports from the public teletext provider. This note is for general guidance only, and is not intended to fetter Ofcom's discretion. Ofcom will, as required under the Act, keep guidance notes under review.

It is important that statements of policy in specific areas reflect the range and depth of the complete proposition rather than simply set out numbers of pages. It is acknowledged that some content may contribute towards public service provision in a number of different ways, and may not easily fit within narrow subject definitions.

2. Format for statements and reviews

The self assessment review should follow the same general format as the statement of content policy. Both documents should reflect the services provided on analogue and digital systems.

3. Overall strategy/major themes for the year

Teletext should set out in the statement of service policy, and subsequently review achievement against, the overall strategic aims for the service in terms of:

- (a) broad service and content strategy
- (b) overall audience and any specific demographic targets
- (c) balance of output proposed
- (d) specific areas to be addressed
- (e) any specific key goals/objectives and initiatives to address them.

This statement should include a description of the intentions behind the proposals rather than merely promise to deliver a number of pages. The range and depth of a section is more important than an amount. The review should consider the achievement of strategic developments against the previous year's statement. It is expected that the review will be duly self-critical, where appropriate.

The review should cite the past year's overall budget, and audience figures.

4. Significant changes

Any significant change which would make the service as a whole materially different in character should be approved by Ofcom and should be flagged in the statement.

"Significant change" is defined (section 269(4) of the Act) as one where a service would be materially different in character from in previous years. The Act says: "Any change that is significant in relation to so much of the public teletext service, as it is provided in digital form, or in relation to so much of it as provided in analogue form, is to be regarded as a significant change in relation to the whole service".

Teletext may wish Ofcom to consider issues of 'significant change' at other points in the year, and not only at the point of submission of the statement.

Appendix 1 sets out in greater detail what is meant by "significant change", and Teletext's responsibilities in this regard.

5. Innovation, experiment and creativity

It would be helpful for Teletext to draw attention to particular plans/achievements in this field.

6. Service offer

These guidelines are not intended to be a box ticking exercise, but to act as examples of how Teletext can demonstrate it is fulfilling the public service broadcasting requirements, as defined and laid out in the Act.

Ofcom believes that regulation and self-assessment should reflect the main purposes of public service broadcasting. Four key purposes are identified in Phase 1 of Ofcom's PSB Review, and are currently subject to public consultation:-

- (a) to inform and to increase understanding of the world, through news, information and analysis of current events and ideas
- (b) to reflect and strengthen cultural identity, through high quality UK national and regional content
- (c) to stimulate interest in, and knowledge of arts, science, history and other topics, through content that is accessible, encourages personal development and promotes participation in society

- (d) to support a tolerant and inclusive society through content which reflects the lives of different people and communities within the UK, encourage a better understanding of different cultures and, on occasion, bring the nation together for shared experiences.

Information on the Teletext services in statements and reviews should reflect these broad purposes, as finalised in Phase 3 of the PSB Review.

As stated, Ofcom recognises that some content does not fit readily into simple genre definitions of page headings. For that reason Teletext is invited to describe any content/initiatives or projects that do not fall easily into traditional definitions. Nevertheless the Act requires that an assessment of public service provision takes account of the key values linked to specific areas (as outlined under section 264(6) of the Act). Teletext will need to consider which of the following can be interpreted as relevant and deliverable within its services.

These areas of content are:

- (a) news
- (b) current Affairs
- (c) education – and content of educational value
- (d) schools programmes
- (e) science
- (f) religion and other beliefs
- (g) social Issues
- (h) international coverage – outside of news and current affairs
- (i) drama
- (j) comedy and entertainment
- (k) arts and music
- (l) feature films (reflecting cultural activity in the UK)
- (m) sport
- (n) leisure interests.

For each of these areas the statement of policy and self-assessment review might outline Teletext's general strategy. It should take account of Ofcom guidance on the public service remit, and - where appropriate - outline for the past and coming year:

- (a) the quality of the provision
- (b) required pages/sections
- (c) range of subject matter
- (d) the development of new talent
- (e) any notable innovative, original or challenging content.

Guidance follow on a number of key content areas/objectives similar considerations apply to all the areas listed above.

a) News

The Teletext service should be able to demonstrate (see section 284 of the Act) that its news services contain a suitable quality and variety of news items. It is also required to ensure that the news items included in the services are up to date and regularly revised. Teletext should describe in detail the main news provision.

Matters to consider are:

- (a) arrangement for news gathering, including arrangements to cover news outside London and South-East England, and overseas
- (b) the range and balance of domestic stories and foreign news
- (c) the delivery of authority and the provision of in-depth analysis.

b) Regional Matters

The Teletext services (section 289 of the Act) are expected to provide an appropriate proportion of material that is of particular interest to persons living in different parts of the UK. The content should inform viewers of local/regional news and major events.

When assessing this output Teletext should take account of:

- (a) the volume and accessibility of the content
- (b) quality and depth
- (c) range of treatment and subject matter.

c) Other Content Areas/ Diversity of Provision

Religion – across the public service broadcasters there should be provision of content that deals with religion and belief. These should include coverage of a diversity of faiths and cultures.

Arts & Music – Teletext should give examples of how it will deliver content that reflects art and popular culture, and makes accessible the diversity of provision across the UK.

Education – Teletext may give examples of coverage of educational matters and perhaps include advice and support from educational specialists. It may also include content that stimulates the viewer to learn more about the subject.

Cultural and Community interest – section 264(4) of the Act requires that public service broadcasters reflect the lives of different communities and cultural interests within the UK. Teletext could give examples of the range of perspectives engaged and the involvement of different communities in the creation of content. Provision for those with disabilities could also be included.

Media Literacy – section 11 of the Act sets out the duties of Ofcom to promote media literacy. Statements should indicate how Teletext will contribute to the promotion and development of media literacy with its audience.

7. Public input

Teletext is encouraged to take account of public input in the formulation of its contents policy for both services, for example through audience research, advisory bodies and invitation for comment on screen and/or via web sites. Information on how this has been used to inform statements and reviews should be included whenever possible. It is anticipated that Teletext will invite viewer and interest-group comment in the months leading up to the formulation of the documents.

8. Publication of statements and reviews

Teletext's statements and reviews should be published "in such a manner, having regard to any guidance given by Ofcom, the provider considers appropriate".

Consideration of any issues of “significant change” will be facilitated if statements and reviews are sent to Ofcom prior to publication, i.e. in December each year. Such issues will be considered by Ofcom in January; publication of the statements and reviews by Teletext should occur soon afterwards. Dates may be agreed in consultation with Ofcom.

Ofcom regards transparency and openness as central to the process of self-assessment. However, it is accepted that some information – such as budgets – may be supplied in confidence to the regulator.

Appendix 1

Further guidance on “significant change”

This note is for general guidance only and is not intended to fetter Ofcom’s discretion to decide whether there has been a “significant change” in any particular case.

Provisions of Section 267 of the Communications Act

Sub-sections (1) and (2) state that any licensee proposing “a significant change” to its service must consult Ofcom before preparing the statement, and take account of any opinions expressed by Ofcom.

Sub-section (4) defines a significant change as one which would make the channel “materially different in character from in previous years”. Each public service broadcasting channel is deemed to have a “character”.

Sub-section (5) states that “a change occurring gradually, over a period of not more than three years” may also amount to “significant change”.

Criteria

Ofcom may consider a number of criteria in judging whether an alteration to programme policy might constitute a “significant change”. However, sub-section 4 points to two important factors – the “character” of a channel, and how it might “materially change”.

a) the “character” of a channel

Ofcom interprets this to mean its character as a public service broadcasting channel, which is linked to the channel’s individual public service mandate as set out in legislation. The most important elements would therefore include:

- (a) the range of genres and balance of time allocated to these
- (b) the mix of programmes in peak time and across the day and week as a whole
- (c) the range of audience being catered for, and the range of tastes and interests addressed
- (d) the mix of first-run programmes and repeats
- (e) the number of landmark programmes
- (f) overall programme quality.

b) what constitutes a “material change”

Ofcom will exercise its discretion in determining what amounts to a “material change”. It will be guided by any evidence provided by the broadcaster – or any other evidence it has access to - in judging the likely impact.

A “material change” could be judged in various ways, including: whether or not a particular programme area is “under threat”; whether it has a special importance in terms of the channel’s contribution to public service broadcasting; whether the

programme area is under-served by other channels etc. Issues of “quality” may also be relevant.

Section 5

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 19 August.

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) 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 Steve.Perkins@ofcom.org.uk.

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

Steve Perkins,
Manager – TV Programmes,
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3333

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 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 John Glover on 020 7981 3878, email John.Glover@ofcom.org.uk.

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, as soon as possible after the consultation period has ended.

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 the final guidance note on 8 October.

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

1. 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

2. We will be clear about who we are consulting, why, on what questions and for how long.
3. 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.
4. We will normally allow ten weeks for responses, other than on dispute resolution.
5. 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.
6. 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

7. 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, as soon as possible after the consultation period has ended, 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, unless we are asked not to.

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 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.

A2.4 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, 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:

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)?

Yes

☐

No

☐

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. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Name

Signed (if hard copy)

Annex 3

Consultation questions

Respondents may choose to answer all, some or – indeed - none of the questions posed below (if they have other issues to raise).

1. Have the guidance notes achieved the right balance between the legitimate freedom of broadcasters to set and review their own achievements, and the aim of ensuring there is a firm framework for citizen-consumers, and the regulator, to assess the delivery of public service broadcasting?
2. Is the emphasis on “range and depth” of programme offer (rather than hours) the right approach? Is it right, in principle, to move away from genre-based statements where the legislation allows?
3. Does the guidance achieve the right balance between wider PSB objectives, and the more detailed genre-related objectives specified in section 264(6) of the Communications Act?
4. Is the basis for judging “significant change” correct, as rooted in the Communications Act (section 267; see appendix to guidance notes)?

Annex 4

Key sections of the Communications Act 2003

The public service remit for television

264

OfCOM reports on the fulfilment of the public service remit

(1) It shall be the duty of OfCOM-

(a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and

(b) as soon as practicable after the end of each such subsequent period as may be selected by OfCOM for the purposes of this section,

to satisfy, for that period, the review and reporting obligations of subsection (3).

(2) The period selected by OfCOM for the purposes of subsection (1)(b) must be a period of not more than five years beginning with the end of the previous period for which OfCOM have satisfied those review and reporting obligations.

(3) The review and reporting obligations for a period are-

(a) an obligation to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom; and

(b) an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom, to prepare a report on the matters found on the review.

(4) The purposes of public service television broadcasting in the United Kingdom are-

(a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;

(b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;

(c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and

(d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to-

(i) the contents of the programmes;

(ii) the quality of the programme making; and

(iii) the professional skill and editorial integrity applied in the making of the programmes.

(5) When-

(a) determining the extent to which any of the purposes of public service television broadcasting in the United Kingdom are fulfilled, and

(b) reviewing and reporting on that matter,

OFCOM must have regard to the desirability of those purposes being fulfilled in a manner that is compatible with subsection (6).

(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures-

(a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;

(b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;

(c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;

(d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;

(e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;

(f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other beliefs, social issues, matters of international significance or

interest and matters of specialist interest;

(g) that the programmes included in those services that deal with religion and other beliefs include-

(i) programmes providing news and other information about different religions and other beliefs;

(ii) programmes about the history of different religions and other beliefs; and

(iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);

(h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;

(i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;

(j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.

(7) In carrying out a review under this section OFCOM must consider-

(a) the costs to persons providing relevant television services of the fulfilment of the purposes of public service television broadcasting in a manner compatible with subsection (6); and

(b) the sources of income available to each of them for meeting those costs.

(8) Every report under this section must-

(a) specify, and comment on, whatever changes appear to OFCOM to have occurred, during the period to which the report relates, in the extent to which the purposes of public service television broadcasting in the United Kingdom have been satisfied;

(b) specify, and comment on, whatever changes appear to OFCOM to have occurred, during that period, in the manner in which those purposes are fulfilled;

(c) set out the findings of OFCOM on their consideration of the matters mentioned in subsection (7) and any conclusions they have arrived at in relation to those findings; and

(d) set out Ofcom's conclusions on the current state of public service television broadcasting in the United Kingdom.

(9) In performing their duties under this section, OFCOM must have regard, in particular, to-

- (a) every statement of programme or service policy which has been made by virtue of this Chapter by a public service broadcaster, or which is treated as such a statement;
- (b) every equivalent statement of policy made by the BBC in pursuance of the BBC Charter and Agreement; and
- (c) such matters arising at times before the coming into force of this section as Ofcom considers material.

(10) Every report prepared by OFCOM under this section must be published by them-

- (a) as soon as practicable after its preparation is complete; and
- (b) in such manner as they consider appropriate.

(11) The following are relevant television services for the purposes of this section-

- (a) the television broadcasting services provided by the BBC;
- (b) the television programme services that are public services of the Welsh Authority (within the meaning of section 207);
- (c) every Channel 3 service;
- (d) Channel 4;
- (e) Channel 5;
- (f) the public teletext service.

(12) The following are public service broadcasters for the purposes of this section-

- (a) the BBC;
- (b) the Welsh Authority;
- (c) the providers of the licensed public service channels; and
- (d) the public teletext provider.

(13) In this section-

"belief" means a collective belief in, or other adherence to, a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines; and

"drama" includes contemporary and other drama in a variety of different formats.

265

Public service remits of licensed providers

(1) The regulatory regime for every licensed public service channel, and for the public teletext service, includes a condition requiring the provider of the channel or service to fulfil the public service remit for that channel or service.

(2) The public service remit-

- (a) for every Channel 3 service, and

(b) for Channel 5,
is the provision of a range of high quality and diverse programming.

(3) The public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular-

(a) demonstrates innovation, experiment and creativity in the form and content of programmes;

(b) appeals to the tastes and interests of a culturally diverse society;

(c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and

(d) exhibits a distinctive character.

(4) The public service remit for the public teletext service is the provision of a range of high quality and diverse text material.

(5) For so long as the public teletext service comprises both-

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,

the conditions imposed under this section must require the public service remit of the public teletext service to be fulfilled separately in the case of each of those services.

266

Statements of programme policy

(1) The regulatory regime for every licensed public service channel includes a condition requiring the provider of the channel-

(a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of programme policy; and

(b) to monitor his own performance in the carrying out of the proposals contained in the statements made in pursuance of the condition.

(2) The condition must require every statement of programme policy prepared in accordance with the condition to set out the proposals of the provider of the channel for securing that, during the following year-

(a) the public service remit for the channel will be fulfilled; and

(b) the duties imposed on the provider by virtue of sections 277 to 296 will be performed.

(3) The condition must also require every such statement to contain a report on the performance of the provider of the channel in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

(4) The condition must also provide that every such statement-

(a) must be prepared having regard to guidance given by OFCOM;

(b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;

(c) must take special account of the most recent such reports;

(d) must be published by the provider of the channel in question as soon as practicable after its preparation is complete; and

(e) must be published in such manner as, having regard to any guidance given by OFCOM, the provider considers appropriate.

(5) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of programme policy.

(6) It shall be the duty of OFCOM-

(a) from time to time to review the guidance for the time being in force for the purposes of this section; and

(b) to make such revisions of that guidance as they think fit.

(7) The conditions of a licence to provide a licensed public service channel may provide that a previous statement of policy made by the provider of the channel is to be treated for the purposes of this Part-

(a) as if it were a statement made in relation to such period as may be so specified; and

(b) were a statement of programme policy for the purposes of a condition imposed under this section.

(8) The reference in subsection (7) to a previous statement of policy is a reference to any statement made by the provider of the channel-

(a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the channel; or

(b) at any time before the commencement of this section, for any other purpose.

(9) A condition under subsection (7) cannot contain provision the effect of which is to postpone the time at which a licence

holder is required to make the first statement of programme policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

267

Changes of programme policy

(1) The regulatory regime for every licensed public service channel includes a condition requiring compliance with subsection (2) in the case of a statement of programme policy containing proposals for a significant change.

(2) This subsection requires the provider of the channel-

- (a) to consult OFCOM before preparing the statement; and
- (b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the channel by OFCOM.

(3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of programme policy has been prepared by the provider of the channel in contravention of a condition imposed under subsection (1), the provider is-

- (a) to revise that statement in accordance with any directions given to him by OFCOM; and
- (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.

(4) A change is a significant change for the purposes of this section if it is a change as a result of which the channel would in any year be materially different in character from in previous years.

(5) In determining for the purposes of any condition under this section whether a change is a significant change-

- (a) regard must be had to any guidance issued by OFCOM;
- (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years; and
- (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur.

(6) It shall be the duty of OFCOM-

- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and

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(b) to make such revisions of that guidance as they think fit.

Statements of service policy by the public teletext provider

(1) The regulatory regime for the public teletext service includes a condition requiring the public teletext provider-

(a) as soon as practicable after the coming into force of this section and subsequently at annual intervals, to prepare a statement of service policy; and

(b) to monitor his own performance in the carrying out of the proposals contained in statements made in pursuance of the condition.

(2) The condition must require every statement of service policy prepared in accordance with the condition to set out the proposals of the public teletext provider for securing that, during the following year, the public service remit for the public teletext service will be fulfilled.

(3) The condition must also require every such statement to contain a report on the performance of the public teletext provider in the carrying out, during the period since the previous statement, of the proposals contained in that statement.

(4) The condition must provide that the proposals or report for a period in the course of which the public teletext service will comprise or has comprised both-

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,

must deal separately with each of those services.

(5) The condition must also provide that every statement in pursuance of the condition-

(a) must be prepared having regard to guidance given by OFCOM;

(b) must be prepared taking account of the reports previously published by OFCOM under sections 264 and 358;

(c) must take special account of the most recent such reports;

(d) must be published by the public teletext provider as soon as practicable after its preparation is complete; and

(e) must be published in such manner as, having regard to any guidance given by OFCOM, that provider considers appropriate.

(6) In preparing guidance about the preparation of such a statement, OFCOM must have regard, in particular, to the matters which, in the light of the provisions of section 264(4) and (6), they consider should be included in statements of

service policy by the public teletext provider.

(7) It shall be the duty of OFCOM-

(a) from time to time to review the guidance for the time being in force for the purposes of this section; and

(b) to make such revisions of that guidance as they think fit.

(8) The conditions of the licence to provide the public teletext service may provide that a previous statement of policy made by the public teletext provider is to be treated for the purposes of this Part-

(a) as if it were a statement made in relation to such period as may be so specified; and

(b) were a statement of service policy for the purposes of a condition imposed under this section.

(9) The reference in subsection (8) to a previous statement of policy is a reference to any statement made by the public teletext provider-

(a) whether before or after the commencement of this section, for the purposes of his application for a Broadcasting Act licence for the public teletext service or for the existing service (within the meaning of section 221); or

(b) at any time before the commencement of this section, for any other purpose.

(10) A condition under subsection (8) cannot contain provision the effect of which is to postpone the time at which a licence holder is required to make the first statement of service policy which (apart from that subsection) he is required to make in pursuance of a condition imposed under this section.

269

Changes of service policy

(1) The regulatory regime for the public teletext service includes a condition requiring compliance with subsection (2) in the case of a statement of service policy containing proposals for a significant change.

(2) This subsection requires the provider of the service-

(a) to consult OFCOM before preparing the statement; and

(b) to take account, in the preparation of the statement, of any opinions expressed to the provider of the service by OFCOM.

(3) A condition imposed under this section must further provide that, if it appears to OFCOM that a statement of service policy has been prepared by the public teletext provider in contravention of a condition imposed under subsection (1), that

provider is-

- (a) to revise that statement in accordance with any directions given to him by OFCOM; and
- (b) to publish a revision of the statement in accordance with any such directions only after the revision has been approved by OFCOM.

(4) A change is a significant change for the purposes of this section if it is a change as a result of which the service would in any year be materially different in character from in previous years.

(5) In determining for the purposes of any condition under this section whether a change is a significant change-

- (a) regard must be had to any guidance issued by OFCOM;
- (b) the changes to be considered include any changes that, together with any proposed change for a particular year, would constitute a change occurring gradually over a period of not more than three years;
- (c) the previous years with which a comparison is to be made must be those immediately preceding the year in which the change is made, or in which the changes comprised in it began to occur; and
- (d) any change that is a significant change in relation to so much of the public teletext service as is provided in digital form or in relation to so much of it as is provided in analogue form is to be regarded as a significant change in relation to the whole service.

(6) It shall be the duty of OFCOM-

- (a) from time to time to review the guidance for the time being in force for the purposes of this section; and
- (b) to make such revisions of that guidance as they think fit.

270

Enforcement of public service remits

(1) This section applies if OFCOM are of the opinion that the provider of a licensed public service channel or the public teletext provider-

- (a) has failed to fulfil the public service remit for that channel or the public teletext service; or
- (b) has failed, in any respect, to make an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

(2) This section does not apply unless-

- (a) OFCOM are of the opinion that the failure of the provider is

serious and is not excused by economic or market conditions;
and

(b) OFCOM determine that the situation requires the exercise of their powers under this section.

(3) In making a determination under subsection (2)(b), OFCOM must have regard, in particular, to-

(a) the public service remit of that provider;

(b) the statements of programme policy or statements of service policy made (or treated as made) by the provider under section 266 or 268;

(c) the record generally of the provider in relation to the carrying out of obligations imposed by conditions of licences under the 1990 Act and the 1996 Act (including past obligations);

(d) the effectiveness and efficiency of the provider in monitoring his own performance; and

(e) general economic and market conditions affecting generally the providers of television programme services or the providers of television multiplex services, or both of them.

(4) OFCOM shall have power to give directions to the provider to do one or both of the following-

(a) to revise the provider's latest statement of programme policy, or statement of service policy, in accordance with the directions; and

(b) to take such steps for remedying the provider's failure as OFCOM may specify in the direction as necessary for that purpose.

(5) A direction given under this section must set out-

(a) a reasonable timetable for complying with it; and

(b) the factors that will be taken into account by OFCOM in determining-

(i) whether or not a failure of the provider has been remedied; and

(ii) whether or not to exercise their powers under subsection (6).

(6) If OFCOM are satisfied-

(a) that the provider of a public service channel or the public teletext provider has failed to comply with a direction under this section,

(b) that that provider is still failing to fulfil the public service remit for that channel or service or adequately to contribute to the fulfilment of the purposes of public service television broadcasting in the United Kingdom, and

(c) that it would be both reasonable and proportionate to the seriousness of that failure to vary the provider's licence in accordance with this subsection,

OFCOM may, by notice to the provider, vary that licence so as to replace self-regulation with detailed regulation.

(7) For the purposes of subsection (6) a variation replacing self-regulation with detailed regulation is a variation which-

- (a) omits the conditions imposed by virtue of sections 265 to 269; and
- (b) replaces those conditions with such specific conditions as OFCOM consider appropriate for securing that the provider-
 - (i) fulfils the public service remit for his service; and
 - (ii) makes an adequate contribution towards the fulfilment of the purposes of public service television broadcasting in the United Kingdom.

(8) If, at any time following a variation in accordance with subsection (6) of a provider's licence, OFCOM consider that detailed regulation is no longer necessary, they may again vary the licence so as, with effect from such time as they may determine-

- (a) to provide for the conditions required by virtue of sections 265 to 269 again to be included in the regulatory regime for the service provided by that provider; and
- (b) to remove or modify some or all of the specific conditions inserted under that subsection.

(9) Before giving a direction under this section to a provider or exercising their power under this section to vary a provider's licence, OFCOM must consult that provider.

(10) In accordance with section 265(5), the reference in subsection (1) to a failure to fulfil the public service remit for the public teletext service includes a failure to fulfil that remit as respects only one of the services comprised in that service.

271

Power to amend public service remits

(1) The Secretary of State may by order modify any one or more of the following-

- (a) the public service remit for any licensed public service channel or for the public teletext service;
- (b) the purposes of public service television broadcasting in the United Kingdom (within the meaning given by subsection (4) of section 264);
- (c) the matters to which OFCOM are to have regard under subsections (5) and (6) of that section.

(2) The Secretary of State is not to make an order under this section except where-

(a) OFCOM have made a recommendation for the making of such an order in their most recent report under section 229 or 264; or

(b) subsection (3) applies to the order.

(3) This subsection applies to an order if-

(a) it is made by the Secretary of State less than twelve months after the date on which he has received a report under section 229;

(b) he has considered that report; and

(c) he is satisfied that the making of the order is required, notwithstanding the absence of a recommendation by OFCOM, by circumstances or other matters which are dealt with in that report or which (in his opinion) should have been.

(4) Before including a recommendation for the making of an order under this section in a report under section 229 or 264, OFCOM must consult-

(a) members of the public in the United Kingdom;

(b) such public service broadcasters as they consider are likely to be affected if the Secretary of State gives effect to the recommendation they are proposing to make; and

(c) such of the other persons providing television and radio services as OFCOM consider appropriate.

(5) Before making an order under this section, the Secretary of State must consult the persons mentioned in subsection (6) about its terms (even if the order is the one recommended by OFCOM).

(6) Those persons are-

(a) OFCOM;

(b) such public service broadcasters as they consider are likely to be affected by the order; and

(c) such of the other persons providing television and radio services as he considers appropriate.

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

(8) In this section "public service broadcaster" means any of the persons who are public service broadcasters for the purposes of section 264.