

## Regulatory Triage Assessment

<b>Title of regulatory proposal</b>	Revocation of Sections 218 and 265 of the Communications Act 2003
<b>Lead Department/Agency</b>	DCMS
<b>Expected date of implementation</b>	SNR 5
<b>Origin</b>	Domestic
<b>Date</b>	01/03/13
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<b>Departmental Triage Assessment</b>	Deregulation (fast track)

### **Rationale for intervention and intended effects**

Under Section 218 of the Communications Act 2003, Ofcom is required to make its best endeavours to issue a licence for the provision of a public Teletext service. However, it is no longer commercially viable to provide this service, and the valuable UHF spectrum currently reserved for it could be released for other uses. It is therefore proposed that this statutory requirement should cease by removing references to public Teletext in the Communications Act 2003. These are primarily contained in Sections 218 and 265. We would also amend the Television Multiplex Service (Reservation of Digital Capacity) Order 2008 to free up the spectrum currently reserved for the public teletext service.

### **Viable policy options (including alternatives to regulation)**

The preferred policy option is to remove the requirement on Ofcom to do all it can to secure the provision of a public Teletext service by removing references to public Teletext from the Communications Act 2003.

No other options are regarded as viable.

### **Initial assessment of business impact**

The first commercial Teletext service – Oracle - was created in 1974 to compete with the Ceefax teletext service provided by the BBC. The first public teletext licence was issued in 1991 to Teletext Ltd under a competitive process against other bidders (including the incumbent, Oracle). Teletext Ltd's operations started in 1993. Under this licence, 3% of the MUX 2 spectrum was allocated to this use.

Section 218 of the Communications Act 2003 imposes a duty on Ofcom to do all it can to secure a national public service teletext service and section 265 sets out the form it should take. The original licence was extended for a further 10 years in 1994.

For some years the service was provided at a profit. However, by 2009, the service was making significant losses and Teletext Ltd announced that the service would be withdrawn. Ofcom found that Teletext was in breach of its licence obligations and revoked the licence on 29 January 2010. Several subsequent attempts to resurrect the service have proved unsuccessful.

The proposal is to remove the obligation to run a national teletext service and release the spectrum currently reserved for the service. This will provide on-going benefits because it will mean that Ofcom will not have to spend resources on searching for a licence holder when the business prospects for the service are poor.

It is not thought that the potential costs of the policy are significant. It is now nearly three years since the service ceased and few complaints about lack of teletext have been received. On the contrary, removal of the provisions contained in Sections 218 and 265, and the release of the spectrum reserved under the Multiplex Order 2008, will release a significant

amount of spectrum for other, more economically valuable uses.

**One-in, One-out status**

The measure is within scope of OITO. It is an out. However, since no licence holder is presently in place zero costs are involved. 3% of MUX 2 spectrum is likely to be worth in the region of £16 million.

**Rationale for Triage rating**

This measure is de-regulatory with impacts on under £1 million per annum.

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## **BACKGROUND**

Oracle began a commercial teletext service in 1974 on spare Channel 3 lines to compete with the Ceefax service offered by the BBC. In 1991, as a result of a competition, a public teletext licence was issued to Teletext Ltd, a wholly owned subsidiary of the Daily Mail and General Trust plc. Teletext Ltd began operations in 1993 and continued until January 2010. (A public teletext service has public service elements and is defined in Sections 218 and 265 of the Communications Act 2003.)

Section 218 of the Communications Act 2003 imposes a duty on Ofcom to do all it can to secure the provision of a public service teletext service available nationwide and Section 265 sets out the requirements for a public teletext service. Teletext Ltd obtained a replacement licence in 2004 for 10 years for which it made a cash bid plus annual payments of a percentage of qualifying revenue. The terms of this arrangement were reviewed in 2006 and amended from its initial cash element of £1.9 million to £25,000 (increasing by RPI each year) plus 5% of qualifying revenue (compared to 18% originally). It obtained access to approximately 3% of the Mux 2 spectrum and was obligated under the Communications Act 2003 to provide regularly updated news items and material of interest to regional consumers.

In 2009, Ofcom found that Teletext was accessed by 1.9 million households through Channel 3 and another 0.8 million via Channel 4. This was considerably more than the teletext services offered by Sky on Channel 5 but less than the 3 million households (50% of all teletext users) who used Ceefax. It is believed that people in lower socio-economic classes, the hard of hearing and the elderly are more likely to claim that they would rather have a teletext service.

By July 2009, falling revenues due to competition from alternative fully commercial services and the costs of the PSB obligations led Daily Mail and General Trust to announce that the service was loss-making and that it would be withdrawing the service. In December, it ceased to comply with its PSB obligations and accordingly the licence was revoked by Ofcom on 29 January 2010. By that time, the main commercial revenue earner of the service had been transferred to Daily Mail and General Trust's fully commercial text services. From that point, public service teletext was confined to Ceefax. Post-switchover, Ceefax has been replaced by the BBC's Red Button services.

## **POLICY OPTIONS**

Section 27 of the Digital Economy Act 2010 added Section 218A to the Communications Act 2003 and required Ofcom to report on teletext services. That report was published on 1 December 2010. That report cast serious doubt upon the long-term viability of commercial public teletext services. Ofcom concluded that the advantages of continuing with a public teletext service were limited and outweighed by the disadvantages of reserving Mux 2 capacity. It also suggested that it was appropriate to re-consider whether the

obligation to secure a public teletext provider should be continued and whether public service obligations of public teletext should be revised.

Four options have been identified.

***Option 1: Do Nothing.***

In this option Section 218 of the Communications Act 2003 is left un-amended. In fulfilment of its duty Ofcom will be required to advertise for possible public service teletext licence holders. If there is no response to the advertisement then it is to be expected that Ofcom will regularly re-advertise until a suitable applicant emerges. The 3% of the Mux 2 spectrum will continue to be reserved for teletext services and could not be used for another purpose.

***Option 2: Maintain the Ofcom Duty and Remove or Relax PS Obligations.***

Under this Option the duty under Section 218 remains so that Ofcom must seek a teletext provider but Section 265 is amended to allow Ofcom to relax or remove public service requirements from the public teletext licence. Those public service requirements that remain would, thus, become negotiable. The costs of providing the service would not be significantly altered. Nevertheless, the existing Mux 2 spectrum would continue to be allocated to the chosen licence holder and so could not be re-allocated to another use.

***Option 3: Remove the Ofcom Duty and Keep PS Obligations.***

Section 218 of the Communications Act 2003 is amended by bringing Section 28 of the Digital Economy Act 2010 into force. This would replace the duty on Ofcom to secure a public teletext provider with a power to do so. Although the Multiplex Order 2008 could be amended to release the 3% of Mux 2 spectrum that is currently reserved for this purpose, Ofcom are clear that there is no realistic prospect of a public teletext service becoming commercially viable.

***Option 4: Remove the Ofcom Duty and Remove PS Obligations.***

The Communications Act 2003 is amended remove references to the public teletext service, primarily in Sections 218 and 265, thereby removing the Ofcom duty to secure a public teletext service. The Multiplex Order 2008 would be amended at the same time (via the negative procedure) to release the 3% of Mux 2 spectrum that is currently reserved for this purpose. It could then be used for another more economically valuable purpose.

MUX2 uses approximately 43 MHz. 3% of this is reserved for use by teletext services, i.e. 1.29 MHz. In February 2005, DTI and DCMS conducted a cost-benefit analysis of the spectrum released by digital TV switchover. When this valuation is reflatd to 2011 prices it approximates to £12.46 million per MHz. and represents the value of the spectrum that can be potentially realised by other users. On this basis, the value of the teletext bandwidth in alternative uses is £16.07 million.