

Consultation on changes to the Office of Communications’ (Ofcom’s) statutory duties and functions

**23/04/2013**

Contents

Page 5: Overview

Page 8: How to respond

Page 8: Additional copies

Page 9: Confidentiality and data protection

Page 9: Help with queries

Page 10: Policy proposals in detail, including how each of the changes will affect costs and savings

Page 14: Monitoring & evaluation

**Annexes:**

Page 15: Annex A - Consultation questions

Page 16: Annex B – Consultation Response Form

|  |
| --- |
| **NB:** Due to its length, Annex C – a summary of existing legislation relevant to this consultation – has been published separately on the DCMS website: <https://www.gov.uk/government/organisations/department-for-culture-media-sport>Hard copies of this annex can be made available on request (see page 7 for details) |

**Overview: Consultation on proposals to make changes to the Office of Communications’ (Ofcom’s) statutory duties**

As part of the Government’s drive to increase the efficiency, transparency and accountability of public bodies, an analysis of the Office of Communication’s duties was undertaken in Summer 2010. A number of changes to Ofcom’s duties and powers were identified with the aim of reducing duplication and unnecessary expenditure. This consultation seeks views on those changes. The proposed changes are as follows:

1. Amend the duty to review Public Service Broadcasting at least every 5 years, under Part 3 section 264 of the Communications Act 2003, in order that a review will only be conducted at the discretion of the Secretary of State, who will also determine the scope of the review

1. Allow Ofcom flexibility to implement changes to its internal governance, by amending part 1 section 12-21 of the Communications Act 2003, and requiring the approval of the Secretary of State to any revised structure
2. Remove the requirement that Ofcom promote development opportunities for training and equality of opportunity, by amending section 27 of the Communications Act 2003
3. Amend the duty to assess Channel 3 networking arrangements, from an annual requirement to a reserve power for Ofcom to assess as required, by amending section 290-294 and Schedule 11 of the Communications Act 2003
4. Remove the requirement that Public Sector Broadcasters provide annual statements of programme policy, by amending section 266 & 270 of the Communications Act 2003
5. Amend the duty to review a change of control of a Channel 3 or Channel 5 licence, by amending section 351 & 353 of the Communications Act 2003, in order that one is not automatically required. However, Ofcom will retain the powers to carry one out if it considers it appropriate and the Secretary of State will attain the power to request one should it be felt appropriate. The “fit and proper persons” regime on new owners of Channel 3 and 5 licences will remain in place unchanged
6. Provide Ofcom powers to charge fees for satellite filings made to the International Telecommunications Union (ITU), by amending section 28 of the Communications Act 2003, bringing it into line with most other countries

We plan to make the above changes by amending the relevant sections of the Communications Act 2003 as detailed above, using powers in the Public Bodies Act to modify functions of Ofcom by an order.  The only exception to this is measure 5, which will be dealt with using an existing power in the Communications Act 2003.  Measure 5 relates to the regulatory regime for broadcasters, rather than Ofcom’s functions and powers, and it is most appropriate to amend that regime using the powers in the Communications Act 2003.  A separate Statutory Instrument (SI) will be laid to make this change to the regulatory regime.

This consultation therefore seeks views on:

1. Whether you agree with the proposed changes to Ofcom’s statutory duties and powers
2. Whether there are better/alternative ways to make these changes to Ofcom’s duties and powers

**Potential benefits**

We believe that the measures will lead to a range of potential benefits for business, organisations and individuals, including:

* Providing for the Secretary of State to have powers to request reviews of public service broadcasting;
* Freeing up Ofcom’s resources, in order that they may be better used elsewhere to tackle other issues;
* Providing Ofcom with more flexibility about how it structures itself, which would enable the regulator to become more efficient and streamlined;
* Introducing clearer lines of responsibility, and making it easier for businesses, organisations and individuals to understand the structure.

**Who will be affected by this consultation?**

* + Ofcom
	+ Broadcasters, and production companies making television programmes – as well as the Trade Unions, Skillset, and the Equality and Human Rights Commission, which represent and look after the interests of employees in the broadcasting sector

* + Companies that currently do not make a payment by using Ofcom’s satellite filing service

This consultation document and an impact assessment for these proposals are available for download from the DCMS website: <https://www.gov.uk/government/organisations/department-for-culture-media-sport>

**Next Steps**

The consultation will close on **Tuesday 25 June**. Following consideration of comments received, we aim to lay a draft order before Parliament. Subject to approval by both Houses, the Order will be made.

**CONSULTATION BY THE DEPARTMENT FOR CULTURE MEDIA & SPORT (DCMS) ON A DRAFT ORDER, WHICH PROPOSES CHANGES TO OFCOM’S STATUTORY DUTIES AND FUNCTIONS**

Issued: **23 April 2013**

Respond by: **25 June 2013**

Enquiries to:

Henry Anderton

Department for Culture Media & Sport (DCMS)

100 Parliament Street
London SW1A 2BQ

Tel: 020 7211 6110

Fax: 020 7211 6339

Email: Henry.Anderton@Culture.gsi.gov.uk

* This consultation document is relevant to businesses, organisations and individuals who may have interaction with Ofcom.
1. **How to respond**
* When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.
* A copy of the Consultation Response Form is enclosed at **Annex B** and is also available electronically on the [DCMS website](https://www.gov.uk/government/organisations/department-for-culture-media-sport)
* The form can be submitted by letter, fax or email to:

Henry Anderton

Department for Culture Media & Sport (DCMS)

100 Parliament Street
London SW1A 2BQ

Tel: 020 7211 6110

Fax: 020 7211 6339

Email: Henry.Anderton@Culture.gsi.gov.uk

1. **Additional copies**
* You may make copies of this document without seeking permission and further paper copies can be obtained from:

Henry Anderton

Department for Culture Media & Sport (DCMS)

100 Parliament Street
 London SW1A 2BQ

Tel: 020 7211 6110

Fax: 020 7211 6339

Email: Henry.Anderton@Culture.gsi.gov.uk

* An electronic version can be found at the [DCMS website](https://www.gov.uk/government/organisations/department-for-culture-media-sport)
* Other versions of this document in Braille, other languages or audio-cassette are available upon request.
1. **Confidentiality & Data Protection**
* Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
* If you want information, including personal data, that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
* In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
1. **Help with queries**
* Questions about the policy issues raised in this consultation document should be addressed to:

Henry Anderton

Department for Culture Media & Sport (DCMS)

100 Parliament Street
 London SW1A 2BQ

Tel: 020 7211 6110

Fax: 020 7211 6339

Email: Henry.Anderton@Culture.gsi.gov.uk

1. **Policy Proposals in detail, including how each of the changes will affect costs and savings**

*1. Amend the duty to review Public Service Broadcasting every 5 years – under part 3, section 264 of the Communications Act 2003*

Currently Ofcom is required by the Communications Act 2003 to undertake a review of the Public Service Broadcasting landscape at least once every 5 years. The intention is to change this to being at the discretion of the Secretary of State. These reviews are costly for Ofcom and do not necessarily directly link into to more major policy decisions, such as the current Communications Review. The proposed change is in line with the Government’s deregulatory agenda, as it will reduce the need for Ofcom to undertake unnecessary reviews allowing them to make cost savings. It will provide the powers to the Secretary of State, who will be able to request Ofcom to undertake a review of Public Service Broadcasting, as and when she thinks it most appropriate. Perhaps more importantly it is also proposed that the Secretary of State will also have powers to decide which parts of the PSB landscape should be reviewed, rather than to require a full review.

The savings to Ofcom are estimated to be between £135,000 and £180,000 per annum. This is on the assumption that a review takes place every ten years (which is half the frequency of the current requirement). The savings could be even greater if Ofcom focused on fewer areas than before, and there will be further savings for the public service broadcasters required to participate in these wide-ranging reviews.

*2. Allow Ofcom to design changes to governance – amending part 1, sections 12-21 of the Communications Act 2003*

The Communications Act 2003, under which Ofcom operates, is rigid and Ofcom has recently undertaken a review of their governance structures as part of the wider efficiency review.  We would like to give Ofcom the flexibility to adapt its structure, creating a more fit for purpose and streamlined organisation, reflecting advances in technology and the regulatory landscape.

For example, the EU Communications Framework Directive specifically requires national regulatory authorities (like Ofcom) to establish and maintain “arrangements” which allow those bodies to consult consumers in their state on issues which impact on those consumers as regards electronic communications networks and services.  In 2003 a policy decision was taken to mandate the current Consumer Panel as the way in which Ofcom was to fulfil this obligation.  However, in the future it is conceivable that there may be more efficient and effective ways of consulting with consumers.

We therefore propose to remove many of the requirements in sections 12-21 of the Communications Act 2003, and permit Ofcom, with the consent of the Secretary of State, to establish and maintain such advisory committees or consultation mechanisms as Ofcom thinks best enable it to deliver its key functions.

**Figure 1: Ofcom’s Governance Structure**

***Content Board***

*The Content Board is a committee of the main Board and it sets and enforces quality and standards for television and radio. It has members representing each of the countries in the UK, and includes both lay members and members with extensive broadcasting experience. It is charged with understanding, analysing and championing the voices and interests of the viewer, the listener and citizen.*

***Committees***

*The work of both the Ofcom Board and Executive is informed by the contribution of a number of committees and advisory bodies, which are required by the Communications Act.*

*These include the Communications Consumer Panel, the England, Northern Ireland, Scotland and Wales Advisory Committees, the Ofcom Spectrum Advisory Board and the Advisory Committee on Older and Disabled Persons (ACOD).[[1]](#footnote-2)*



*3. Remove the requirement that Ofcom promote development opportunities for training and equality of opportunity – amending section 27 of the Communications Act 2003*

Section 27 requires Ofcom to promote development opportunities for training and equality of opportunity.

Skillset is the body which provides skills and training for employees and businesses for the media industry. In particular it helps provide the training opportunities the UK broadcasting sector needs to help maintain its strong position in the world. All employers in the UK are subject to the Equality Act 2010, and as a public body, Ofcom is also required to comply with the public sector equality duty. As a result, the training and equal opportunity requirements set out in the Communications Act 2003 have largely been superceded and leave Ofcom alone among UK regulators charged with this type of duty.

To remove unnecessary duplication, we are proposing to remove the requirement that Ofcom promote training and equality of opportunity for employees. As well as removing an unnecessary burden on the regulator, this also ensures consistency with regulators in other sectors, who do not have this role.

*4. Amend the duty to assess Channel 3 Networking Arrangements – amending section 290-294 and schedule 11 of the Communications Act 2003*

The Communications Act 2003 at sections 293 and 294 requires Ofcom to undertake a review, at least once a year, of the Channel 3 networking arrangements, the set of arrangements between the holders of the 15 regional Channel 3 licences which enable the licensees to work together to provide a competitive public service network. The purpose of the review by Ofcom is to assess whether the arrangements continue to enable the licensees to meet the statutory objective, or whether modifications are necessary in order that the licensees may do so. Experience has shown that an annual review cycle places a considerable regulatory burden on the licence holders and is of uncertain value. Nevertheless, the Government believes it is appropriate that Ofcom have the power to conduct such a review if it deems it necessary. The measure removes the duty to perform annual reviews of the Channel 3 networking arrangements and provides Ofcom with the power to perform such a review as it thinks fit.

This measure should result in savings of around £30,000 per annum for the Channel 3 broadcasters and is also in line with part of the Government’s deregulatory agenda, as it would reduce the need to undertake any unnecessary reviews, which incurs valuable resources. Removing this duty from Ofcom will allow it to make cost savings estimated to be up to £60,000 per annum.

*5. Remove the requirement that Public Sector Broadcasters (PSB) provide annual statements of programme policy – amending sections 256 and 270 of the Communications Act 2003*

The Government is committed to reducing unnecessary processes whenever possible and agrees with Ofcom’s view that Statements of programme policy are in many cases ineffective tools, which have proved to be a weak regulatory lever. The quota requirements for PSBs will continue as normal and include news, current affairs, original productions, independent productions, production outside London and regional news. Ofcom will continue to collect and publish data from all PSBs annually on their delivery in key areas and to conduct PSB Reviews at the request of the Secretary of State. It will also continue to monitor delivery against Channel 4’s new digital remit, examining its Statement of Media Content Policy – a separate requirement of the Digital Economy Act (DEA) 2010. It should be stressed that under these proposals the BBC will not be affected.

It is estimated that savings for Ofcom will be £15,000 per annum**.** Ofcom runs a routine check that documents conform to the note of guidance.  The cost of this and any work needed during the course of the year is £5,000. However, where a statement of policy contains a proposal for ‘significant change’, a greater level of analysis and consideration is required of Ofcom. On the assumption that there is one such significant change in any given year, Ofcom estimates its cost to be £10,000.

We believe that there are more effective mechanisms which remain in place for Ofcom to monitor that PSB obligations are being met, notably the set quotas for news, current affairs, original productions, independent productions, out of London production and in the case of Channel 3 regional news and other programmes.

*6. Amend the duty to review a change of control of a Channel 3 or Channel 5 license – amending sections 351 and 353 of the Communications Act 2003*

Currently Ofcom is obliged to undertake a “change of control” review if a Channel 3 or Channel 5 licence changes ownership. We propose to revise the regulations so that Ofcom retains powers to carry one out if it deems it appropriate, but more importantly provides the Secretary of State with the power to request one as appropriate.

The scope of Ofcom’s reviews is limited to the likely effects of any “change of control” to the various obligations that are listed in the Act. This includes original productions, news and current affairs, and in the case of Channel 3, regional programmes. Ofcom would have the discretion to carry out a “change of control” review in cases where they feel it is warranted. This is different to the “fit and proper persons” regime which will remain unchanged.

With regards to ownership controls, the situation would remain as it is now and cross media ownership rules would remain in force and prohibit an owner of a national newspaper with a market aggregate share of greater than 20% from owning more than 20% of an ITV licence. The public interest test would still apply if there were serious concerns about news provision and loss of plurality.

Since 2003 Ofcom has undertaken three such “change of control” reviews, costing about £10,000 each. On this basis, Ofcom therefore estimates the removal of this obligation will save about £5,000 per annum. Ofcom does not consider that significant costs are incurred by licensees in supplying data to Ofcom for this purpose and there would be no implementation costs.

*7. Provide Ofcom powers to charge fees to recover costs for satellite filings made to the International Telecommunications Union (ITU) – amending section 28 of the Communications Act 2003*

Regulators in many other countries make a charge for providing this type of service. Therefore, we believe this action will bring Ofcom into line with international practice, as well as making cost savings.

The ITU coordinates the international use of satellites by allocating orbits to users. Satellite operators draw up technical specifications of their use of satellites which are filed at the ITU on their behalf by Ofcom. This is under a duty arising from Secretary of State Directions on Ofcom to represent HMG in the ITU. The Communications Act 2003 has no provision for Ofcom to be able to charge for this activity.

By contrast, other countries commonly charge for this: for example, France at about €20,000 per filing, Australia at about $A15,000 per filing plus any additional cost recovery charges, and the USA in the region of $US150,000 per filing.

Ofcom’s 2007 consultation estimated that they would incur costs of approximately £400,000 per annum on processing satellite fillings applications. It is possible that if charges were introduced to recover these costs, then some operators could choose to make their filing elsewhere. However it is difficult to assess exactly how much impact the proposed fee introduction may have on the decision about whether to file with Ofcom or a regulator in a different country.

The cost of implementation would be about £500-£1,000 and Ofcom would incur the cost of manually attributing costs and invoicing approximately 20 operators a year, which would take up about one or two days a year.

|  |
| --- |
| **Implementation:**We plan to make the above changes by amending the relevant sections of the Communications Act 2003 as detailed above, using powers in the Public Bodies Act to modify functions of Ofcom by an order.  The only exception to this is measure 5, which will be dealt with using an existing power in the Communications Act 2003.  Measure 5 relates to the regulatory regime for broadcasters, rather than Ofcom’s functions and powers, and it is most appropriate to amend that regime using the powers in the Communications Act 2003.  A separate Statutory Instrument (SI) will be laid to make this change to the regulatory regime. |

**6. Monitoring & Evaluation, Recommendation & Enforcement**

Following the end of the consultation period a specific proposal will be brought forward and a detailed plan of action including evaluation of the policy impacts will be established. We will publish the Government’s response to this consultation document as soon as possible after the close of consultation. A copy will be available on DCMS’s website, with paper copies being made available upon request. We would request that the proposals set out on page 5 of this document be carefully considered and views made known to us by using the consultation response form.

 **Annex A**

**Consultation Questions**

**Q1: Do you agree with the proposed changes to Ofcom’s statutory duties and powers? If you disagree then please set out, in detail, the reasons why.**

**Q2: Are there alternative/better ways to make these changes to Ofcom’s duties?**

**Q3: Do you have any other comments that might aid the consultation process as a whole?**

**Annex B**

**Consultation Response Form**

**Response form regarding Ofcom proposals to make changes to its statutory duties and functions**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available on public request individual responses.

The closing date for this consultation is **25/06/2013**

**Name:**

**Organisation:**

**Address:**

Please return completed forms to:

Henry Anderton

Department for Culture Media & Sport (DCMS)
100 Parliament Street
London SW1A 2BQ

Tel: 020 7211 6110

Fax: 020 7211 6339

Email: Henry.Anderton@Culture.gsi.gov.uk

Please tick a box from the following list of options that you feel best describes you, as it will allow us to understand views represented by group type:

|  |  |
| --- | --- |
|  | Business representative organisation/trade body |
|  | Central government |
|  | Charity or social enterprise |
|  | Individual |
|  | Large business ( over 250 staff) |
|  | Legal representative |
|  | Local Government  |
|  | Medium business (50 to 250 staff) |
|  | Micro business (up to 9 staff) |
|  | Small business (10 to 49 staff) |
|  | Trade union or staff association |
|  | Other (please describe):  |

**Question 1**

**Do you agree with the proposed changes to Ofcom’s statutory duties and functions? If you disagree then please set out, in detail, the reasons why.**

***Comments:***

**Question 2**

**Are there alternative/better ways to make these changes to Ofcom’s duties?**

***Comments:***

**Question 3**

**Do you have any other comments that might aid the consultation process as a whole?**

***Comments***:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply [ ]

At DCMS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

[ ]  Yes [ ]  No



4th Floor, 100 Parliament Street

London SW1A 2BQ

www.gov.uk/dcms

1. It is worth noting that the Advisory Committee on Older and Disabled Persons and the Consumer Panel have in effect been merged (they have the same membership but still operate as a separate committee). [↑](#footnote-ref-2)