



Communications Act 2003

2003 CHAPTER 21

PART 3

TELEVISION AND RADIO SERVICES [F¹ETC]

CHAPTER 6

OTHER PROVISIONS ABOUT TELEVISION AND RADIO SERVICES

Annual report on television and radio

358 Annual factual and statistical report

- (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 every subsequent period of twelve months,to satisfy for that period the review and reporting requirements of this section.
- (2) For any period those obligations are—
 - (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom during that period; and
 - (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.
- (3) In carrying out a review for any period under this section, OFCOM must consider, in particular, each of the following—
 - (a) the extent to which programmes included during that period in television and radio services are representative of what OFCOM consider to be the principal genres for such programmes;

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- (b) the extent to which codes made by OFCOM under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have been complied with during that period;
 - (c) the extent to which any guidance given by OFCOM under section 314 has been followed during that period;
 - (d) any trends appearing or operating during that period in the size and behaviour of the audience for radio and television services;
 - (e) the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced;
 - (f) what it is appropriate to achieve by conditions and duties under section 277 and paragraphs 1 and 7 of Schedule 12 and the effectiveness for that purpose of the conditions and duties for the time being in force;
 - (g) whether it would be appropriate to recommend to the Secretary of State that he exercises any of his powers under that section or those paragraphs;
 - (h) the extent to which work on independent productions (within the meaning of that section and those paragraphs) that are produced in the United Kingdom is done in a range of production centres outside the M25 area;
 - (i) any issues relating to intellectual property in programmes that have arisen or been of significance during that period;
 - (j) developments in technology that have occurred or become important during that period and are relevant to the provision, broadcasting or distribution of television and radio programmes;
 - (k) the availability during that period of persons with skills that are used or likely to be useful in connection with the provision of television and radio services and the production of programmes for inclusion in such services;
 - (l) the availability during that period of facilities for the provision of training in such skills.
- (4) Every report under this section must set out OFCOM’s findings on their consideration of the matters mentioned in subsection (3).
- (5) 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.
- (6) OFCOM’s duties under this section are in addition to their duties under section 264.

Commencement Information

II S. 358 in force at 29.12.2003 by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

Community radio and local digital television

359 Grants to providers

- (1) OFCOM may make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 262.

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- (2) The Secretary of State may by order provide that OFCOM may also make such grants as they consider appropriate to the provider of any service of a description of service in relation to which provision is for the time being in force under section 244.
- (3) A grant made by virtue of this section may be made on such terms and conditions, and shall become repayable to OFCOM in such circumstances, as may be specified by OFCOM when making the grant.
- (4) A person is not—
- (a) by reason of the making to him of a grant by virtue of this section, or
 - (b) by reason of any terms or conditions (including any provisions for repayment) subject to which such a grant is or has been made to him,
- to be a disqualified person by virtue of any provision of Schedule 2 to the 1990 Act in relation to a licence mentioned in subsection (5).
- (5) Those licences are—
- (a) a licence under Part 1 of the 1990 Act, or under Part 1 of the 1996 Act, which is granted in accordance with any provision made by an order under section 244 of this Act; and
 - (b) a licence under Part 3 of the 1990 Act, or under Part 2 of the 1996 Act, which is granted in accordance with any provision made by an order under section 262 of this Act.
- (6) 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.

Commencement Information

I2 S. 359 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

Supplemental provisions of Part 3

360 Amendments of the 1990 and 1996 Acts

- (1) In section 201 of the 1990 Act (programme services), in subsection (1)—
- (a) for paragraphs (a) to (bb) there shall be substituted—
 - “(aa) any service which is a programme service within the meaning of the Communications Act 2003;”
 - (b) in paragraph (c), for “a telecommunication system” there shall be substituted “an electronic communications network (within the meaning of the Communications Act 2003)”.
- (2) For subsection (2) of that section there shall be substituted—
- “(2A) Subsection (1)(c) does not apply to so much of a service consisting only of sound programmes as—
- (a) is a two-way service (within the meaning of section 248(4) of the Communications Act 2003);
 - (b) satisfies the conditions in section 248(5) of that Act; or

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- (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 248(7) of that Act.
- (2B) Subsection (1)(c) does not apply to so much of a service not consisting only of sound programmes as—
- (a) is a two-way service (within the meaning of section 232 of the Communications Act 2003);
 - (b) satisfies the conditions in section 233(5) of that Act; or
 - (c) is provided for the purpose only of being received by persons who have qualified as users of the service by reason of being persons who fall within paragraph (a) or (b) of section 233(7) of that Act.”
- (3) Schedule 15 (which makes minor and consequential amendments of the 1990 Act and the 1996 Act for purposes connected with the other provisions of this Chapter) shall have effect.

Commencement Information

- I3** S. 360(1)(2) in force at 29.12.2003 by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))
- I4** S. 360(3) in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), [art. 2\(1\)](#), [Sch. 1](#)
- I5** S. 360(3) in force at 18.9.2003 for specified purposes by [S.I. 2003/1900](#), [art. 2\(2\)](#), [Sch. 2](#)
- I6** S. 360(3) in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

361 Meaning of “available for reception by members of the public”

- (1) The services that are to be taken for the purposes of this Part to be available for reception by members of the public include (subject to subsection (2)) any service which—
- (a) is made available for reception, or is made available for reception in an intelligible form, only to persons who subscribe to the service (whether for a period or in relation to a particular occasion) or who otherwise request its provision; but
 - (b) is a service the facility of subscribing to which, or of otherwise requesting its provision, is offered or made available to members of the public.
- [^{F1}(2) A service is not to be treated as available for reception by members of the public if it is an on-demand programme service.]
- (6) References in this section to members of the public are references to members of the public in, or in any area of, any one or more countries or territories (which may or may not include the United Kingdom).
- (7) The Secretary of State may by order modify any of the provisions of this section if it appears to him appropriate to do so having regard to any one or more of the following—
- (a) the protection which, taking account of the means by which the programmes and services are received or may be accessed, is expected by members of the public as respects the contents of television programmes or sound programmes;

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- (b) the extent to which members of the public are able, before television programmes are watched or accessed, to make use of facilities for exercising control, by reference to the contents of the programmes, over what is watched or accessed;
 - (c) the practicability of applying different levels of regulation in relation to different services;
 - (d) the financial impact for providers of particular services of any modification of the provisions of that section; and
 - (e) technological developments that have occurred or are likely to occur.
- (8) No order is to be made containing provision authorised by subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

^{F2}(9)

Textual Amendments

- F1** S. 361(2) substituted for s. 361(2)-(5) (19.12.2009) by [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **9(a)**
- F2** S. 361(9) omitted (19.12.2009) by virtue of [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **9(b)**

Commencement Information

- I7** S. 361 in force at 25.7.2003 by [S.I. 2003/1900](#), art. 2(1), **Sch. 1**

362 Interpretation of Part 3

(1) In this Part—

“additional radio service” means an additional service within the meaning given by section 114(1) of the 1990 Act for the purposes of Part 3 of that Act;

“additional television service” (except in the expression “digital additional television service”) means an additional service within the meaning given by section 48 of the 1990 Act for the purposes of Part 1 of the 1990 Act;

“analogue teletext service” is to be construed in accordance with section 218(4);

“ancillary service” has the same meaning as it has, by virtue of section 24(2) of the 1996 Act, in Part 1 of that Act;

“assistance for disabled people” [^{F3}includes, in particular,] any of the following—

- (a) subtitling;
- (b) audio-description for the blind and partially sighted; and
- (c) presentation in, or translation into, sign language;

“available for reception by members of the public” is to be construed in accordance with section 361;

“the BBC Charter and Agreement” means the following documents, or any one or more of them, so far as they are for the time being in force—

- (a) a Royal Charter for the continuance of the BBC;
- (b) supplemental Charters obtained by the BBC under such a Royal Charter;

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(c) an agreement between the BBC and the Secretary of State entered into (whether before or after the passing of this Act) for purposes that include the regulation of activities carried on by the BBC;

“BBC company” means—

- (a) a body corporate which is controlled by the BBC; or
- (b) a body corporate in which the BBC or a body corporate controlled by the BBC is (to any extent) a participant;

“C4 company” means—

- (a) a body corporate which is controlled by C4C; or
- (b) a body corporate in which C4C or a body corporate controlled by C4C is (to any extent) a participant;

“Channel 3”, “Channel 4” and “Channel 5” each has the same meaning as in Part 1 of the 1990 Act (see section 71 of that Act);

“Channel 3 licence” means a licence to provide a Channel 3 service;

“a Channel 3 service” means a television broadcasting service comprised in Channel 3;

“digital additional sound service” means a digital additional service within the meaning given by section 63 of the 1996 Act for the purposes of Part 2 of that Act;

“digital additional television service” means a digital additional service within the meaning given by section 24(1) of the 1996 Act for the purposes of Part 1 of that Act;

“the digital public teletext service” means so much of the public teletext service as consists of a service provided in digital form;

“digital sound programme licence” and “digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“digital television programme service” means a digital programme service within the meaning given by section 1(4) of the 1996 Act for the purposes of Part 1 of that Act;

[^{F4}“EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978, ^{F5}...;]

[^{F6}“the European Convention on Transfrontier Television” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;]

“general multiplex service” means a multiplex service within the meaning of section 175 which is neither a television multiplex service nor a radio multiplex service;

“initial expiry date” has the meaning given by section 224;

“licensed public service channel” means any of the following services (whether provided for broadcasting in digital or in analogue form)—

- (a) any Channel 3 service;
- (b) Channel 4;
- (c) Channel 5;

“local digital sound programme licence” and “local digital sound programme service” each has the same meaning as in Part 2 of the 1996 Act (see sections 60 and 72 of that Act);

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“local radio multiplex licence” and “local radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“local sound broadcasting licence” means a licence under Part 3 of the 1990 Act to provide a local sound broadcasting service;

“local sound broadcasting service” means a sound broadcasting service which, under subsection (4)(b) of section 245, is a local service for the purposes of that section;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25);

“national Channel 3 service” means a Channel 3 service provided between particular times of the day for more than one area for which regional Channel 3 services are provided;

“national digital sound programme service” has the same meaning as in Part 2 of the 1996 Act;

“national radio multiplex licence” and “national radio multiplex service” each has the same meaning as in Part 2 of the 1996 Act (see sections 40 and 72 of that Act);

“networking arrangements” has the meaning given by section 290;

“OFCOM’s standards code” means any code or codes for the time being in force containing standards set by OFCOM under section 319 (whether originally or by way of any revision of any standards previously so set);

[^{F7}“product placement” has the meaning given by paragraph 1 of Schedule 11A;]

“provision”, in relation to a service, is to be construed (subject to subsection (3)) in accordance with subsection (2), and cognate expressions are to be construed accordingly;

“the public teletext provider” means—

- (a) subject to paragraph (b), the person holding the licence under section 219 to provide the public teletext service; and
- (b) in relation to a time before the grant of the first licence to be granted under that section, the person holding the Broadcasting Act licence to provide the existing service (within the meaning of section 221);

“the public teletext service” means the service the provision of which is required to be secured in accordance with section 218;

“qualifying service” has the same meaning as in Part 1 of the 1996 Act (see section 2(2) of that Act);

“radio licensable content service” has the meaning given by section 247;

“radio multiplex service” has the same meaning as (by virtue of section 258 of this Act) it has in Part 2 of the 1996 Act;

“radio programme service” means any of the following—

- (a) a service the provision of which is licensed under Part 3 of the 1990 Act;
- (b) a digital sound programme service the provision of which is licensed under Part 2 of the 1996 Act;
- (c) a digital additional sound service the provision of which is licensed under section 64 of the 1996 Act;

“regional Channel 3 licence” means a licence under Part 1 of the 1990 Act to provide a regional Channel 3 service;

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“regional Channel 3 service” means a Channel 3 service provided for a particular area determined under section 14(2) of the 1990 Act;

“restricted television service” means any restricted service within the meaning given by section 42A of the 1990 Act for the purposes of Part 1 of that Act;

“S4C” and “S4C Digital” means the services so described in section 204(3);

“S4C company” means—

- (a) a body corporate which is controlled by the Welsh Authority; or
- (b) a body corporate in which that Authority or a body corporate controlled by that Authority is (to any extent) a participant;

“simulcast radio service” means any simulcast radio service within the meaning given by section 41(2) of the 1996 Act for the purposes of Part 2 of that Act;

“sound broadcasting service” has the same meaning as in Part 3 of the 1990 Act (see section 126 of that Act);

“standards objectives” has the meaning given by section 319(2);

“subtitling” means subtitling for the deaf or hard of hearing, whether provided by means of a teletext service or otherwise;

“television broadcasting service” means (subject to subsection (4)) a service [F8(or a dissociable section of a service)] which—

- (a) consists in a service of television programmes provided with a view to its being broadcast (whether in digital or in analogue form);
- (b) is provided so as to be available for reception by members of the public; and
- (c) is not—
 - (i) a restricted television service;
 - (ii) a television multiplex service;
 - (iii) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; or
 - (iv) a service provided under the authority of a licence under Part 1 of the 1996 Act to provide a digital television programme service;

“television licensable content service” has the meaning given by section 232 of this Act;

“television multiplex service” has meaning given by section 241(1) of this Act to a multiplex service within the meaning of Part 1 of the 1996 Act;

“television programme service” means any of the following—

- (a) a television broadcasting service;
- (b) a television licensable content service;
- (c) a digital television programme service;
- (d) a restricted television service;

F9
...

“text service” means any teletext service or other service in the case of which the visual images broadcast or distributed by means of the service consist wholly or mainly of non-representational images.

(2) In the case of any of the following services—

- (a) a television broadcasting service or sound broadcasting service,
- (b) the public teletext service;

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- (c) a television licensable content service or radio licensable content service,
- (d) a digital television programme service or digital sound programme service,
- (e) a restricted television service,
- (f) an additional television service or additional radio service,
- (g) a digital additional television service or a digital additional sound service,

the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service).

(3) For the purposes of this Part—

- (a) the provision of a service by the BBC does not include its provision by a BBC company;
- (b) the provision of a service by C4C does not include its provision by a C4 company;
- (c) the provision of a service by the Welsh Authority does not include its provision by an S4C company;

and, accordingly, control that is or is capable of being exercised by the BBC, C4C or the Welsh Authority over decisions by a BBC company, C4 company or S4C company about what is to be comprised in a service shall be disregarded for the purposes of subsection (2).

(4) References in this Part to a television broadcasting service do not include references to any text service.

(5) References in this Part to imposing a charge on a person in respect of his reception of a service in, or in a part of, the United Kingdom include references to imposing charges—

- (a) for his use of the service at a place in the United Kingdom or in that part of it;
- (b) for an entitlement of his to receive it at such place;
- (c) for the use of a facility by means of which he exercises such an entitlement; or
- (d) for the service's being made available for reception by him at such a place.

(6) In subsection (1) “controlled” and “participant” each has the same meaning as in Schedule 2 to the 1990 Act.

(7) In this section “non-representational images” means visual images which are neither still pictures nor comprised within sequences of visual images capable of being seen as moving pictures.

Textual Amendments

- F3** Words in s. 362(1) substituted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **17(a)** (with Pt. 7)
- F4** Words in s. 362(1) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), regs. 1, 7
- F5** Words in s. 362(1) omitted (31.12.2020) by virtue of [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 1 para. 28(a)** (with reg. 6) (as amended by S.I. 2020/1536, regs. 2, **5(2)(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- F6** Words in s. 362(1) inserted (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 1 para. 28(b)** (with reg. 6) (as amended by S.I. 2020/1536, regs. 2, **5(2)(3)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F7** Words in s. 362(1) inserted (16.4.2010) by [The Audiovisual Media Services \(Product Placement\) Regulations 2010 \(S.I. 2010/831\)](#), regs. 1(1), **6**
- F8** Words in s. 362(1) inserted (1.11.2020) by [The Audiovisual Media Services Regulations 2020 \(S.I. 2020/1062\)](#), regs. 1(2), **17(b)** (with Pt. 7)
- F9** Words in s. 362(1) omitted (19.12.2009) by virtue of [Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), regs. 1(1), **10**

Modifications etc. (not altering text)

- C1** S. 362(2)(3) applied by 1990 c. 42, s. 202(6A) (as inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 15 para. 68(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11))

Commencement Information

- I8** S. 362 in force at 25.7.2003 by [S.I. 2003/1900](#), art. 2(1), **Sch. 1** (with art. 6)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)