

Section (Clause) 285, Communications Act

285 Code relating to programme commissioning

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that the provider of the channel draws up and from time to time revises a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that the provider of every licensed public service channel—

(a) at all times complies with a code of practice which has been drawn up by him by virtue of this section and is for the time being in force; and
(b) exercises his power to revise his code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this section.

(3) The conditions imposed under this section must ensure that the code for the time being in force in the case of every licensed public service channel secures, in the manner described in guidance issued by OFCOM—

(a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
(b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
(c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;
(d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and exclusivity of those rights;
(e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
(f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
(g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.

(4) The conditions imposed under this section must also ensure that the drawing up or revision of a code by virtue of this section is in accordance with guidance issued by OFCOM as to—

(a) the times when the code is to be drawn up or reviewed with a view to revision;
(b) the consultation to be undertaken before a code is drawn up or revised;
and
(c) the publication of every code or revised code.

(5) The provision that may be included in a condition imposed under this section includes—

(a) provision requiring a draft of a code or of any revision of a code to be submitted to OFCOM for approval;
(b) provision for the code or revision to have effect only if approved by OFCOM; and
(c) provision for a code or revision that is approved by OFCOM subject to modifications to have effect with those modifications.

(6) OFCOM—

(a) must issue and may from time to time revise guidance for the purposes of this section;

(b) must ensure that there is always guidance for those purposes in force;

(c) must, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the BBC and the Welsh Authority; and

(d) must publish their guidance or revised guidance in such manner as they think appropriate.

(7) Guidance issued by OFCOM for the purposes of this section must be general guidance and is not to specify particular terms to be included in agreements to which the guidance relates.

(8) Conditions imposed under this section requiring a code to be drawn up or approved may include transitional provision for treating a code drawn up before the imposition of the condition —

(a) as satisfying the requirements of that condition; and

(b) as a code approved by OFCOM for the purposes of conditions so imposed.

(9) In this section “independent production” has the same meaning as in section 277.

Section 277 e 278

Programming quotas for public service television

277 Programming quotas for independent productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.

(2) In this section—

(a) a reference to qualifying programmes is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be qualifying programmes for the purposes of this section;

(b) a reference to independent productions is a reference to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be independent productions for the purposes of this section; and

(c) a reference to a range of independent productions is a reference to a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved.

(3) The Secretary of State may by order amend subsection (1) by substituting a different percentage for the percentage for the time being specified in that subsection.

(4) The Secretary of State may also by order provide for the regulatory regime for every licensed public service channel to include conditions falling within subsection (5), either instead of or as well as those falling within subsection (1).

(5) The conditions falling within this subsection are those that OFCOM consider appropriate for securing that, in each year, not less than the percentage specified in the order of the programming budget for that year for that channel is applied in the acquisition of independent productions.

(6) The power to make an order under subsection (4) includes power to provide that conditions that have previously ceased under such an order to be included in the regulatory regime for every licensed public service channel are again so

included, in addition to or instead of the conditions already so included (apart from the exercise of that power) by virtue of this section.

(7) The Secretary of State is not to make an order for the regulatory regime of every licensed public service channel to include or exclude conditions falling within subsection (1) or conditions falling within subsection (5) unless—

(a) OFCOM have made a recommendation to him for those conditions to be included or excluded; and

(b) the order gives effect to that recommendation.

(8) The regulatory regime for every licensed public service channel also includes a condition requiring the provider of the channel to comply with directions given to him by OFCOM for the purpose of—

(a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in his compliance with the requirements of conditions imposed by virtue of subsection (1) or (4); and

(b) thereby increasing the percentage applicable for the purposes of those conditions to the subsequent year or years.

(9) For the purposes of conditions imposed by virtue of this section—

(a) the amount of the programming budget for a licensed public service channel for a year, and

(b) the means of determining the amount of that budget that is applied for any purpose,

are to be computed in accordance with such provision as may be set out in an order made by the Secretary of State, or as may be determined by OFCOM in accordance with such an order.

(10) The powers of the Secretary of State to make orders under this section do not include—

(a) power to specify different percentages for the purposes of subsection (1), or of a condition falling within subsection (5), for different regional Channel 3 services or for different national Channel 3 services; or

(b) power to make different provision for different licensed public service channels as to whether conditions falling within subsection (1) or conditions falling within subsection (5), or both, are included in the regulatory regimes for those services.

(11) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

(12) 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.

(13) In this section—

“acquisition”, in relation to a programme, includes commissioning and the acquisition of a right to include it in a service or to have it broadcast;

“programme” does not include an advertisement; and

“programming budget” means the budget for the production and acquisition of qualifying programmes.

278 Programming quotas for original productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—

(a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the channel; and

(b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between

peak viewing times and other times.

(2) The proportion determined by OFCOM for the purposes of subsection (1)—

(a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and

(b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(3) A condition contained in a licence by virtue of this section may provide—

(a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;

(b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.

(7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.

(8) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

(9) 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.

(10) In this section—

“peak viewing time”, in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and

“programme” does not include an advertisement.

(11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.