

Initial Regulatory Impact Assessment -

The Broadcasting (Original Productions) Order 2004

Objective

To set an appropriate definition of “original productions” that will facilitate the implementation of Section 278 and paragraph 8 of Schedule 12 of the Communications Act 2003.

Policy Background

Licensed public service broadcasters currently have licence conditions requiring that their channel or service include an agreed percentage of original productions, by time of the programmes included on that channel or in that service in each calendar year. This has now been replaced by a statutory requirement for original productions

Section 278 of the 2003 Act requires OFCOM to include conditions in the licences of all licensed public service channels in order to secure that an appropriate amount of airtime, in each year, is allocated to the broadcasting of original productions and that the time allocated is divided up as may be appropriate between peak viewing times and other times. Before including such a condition for an original production quota, OFCOM must consult the licence holder on whom it is to be imposed.

Similarly, under paragraph 8 of Schedule 12 to the 2003 Act the Welsh Authority has a duty to secure that an appropriate amount of airtime is allocated to original productions including in peak viewing times in relation to their designated public services (taken together). The services to which this requirement will apply are, for the time being, S4C and S4C Digital. The Welsh Authority is to agree with OFCOM the proportions of time allocated to original productions and manner of its split between peak viewing and other times or, in default of agreement, OFCOM can give a direction to the Welsh Authority.

Under section 278 (6) of and paragraph 8(6) of Schedule 12 to the 2003 Act, references to original productions, in relation to a public service channel and to the designated public services of the Welsh Authority respectively, are references to programmes of such description as the Secretary of State may by order specify.

The power to specify descriptions of programmes includes under section 278 (7) of and paragraph 8(7) of Schedule 12 to that Act the power to confer such discretions on OFCOM as the Secretary of State thinks fit.

Under clause 5F of the Agreement between the Secretary of State and the BBC of 25th January 1996 (amended by an agreement dated 4th December 2003), in relation to each of the Public Television Services (as defined by subclause 2.1), the Corporation is required to comply with arrangements, agreed with OFCOM, for securing that an appropriate proportion of the broadcasting time is allocated to original productions and that it is split in an appropriate manner between peak viewing times and other times.

Furthermore, under subclause 5F.5 'original productions' in relation to the Public Television Services taken together, has the same meaning that is specified by order under section 278(6) of the 2003 Act, with certain exceptions to reflect any differences in the relevant circumstances of the Corporation.

It is the duty of OFCOM to set appropriate targets. They must determine the proportion of time to be allocated, in each year, to the broadcasting of original productions for every licensed public service channel to ensure that channel is consistently of a high quality. Furthermore, OFCOM may express targets as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

Similarly, OFCOM will agree an appropriate target with the Welsh Authority. They must agree the time to be allocated, in each year, to the broadcasting of original productions in relation to the Authority's designated public services (taken together) that OFCOM consider appropriate to ensure that the service is consistently of high quality. In default of agreement OFCOM will give direction to the Authority. The agreement or direction may express the target as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

Risk assessment

To ensure that the definition of original productions contained in the Act is robust, but flexible, we decided that the description of 'original production' should be determined by the Secretary of State by affirmative resolution order. The Secretary of State therefore has the ability to 'ratchet-up' the definition in the future if necessary. Alternatively, if the definition is demonstrated to be too strict, and was adversely constraining the broadcasters, the Secretary of State also has the option to loosen it.

Costs

This statutory instrument will apply to Channel 3, Channel 4, Channel 5, the Welsh Authority and, with certain exceptions to reflect any differences in the relevant circumstances of the Corporation, the BBC.

The instrument does not, of itself, make the requirements on these broadcasters more or less onerous. OFCOM set targets for licensed public service channels (or agree targets in the case of the Welsh Authority). Any cost implication for the broadcasters will be as a result of the targets OFCOM set/agree, rather than as a result of the description provided by this Order. Before imposing a condition under section 278 of the Communications Act 2003 OFCOM must consult the person on whom it is to be imposed.

There are no other financial implications in terms of costs to either the public or the Exchequer.

Consultation

OFCOM, the BBC and the Welsh Authority were consulted during the preparation of this instrument, as required by section 278(8) of and paragraph 8(8) of Schedule 12 to the Communications Act 2003. In addition, Channel 3 licence holders, Channel 4 and Channel 5 were also consulted.

Options

Option: Make an Order as drafted

Consideration – This is an appropriate option. An Order by the Secretary of State specifying the description of programmes that are to be “original productions” for the purposes of section 278 and paragraph 8 of Schedule 12 of the Communications Act 2003 is necessary for the proper operation of that section and paragraph of that Schedule. The second Commencement Order (SI 2003 No.3142 (C.125)) as amended by (SI 2004 No. 545 (C.21)) to that Act brings these requirements into force on 1 July 2004. An Order must be made on or before this date.

Option: Do nothing.

Consideration – This is not an appropriate option. As noted above, an Order by the Secretary of State specifying the description of programmes that are to be “original productions” is necessary for the proper operation of the relevant section and paragraph of the Schedule of the 2003 Act.

Summary and Recommendation

The Secretary of State has decided to use the power granted by section 278(6) and (7) of and paragraph 8(6) and (7) of Schedule 12 to the Communications Act 2003 to provide by Order for a description of “original productions” in relation to a licensed public service channel and for the designated public services of the Welsh Authority.

Signed

Date May 2004

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Contact point -

Ian Miller
Broadcasting Policy Division, DCMS
2-4 Cockspur Street, London SW1Y 5DH
Tel: 020 7211 6541
e-mail: ian.miller@culture.gsi.gov.uk