

Annex A: EU and UK legislative framework

Introduction

In this Annex, we set out an extract from the Audiovisual Media Services Directive that provides the European framework for the listed events regime. We also include an unofficial consolidated version of relevant extracts from the Broadcasting Act 1996, as amended.

Audiovisual Media Services Directive

Article 3j

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society, in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.
2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the *Official Journal of the European Union* and at least once a year the consolidated list of measures taken by Member States.
3. Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of the publication of this Directive, in such a way that a substantial proportion of the public in another Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.

Extract from the Broadcasting Act 1996 (as amended)

Sporting and other events of national interest

97. (1) For the purposes of this Part, a listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State for the purposes of this Part.

Before drawing up such a list, or revising or ceasing to maintain it, the Secretary of State must consult –

- (a) Ofcom,
- (b) the BBC,
- (c) the Welsh Authority, and
- (d) in relation to a relevant event, the person from whom the rights to televise that event may be acquired;

and, for the purposes of this subsection, a relevant event is a sporting or other event of national interest which the Secretary of State proposes to include in, or omit from, the list.

(3) As soon as he has drawn up or revised such a list as is mentioned in subsection (1), the Secretary of State shall publish the list in such manner as he considers appropriate for bringing it to the attention of –

- (a) the persons mentioned in subsection (2), and
- (b) every person who is the holder of a licence granted under Part I of the 1990 Act or a digital programme licence granted under Part I of this Act.

(4) In this section “national interest” includes interest within England, Scotland, Wales or Northern Ireland.

(5) The addition of any relevant event to such a list as is mentioned in subsection (1) shall not affect –

- (a) the validity of any contract entered into before the date on which the Secretary of State consulted the persons mentioned in subsection (2) in relation to the proposed addition, or
- (b) the exercise of any rights acquired under such a contract.

(6) The list drawn up by the Secretary of State for the purposes of section 182 of the 1990 Act, as that list is in force immediately before the commencement of this section, shall be taken to have been drawn up for the purposes of this Part.

98. (1) For the purposes of this Part, television programme services and EEA satellite services shall be divided into two categories as follows:

- (a) those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions, and
- (b) all other television programme services and EEA satellite services.

(2) In this section “the qualifying conditions”, in relation to a service, means the conditions:

- (a) that the service is provided without any consideration being required for reception of the service, and

- (b) that the service is received by at least 95% of the population of the United Kingdom.
- (3) There shall be disregarded for the purposes of subsection (2)(a) any fee payable in respect of a licence for the purposes of section 363 of the Communications Act 2003.
- (4) The condition in subsection (2)(b):
- (a) is to be taken to be satisfied in relation to a regional Channel 3 service if it is satisfied in relation to Channel 3 as a whole, and
 - (b) is to be taken to be satisfied in relation to Channel 4 if it is satisfied in relation to Channel 4 and S4C taken together.
- (5) Ofcom shall from time to time publish a list of the television programme services and EEA satellite services which appear to them to satisfy the qualifying conditions.
- (6) In this section "EEA satellite service" means any service which:
- (a) consists in the broadcasting of television programmes from a satellite so as to be available for reception by members of the public (within the meaning of Part 3 of the Communications Act 2003), and
 - (b) is provided by a person who, for the purposes of Council Directive 89/552/EEC, is under the jurisdiction of an EEA State other than the United Kingdom.
- 99.** (1) Any contract entered into after the commencement of this section under which a television programme provider acquires rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or in any area of the United Kingdom, shall be void so far as it purports, in relation to the whole or any part of the event or in relation to reception in the United Kingdom or any area of the United Kingdom, to grant those rights exclusively to any one television programme provider.
- (2) In this Part "television programme provider" means the BBC, the Welsh Authority or any person who is the holder of any licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act.
- (3) For the purposes of this section, rights to televise the whole or any part of an event live for reception in any area granted to a television programme provider are granted exclusively if the person granting them -
- (a) has not granted any right to televise the whole or, as the case may be, that part of the event live for reception in that area to any other television programme provider nor to any broadcaster who for the purposes of Council Directive 89/552/EEC is under the jurisdiction of an EEA State other than the United Kingdom, and
 - (b) is precluded by the terms of the contract from doing so.
- 100.** (1) Any contract entered into after the commencement of this section shall be void so far as it purports to grant to a television programme provider rights to televise the whole or any part of a listed event live for reception in the United Kingdom, or any area of the United Kingdom, unless the contract complies with subsection (2).

(2) A contract complies with this subsection if the terms of the contract allow the television programme provider to include the live coverage of the listed event –

- (a) only in a television programme service falling within paragraph (a) of subsection (1) of section 98, or
- (b) only in a television programme service falling within paragraph (b) of that subsection.

101. (1) A television programme provider providing a service falling within either of the categories set out in subsection (1) of section 98 (“the first service”) for reception in the United Kingdom or in any area of the United Kingdom shall not, without the previous consent of Ofcom, include in that service live coverage of the whole or any part of a listed event unless –

- (a) another person, who is providing a service falling within the other category set out in that subsection (“the second service”), has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event, and
- (b) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided.

(2) Ofcom may revoke any consent given by them under subsection (1).

(3) Failure to comply with subsection (1) shall not affect the validity of any contract.

(4) Subsection (1) shall not have effect where the television programme provider providing the first service is exercising rights acquired before the commencement of this section.

101A. For the purposes of this Part, a sporting or other event is a designated event, in relation to an EEA State other than the United Kingdom, if:

- (a) that State has designated the event in accordance with Article 3a(1) of Council Directive 89/552/EEC as being of major importance to its society, and
- (b) the designation forms part of measures:
 - (i) which have been notified by that State to the European Commission for the purposes of Article 3a(2) of that Directive, and
 - (ii) notice of which has been published by the European Commission in the Official Journal of the Communities.

101B. (1) A television programme provider shall not, without the previous consent of Ofcom, exercise rights to televise the whole or part of an event which is a designated event, in relation to an EEA State other than the United Kingdom, for reception in that EEA State or any area of that EEA State, where a substantial proportion of the public in that EEA State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 3a(1) of Council Directive 89/552/EEC.

(2) Ofcom may revoke any consent given by them under subsection (1).

(3) Failure to comply with subsection (1) shall not affect the validity of any contract.

(4) Subsection (1) shall not have effect where the rights were acquired before the day on which the event became a designated event.

102. (1) If Ofcom:

- (a) are satisfied that the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has failed to comply with subsection (1) of section 101, or subsection (1) of section 101B, and
- (b) are not satisfied that in all the circumstances it would be unreasonable to expect him to have complied with that subsection, they may require him to pay, within a specified period, a specified financial penalty to Ofcom.

(2) If Ofcom are satisfied that, in connection with an application for consent under subsection (1) of section 101, or subsection (1) of section 101B, the holder of a licence under Part I of the 1990 Act or a digital programme licence under Part I of this Act has:

- (a) provided them with information which was false in a material particular, or
- (b) withheld any material information with the intention of causing Ofcom to be misled, they may require him to pay, within a specified period, a specified financial penalty to Ofcom.

(2A) Before requiring any person to pay a financial penalty under subsection (1) on the ground that he has failed to comply with subsection (1) of section 101B, Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

(3) The amount of any financial penalty imposed on any person under subsection (1) or (2) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

(4) In subsection (3) -

- (a) "the relevant consideration" means an amount determined by Ofcom as representing so much of any consideration paid by the person on whom the penalty is being imposed as is attributable to the acquisition of the rights to televise the event in question, and
- (b) "the prescribed multiplier" means such number as the Secretary of State may from time to time by order prescribe.

(5) An order under subsection (4)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Where Ofcom receive any amount payable to them by virtue of subsection (1) or (2), that amount shall not form part of the revenues of Ofcom but shall be paid into the Consolidated Fund.

(7) Any amount payable by any person to Ofcom by virtue of subsection (1) or (2) shall be recoverable by them as a debt due to them from that person.

- 103.** (1) If Ofcom:
- (a) are satisfied that a broadcasting body has failed to comply with subsection (1) of section 101 or subsection (1) of section 101B, and
 - (b) are not satisfied that in all the circumstances it would be unreasonable to expect the body to have complied with that subsection, they shall make a report on the matter to the Secretary of State.
- (2) If Ofcom are satisfied that, in connection with an application for consent under subsection (1) of section 101 or subsection (1) of section 101B, a broadcasting body has –
- (a) provided them with information which was false in a material particular, or
 - (b) withheld any material information with the intention of causing Ofcom to be misled, they shall make a report on the matter to the Secretary of State.
- (2A) Before reporting to the Secretary of State that a broadcasting body has failed to comply with subsection (1) of section 101B, Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.
- (3) In this section “broadcasting body” means the BBC or the Welsh Authority.
- 104.** (1) Ofcom shall draw up, and may from time to time revise, a code giving guidance:
- (a) as to the matters which they will take into account in determining whether to give or to revoke their consent for the purposes of section 101 (1B) or section 101B (1); and
 - (b) as to the matters which they will take into account in determining for the purposes of section 102 (1) or 103 (1), whether in all the circumstances it is unreasonable to expect a television programme provider to comply with section 101 (1) or section 101B (1).
- (2) In exercising their powers under this Part, Ofcom shall have regard to the provisions of the code.
- (3) Before drawing up or revising the code Ofcom shall consult such persons as appear to Ofcom to be appropriate.
- (4) As soon as Ofcom have drawn up or revised such a code, Ofcom shall publish the code in such manner as they consider appropriate for bringing it to the attention of:
- (a) the BBC,
 - (b) the Welsh Authority,
 - (c) every person from whom the rights to televise a listed event may be acquired, and
 - (d) every person who is the holder of a licence granted under Part I of the 1990 Act or a digital programme licence granted under Part I of this Act.

104ZA. (1) A television programme provider shall, at the request of Ofcom, provide them with such information as Ofcom consider appropriate regarding any contract which he has entered into which relates to an event which, in relation to an EEA State other than the United Kingdom, is a designated event.

(2) If so requested by a competent authority in an EEA State other than the United Kingdom, Ofcom shall provide the authority with such information relating to rights to televise listed events or designated events as Ofcom consider it appropriate to provide.

Ofcom Code on Sports and Other Listed and Designated Events

[Note: this Code was first published by the Independent Television Commission (ITC), and amended by it in January 2002. References to the ITC have been replaced with references to Ofcom, and the list of qualifying services at Annex 2 has been updated to reflect Ofcom's decision in March 2008 that Five meets the qualifying conditions set out in the Television Regulations 2000.]

Foreword

- 1.1 The Broadcasting Act 1996 (the 'Act'), as amended by the Television Broadcasting Regulations 2000 (the 'Regulations') and the Communications Act 2003, requires Ofcom to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture, Media and Sport. This Code has been produced after consultation with broadcasters, sports bodies, the holders of sports rights and other interested parties, for the purpose of fulfilling this statutory duty, as defined under Section 104 of the Act. The Code has been updated to incorporate the requirements of directive 89/552/EC as amended by 97/36/EC and Statutory Instrument 2000 No. 54 (the 'Audiovisual Media Services Directive').
- 1.2 The Act restricts the acquisition by television programme providers of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage without the previous consent of Ofcom (see Part IV of the Act). Under the Act, Ofcom has powers to impose a financial penalty on its licensees if the restrictions on broadcasting live coverage of listed events have not been observed, if Ofcom has been given false information, or if material information has been withheld. In the case of the BBC and S4C, Ofcom must report the matter to the Secretary of State. Ofcom will have regard to the provisions of the Code in exercising these powers.
- 1.3 'Listed events' are drawn up by the Secretary of State in accordance with the Act, and the current list is at Annex 1. The Secretary of State may add events to and delete events from the list at any time, but only after consultation with the BBC, the Welsh Authority, Ofcom and the holder of the rights for the event in question. In June 1998 the Secretary of State extended the list to include Group B events on the understanding that they would be treated differently from Group A events. Group A events are those events which may not be covered live on an exclusive basis unless certain criteria are met. The criteria and matters to be taken into account by Ofcom are set out at paragraphs 1.13 -1.17. Group B events are those events that may not be broadcast live on an exclusive basis unless adequate provision has been made

for secondary coverage. The minimum standard of secondary coverage Ofcom will regard as adequate provision is set out at paragraphs 1.18 and 1.19.

- 1.4 A separate voluntary code of conduct for sports events has been drawn up by the Major Spectator Sports Division of the Central Council of Physical Recreation in consultation with the Sports Council. The central principle of this voluntary code is to ensure that, assuming interest on the part of broadcasters, television coverage of major sporting events generally, i.e. not only the listed events, will be available to the general public in live, recorded and/or highlights programmes.
- 1.5 Certain requirements are also placed on broadcasters by Article 3j paragraph 3 of the AVMS Directive as applied in the Regulations. These requirements, set out in paragraphs 1.23-1.28, are designed to ensure that broadcasters under the jurisdiction of the UK and broadcasting to other EEA States do not circumvent the rules on listed (or 'designated') events which apply in those states. Reciprocal arrangements exist for preventing broadcasters established in other EEA States from circumventing the UK listed events rules.

General provision and background relating to listed events

- 1.6 For the purpose of the live broadcasting of listed events, the Act defines two categories of television programme services: those television programme services and EEA satellite services which for the time being satisfy the qualifying conditions ('the first category') and all other television programme services and EEA satellite services ('the second category'). The qualifying conditions are defined as (a) that the service is provided without any consideration being required for reception of the service and (b) that the service is received by at least 95% of the population of the United Kingdom. Television programme services and EEA satellite services which fall within the first category will appear in a list published from time to time by Ofcom (see Annex 2). These requirements are set out in the Act as amended by the Regulations.
- 1.7 Any contract for televising live coverage of a listed event which is entered into by a broadcaster must state that the rights are available for showing the event on a service falling within only one of the two categories, i.e. separate contracts must exist for each category. A broadcaster providing a service in either category ('the first service') is prohibited from showing exclusively live coverage of the whole or any part of a Group A event without the previous consent of Ofcom, unless a broadcaster providing a service in the other category ('the second service') has acquired the right to show live coverage of the event or the same part of the event. The area served by the second service must consist of or include the whole, or substantially the whole, of the area served by the first service. The first and second services may be provided by licensees in the same ownership but, between them, they must include a broadcaster in each of the two categories described above.
- 1.8 The restrictions apply only to rights acquired either after the commencement of Section 101 of the 1996 Act, i.e. 1 October 1996 or after the Secretary of State began to consult rights holders about changes to the list i.e. 25 November 1997 or 24 January 2001 as shown in Annex 1.

- 1.9 An event may be listed because it is of 'national' interest within England, Scotland, Wales or Northern Ireland separately. This is the basis on which the Scottish FA Cup Final, for example, has been listed. The Act allows for those events to be shown only in the relevant part of the UK in which there is likely to be most viewer interest.

The reference to Channel 3 in Annex 2, therefore, means individual or groups of regional Channel 3 services, or Channel 3 as a whole.

- 1.10 The Act is concerned with providing an opportunity for live coverage to be made available. It is important to emphasise that the Act does not require or guarantee live coverage of listed events, including coverage on Channel 3, Channel 4 and the BBC. Nor does the Act prohibit exclusive live coverage of listed events on these or other services subject to Ofcom being satisfied that certain criteria have been met (see paragraphs 1.13-1.20).

- 1.11 The specific guidance which Ofcom is required to give is set out below. Ofcom will keep this guidance under review and may amend it in the light of experience.

Note: This code is for guidance only. It should not be interpreted in any way that would produce a result contrary to the requirements and objectives of the relevant parts of the 1990 and 1996 Broadcasting Acts or the AVMS Directive. Broadcasters and other interested parties are advised to read carefully the relevant parts of the Acts and Directive, together with this code, and to obtain their own professional advice as necessary.

Definition of 'live'

- 1.12 Section 104 of the Act requires Ofcom to specify the circumstances in which the coverage of listed events generally, or of a particular listed event, is, or is not, to be treated as live. In considering this matter Ofcom takes the view that the interests of viewers lie in allowing them to participate in the event as it happens, as far as possible. This suggests that live television coverage of most sports events, including those taking place in different time zones, should be defined as coverage which is simultaneous with the event (i.e. as the event is happening). However, given the different nature and length of events, no single definition is possible.

The following interpretation should allow for necessary flexibility:

- (a) the restrictions on live coverage will apply while the event concerned is in progress;
- (b) if the event involves separate games or matches, the restrictions will apply while each game or match is in progress;
- (c) in the case of a single event which is scheduled to last over several days, the restrictions will apply to each day's play, while it is in progress;
- (d) in the case of an event which consists of defined separate parts which overlap in time (e.g. the Olympic Games or the FIFA World Cup Finals) and cannot therefore be televised simultaneously in full, the restrictions will apply to each match or competition as if it were a single event.

Matters to be taken into account in giving or revoking consent for exclusive coverage

- 1.13 Under Section 104(1)(b) of the Act, Ofcom is required to provide guidance as to the matters it will take into account in determining whether to grant its consent to a broadcaster providing a service in one category (the first service), to provide exclusive live coverage of an event (or part of an event) where no broadcaster providing a service in the other category (the second service) has acquired the same rights, or where the area for which the second service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the first service is provided.
- 1.14 In deciding whether to give its consent it may be sufficient for Ofcom to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights. However, Ofcom will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms and, in reaching a view, will take account of some or all of the following criteria:
- (a) any invitation to express interest, whether in the form of public advertisement or closed tender, in the acquisition of the rights must have been communicated openly and simultaneously to broadcasters providing services in both categories;
 - (b) at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring the rights and all material terms and conditions, including what rights were available;
 - (c) if the rights to the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services in one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, e.g. to highlights, delayed transmissions, other events;
 - (d) the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service;
 - (e) the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. What is a fair price will depend upon the rights being offered and the value of those rights to broadcasters. A wide range of prices is likely to be regarded as fair but, when required to make its own judgement on the matter, Ofcom will have regard to, inter alia:
 - (i) previous fees for the event or similar events;
 - (ii) time of day for live coverage of the event;
 - (iii) the revenue or audience potential associated with the live transmission of the event (e.g. the opportunity to sell advertising and sponsorship; the prospects for subscription income);
 - (iv) the period for which rights are offered; and
 - (v) competition in the market place.
 - (f) such other facts and matters as appear to Ofcom to be relevant, in the particular circumstances that have arisen.
- 1.15 A genuine opportunity to acquire the rights also requires that broadcasters are given a reasonable time in which to do so. What constitutes a reasonable time

will depend upon the circumstances of each case, including the complexity of the negotiations and the production and transmission of the programme surrounding the event, and the proximity of the event to the date on which the rights are offered. The time allowed should give all parties a realistic opportunity to negotiate and reach agreement, but should not be unduly protracted, thereby preventing or restricting broadcasters from complying with this Code.

- 1.16 Ofcom's consent is also required where the area for which the service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the other service is to be provided. In considering whether to give its consent, Ofcom will take account of the interests of the viewers in the different areas and the transmission coverage areas of the different broadcasters.
- 1.17 Consent will normally be given for the full period for which rights are acquired in recognition of the fact that the price paid will, inter alia, reflect the duration of the rights. However, Ofcom will revoke its consent if the broadcaster to whom the consent has been given requests it, or if the consent has been given on the basis of false or misleading information. Additionally, Ofcom will consider revoking its consent if it appears that rights have been acquired for an extended period in order to circumvent the spirit of the Act. In determining what is an extended period, Ofcom will have regard to precedents for this and similar events, including the periods for which rights are granted to non-UK broadcasters for overseas transmissions.
- 1.18 For those events listed in Group B in Annex 1, Ofcom will give its consent to exclusive live coverage of an event by a broadcaster providing a service in one category (the first service) if adequate provision has been made for secondary coverage by a broadcaster providing a service in the other category (the second service). The minimum which Ofcom will consider to be adequate is where the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event (or the play in the event taking place on any day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is the greater. For these purposes, where an event has a number of different components taking place concurrently, the scheduled duration of the event is defined as the time elapsed between the scheduled beginning of the first component of the event taking place on any day and the scheduled finish of the last component of the event on that day. The second service must have editorial control over the content and scheduling of the edited highlights or delayed coverage except that a restriction may be imposed that the second service shall not begin broadcasting the edited highlights or delayed coverage until a period has elapsed following the scheduled conclusion of the event (or the play in the event on any day). The maximum period which may be set is as follows:

For an event scheduled to finish:	Maximum delay:
After midnight and up to 8.00am	Edited highlights or delayed coverage to start no later than 10.00am
Between 8.00am and 8.30pm	Up to two hours
Between 8.30pm and 10.00pm	Edited highlights or delayed coverage to start no later than 10.30pm
Between 10.00pm and midnight.	Up to 30 minutes

- 1.19 In addition to the above, the right to provide live radio commentary on the event must have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national (or near national) network.
- 1.20 The situation may arise where a second service is unable or unwilling to provide adequate secondary coverage or any secondary coverage at all. Ofcom will then consider whether to give its consent to exclusive live coverage without secondary coverage and the same or similar criteria as set out in paragraphs 1.13-1.17 will apply.
- 1.21 Broadcasters should note that under the Act, Ofcom consent is needed for exclusive live coverage of Group B events even if the minimum requirements set out in paragraphs 1.18 and 1.19 are met. However, in these circumstances consent will be given automatically.

Circumstances in which sanctions might not be imposed

- 1.22 Section 104 also requires Ofcom to give guidance on the matters which it will take into account in deciding whether it is unreasonable to expect a television programme provider to comply with the restrictions on broadcasting live coverage of listed events and therefore whether sanctions should be imposed if the restrictions are not observed. Given the long lead times which are generally available for offering, selling and acquiring the rights, Ofcom believes that there are very few circumstances in which it would be reasonable for a broadcaster to proceed with exclusive coverage without Ofcom's consent. A broadcaster who proceeds to broadcast a listed event live without Ofcom's consent, and where this is not in compliance with Section 101(1), will need to convince Ofcom that for legitimate reasons the period between the rights becoming available and the event taking place was too short for this consent to be obtained or that he believed he had complied but that belief was based on false information. In the latter situation, however, Ofcom will need to be convinced that the broadcaster had taken all reasonable steps to satisfy himself that another broadcaster providing a service in the other category had acquired the rights.

Requirements relating to designated events arising from the AVMS Directive

- 1.23 Ofcom consent is also required in certain circumstances before a broadcaster transmits coverage of an event to another EEA State and the event in question has been designated in that state.
- 1.24 In this section of the Code, a "designated event" has the meaning ascribed to it under s101A of the Broadcasting Act 1996 (as amended by Statutory Instrument 2000 No 54). The events which have been designated so far by other EEA States are shown in Annex 3. However, it is the responsibility of broadcasters to check, in advance of acquiring the rights and in any event prior to transmission, whether the event in question has been designated and if so, in what terms. It is important to emphasise that the terms of designation may relate either to live or deferred coverage, or both. Broadcasters should inform Ofcom that they have acquired the rights to an event designated by another EEA State as soon as this happens.

- 1.25 Ofcom's consent to the exercise of the right to broadcast a designated event is required in the circumstances set out in s101B of the Broadcasting Act 1996, as amended by Statutory Instrument 2000 No. 54. In summary, consent is required where a substantial proportion of the public of the EEA State in question is deprived of the possibility of following that event by live or deferred coverage on free television, as determined by that State. This applies to any rights acquired on or after the day on which the event became a designated event. This requirement should be read in conjunction with Article 3a paragraph 3 of the European Broadcasting Directive.
- 1.26 In deciding whether or not to grant consent to the exercise of rights to broadcast a designated event, Ofcom shall take note of the circumstances in which the rights were acquired, for example whether:
- (a) other broadcasters were given an opportunity to acquire the rights on fair and reasonable terms, and did in fact try to do so. For example, even if the rights were acquired in an auction process in which free broadcasters reaching a substantial proportion of the population were able to take part, it may be appropriate for these free broadcasters to be given a further opportunity to acquire the rights;
 - (b) the manner in which the broadcaster proposes to exercise the rights acquired and the steps taken to try to ensure that a substantial proportion of the population is not deprived of the possibility of following the event;
 - (c) the legislation of the EEA State in question and the extent to which (if at all) the rights holder has sought to comply with that legislation. Ofcom considers it desirable that the protection afforded to a designated event should, as far as possible, take account of the system of regulation applying in the EEA State which actually designated the event;
 - (d) the practicality of steps that would enable the rights holder to comply with the objectives of the European Broadcasting Directive, namely achieving the transmission of the event on free television so that it can be received by a substantial proportion of the population of the EEA State in question;
 - (e) such other facts and matters as appear to Ofcom to be relevant, in the particular circumstances that have arisen, including the facts and matters set out in paragraph 1.14 above to the extent applicable to designated events.
- 1.27 Ofcom shall consult on the request for consent in such a manner as it considers appropriate. Ofcom may seek, and have regard to, the views of the broadcasting authorities, economic regulators and other television service providers in the EEA State which designated the event.
- 1.28 Although authorities in other EEA States are not required to consult Ofcom when one of their broadcasters has acquired exclusive rights to a UK listed event, the Regulations confer a power on Ofcom to provide information relating to rights to televise UK listed events which it considers appropriate to competent authorities in other EEA States in order to enable the authorities to exercise their obligations under the European Broadcasting Directive to prevent broadcasters under their jurisdiction from circumventing the UK listed events rules. Ofcom is conscious of the need to respect the confidentiality of certain information which may be provided by broadcasters, for example about the acquisition of rights and the scheduling of programmes. However, it is also important to prevent the circumvention of the UK listed events rules.

As much information as possible will therefore be made available to the relevant authorities including whether consent has already been given by Ofcom for exclusive live coverage of the event, whether complaints have been received from broadcasters that they were not given a reasonable opportunity to acquire the rights and an estimate of the value of the rights, together with information about how this estimate was calculated.

Procedures for seeking consent in relation to both listed and designated events

- 1.29 A request for Ofcom's consent for exclusive live coverage of a listed event or a designated event must be made in writing to Ofcom by the broadcaster wishing to transmit the event and be accompanied by full reasons and justification for the request and all relevant supporting information. Requests should be made not less than three months prior to the date of the event. In circumstances where the broadcaster requesting consent only acquires the rights to the event within three months of proposed transmission, the request for consent shall be made within seven days of the rights being acquired. In any event, a broadcaster who is unable to meet the three-month deadline should keep Ofcom informed about the progress of negotiations. Broadcasters should be aware that Ofcom may not be able to consider applications for consent which are received very close to the date when the event takes place and in exceptional circumstances this may mean that consent cannot be given.
- 1.30 As a first step in considering the request Ofcom will normally issue a public notice inviting broadcasters, rights holders and other interested parties to comment on the request. Depending on the response to this and any other consultations, and on Ofcom's own investigations into the matter, the applicant may be asked to supply additional information in writing and/or to attend a meeting with Ofcom staff.
- 1.31 Ofcom will respond as quickly as possible to any request. Ofcom will normally publish its decisions and its reasons, but, in doing so, will have regard to the legitimate interest of the parties in the protection of confidentiality.

Appendix 1

UK Listed Sporting Events

GROUP A

The Olympic Games
The FIFA World Cup Finals Tournament
The FA Cup Final
The Scottish FA Cup Final (in Scotland)
The Grand National
The Derby
The Wimbledon Tennis Finals
The European Football Championship Finals Tournament
The Rugby League Challenge Cup Final *
The Rugby World Cup Final *

GROUP B

Cricket Test Matches played in England
Non-Finals play in the Wimbledon Tournament
All Other Matches in the Rugby World Cup Finals Tournament *
Six Nations Rugby Tournament Matches Involving Home Countries †
The Commonwealth Games *
The World Athletics Championship *
The Cricket World Cup – the Final, Semi-finals and Matches Involving Home Nations' Teams *
The Ryder Cup *
The Open Golf Championship *

* Restrictions apply to rights acquired after 1 October 1996 except for those events marked by an asterisk where the relevant date is 25 November 1997.

† The list was amended in 2001 following the change of name of this event to the Six Nations Rugby Tournament. The relevant date for this event is therefore 24 January 2001

Appendix 2

List of services meeting the 'qualifying conditions' as set out in the Television Regulations 2000

Channel 3 (ITV1)

Channel 4

BBC 1

BBC 2

Channel 5 (Five)

Appendix 3

Events designated in other EEA States under Article 3a of the Broadcasting Directive

AUSTRIA

- The Summer or Winter Olympic Games
- FIFA World Cup football matches (for men) if the Austrian national team is involved, as well as the opening match, the semi-finals and the final of the football World Cup (for men)
- European Championship football matches (for men) if the Austrian national team is involved, as well as the opening match, the semi-finals and the final of the football European Championship (for men)
- The final of the Austrian Football Cup
- FIS World Alpine skiing championships
- World Nordic skiing championships
- The Vienna Philharmonic Orchestra's New Year Concert
- The Vienna Opera Ball

BELGIUM

- Summer Olympic Games (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Belgian Football Cup Final (men) (Flemish Community: live and in full. French Community: live and in full)
- All matches involving the Belgian men's football team (Flemish Community: live and in full. French Community: live and in full)
- Football World Cup Finals Tournament (men) (Flemish Community: live and in full. French Community: live and in full)
- European Football Championship, final round (men) (Flemish Community: live and in full. French Community: live and in full)
- Champion's League, matches involving Belgian clubs (Flemish Community: live and in full. French Community: live and in full)
- UEFA Cup, matches involving Belgian clubs (Flemish Community: live and in full. French Community: live and in full)
- Tour de France, men, professional (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Liège-Bastogne-Liège (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Amstel Gold Race (Flemish Community: live and with excerpts. French Community: live and with excerpts)

- Tour of Flanders (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Paris-Roubaix (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Milan-San Remo (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Belgian Road Cycling Championships, professional (men) (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- World Road Cycling Championships, professional (men) (Flemish Community: live and with excerpts. French Community: live and with excerpts)
- Ivo Van Damme Memorial (Flemish Community: live and in full. French Community: live and in full)
- Belgian Formula 1 Grand Prix (Flemish Community: live and in full. French Community: live and in full)
- The following Grand Slam tennis tournaments: Roland Garros and Wimbledon, quarter-finals, semi-finals and finals involving a Belgian player (Flemish Community: live and in full. French Community: live and in full)
- The Davis Cup and the Fed Cup, quarter-finals, semi-finals and finals involving the Belgian team (Flemish Community: live and in full. French Community: live and in full)
- Queen Elisabeth Music Competition, the final (Flemish Community: live and in full. French Community: live and in full)

Events specific to the French list:

- La Flèche wallonne (live and with excerpts)
- Winter Olympic Games (live and with excerpts)
- World Athletics Championships (where Belgian athletes are taking part, live and in full)

Events specific to the Flemish list:

- Champions League: finals and semi-finals, live and in full
- UEFA Cup: finals and semi-finals, live and in full
- Cycling, Paris-Tours and Tour of Lombardy: live and with excerpts
- The Belgian and World Cyclo-cross Championships, men, professional: live and in full
- The following Grand Slam tennis tournaments: Australian Open and US Open, quarter-finals, semi-finals and finals involving a Belgian player, live and in full

DENMARK

- Olympic, summer and winter games: the games in their entirety
- World and European football championships (men): all matches with Danish participation together with semi-finals and finals
- World and European handball championships (men and women): all matches with Danish participation together with semi-finals and finals
- Denmark's world and European championship qualifying matches in football (men)
- Denmark's world and European championship qualifying matches in handball (women)

FINLAND

- The Summer and Winter Olympic Games, organised by the International Olympic Committee
- The opening match, quarter-finals, semi-finals and final of the Football World Cup, organised by FIFA (the Fédération Internationale de Football Association), and the matches of the Finnish team
- The opening match, quarter-finals, semi-finals and final of the European Football Championships, organised by UEFA (Union of European Football Associations), and the matches of the Finnish team
- The men's Ice Hockey World Championships, organised by the International Ice Hockey Federation (IIHF)
- The Nordic World Ski Championships, organised by the International Ski Federation (FIS)
- The World Championships in Athletics, organised by the International Association of Athletics Federations (IAAF)
- The European Athletics Championships, organised by the European Athletics Association (EAA)

FRANCE

- The winter and summer Olympics
- Official matches of the French national football team in the Fédération Internationale de Football Association (FIFA) calendar
- The opening match, semi-finals and final of the Football World Cup
- The semi-finals and final of the European Football Championship
- The final of the UEFA Cup, where a French club involved in one of the French championships is playing
- The final of the Football Champions League
- The French Football Cup Final
- The Six Nations rugby tournament
- The semi-finals and final of the Rugby World Cup
- The French Rugby Championship final
- The European Rugby Cup final, where a French club involved in one of the French championships is playing
- The finals of the men's and women's singles events of the Roland Garros tennis tournament
- The semi-finals and finals of the Davis Cup and the Fed Cup, where the French tennis team is playing
- The French Formula 1 Grand Prix
- The Tour de France (cycling, men)
- The Paris-Roubaix cycling race
- The men's and women's finals of the European Basketball Championship, where the French national team is playing
- The men's and women's finals of the World Basketball Championship, where the French national team is playing

- The men's and women's finals of the European Handball Championship, where the French national team is playing
- The men's and women's finals of the World Handball Championship, where the French national team is playing
- The World Athletics Championships

GERMANY

- The summer and winter Olympic Games
- All European Championship and World Cup matches involving the German national football team, as well as the opening match, the semi-finals and finals, irrespective of whether the German team is involved
- The semi-finals and final of the German FA Cup
- The German national football team's home and away matches
- The final of any European football club competition (Champions League, UEFA Cup) involving a German club
- Where major events consist of more than one individual event, each event shall be considered to be a major event. The inclusion or exclusion of events in these provisions is possible only on the basis of an agreement concluded by all Länder

IRELAND

- The Summer Olympics
- The All-Ireland Senior Inter-County Football and Hurling Finals
- Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournaments
- Ireland's games in the European Football Championship Finals Tournament and the FIFA World Cup Finals Tournament
- The opening games, the semi-finals and final of the European Football Championship Finals and the FIFA World Cup Finals Tournament
- Ireland's games in the Rugby World Cup Finals Tournament
- The Irish Grand National and the Irish Derby
- The Nations Cup at the Dublin Horse Show

ITALY

- The summer and winter Olympic Games
- The football World Cup final and all matches involving the Italian national team.
- The European football Championship final and all matches involving the Italian national team
- All matches involving the Italian national football team, at home and away, in official competitions
- The final and the semi-finals of the Champions League and the UEFA Cup where an Italian team is involved
- The Tour of Italy (Giro d'Italia) cycling competition
- The Formula One Italian Grand Prix
- The San Remo Italian music festival