

Culture Committee CC 03-03 p3

Date: 5 February 2003

Time: 9.00 - 12.30pm

Venue: Committee Room 1, National Assembly for Wales

The Communications Bill. Report on UK Government's response to the Assembly's recommendations.

Purpose

1. The purpose of this paper is to update the Culture Committee on the UK Government's response to the Welsh Assembly Government's recommendations in relation to the draft Communications Bill.

Summary

2. This paper outlines the outcomes in the areas on which the Welsh Assembly Government made a response.

Background

3. In December 2000, the UK Government published a White Paper, *A New Future for Communications*. The Welsh Assembly Government consulted on that paper and responded making a number of recommendations. Following on from this, the draft Communications Bill was published on 7 May 2002 and the UK Government conducted a public consultation exercise to which the Assembly made a formal response, following debate at Culture Committee and Plenary and wide consultation. Concurrently with the UK Government consultation, a Joint Committee of the House of Lords and the House of Commons was formed to give pre-legislative scrutiny to the draft bill. The Communications Bill was subsequently published in the House of Commons on 20 November 2002. It will be at Standing Committee Stage until mid-February, Report Stage until the end of February/early March and then be published in the House of Lords around Easter. The Bill is expected to receive Royal Assent by mid-summer and OFCOM (Office for Communications) are preparing for a launch in late 2003.

Consideration

4. The Welsh Assembly Government's response to the draft Bill focussed on issues in three key areas: the proposed structure, functions, duties and powers of OFCOM in relation to securing a strong voice for Wales in the new regulatory environment; regional production and programming; and Access. Progress made in relation to each of the first two is summarised in Annexes A and B respectively.

5. The Welsh Assembly Government's response to the draft Bill on issues relating to access stressed

that because of the unique communications environment in Wales, it was vital that a number of issues relating to access, including analogue switch-off, should be considered separately on a nations and regions basis. The latest version of the UK Government’s Digital Action Plan (October 2002) lists a number of reports which have been commissioned for publication during the first quarter of 2003 on issues of access, availability and accessibility.

Compliance

There are no compliance issues. The National Assembly of Wales has no powers in relation to broadcasting.

Action for the subject committee

To note progress.

Contact point

Judith Scott, Culture & Welsh Language Division, Welsh Assembly Government.

Annex A

Issues relating to the regions and nations

Issue raised by the Welsh Assembly Government	Outcome
Requested Welsh representation on OFCOM main board	Both the Joint Committee on the Draft Communications Bill and UK Government maintain that it would be wrong to expand the main Board’s membership for representative purposes that could well detract from its strategic role. However the board size has been increased to 9, to ensure executive representation.

Welcomed provision for representation of Welsh interests on both the Content Board and Consumer Panel of OFCOM but remove "so far as practicable"	Caveat removed from the Bill.
Statutory duty for Assembly to appoint the reserved member for Wales on both the Content Board and the Consumer Panel	<p>The UK Government have stated that the form of consultation regarding appointments will be formalised in a Memorandum of Understanding rather than in the Bill.</p> <p>The urgency with which OFCOM wished to appoint members to the Content Board has meant that the recruitment process has moved ahead of resolving the issue/drawing up a Memorandum of Understanding. The Welsh Assembly Government has been consulted, by the Secretary of State for Wales, on nominations for a member for Wales on OFCOM Shadow Content Board.</p>
OFCOM's duties under the Bill refer only to customers. The Bill should place explicit duties on OFCOM to the public at large	The Joint Committee on the Draft Communications Bill and UK Government concurred that in the general duties of OFCOM, and elsewhere in the Bill where a specific relationship is not being referred to, the term consumer be used in preference to customer.
Establishment of a Wales Communications Council to consider all functions of OFCOM in Wales	<p>The Welsh Assembly Government is awaiting an options paper from UK Government Officials on consultative mechanisms.</p> <p>The Communications Bill includes provision for the setting up of panels and committees of both the Content Board and the Consumer Panel.</p>
General duty on OFCOM to consult with National Assembly for Wales and a specific obligation on OFCOM to give due consideration to representations made to it by the National Assembly for Wales	The UK Government's position remains that it will be a matter for OFCOM to determine how best to ensure that proper consultative mechanisms are in place to ensure that the views of the devolved institutions are taken into account. The UK Government envisage this being agreed via a Memorandum of Understanding.
Specific obligation, rather than expectation, that OFCOM will hold regular meetings in different parts of the UK	The Joint Committee on the Draft Communications Bill and UK Government agree that it should be for the OFCOM Board to determine the best means of ensuring that the public can engage with its work. The Chair of OFCOM has already undertaken to put it to his board that they should meet in Wales.

<p>Welcome the Bill saying OFCOM expected to ascertain the opinions of people in the UK nations but not clear from draft bill that this research will be carried out on a nation-specific basis.</p>	<p>The Chair of OFCOM has assured the Welsh Assembly Government that nation-specific research will underpin the work of OFCOM.</p>
<p>Specific obligation, rather than expectation that OFCOM establishes offices in each nation.</p>	<p>The UK Government have included appropriate provision for this in the Bill and they have undertaken to urge OFCOM to report in their annual report accounts of its activities in Scotland, Wales and Northern Ireland.</p>

Annex B - Issues relating to regional programming and production in the Bill

Issues raised by the Welsh Assembly Government

- The Welsh Assembly Government, in its response to the draft Bill, noted that regional programming and production are matters of great importance. The Communications Bill makes provision for regional programmes on Channel 3 (Clause 194), and for regional production on Channel 3 (Clause 193) and Channel 4 (Clause 195). The BBC's agreement includes provisions relevant to regional considerations.
- The Assembly welcomed the intentions behind the ITV's Charter for Broadcasting in the Nations and Regions and urged OFCOM to take every step to ensure that substantial, detailed and explicit quotas are agreed with broadcasters with regard to the number of hours, proportion and investment of regional programming and production.
- Furthermore, the Welsh Assembly Government asked that the lifting of restrictions on media ownership is balanced by duties and powers to protect the quality and key characteristics of broadcasting in the UK.
- The Welsh Assembly Government urged the UK Government to ensure that the new no right of renewal for channels 3 and 5 after 2014 regime will not adversely affect the broadcasting environment in Wales. An explicit process of license allocation for the years after 2014 has advantages, including as a safeguard for the regional character of ITV licences. However, there is a danger that the process may serve as a disincentive to invest in the years before then.

Provision in the Bill

Programme Production and Regional Programming are covered in a number of clauses of the Communications Bill and these relate, in summary, to quotas for the proportion, range and investment in

Channel 3 and Channel 4 programmes made in the United Kingdom outside the M25 area. Furthermore, the bill states that the regulatory regime for every regional Channel 3 service includes the conditions that OFCOM secure a sufficient amount of time, at appropriate viewing times and a suitable range of programmes in the service which are of particular interest to persons living within the area for which the service is provided and that they are of high quality.

Review of the Programme Supply Market in British Broadcasting

In August 2002, the Secretary of State for Culture, Media & Sport, requested a review of the Programme Supply Market in British Broadcasting, in order to examine concerns raised by the Joint Committee on the draft Communications Bill, by the industry and other bodies, and to provide a foundation for related parliamentary decisions. In the context of an economic overview of the production market in the UK, it identified key issues for the future, in particular the efficacy of the independent production quota, the likely impact of proposed changes to media ownership rules and ways to encourage a strong UK production base.

On Wednesday 15 January 2003, the UK Government acknowledged the importance of independent production companies to the regional programming and production and the broadcasting industry in general by accepting all but two of the recommendations of the review of the Programme Supply Market in British Broadcasting. These will be taken forward, where appropriate, as amendments to the Communications Bill currently going through Parliament. They include:

- introducing binding codes of practice governing the dealings of broadcasters with independent production companies. This will apply to Channel 3, Channel 4, Channel 5 and S4C, and to the BBC through its Agreement with the Secretary of State. The codes will be drawn up by the broadcasters in the light of guidance issued by OFCOM, and will be subject to approval by OFCOM. They will aim to ensure that the terms of trade between broadcasters and independent producers are fair and foster an economically sound independent production industry. OFCOM will be able to use the usual range of sanctions, including fines, if broadcasters fail to comply with the codes.
- giving OFCOM the power to measure the quota of independent productions used by broadcasters by value as well as volume if necessary;
- applying the quota separately to BBC One and BBC Two;
- giving OFCOM the power to require broadcasters to make up any shortfall in meeting the independent quota in subsequent years;
- requiring OFCOM to take into account whether the quota has been met as part of the annual factual and statistical survey it will be required to publish;
- requiring OFCOM to consider the effect on regional productions, original productions and news and current affairs programmes if the holder of a Channel 3 licence changes. Under the current draft of the Bill it would only have to consider the effect on regional programming;
- introducing a similar duty for OFCOM to review the effect on regional productions, original

productions and news and current affairs programmes if the holder of a Channel 5 licence changes;

- introducing new targets for regional production and investment for Channel 5 and a new regional investment target for Channel 4, to add to its existing regional production target.

Tessa Jowell announced that she was not accepting two of the report's recommendations:

- that OFCOM should be able to vary licence conditions for Channel 3 and Channel 5 relating to the level of original production - this power already exists under the current draft of the Bill;
- that OFCOM should be able to set investment targets for original production – under the current draft, a range of quotas are already in place covering original and regional production and the split of programmes between peak and non-peak.

ITV Charter for Broadcasting in the Nations and Regions

The amendment above build on themes worked out through the ITV Charter for Broadcasting in the Nations and Regions. As part of the ITC's work on streamlining positive programme regulation, ITV were invited to consider new approaches to this part of their public service remit in preparation for the draft Communications Bill published on May 7. An ITV Charter for the Nations and Regions was launched in May 2002. Its aim was to secure a sustainable future for ITV regional programming and it has been agreed by the Independent Television Commission (ITC). The Charter modernised ITV's regional commitments to guarantee out of London investment, improving scheduling of regional programmes and strengthening local accountability. It aimed to secure the quality and accessibility of regional programmes into the future.

For the first time, ITV agreed to commit to annual investment targets for out-of-London production in anticipation of the Communications Bill. This was vitally important to maintaining regionally based production as ITV ownership consolidates or changes. The minimum target is 50 per cent of expenditure on originated programmes. The reforms ensured a concentration on core regional values: news and current affairs; diversity for local needs and interests; a distinctive and comprehensive alternative to the BBC.

The Charter states:

- The ITV companies will give their full and continuing commitment to the production of programmes in the Nations and Regions, not only as part of their local services but also as part of a rich and diverse ITV network schedule.
- To underwrite this commitment, ITV undertakes that in excess of 50% of its total investment in original commissioned programmes (network and regional) will fund productions from ITV and independent producers made wholly or substantially outside London. In practice, ITV will hope to over-deliver on this baseline commitment. In 2002 it is anticipated that around 55% of expenditure will be outside London.
- At least 90 per cent of ITV's dedicated regional programmes will be produced in the region for

which they are commissioned. At least 90 per cent of Scottish and Grampian, HTV Wales and ITV regional programmes will be produced in Scotland, Wales and Northern Ireland respectively.

- Regional accountability will be strengthened with ITV companies committing to appoint two non-executive directors to regional company boards, and establish regional advisory groups. Each advisory group will be chaired by a local non-executive director. This is in addition to the existing commitments to locally-based managing directors of regional ITV licences and will spread best practice in accountability to all licensee boards.
- A key feature of the Charter is the switch in focus in the Nations and Regions from hours of output to levels of investment that will attract and nurture talent and offer viewers a better quality service. Hours of low budget productions have been scheduled in late or low audience slots. The difficulties of co-ordinating scheduling regional "opt outs" in different regions has weakened the schedules.
- As part of the agreement, regional programmes will be scheduled in prominent parts of the ITV schedule in peak or near-peak slots. A high proportion of savings on programmes in the margins of the schedule will be invested into these peak-time regional productions, and on commissioning replacement material from outside London.
- There will be three levels of regional provision for the ITV companies: Nations (10/12 hours), English regions (8.5 hours); smallest region (5-7 hours). These minimum requirements exclude repeats. Productions from independent producers will remain an important component in the regional schedules and should benefit from enhanced opportunities to pitch for network commissions from outside London.
- In addition to news, each ITV company will provide current affairs and a range of other programmes to meet the needs and interests of viewers. This may include drama, entertainment, social action, sport, documentaries, religion and arts.

Right of renewal of Channel 3 and Channel 5 licenses

The Communication Bill now states that there is a presumption of renewal of Channel 3 and Channel 5 licenses after 2014 unless OFCOM decides not to renew on the following grounds or unless the Secretary of State has exercised her powers to deny renewal. OFCOM may decide not to renew the license if they are not satisfied that the

applicant (if his license were renewed) would provide a service complying

with the requirements relating to

(a) the public service remit for the licensed service;

(b) programming quotas;

(c) news and current affairs programmes; and

(d) programme production and regional programming.

OFCOM may also decide not to renew the license if they propose to grant a fresh license for a service replacing the licensed service which would differ from the licensed service in (a) the area for which it would be provided; or

(b) the times of the day, or days of the week, between or on which it would be provided.