

DIGITAL ECONOMY BILL

Supplementary memorandum concerning the delegated powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This further supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Culture, Media and Sport to address a further amendment to the Digital Economy Bill tabled by Baroness Benjamin with the support of the Government for Report stage in the House of Lords.

B. ANALYSIS OF DELEGATED POWERS BY CLAUSE

New clause: Power to publish criteria and impose conditions on licensed public service channels for securing the provision of children's programmes

Power conferred on: OFCOM

Power exercisable by: Statement

Parliamentary procedure: None

Context and purpose

2. This clause inserts new section 289A into the Communications Act 2003, conferring a power on Ofcom, if it thinks fit, to publish criteria relating to the provision of children's programmes on licensed public service channels (i.e. Channel 3, Channel 4 and Channel 5) and services related to those channels, and to impose conditions that it considers appropriate for securing that the provision of children's programmes meets any such criteria.
3. "Children's programme" is defined in subsection (13) to mean a programme made (a) for a television programme service or for an on-demand programme service, and (b) for viewing primarily by persons under the age of sixteen.

4. Ofcom must publish any such criteria in a statement which sets out the criteria and how it proposes to apply them. Before publishing or reviewing any statement, Ofcom must carry out a public consultation. After any review, Ofcom may revise or withdraw the criteria by publishing a further statement.
5. Where Ofcom publishes criteria, it may from time to time assess the provision of children's programmes in relation to any licensed public service channel. For the purposes of that assessment, Ofcom must take into account the provision of children's programmes on all "related services" and draw no distinction between whether a programme is provided on a licenced public service channel or on another service.
6. "Related services" are defined in subsections (4) to (6) and include the relevant public service channel and all services with a sufficient connection to that channel which are free at the point of use in the UK. In relation to Channel 4, for example, this will include related services such as E4 and More 4.
7. Ofcom may, taking into account its assessment of the provision of children's programmes on all related services, impose conditions that it considers appropriate for securing that the provision of children's programmes meets the criteria. Any conditions must relate only to the licensed public service channel concerned (not other "related services"). Such conditions would be imposed by varying the public service channel's broadcasting licence to include such requirements for the provision of children's programmes as Ofcom considers appropriate.
8. This responds to concerns that commercial public service channels' provision of children's television content has been in decline. For example, in 2014 the BBC accounted for 97% of all spending by public service channels on children's content. The ability for Ofcom to introduce quotas on the commercial public service channels should help to address this decline and support a public service broadcasting system that provides for UK audiences.

Justification

9. It is not considered appropriate for the criteria to be set out on the face of the Bill. Ofcom is best placed, as the expert regulator, to determine the criteria following a detailed consideration of the current provision of children's programmes and a public consultation during which the views of the public and the impact on public service channels can be given due consideration. The criteria may furthermore be complex and may need to be regularly reviewed. The clause also provides for Ofcom to withdraw criteria where it considers appropriate.

Justification for procedure selected

10. The Government does not consider that any Parliamentary procedure is necessary. The criteria will be determined by Ofcom as expert regulator following public consultation. This will ensure that there is input from experts, industry and from members of the public. The conditions may only be imposed following consultation with the holder of the public service channel licence concerned. Under section 3(4) of the Broadcasting Act 1990, Ofcom is permitted to vary the licences by way of a notice served on the licence holder, but it must allow the licensee a reasonable opportunity of making representations about the variation before doing so.

Department for Culture, Media and Sport

21 March 2017