

Memorandum of Understanding
Between The Office of
Communications (Ofcom) and the BBC Trust

Ofcom
OFFICE OF COMMUNICATIONS

BBC | Trust

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Section 1: Scope, purpose and background

Scope and purpose

The BBC Trust ("the Trust") and Ofcom have been given duties and responsibilities which enable both bodies to serve the public in different ways. This Memorandum of Understanding ("MOU") concerns the relationship between Ofcom and the Trust and the areas of interaction between the two bodies. The Trust and Ofcom are committed to working constructively together to achieve the purposes set out in this MOU.

The scope and purpose of this MOU is as follows:-

- (a) to establish the principles and practices which will apply to dealings between the Trust and Ofcom;
- (b) to identify the different authorities and functions that Ofcom has as statutory regulator and the Trust has as the sovereign body within the BBC under the Royal Charter;
- (c) to assist co-operation and co-ordination between Ofcom and the Trust in carrying out their respective roles and responsibilities;
- (d) to outline certain procedures to facilitate effective liaison on areas of mutual interest;
- (e) to provide for the exchange of information between Ofcom and the Trust in areas of common responsibility; and
- (f) to promote dialogue on areas of common responsibility and on issues of mutual interest.

Background

The BBC has been established by Royal Charter ("the Charter") to serve the public interest and its main object is to promote its public purposes through the provision of information, education and entertainment by means of television, radio and other media services. The Charter also recognises the independence of the BBC. The Trust represents the interests of licence fee payers and is responsible for ensuring the effective promotion of the BBC's public purposes.

Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

The Charter and the Framework Agreement between the Department for Culture, Media and Sport and the BBC ("the Agreement") set out the public obligations placed upon the BBC and the duties and functions of the Trust.

The Communications Act 2003 ("the Act"), the Broadcasting Act 1996, the Charter and the Agreement set out Ofcom's duties and powers in relation to the BBC.

Annex 1 sets out in greater detail the relevant background to this MOU.

Effect of this MOU

This MOU is not intended to be, and is not, legally binding. This MOU does not amend, increase, restrict or derogate from any existing responsibilities, powers, duties or authorities of the Trust or of Ofcom.

Section 2: Areas of Ofcom/Trust engagement

Respective Roles and Responsibilities

Under the terms of the Charter, the Agreement and the Act, some areas of BBC activity are regulated by Ofcom and some are regulated by the Trust. In some areas, both bodies have duties and powers. The distribution of responsibility between Ofcom and the Trust is summarised as follows. (Further details are set out in the Annexes referred to below.)

Programme Standards

The BBC is required to observe certain of the programme standards objectives ("the relevant programme standards") set by Ofcom under section 319 of the Act, namely:

- The protection of the under 18s;
- The exclusion from services of material which is likely to encourage or to incite the commission of crime or to lead to disorder;
- The exercise of the proper degree of responsibility regarding the content of religious programmes;
- The application of generally accepted standards to provide adequate protection from the inclusion of harmful and offensive material in services; and
- Refraining from the use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred;

to the extent that such standards do not concern the accuracy or impartiality of the content of any programme included in the BBC's UK Public Broadcasting Services. The accuracy and impartiality of programmes within the BBC's Public Broadcasting Services are the responsibility of the Trust.

The BBC is also required to comply with the Fairness Code under section 107 of the Broadcasting Act 1996.

Any commercial service which is provided by the BBC and licensed by Ofcom is required to observe all of the standards set by Ofcom under section 319 of the Act.

Both the BBC and Ofcom have duties to consider standards complaints. The Trust is required to establish and maintain procedures for the handling and resolution of complaints about standards in the content of the BBC's services, including complaints regarding BBC editorial guidelines designed to secure appropriate standards, accuracy and impartiality, Ofcom's Fairness Code and the relevant programme standards as set out above. Ofcom is also required to consider and adjudicate on fairness complaints and to establish procedures for the handling and resolution of complaints about the observance by the BBC of standards referred to above.

Annex 2 contains the procedures that the Trust and Ofcom will adopt to ensure the efficient handling of complaints that may involve the Trust, the BBC Executive and Ofcom.

Programming and production quotas/codes

There are a number of duties with regard to programming imposed upon the Trust and the BBC Executive by the Agreement in relation to which Ofcom also has an involvement.

Quotas

The Trust sets all quotas for BBC TV services that apply to news and current affairs and programming for the nations and regions – after consulting and having regard to any comments by Ofcom.

Ofcom's agreement is required before the Trust imposes any requirements which in effect reduce the quota for news and current affairs or nations and regions programming below the agreed quota levels for the year 2002.

Ofcom's agreement is required regarding the quotas for original productions and programme-making in the nations and regions.

Ofcom is responsible for monitoring compliance against these quotas and against the quota for independent production and the quota for programmes of European-origin. The Trust is also required to monitor compliance in these areas. The BBC must comply with directions given to it by Ofcom regarding carrying forward shortfalls in meeting the quota for independent productions (Annex 4 and 5).

Codes

The BBC must observe the code maintained by Ofcom relating to the provision for the deaf and the visually impaired (modified as set out in the Agreement and Act).

The Trust is required to set requirements upon the BBC Executive to draw up and from time to time revise a code of practice in relation to the principles that are to be applied for the commissioning of independent productions. The Trust must secure that the drawing up or revision of such a code is in accordance with guidance issued by Ofcom as to the times when the code is to be drawn up or reviewed, the consultation to be undertaken and the publication of the code or revised code.

Market Impact Assessments (MIAs)

The Trust is required to apply a Public Value Test (PVT) prior to making decisions involving significant change to the BBC's UK Public Services. There are two elements to the PVT - a Public Value Assessment (PVA) conducted by the Trust and a Market Impact Assessment (MIA) provided by Ofcom.

Clause 29 of the Agreement requires that the Trust and Ofcom establish a Joint Steering Group (JSG). Ofcom is required by Clause 30 of the Agreement to provide a Market Impact Assessment (MIA) whenever the PVT is to be applied in accordance with Clause 25 of the Agreement.

Annex 6 sets out in detail how the JSG will operate and the MIAs will be carried out:-

(a) **Joint Steering Group**

The composition, functions, procedures for meetings and other matters relating to the operation of the Joint Steering Group are set out in Annex 6.

(b) **Terms of reference for Market Impact Assessments**

Annex 6 sets out the process for the establishment of terms of reference for MIAs.

(c) **Information disclosure**

Annex 6b sets out the terms upon which the Trust will share with Ofcom information submitted by the Executive for the purposes of any PVT and the terms upon which Ofcom will share with the Trust information submitted by third party respondents to Ofcom when carrying out a MIA.

Competitive Impact

The Trust has a duty to have regard to the competitive impact of the BBC's activities on the wider market. To this end, the Trust must adopt and publish a statement of policy as well as codes dealing with those aspects of the operation of the BBC's public services that in its view could raise significant issues regarding the competitive impact of the BBC's activities. The Trust must have regard to any fair and effective competition codes issued by Ofcom (in relation to non-BBC broadcasters) to the extent that the Trust considers them to be relevant. The Trust must also have regard to Ofcom's views on the matters that should be covered by the Trust's codes.

Radio Spectrum

Ofcom is required by section 3(2)(a) of the Act to secure the optimum use of the electromagnetic spectrum in carrying out its functions.

The Trust is obliged to secure the efficient use of the radio spectrum which the BBC or its contractors use. The Secretary of State may direct the BBC to grant a public service broadcaster the right to use the BBC's television multiplex capacity, in which case Ofcom may revise or issue a new licence.

Areas of common responsibility

The BBC and Ofcom have responsibilities set out in the Act and Agreement in relation to certain matters such as Public Service Broadcasting, media literacy and the promotion of equal opportunities and training. The Trust and Ofcom will, where appropriate and in accordance with their respective responsibilities: exchange information on a regular basis as to the actions which either of them is taking or is intending to take in relation to such matters; agree a joint strategy and course of action in relation to any such matters; and work together to develop or share research to provide a coherent evidence base for policy decisions.

Section 3: How Ofcom and the Trust will work together

The relationship between the Trust and Ofcom

The Trust and Ofcom each have responsibilities and obligations which require them to be involved with each other in a number of different areas and this section of the MOU sets out how the relationship between the Trust and Ofcom should be conducted.

As outlined in the sections above, the Trust and Ofcom share many of the duties of regulation in relation to the BBC. The specific areas of BBC activity where Ofcom has a role are outlined in Annex 7.

The Trust is required to consult with Ofcom and have regard to its comments in relation to a number of its functions, such as setting programming quotas for news and current affairs and programmes for nations and regions as outlined above in Section 2. Annex 3 sets out how the consultation process will operate.

In a range of areas relating to BBC activity such as setting quotas for original production and programme-making in the nations and regions, the Trust must obtain the agreement of Ofcom as outlined above. Annex 4 sets out the framework and principles in order for an agreement to be reached.

The BBC is obliged to comply with guidance and directions issued by Ofcom in a number of areas as outlined above in Section 2. Annex 5 sets out the relevant compliance principles.

Annex 8 sets out the agreed quota figures for 2002 as required in relation to Clauses 47(3) and 50(3) of the Agreement.

Clause 91 of the Agreement requires the BBC to co-operate with Ofcom, and provide them with such information and other assistance as they may reasonably require from the BBC, in connection with any function of Ofcom's under section 198 of the Act (functions of Ofcom in relation to the BBC).

Liaison and meetings

The Trust and Ofcom will hold high level meetings as follows:-

- (a) the Deputy Chairman of Ofcom (or designated alternative) and a designated member of the Trust shall meet quarterly to review current and forthcoming business arising from the application of the MOU. The meeting shall be supported and attended as appropriate by other Trust Members, Ofcom Board or Content Board members, and by members of the Trust Unit and the Ofcom Executive;
- (b) the Chairmen of the Trust and of Ofcom shall meet at least annually to review the effectiveness of the relationship between the two bodies and, in particular, the operation of this MOU;

- (c) At any time the Chief Officer of the Trust or the Chief Executive of Ofcom can, with the approval of his or her chairman, initiate a discussion of a review of the MOU or part of the MOU with his or her counterpart. Any changes that result from that review must be agreed by both the Chairman of the Trust and the Chairman of Ofcom.

The Trust and Ofcom will also:-

- (i) appoint representatives from the Trust Unit and the Ofcom Executive to act as points of liaison with regard generally to the matters which are the subject of this MOU;
- (ii) appoint representatives to act as specific liaison points in relation to any specific matters which are the subject of this MOU;
- (iii) arrange meetings as may be required between the representatives referred to in subparagraphs (i) and (ii) above with a minimum of one meeting every calendar quarter.

Reconciliation of Disputes

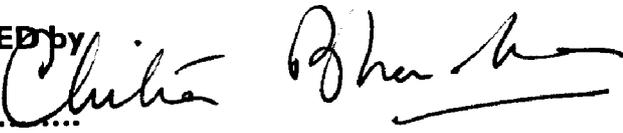
If there are any differences or disputes between the Trust and Ofcom relating to any matters which under the Charter/Agreement is subject to agreement or any matters relating to the operation of the MOU which cannot be settled by the representatives of the Trust and Ofcom directly dealing with any such matter:-

- (a) they shall be referred in the first instance to the representatives from the Trust Unit and Ofcom Executive appointed to act as point of liaison on general matters with regard to the MOU;
- (b) if they are not able to settle any such dispute or difference the matter will be referred for settlement to the member of the Trust nominated for such purpose by the Trust or the chief officer of the Trust and a board member or the chief executive of Ofcom; and
- (c) if they are not able to settle any such dispute or difference the matter will be referred for settlement to the Chairman of the Trust and the Chairman of Ofcom.

Enforcement by Ofcom

If Ofcom intends to make a direction to require the BBC to take remedial action in accordance with Clause 93 of the Agreement or to require the BBC to pay a penalty by serving a notice in accordance with Clause 94 of the Agreement it shall first give the BBC a reasonable opportunity to make representations about the matters appearing to Ofcom to provide grounds for making or serving any such direction or notice in compliance with any relevant published Ofcom procedures regarding the imposition of statutory sanctions.

SIGNED by

..... 

on behalf of the BBC Trust

1 March 2007

Date

SIGNED by

..... 

on behalf of the Office of Communications

5 March 2007

Date

Annex 1

Background

1 Renewal of the Charter

By Royal Charter granted on 19 July 2006 ("the Charter") the objects, constitution and organisation of the British Broadcasting Corporation ("the BBC") were reformed and its existence was continued until 31 December 2016.

2 Framework Agreement

A Framework Agreement ("the Agreement") was executed on 30 June 2006 by the BBC and the Secretary of State for Culture, Media and Sport pursuant to section 49 of the Charter. This sets out certain detailed requirements and obligations of the BBC in relation to the Charter and deals with certain other matters outside the Charter.

Ofcom is not a party to the Agreement but the agreement refers in a number of instances to Ofcom having a function or involvement in relation to the subject matter of the Agreement.

3 Constitution of the BBC

The BBC is a body corporate established by Royal Charter.

The members of the BBC are the members of the Trust and of the Executive Board.

The functions of the BBC are to be exercised either by the Trust or the Executive Board as to be determined in any particular circumstances by reference to the relevant provisions of the Charter and the Agreement.

The Trust is responsible for setting the overall strategic direction of the BBC and exercising a general oversight of the work of the Executive Board.

The Executive Board has responsibility for delivering the BBC's services in accordance with the priorities set by the Trust and for all aspects of operational management, except that of the Trust's services.

4 Ofcom's relationship with the BBC

By section 198 of the Communications Act 2003 ("the Act") Ofcom is authorised to regulate the provision of the BBC's services and the carrying on by the BBC of other activities for purposes connected with the provision of such services, to the extent that provision to do so is contained in the Charter, the Agreement (and any other framework agreements entered into pursuant to the Charter), the Act and Part 5 of the Broadcasting Act 1996.

Ofcom has competition functions and powers generally in relation to communication matters as referred to in Part 5 of the Act which may be exercised in relation to the BBC.

Annex 2

Application of Ofcom's Standards Code and Fairness Code to the BBC

All broadcasters licensed by Ofcom (and S4C) are required to observe Ofcom's Programme Standards Code and Fairness Code¹. Clauses 45 and 46 of the Agreement also require the BBC, with certain exceptions as noted in Section 2 of the MOU, to comply with these codes.

Complaints made to Ofcom concerning programme standards and fairness regarding the BBC's programmes will be handled in accordance with Ofcom's published procedures².

However the BBC's status as a broadcaster is unique. It is established by virtue of a Royal Charter and it has a Trust which also has duties and powers regarding complaints. Both the Trust's and Ofcom's powers and duties regarding complaints about BBC programmes are set out in the Charter and Agreement. It is important that the procedures established by both Ofcom and the Trust complement each other. This is not only to fulfil the requirements of the Charter and Agreement but also to give viewers and listeners the fullest confidence in the systems for complaints handling.

Roles and responsibilities

Where the BBC is required to comply with the Ofcom Programme Standards and Fairness Codes, the following principles will apply when Ofcom conducts an investigation of a complaint about a BBC programme:

1. The BBC Executive will represent the BBC in dealings with Ofcom about potential breaches of the Codes. Ofcom enquiries should be directed to and dealt with by the BBC's Editorial Complaints Unit; and
2. Ofcom will inform the Trust of all adjudications regarding breaches of the Codes and any statutory sanction proceedings which could follow. For information the Trust will also be copied into any further substantive formal correspondence regarding the adjudication or sanction.

The handling of standards complaints (excluding fairness and privacy) concerning the accuracy and/or impartiality of BBC programmes

As a result of the Charter and the Agreement, the Trust is responsible for the regulation of the BBC in the area of accuracy and impartiality. Ofcom's published procedures for handling standards complaints will not apply in cases relating to accuracy and impartiality in BBC programmes on UK Public Services.

Therefore such complaints will be returned to the complainant on the basis that these are not within Ofcom's remit. The complainant will be given contact details for the BBC and normally invited to send such complaints to BBC Complaints.

¹ Both the Standards and Fairness Codes are contained within the Ofcom Broadcasting Code.

² Outline Procedure for Handling Fairness and Privacy Complaints and Outline Procedure for Handling Standards Complaints and Cases.

Other complaints which are not in Ofcom's remit (and do not concern accuracy or impartiality) will be returned to the complainant and the BBC's contact details given where appropriate.

Annex 3

Specific obligations on the Trust to consult with Ofcom

The Trust must consult with, and have regard to comments made by Ofcom in relation to certain matters, in particular:-

- (a) the imposition of requirements on the Executive Board in relation to news and current affairs quotas pursuant to Clause 47(2) of the Agreement; and
- (b) the imposition of requirements on the Executive Board in relation to nations and regions quotas pursuant to Clause 50(2) of the Agreement; and

When the Trust must consult Ofcom in relation to any matter as referred to above then the following shall apply:-

- (i) the Trust shall inform Ofcom in advance of its intention to take any action in respect of which it is obliged to consult Ofcom in sufficient time in order for Ofcom to consider properly and fully any relevant issues;
- (ii) the Trust will provide details of any proposed course of action and any supporting information reasonably requested by Ofcom;
- (iii) Ofcom will normally have a minimum period of 30 days within which to consider any proposed course of action and by the end of such period may submit written representations as to any such proposed action;
- (iv) the Trust will give a timely response to any questions put to it by Ofcom during the consultation period and will arrange meetings with relevant persons if so required by Ofcom; and
- (v) the Trust will, if it decides not to follow any recommendations of Ofcom, provide a written statement setting out its reasons for not accepting any such recommendations.

Annex 4

Procedures relating to agreements to be entered into between the Trust and Ofcom

Part 1

Agreements following execution of the Framework Agreement

The Trust and Ofcom are obliged to enter into agreements or agreed arrangements following execution of the Agreement in relation to:-

- (a) Clause 49(1) (programming quotas for original productions);
- (b) Clause 51(1) (programme-making in the nations and regions);
- (c) Clause 59(4) and (9) (code relating to the provision for the deaf and the visually impaired);
- (d) Clause 61(5) (code relating to programme commissioning); and
- (e) Clause 62(1)(a) (agreed terms relating to the retention period and form of recordings of programmes).

Clause 92 of the Agreement sets out the principles to apply to the obtaining of agreement of Ofcom to certain specified matters including those mentioned in the previous paragraph.

The Trust and Ofcom have agreed in addition to following the principles set out in Clause 92 that the following shall apply, unless separately subject to public consultation by Ofcom or otherwise agreed, in relation to Clauses 49(1), 51(1), 59(4) and (9), 61(5) and 62(1)(a):-

- (i) within 60 working days from the date of this MOU Ofcom shall produce a first draft of a document which will set out the proposed agreed arrangements for the applicable matter referred to in the above provisions;
- (ii) within 60 working days from the submission of the draft referred to in sub-paragraph (i) above the Trust shall send its comments to Ofcom; and
- (iii) the parties will then negotiate and agree the final terms of the draft document within a period of not more than 60 working days from the date the Trust sends its comments to Ofcom.

The Trust and Ofcom may agree in any particular case to vary the timetable set out above. If the Trust and Ofcom cannot agree the document within the agreed timetable the matter shall be referred for settlement in accordance with the Reconciliation of Disputes procedure referred to in the MOU.

Part 2

Future agreements between the Trust and Ofcom

The Trust may need from time to time to obtain the agreement of Ofcom in relation to matters under Clause 47(3) to (5), 49(1), 50(3) to (5), 51(1), 59(4), 59(9), 61(5) or 62(1) of the Agreement.

Likewise Ofcom may also wish to propose a change to the agreements in relation to the above matters.

Clause 92 of the Agreement sets out the principles to apply to the obtaining of agreement to certain specified matters including those mentioned in the previous paragraph.

Either party will notify the other in writing if it wishes to agree any such matter and shall either agree at that time the timetable or procedure applicable or the timetable and procedure set out above shall apply (but the commencement date of such procedure shall be the date of such notification).

If the Trust and Ofcom cannot reach agreement within the agreed timetable the matter shall be referred for settlement in accordance with the procedure set out in accordance with the Reconciliation of Disputes procedure referred to in Section 3 of the MOU.

Part 3

Quotas

The BBC is required to comply with arrangements agreed by the BBC and Ofcom to secure that the time allocated to original programming in a particular service meets an agreed proportion of the total broadcasting time and peak broadcasting time for that service. In determining the programmes - a proportion of which is to consist of original productions - there may be an agreed arrangement to exclude specified descriptions of programmes. Regard is to be had for any guidance by Ofcom in determining which descriptions of programmes are to be excluded for this purpose,

The Trust is required to set requirements upon the BBC Executive in relation to:

- the minimum number of hours of news in BBC1;
- the proportion of hours of news at peak viewing times in BBC1;
- the minimum number of hours of current affairs included in BBC1 and BBC2 taken together;
- the proportion of hours of current affairs at peak viewing times included in BBC 1 and BBC 2 taken together ;
- the hours of regional programmes included in BBC1 and BBC2 taken together;
- the proportion of regional programmes made in the relevant area on BBC1 and BBC2 taken together;
- the hours of regional news programmes on BBC1; and
- the hours of regional programmes on BBC1 and BBC2 taken together which are not regional news programmes and are broadcast for viewing at (or immediately preceding or following) peak viewing times.

The Trust must consult Ofcom before imposing these requirements and have regard to any comments Ofcom makes. The Trust may not allow any of the above hours or, as the case may

be, the proportion of programmes, to fall below those that were broadcast in each such category in 2002 (as adjusted) without the agreement of Ofcom.

The BBC is required to comply with arrangements agreed by the BBC and Ofcom to secure that a suitable range and a suitable proportion of network programmes are made in the UK outside the M25 area and further that a suitable proportion of expenditure is referable to programme production at different programme production centres (comprising a suitable range of production centres outside the M25 area).

The BBC must also ensure that not less than a specified percentage of broadcasting time of BBC1 and BBC2 allocated to qualifying programmes is allocated annually to independent productions. The BBC is required to comply with directions given to it by Ofcom for carrying forward any shortfall for any year (Annex 5).

Annex 5

Ofcom guidance

Part 1

Compliance with guidance, directions, codes and other requirements of Ofcom

The BBC has specific duties in respect of guidance, directions, codes and other requirements of Ofcom ("Ofcom requirements") in relation to certain matters, in particular:-

- (a) to comply with the Fairness Code published by Ofcom pursuant to section 107 of the Broadcasting Act 1996;
- (b) to comply with the Listed Events Code issued pursuant to section 104 of the Broadcasting Act 1996;
- (c) to observe the Relevant Programme Code Standards in accordance with Clause 46(1) of the Agreement;
- (d) to have regard to guidance from Ofcom in determining whether a programme is an excluded programme in accordance with Clause 49(3)(b) of the Agreement;
- (e) to comply with directions from Ofcom in relation to the carrying forward of any shortfall and any subsequent increase in the relevant percentage in relation to independent productions in accordance with Clause 52(3) of the Agreement;
- (f) to secure that the drawing up or revision of any code of practice established in relation to programming commissioning for independent productions in accordance with Clause 61 (4) of the Agreement is in accordance with guidance issued by Ofcom as to the times when the code is to be drawn up or reviewed, the consultation to be undertaken and the publication of the code or revised code. The BBC must revise the code to take account of revisions of the guidance issued by Ofcom;
- (g) to retain recordings in an agreed form and for an agreed period and comply with requests for the production of such recordings, and to the extent that the BBC is able to do so, the production of scripts or transcripts, in accordance with Clause 62(1) of the Agreement; and
- (h) to comply with requirements of Ofcom in relation to international obligations in accordance with Clause 63(1) of the Agreement.

Ofcom will, if appropriate and prior to issuing any Ofcom requirements to the Trust which are not of general application, give the Trust a reasonable opportunity to make representations to Ofcom in relation to any such Ofcom requirements.

The Trust shall in relation to the Ofcom requirements:-

- (i) act in a timely manner and expeditiously in order to comply with all such Ofcom requirements to the extent that any action is required to be taken in order to secure compliance;

- (ii) submit in a timely manner whenever it is necessary to demonstrate that it has complied with an Ofcom requirement (upon request from Ofcom) a response setting out in detail how the Ofcom requirement has been complied with;
- (iii) if it receives any complaint notification from Ofcom following receipt of a response referred to in sub-paragraph (b) above to the effect that Ofcom is not satisfied with the compliance action taken by the Trust, take such action as shall be reasonably required to remedy any matter which is the subject of such notification.

Part 2

Issuance of Ofcom guidance and directions

Ofcom may, or may be obliged to in relation to certain provisions of the Agreement to, issue guidance and/or directions specifically in relation to the BBC³, namely:-

- (a) Clause 49(3) of the Agreement (determination of whether a programme is within a description of excluded programmes for the purposes of programming quotas for original productions);
- (b) Clause 52 (3) of the Agreement (carry forward of any shortfall of quotas for independent productions and subsequent increase of relevant percentages for independent productions); and
- (c) Clause 61(2)(b),(3) and (4) (guidance as to code of practice in relation to programme commissioning).

Ofcom:-

- (i) shall, if it is obliged to issue guidance and/or directions specifically in relation to the BBC, issue the required guidance and/or directions within 90 working days (excluding time taken for public consultation) from the date of such obligation arising;
- (ii) may revise any guidance and/or directions from time to time;
- (iii) shall, prior to issuing any guidance or directions or revisions, to the extent required by any relevant provisions of the Agreement⁴ or otherwise as it considers appropriate, and in accordance with any applicable guidelines as to consultation generally applied by Ofcom, consult with interested persons as to the proposed guidelines or directions; and
- (iv) may publish any such guidance or directions on the Ofcom website.

³ This is not intended to deal with general guidance and reports issues pursuant to the Act (e.g. s 266 regarding preparation of statements of programme policy and s 264 and 358 regarding fulfilment of public service remit of services – see Clause 21)

⁴ e.g. Clause 61(7)

Annex 6

Market Impact Assessments

Background

Clause 30 of the Agreement states that whenever the Public Value Test (“PVT”) is to be applied, Ofcom will have the responsibility for providing a Market Impact Assessment (“MIA”). When conducting such MIAs, Ofcom will have regard to its statutory duties. In doing so, Ofcom will always act as an independent body, and will have regard to its regulatory principles of transparency, accountability, proportionality and consistency. The constitution and the terms of reference for any MIA will apply as set out in this Annex and the subsequent Annex, unless and to the extent otherwise agreed in relation to any particular MIA.

Joint Steering Group – Constitution

In accordance with Clause 29 of the Agreement, the Trust and Ofcom are required to establish a Joint Steering Group (“JSG”). Where a PVT is to be applied, the Trust must inform the JSG of the need for a MIA. In doing so, the Trust will endeavour to provide as much prior notice as possible.

1 Purpose and scope of authority

The JSG is responsible for:

- (a) setting and publishing the terms of reference for the MIA;
- (b) after considering advice from Ofcom, agreeing the potential relevant markets for the purpose of the MIA. Where there are a number of potential markets identified, the MIA shall report on each potential market unless agreed otherwise;
- (c) ensuring that the MIA is conducted in a manner appropriate to the nature of the PVT and to a suitable schedule.

The JSG is not responsible for contributing to or approving the MIA’s conclusions or recommendations, but is responsible for ensuring the MIA meets all of the above requirements and is conducted according to the agreed terms of reference.

2 Composition of the JSG

The JSG will consist of:

- (a) three individual members appointed by the Trust; and
- (b) three individual members appointed by Ofcom.

3 Chairmanship

- (a) each successive MIA is to be overseen by the JSG under the chairmanship of an appointee of the Trust or an appointee of Ofcom on an alternating basis, unless otherwise agreed by all members of the JSG (Clause 29 (c) of the Agreement).
- (b) in the absence of the Chairman at any meeting of the JSG, the remaining members shall choose one of their number to act as Chairman of the meeting, with that member expected to come from the body that currently holds the chairmanship

for the specific MIA. The Chairman does not possess any extra authority (such as a casting vote) in JSG proceedings.

4 Changes in composition of the JSG

Either the Trust or Ofcom may change its nominated members on the JSG by giving reasonable notice to the other JSG members.

5 Role and conduct of JSG members

- (a) JSG members will have access to all relevant information (having regard to any confidentiality obligations) to enable effective contribution at meetings;
- (b) JSG members should operate on principles of equality of status and participation;
- (c) JSG members are expected to avoid dealing with interested third parties during periods where a significant decision is imminent except in the course of the discharge of their proper business;
- (d) in the event that a vote is required, each JSG member shall have one equal vote at any meeting of the JSG;
- (e) if a JSG member is unable to attend a scheduled meeting, an alternate may attend in place;
- (f) the quorum for any meeting of the JSG shall be two members appointed by the Trust and two members appointed by Ofcom;
- (g) if, in respect of any matter arising under this clause, the JSG is unable to reach agreement on suitable arrangements for their implementation, the matters in dispute may be referred to the Chairman of the Trust and the Chairman of Ofcom for resolution of them jointly;
- (h) detailed arrangements for the terms on which the Trust will grant Ofcom access to information submitted to the Trust by the BBC Executive in support of the PVT is provided in the subsequent Annex.

6 JSG Secretariat

For reasons of administrative simplicity, the provision of secretariat services will rotate on a three monthly basis between the Trust and Ofcom, subject to any variations to this arrangement agreed by the JSG that promote efficiency and are consistent with maintaining parity of effort between the Trust and Ofcom.

The secretariat of the JSG shall:

- (a) convene meetings of the JSG, on the instruction of the Chairman of the JSG;
- (b) take minutes of meetings of the JSG;
- (c) distribute copies of minutes of meetings, agendas and any supporting documents to members of the JSG; and
- (d) perform other secretariat duties as and when required.

7 Appointment of advisers and contributors

- (a) the JSG may seek and receive advice and guidance from any advisers or experts appointed by it;
- (b) the JSG is entitled to set up an independent panel of advisers and experts for this purpose;

(c) contributors to MIAs may attend meetings of the JSG by invitation.

8 Recovery of costs

All reasonable costs incurred by Ofcom when performing a MIA may be recovered from the BBC in addition to its annual contribution to Ofcom.

9 Terms of Reference

The JSG will produce draft terms of reference for each MIA. After having considered any comments, the JSG will set and publish the terms of reference for each MIA, normally within two weeks of the formal PVT application being received. This will be accomplished by simultaneous publication on the Ofcom and BBC Trust websites.

The terms of reference will contain:

- (a) an approximate timetable for conducting the MIA. Each MIA must be completed within three months of the date on which the terms of reference are set. In some circumstances agreed by the JSG, it may be feasible to complete a MIA in less than three months. Alternatively, the JSG may agree on a longer period for completion if justified by the complexity of the information gathering process or the extent of the analysis required. Likewise, the JSG may at any time during the course of an MIA agree to extend the deadline for delivery where justified by the particular circumstances of that MIA, although the JSG must publicly announce any changes to the timetable;
- (b) a list of the potential relevant markets for the assessment;
- (c) an indication of what information will be required to perform the MIA and the likely sources of such information; and
- (d) the methodology to be used where appropriate.

10 Publication and press management

The Trust and Ofcom shall normally coordinate planned communications as appropriate, but the Trust and Ofcom shall be entitled to publish the conclusions and output of the MIA in relation to any PVT on their respective websites independently should they wish to do so.

Annex 6b

Terms on which the Trust will grant Ofcom access to information submitted to the Trust by the BBC Executive in support of any Public Value Test

This Annex sets out the terms on which the Trust will share with Ofcom information submitted by the Executive for the purposes of any PVT.

The Trust will endeavour to ensure that Ofcom has access to all relevant information which will assist it in conducting the MIA element of any PVT initiated by the Trust on a service proposition from the BBC. In particular, the Trust will supply any information submitted to it as part of a PVT application relevant to the assessment of the market impact of the proposal. The Trust will usually make available a complete copy of the application document to Ofcom subject to the following terms:

- (a) any material will be supplied in confidence to the head of the MIA case team nominated by Ofcom to undertake the MIA. It must not be shared with anyone outside that team, other than staff or Board Members relevant to the MIA in question or the JSG, except where Ofcom is performing its statutory functions under the Competition Act 1998, Enterprise Act 2002, Communications Act 2003 or any other legislation it administers. Ofcom must have in place appropriate safeguards to ensure that the material cannot be accessed by anyone not authorised to do so;
- (b) where such material contains information that is highlighted as being commercially or otherwise sensitive, such information shall not appear in full or in part in any published results of the MIA;
- (c) material supplied to Ofcom for purposes of conducting an MIA is supplied for use for that purpose only and may not be used for any other purpose within or outside Ofcom except where Ofcom is performing its statutory functions under the Competition Act 1998, Enterprise Act 2002, Communications Act 2003 or any other legislation it administers; and
- (d) the material provided will obviously be wider than strictly pertinent to the MIA, for example in relation to considerations of public value or value for money. Ofcom will be expected to disregard such information as appropriate and restrict its commentary to relevant market impact considerations.

For the avoidance of doubt, Clause 91 of the Agreement does not include an obligation on the BBC to supply information to Ofcom at its request in relation to legislation administered by Ofcom, pursuant to the conduct of an MIA; if Ofcom requires information from the BBC in connection with any investigation which may be contemplated or proposed under any legislation which Ofcom administers, it must seek that information pursuant to the powers contained in the applicable legislation and not by means of information requested pursuant to the conduct of the MIA.

Terms on which Ofcom will grant the Trust access to information submitted to Ofcom in carrying out a Market Impact Assessment

In order to carry out a PVT on a service, Ofcom acknowledges that the Trust may need access to material provided to Ofcom when carrying out the MIA on that service.

Ofcom will endeavour to ensure that the Trust has access to all relevant information which will assist it in conducting any PVT on a service proposition from the BBC. In particular, Ofcom will supply any information submitted to it as part of an MIA that is relevant to the PVT assessment of the market impact of the proposal. Ofcom will usually make such information available subject to the following terms:

- (a) where such material has been supplied to Ofcom by a third party respondent and that party has agreed that the information may be disclosed to the Trust;
- (b) where such material contains information that is highlighted as being commercially or otherwise sensitive, such information shall not appear in full or in part in any published results of the PVT;
- (c) all such material supplied to the Trust shall be held by the Trust in confidence and shall not be used for any purpose other than the carrying out of the PVT for the service about which it has been submitted; and
- (d) the Trust shall not disclose such material to any persons other than Trust Members, Trust staff who are part of the team carrying out the PVT and to any consultants notified to Ofcom who are assisting the Trust in this exercise.

Annex 7

Specific involvement between the BBC and Ofcom

Source	Matter	Ofcom function/involvement
Broadcasting Act 1996		
S 104	Listed events	BBC to comply with code of guidance
S 107	Fairness Code	Established by Ofcom to be observed by BBC
Communications Act 2003		
S 198	Functions of Ofcom in relation to the BBC	General authority for Ofcom to regulate the BBC (to the extent that it is contained in Charter, Agreement, Communications Act 2003 and the Broadcasting Act 1996)
S303	Code relating to provision for deaf and visually impaired	Code produced by Ofcom
S 319	Ofcom standards code	Ofcom to set standards code – to be observed by BBC
S 324 (3)	Setting s 319 Standards Code	Ofcom to consult with BBC on draft standards code
Schedule 12 Part 1 paragraph 1	Quotas for independent productions	BBC to secure quotas BBC to comply with Ofcom directions
paragraph 2	Duty to publicise complaints procedures	BBC duty to bring to the public's attention Ofcom's fairness and standards complaints procedures
Framework Agreement		
Clause 21	Statements of programme policy	Trust and Executive to each consider guidance by Ofcom and reports
Clause 29	Joint Steering Group	<ol style="list-style-type: none"> 1. Trust and Ofcom to establish a joint steering group 2. Trust and Ofcom to agree composition 3. Trust to inform JSG of need for MIA 4. JSG to set and publish terms of reference and may specify methodology

		<p>5. JSG agree potential relevant markets (after considering Ofcom advice) and ensure it is conducted in an appropriate manner and to a suitable schedule</p> <p>6. Trust and Ofcom to make arrangements to ensure timeliness</p>
Clause 30	Market Impact Assessments	Ofcom to provide under supervision of the JSG
Clause 35	Digital switchover	SOS to consult Ofcom re BBC coverage plan
Clause 37	Digital switchover	BBC obligation to co-operate with Ofcom (and others) in relation to Digital Switchover
Clause 42	Radio spectrum	New/revised licences from Ofcom
Clause 45	Fairness Code	BBC to comply with Fairness Code (set by Ofcom)
Clause 46	Programme Code Standards	BBC to observe Programme Code Standards (set by Ofcom) with certain exemptions
Clause 47	News and current affairs	<p>1. The Trust to consult Ofcom on proposed news and current affairs requirements and have regard to Ofcom comments</p> <p>2. BBC and Ofcom to agree not to fall below 2002 hours (clause 91)</p>
Clause 49	Programming quotas for original productions	<p>1. BBC to comply with agreed arrangements</p> <p>2. BBC and Ofcom to agree programming quotas for original productions (clause 91)</p> <p>3. BBC to have regard for any guidance from Ofcom as to whether a programme meets the descriptions of an excluded programme</p>
Clause 50	Programming for the nations and regions	<p>1 The Trust to consult Ofcom and have regard to comments on proposed nations and regions requirements</p> <p>2 The Trust to secure agreement from Ofcom re fall below 2002 hours (clause 91)</p>
Clause 51	Programme-making	BBC to comply with agreed

	in the nations and regions	arrangements. BBC and Ofcom to agree on certain matters (clause 91)
Clause 52	Quotas for independent productions	BBC to comply with Ofcom directions re shortfall
Clause 59	Code relating to provision for the deaf and visually impaired	BBC to observe s 303 Code. BBC and Ofcom to agree modifications and whether service is a continuation or new (clause 91)
Clause 60	Power to modify targets for the purpose of clause 59	SoS to consult with the BBC and Ofcom
Clause 61	Code relating to Programme Commissioning	BBC to draw up/revise Code to take account of guidance by Ofcom Ofcom to consult and issue guidance BBC and Ofcom to agree Code (clause 91) BBC to make reports to Ofcom re application of Code BBC to make provision for dispute resolution in a manner that appears to Ofcom to be appropriate
Clause 62	Retention and production of recordings and production of scripts/transcripts	1. BBC to comply with Ofcom request for the production of recordings and (to the extent that it is able) scripts/transcripts 2. BBC and Ofcom to agree period of recording retention and form of recording (clause 91)
Clause 63	International obligations	BBC to comply with Ofcom requirements
Clause 66	Competitive impact	Trust to have regard to (as relevant) any fair and effective competition codes issued by Ofcom
Clause 84(3)	Training	Executive Board obligation to use its best endeavours to work in partnership with others in audio visual industry in planning and provision of training and retraining
Clause 90(5)(b)	Complaints	The Trust is obliged to give guidance as to the availability of other means of redress of complaints – see Schedule 12 Part 1 paragraph 2 of the Communications Act 2003
Clause 91	Co-operation with	Provision of information and

	Ofcom	assistance to Ofcom
Clause 92	Agreements between the BBC and Ofcom	General obligation of BBC to secure and maintain agreement of Ofcom re Clauses 47, 49, 50, 51, 52, 59, 61 and 62
Clause 93	Power of Ofcom to require remedial action	Power of Ofcom to direct a correction or statement of findings or both
Clause 94	Power of Ofcom to fine the BBC	Power of Ofcom to fine
Clause 95	Relevant Enforceable Requirements	<i>[for purposes of Clause 93 and 94]</i>

Annex 8

2002 figures

The agreed number of hours and programming used as the reference numbers for the calendar year ended 31 December 2002 as referred to in Clause 47(3) (news and current affairs) and Clause 50(3) (nations and regions) are as follows:-

Part A

1 Agreed number of hours*/percentage for the calendar year ended 31 December 2002 in relation to:-

Category	Reference in the Agreement	Number of hours*/percentage
Hours of news programmes in BBC1	47(3)(a)	1380
Hours of news programmes in BBC1 at peak viewing times	47(3)(b)	275
Hours of current affairs programmes in BBC1 and BBC 2 taken together	47(3)(c)	365
Hours of current affairs programmes in BBC1 and BBC2 taken together broadcast at peak viewing times	47(3)(d)	105
Hours of regional programmes for BBC1 and BBC2 taken together	50(3)(a)	[6580]
Proportion of regional programmes for BBC1 and BBC2 taken together	50(3)(b)	**[95%]
Hours of regional news programmes included in BBC1	50(3)(c)	[3920]
Hours of regional programmes included in BBC1 and BBC2 which are not regional news programmes in BBC 1 and are broadcast for viewing (a) at or (b) immediately prior to or after peak viewing times	50(3)(d) and 50(1)(e)	(a) 1030 (b)355 Total 1385

* actual number of hours have been adjusted as agreed between the Trust and Ofcom

** percentage not hours

2 A "year" to be compared with the 2002 year means a calendar year; in respect of a leap year the benchmark hours should be 366/365 of the original 2002 hours.

The "peak viewing time" is to be (as for 2002 for BBC1 and BBC2) 1800 -22.30 hours.

Part B

The agreed definitions of news and current affairs are as follows:-

GENRE	DEFINITION
News/news headlines	A newscast or news bulletin providing national, international or regional news coverage. News magazines are also included which may contain a range of items related to news stories, with comment and elements of general interest.
Current Affairs	A programme which contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with public policy. Topical programmes about business matters and financial issues which are of current interest.