

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

BROADCASTING

Copy of the Amendment dated 4th December 2003
to the Agreement of
25th Day of January 1996 (as amended)
Between Her Majesty's Secretary of
State for Culture, Media and Sport and
the British Broadcasting Corporation

*Presented to Parliament
By the Secretary of State for Culture, Media and Sport
By Command of Her Majesty
December 2003*

CM 6075

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DEED OF VARIATION

THIS DEED is made the fourth day of December two thousand and three BETWEEN (1) HER MAJESTY'S SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT (hereinafter called "the Secretary of State") and (2) THE BRITISH BROADCASTING CORPORATION whose chief office is at Broadcasting House Portland Place in the City of Westminster (hereinafter called "the Corporation")

(A) WHEREAS on 25th January 1996 the parties to this Deed concluded an agreement (hereinafter called "the Agreement") which included provision relating to the Corporation and its public services and which now has effect as amended by a further agreement concluded by the parties on 3rd July 2000

(B) WHEREAS the Communications Act 2003 (hereinafter called "the Act") has made provision about the regulation of broadcasting and of the provision of television and radio services, but such provision is not, for the most part, expressed to apply directly to the Corporation or its services

(C) WHEREAS section 198 of the Act makes provision for the Office of Communications to have the function, to the extent that provision for them to do so is contained in "the BBC Charter and Agreement" as defined in section 362(1) of the Act (hereinafter called "the Charter and Agreement"), of regulating the provision of certain of the Corporation's services and the carrying on by the Corporation of other activities for purposes connected with the provision of those services

(D) WHEREAS section 198 of the Act also makes provision for the Office of Communications to have, for the purposes of carrying out that function, such powers and duties as may be conferred on them by or under the terms of the Charter and Agreement and makes further provision connected therewith

(E) WHEREAS it is expedient that the Agreement should be amended to make provision relating to the Corporation and certain of its services and to make provision for the purposes of section 198 of the Act

NOW in consideration of the matters herein set out THIS DEED WITNESSETH and the Secretary of State and the Corporation hereby covenant and agree with one another as follows:-

1. VARIATION OF THE AGREEMENT

The Agreement is hereby varied by the insertion of the provisions set out in the Schedule to this Deed in the places respectively indicated therein.

2. PARLIAMENTARY APPROVAL AND COMMENCEMENT

2.1 It is a condition of this Deed (in accordance with clause 18 of the Agreement) that the contract hereby made shall not be binding unless it has been approved by a resolution of the House of Commons.

2.2 In any event,-

- (a) the provisions inserted into the Agreement by this Deed shall not have effect before 29th December 2003; and
- (b) the following provisions inserted into the Agreement by this Deed shall not have effect before 1st April 2004-
 - (i) the clause 5F (programming quotas for original productions) set out in paragraph 2 of the Schedule to this Deed,
 - (ii) any reference to clause 5F in any other provision set out in that Schedule.

3. TRANSITIONAL PROVISION

3.1 Anything done, before the first day on which any provision inserted into the Agreement by this Deed has effect, for the purpose of enabling that provision to have full effect on and after that day shall not, for the purposes of the Agreement, be regarded, on or after that day, as failing to fulfil any requirement of the Agreement that is expressed in prospective language by reason only that it was done before any such requirement had begun to have effect.

3.2 The reference to “annual intervals” in subclause 5C.1 inserted by paragraph 2 of the Schedule to this Deed shall not be construed as requiring the Corporation to prepare any statements of programme policy under clause 5C earlier than the date on which such a requirement would have arisen if any statements of programme policy prepared by the Corporation before the commencement day had been prepared under that clause.

IN WITNESS whereof the Secretary of State has hereunto set her hand and seal and the Corporation has caused its corporate seal to be hereunto affixed the fourth and first days of December 2003 respectively.

THE SCHEDULE

INSERTIONS MADE TO THE AGREEMENT

1. In subclause 1.1, -

- (a) after the definition of “apparatus for wireless telegraphy” there shall be inserted the following:-

““BBC1" means the Home Service known as BBC1;

“BBC2" means the Home Service known as BBC2;”;

- (b) after the definition of “local authority” there shall be inserted the following:-

““OFCOM” means the Office of Communications;” and

- (c) after the definition of “programme” there shall be inserted the following:-

““Public Broadcasting Services” means the Home Services together with such of the Ancillary Services as may from time to time be specified by the Secretary of State for this purpose;

“Public Television Services” means such of the Public Broadcasting Services as consist of television programme services;”.

2. There shall be inserted after clause 5 the following:-

“5A. FAIRNESS CODE

The Corporation shall secure the observance-

- (a) in connection with the provision of the Public Broadcasting Services, and
(b) in relation to the programmes included in those services,

of the code for the time being in force under section 107 of the Broadcasting Act 1996 (the fairness code).

5B. APPLICABLE PROGRAMME CODE STANDARDS

5B.1 The Corporation shall secure that any Applicable Programme Code Standards are observed in the provision of the Public Broadcasting Services.

5B.2 The Corporation shall establish and maintain procedures for the handling and resolution of complaints about the observance of the Applicable Programme Code Standards in relation to the Public Broadcasting Services.

5B.3 For the purposes of this clause, “Applicable Programme Code Standards” means-

- (a) those standards for the time being set under section 319 of the Communications Act 2003 which relate to the objectives set out in paragraphs (a), (b), (e), (f) and (l) of subsection (2) of that section (protection of persons under the age of eighteen; omission of material likely to encourage or incite any crime or disorder; exercise of responsibility with respect to the content of religious programmes; application of generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material; non 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;)
- (b) any code drawn up under section 108 of the Broadcasting Act 1996, but only to any extent that, by virtue of paragraph 43(1) and (3) of Schedule 18 to the Communications Act 2003, it has effect in relation to the Public Broadcasting Services as if it were a code issued by OFCOM for the purpose of setting standards under section 319 of the latter Act.

5C. STATEMENTS OF PROGRAMME POLICY

5C.1 The Corporation shall, at annual intervals, prepare statements of programme policy in respect of the Public Broadcasting Services.

5C.2 The statements of programme policy prepared under this clause shall-

- (a) include such a statement in respect of each network service, setting out the

Corporation's proposals for how that service will, during the following year, contribute to the fulfilment of the public service remit; and

- (b) set out, in an appropriate manner, the Corporation's proposals for how the other Public Broadcasting Services will, during the following year, contribute to the fulfilment of that remit.

5C.3 In preparing any statement of programme policy under this clause, the Corporation shall consider-

- (a) the guidance given by OFCOM about the preparation of statements of programme policy for the purposes of section 266 of the Communications Act 2003, and
- (b) the reports previously published by OFCOM under sections 264 and 358 of the Communications Act 2003 (OFCEM reports on the fulfilment of the public service remit of certain television services, and Annual factual and statistical reports by OFCOM in relation to certain television and radio services),

for the purpose of deciding how far such guidance and reports contain, in the Corporation's view, anything of relevance to the circumstances of the Corporation which ought to be taken into account in preparing that statement.

5C.4 Every statement of programme policy prepared under this clause-

- (a) shall be published by the Corporation as soon as practicable after its preparation is complete; and
- (b) shall be published in such manner as the Corporation considers appropriate.

5C.5 The Corporation shall monitor its performance in the carrying out of the proposals contained in each statement of programme policy prepared under this clause, and each Annual Report presented by the Corporation pursuant to Article 18 of the Royal Charter shall contain a report on the performance of the Corporation in the carrying out, during the period to which the statement relates, of the proposals contained in any relevant statement.

5C.6 For the purposes of subclause 5C.5, a statement is relevant in relation to a particular Annual Report if it relates to a period ending before the date on which that Report is submitted to the Secretary of State pursuant to Article 18(3) of the Royal Charter and after the date on which the preceding such Report was so submitted.

5C.7 For the purposes of this clause-

“network service” means a Public Broadcasting Service available for general reception throughout the United Kingdom, and the Corporation-

- (a) may treat any such service provided in regional variations as a single such service, but
- (b) may treat the actual regional variations within a service so treated as if they were comprised within the other Public Broadcasting Services mentioned in subclause 5C.2(b); and

“the public service remit” means the Corporation’s programming obligations under the Royal Charter and under this Agreement so far as they apply to the Public Broadcasting Services.

5D. NEWS AND CURRENT AFFAIRS PROGRAMMES

5D.1 The Governors shall determine from time to time arrangements for securing-

- (a) that, in relation to BBC1, news programmes are broadcast for viewing at intervals throughout the period for which the service is provided;
- (b) that, in each year, the time allocated to the broadcasting of news programmes included in BBC1 constitutes no less than what appears to them to be an appropriate amount of time;
- (c) that the time allocated to the broadcasting of news programmes included in BBC 1 is split in what appears to them to be an appropriate manner between peak viewing times and other times;
- (d) that, in each year, the time allocated to the broadcasting of current affairs programmes included in BBC1 and BBC2 taken together constitutes no less than what appears to them to be an appropriate amount of time;
- (e) that the time allocated to the broadcasting of current affairs programmes included in BBC1 and BBC2 taken together is split in what appears to them to be an appropriate manner between peak viewing times and other times;

and the Corporation shall comply with any such arrangements.

5D.2 Before making any determination under subclause 5D.1, the Governors shall consult OFCOM on their proposals for such a determination, and shall have regard to any comments made by OFCOM upon those proposals.

5D.3 Subject to subclauses 5D.4 and 5D.5, the Governors shall not, without first securing the agreement of OFCOM, determine arrangements the effect of which would be to allow any of the following -

- (a) the hours of news programmes included, in any year, in BBC1,
- (b) the hours of news programmes included, in any year, in BBC1 which are broadcast at peak viewing times,
- (c) the hours of current affairs programmes included, in any year, in BBC 1 and BBC 2 taken together,
- (d) the hours of current affairs programmes included, in any year, in BBC1 and BBC2 taken together which are broadcast at peak viewing times,

to fall, respectively, below the number of hours which were included in each such category in the year 2002.

5D.4 A figure shall be agreed to represent the number of hours which were included, in the year 2002, in each of the categories set out in paragraphs (a) to (d) of subclause 5D.3 respectively, and that figure shall, subject to subclause 5D.5, be used for the purposes of subclause 5D.3.

5D.5 Where the agreed meaning of “year” for the purposes of this clause includes any period which is longer or shorter than the year 2002, it shall be agreed whether, and if so in what respect, the figures agreed under subclause 5D.4 shall be subject to any adjustment for the purpose of enabling them to relate fairly to any such period.

5D.6 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

5D.7 For the purposes of this clause-

“current affairs” has the meaning that shall be agreed;

“news” has the meaning that shall be agreed;

“peak viewing time” , in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service; and

“year” has the meaning that shall be agreed.

5E. PARTY POLITICAL BROADCASTS

5E.1 The Corporation shall include, in some or all of the Public Broadcasting Services, party political broadcasts and referendum campaign broadcasts.

5E.2 The Governors shall determine from time to time-

- (a) which of the Public Broadcasting Services shall include party political broadcasts and referendum campaign broadcasts; and
- (b) the basis on which, and the terms and conditions subject to which, such broadcasts are to be so included.

5E.3 For the purposes of subclause 5E.2(b), the Governors may, in particular, determine, so far as they are permitted so to do by the provisions mentioned in subclause 5E.4, -

- (a) the political parties on whose behalf party political broadcasts may be made; and
- (b) the length and frequency of party political broadcasts and referendum campaign broadcasts.

5E.4 The provisions mentioned in this subclause are sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000 (only registered parties and designated organisations to be entitled to party political broadcasts or referendum campaign broadcasts.)

5E.5 Determinations made by the Governors for any of the purposes of this clause may make different provision for different cases.

5E.6 For the purposes of this clause, “referendum campaign broadcast” has the meaning given by section 127 of the Political Parties, Elections and Referendums Act 2000.

5F. PROGRAMMING QUOTAS FOR ORIGINAL PRODUCTIONS

5F.1 In relation to each of the Public Television Services, the Corporation shall comply with agreed arrangements for securing -

- (a) that the time allocated, in each year, to the broadcasting of original productions included in that service is no less than what appears to the parties to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the service; and
- (b) that the time allocated to the broadcasting of original productions is split in what appears to the parties to be an appropriate manner between peak viewing times and other times.

5F.2 The proportion determined by the parties for the purposes of subclause 5F.1-

- (a) shall, in the case of each service, be such proportion as the parties consider appropriate for ensuring that the service is consistently of a high quality; and
- (b) may, for the purposes of paragraph 5F.1(b), be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

5F.3 The agreed arrangements may provide-

- (a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;
- (b) that, in determining for the purposes of the arrangements whether a programme is of a description of programmes excluded by virtue of paragraph 5F.3(a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

5F.4 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

5F.5 For the purposes of this clause-

‘original productions’, in relation to the Public Television Services taken together, has the same meaning that is from time to time specified by order under section 278(6) of the Communications Act 2003 (programming quotas for original productions in relation to licensed public service channels) in relation to a licensed public service channel, except that-

- (a) to any extent that such an order makes different provision for different cases, the agreed arrangements shall determine which of those cases shall be taken to be relevant for the purposes of this clause; and
- (b) to any extent that such an order makes provision in terms which are not apt to apply for the purposes of this clause, the agreed arrangements shall determine whether, and if so what, necessary modifications are to be made so that such provision may apply, as analogously as practicable, for those purposes;

‘peak viewing time’ in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service; and

‘year’ has the meaning that shall be agreed.

5G. REGIONAL PROGRAMMING

5G.1 The Governors shall determine from time to time arrangements for securing-

- (a) that what appears to them to be a sufficient amount of time is given in the programmes included in the relevant services to what appears to them to be a suitable range of programmes (including, in the case of BBC1, regional news programmes) which are of regional interest;
- (b) that the regional programmes included in the relevant services are of high quality;
- (c) that what appears to them to be a suitable proportion of the regional programmes included in the relevant services consists of programmes made in the relevant area;
- (d) that the regional news programmes included in BBC1 are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times; and

- (e) that what appears to them to be a suitable number of the hours of regional programmes that-
 - (i) are included in the relevant services, and
 - (ii) are not regional news programmes included in BBC 1,are broadcast for viewing-
 - (i) at times which are peak viewing times in relation to any particular service in which they are in fact included; and
 - (ii) at times immediately preceding or following those times.

5G.2 Before making any determination under subclause 5G.1, the Governors shall consult OFCOM on their proposals for such a determination, and shall have regard to any comments made by OFCOM upon those proposals.

5G.3 Subject to subclauses 5G.4 and 5G.5, the Governors shall not, without first securing the agreement of OFCOM, determine arrangements the effect of which would be to allow any of the following-

- (a) the hours of regional programmes included, in any year, in the relevant services,
- (b) the proportion of regional programmes included, in any year, in the relevant services which consist of programmes made in the relevant area,
- (c) the hours of regional news programmes included, in any year, in BBC1,
- (d) in relation to any year, the number of hours mentioned in subclause 5G.1(e),

to fall, respectively, below the number of hours or, as the case may be, the proportion of programmes, which were included in each such category in the year 2002.

5G.4 A figure shall be agreed to represent the number of hours or, as the case may be, the proportion of programmes which were included, in the year 2002, in each of the categories set out in paragraphs (a) to (d) of subclause 5G.3 respectively, and that figure shall, subject to subclause 5G.5, be used for the purposes of subclause 5G.3.

5G.5 Where the agreed meaning of “year” for the purposes of this clause includes any period which is longer or shorter than the year 2002, it shall be agreed whether, and if so in what respect, the figures agreed under subclause 5G.4 shall be subject to any adjustment for the purpose of enabling them to relate fairly to any such period.

5G.6 For the purposes of this clause, a programme is of regional interest if-

- (a) it is of particular interest to persons living in any one of the following countries or regions -
 - (i) Northern Ireland,
 - (ii) Scotland,
 - (iii) Wales,
 - (iv) any region of England in relation to which there is a regional variation of the television service concerned; and
- (b) it is included in the variation of the service that relates to that country or region.

5G.7 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

5G.8 For the purposes of this clause-

“particular service” means any of the services which, together, form the relevant services;

“peak viewing time”, in relation to a service, means a time agreed to be, or to be likely to be, a peak viewing time for that service;

“regional programme”, in relation to BBC 1 or the relevant services, means a programme included in BBC1 or, as the case may be, the relevant services, with a view to its being of regional interest, and “regional news programmes” is to be construed accordingly;

“the relevant area”, in relation to regional programmes, means the country or region in

relation to which those programmes are to be of regional interest;

“the relevant services” means BBC1 and BBC2, taken together; and

“year” has the meaning that shall be agreed.

5H. REGIONAL PROGRAMME-MAKING

5H.1 The Corporation shall comply with agreed arrangements for securing-

- (a) that what appears to the parties to be a suitable proportion of all the network programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;
- (b) that the network programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to the parties to be a suitable range of programmes; and
- (c) that what appears to the parties to be a suitable proportion of the expenditure of the Corporation on network programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area; and
- (d) that the different programme production centres to which that expenditure is referable constitute what appears to the parties to be a suitable range of such production centres.

5H.2 A proportion is not to be regarded by the parties as suitable for the purposes of a provision of this clause if it constitutes less than a significant proportion of the programmes or expenditure in question.

5H.3 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

5H.4 For the purposes of this clause-

“expenditure”, in relation to a programme, means-

- (a) expenditure which constitutes an investment in or is otherwise

attributable to the making of the programme; or

- (b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;

“the M25 area” means the area the outer boundary of which is represented by the London Orbital Motorway (M25); and

“network programmes” means programmes made for viewing on any of the Public Television Services, other than programmes made for viewing only on a variation of such a service that relates to one of the following-

- (a) Northern Ireland,
- (b) Scotland,
- (c) Wales,
- (d) any region of England.

5I. CODE RELATING TO PROVISION FOR THE DEAF AND VISUALLY IMPAIRED

5I.1 In the provision of the Public Television Services, the Corporation shall, subject to the following provisions of this clause and clause 5J, observe the code for the time being maintained by OFCOM under section 303 of the Communications Act 2003 (code relating to provision for deaf and visually impaired.)

5I.2 For the purposes of this clause, the code shall, subject to subclauses 5I.3 and 5I.6 and clause 5J, apply to the provision of each of the Public Television Services by the Corporation as it applies to the provision of Channel 4 by the Channel Four Television Corporation.

5I.3 For the purposes of this clause, the Code shall have effect as if the excluded programmes were those agreed for the purposes of this clause instead of those applicable to Channel 4.

5I.4 In agreeing the excluded programmes for the purposes of this clause, the parties shall have regard, in particular, to the matters set out in paragraphs (a) to (f) of section 303(8)

of the Communications Act 2003.

5I.5 The exclusions that may be agreed for the purposes of this clause-

- (a) may include different descriptions of programmes in relation to different services to which this clause applies; and
- (b) in the case of a service which the parties are satisfied (having regard to the matters mentioned in subclause 5I.4) is a special case, may include all the programmes included in the service.

5I.6 For the purposes of this clause, the code shall have effect as if the relevant date in relation to any of the Public Television Services were that determined by or under subclauses 5I.7 and 5I.8 instead of the relevant date applicable to Channel 4.

5I.7 Subject to subclause 5I.8, the relevant date determined by this clause is-

- (a) in the case of BBC1 and BBC2, 1st January 1997; and
- (b) in any other case, the date (whether before or after the execution of this Deed) when the provision of the service began or begins.

5I.8 It shall be agreed whether a service is to be treated for the purposes of this clause as a continuation of a service previously provided by the Corporation.

5I.9 Before agreeing anything for the purposes of this clause, the parties shall consult such persons appearing to them to represent the interests of persons falling within Section 303(1)(a)(i), (ii) or (iii) of the Communications Act 2003 as they think fit.

5I.10 The Corporation shall publish anything agreed for the purposes of this clause in such manner as, having regard to the need to make what has been agreed accessible to-

- (a) persons who are deaf or hard of hearing, and
- (b) persons who are blind or partially sighted,

they consider appropriate.

5I.11 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

5I.12 For the purposes of this clause-

“Channel 4” has the same meaning as in section 303 of the Communications Act 2003;

“excluded programmes” means the descriptions of programmes set out in the code under section 303(7) of that Act; and

“the relevant date” means the relevant date for the purposes of section 303 of that Act.”

5J. POWER TO MODIFY TARGETS FOR THE PURPOSES OF CLAUSE 5I

5J.1 No-

- (a) order made by the Secretary of State under section 306 of the Communications Act 2003 (power to modify targets in section 303 of that Act), or
- (b) revision of the code maintained by OFCOM under section 303 of the Communications Act 2003 for the purpose only of giving effect to such an order,

shall , by virtue of clause 5I, have any effect for the purposes of that clause.

5J.2 The Secretary of State may from time to time give a direction under this clause.

5J.3 A direction under this clause may provide for the code which the Corporation is required to observe by clause 5I to have effect for the purposes of that clause as if it were subject to the modifications specified in the direction.

5J.4 The modifications that may be specified in a direction under this clause are any which correspond to any modification of section 303 of the Communications Act 2003 which is capable of being made by order under section 306 of that Act.

5J.5 A direction under this clause may-

- (a) make different provision for different services;
- (b) include savings for the obligations previously having effect for the purposes of clause 5I; and

- (c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

5J.6 Before giving a direction under this clause the Secretary of State shall consult the Corporation and OFCOM.

5J.7 The Secretary of State shall notify the Corporation and OFCOM of any direction given under this clause.

5K: QUOTAS FOR INDEPENDENT PRODUCTIONS

5K.1 It shall be the duty of the Corporation to secure that, in each year, not less than the relevant percentage of the total amount of time allocated to the broadcasting of qualifying programmes included in BBC1 is allocated to the broadcasting of a range and diversity of independent productions.

5K.2 It shall be the duty of the Corporation to secure that, in each year, not less than the relevant percentage of the total amount of time allocated to the broadcasting of qualifying programmes included in BBC2 is allocated to the broadcasting of a range and diversity of independent productions.

5K.3 The Corporation shall comply with directions given to it by OFCOM for the purpose of-

- (a) carrying forward to one or more subsequent years determined in accordance with the direction any shortfall for any year in their compliance with the duties imposed by virtue of subclause 5K.1 or 5K.2; and
- (b) thereby increasing the percentage applicable for the purposes of those duties to the subsequent year or years.

5K.4 The duties imposed by virtue of subclauses 5K.1 and 5K.2 shall have effect in addition to any relevant statutory duty, and nothing in this clause shall be construed as making or otherwise providing for any designation under paragraph 1(8) of Schedule 12 to the Act.

5K.5 For the purposes of this clause-

“the Act” means the Communications Act 2003;

“acquisition”, in relation to a programme, includes commissioning and acquiring a right to include it in a service or to have it broadcast;

“independent productions”, in relation to BBC1 or BBC2, has the meaning which it has for the time being in relation to that service for the purposes of paragraph 1 of Schedule 12 to the Act;

“qualifying programmes”, in relation to BBC1 or BBC2, has the meaning which it has for the time being in relation to that service for the purposes of paragraph 1 of Schedule 12 to the Act;

“range of independent productions” means a range of such productions in terms of cost of acquisition as well as in terms of the types of programme involved;

“relevant percentage” means the percentage for the time being specified in paragraph 1(1) of Schedule 12 to the Act;

“relevant statutory duty” means any duty for the time being imposed by sub-paragraph (1) or (4) of paragraph 1 of Schedule 12 to the Act; and

“year” has the meaning that shall be agreed, but shall not include any period before 1st April 2005.”

5L: CODE RELATING TO PROGRAMME COMMISSIONING

5L.1 It shall be the duty of the Corporation to draw up and from time to time revise a code of practice setting out the principles that are to be applied when the Corporation is, for a purpose connected with the provision of the Public Television Services, agreeing terms for the commissioning of independent productions.

5L.2 It shall also be the duty of the Corporation-

- (a) at all times to comply with the code of practice which is for the time being in force under this clause;
- (b) to exercise its power to revise that code to take account of revisions from time to time of the guidance issued by OFCOM for the purposes of this clause.

5L.3 The code for the time being in force under this clause shall be such as to secure, in the manner described in guidance issued by OFCOM-

- (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
- (b) that there is sufficient clarity when an independent production is commissioned about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
- (c) that there is sufficient transparency about the amounts to be paid in respect of each category of rights;
- (d) that satisfactory arrangements are made about the duration and exclusivity of those rights;
- (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
- (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to OFCOM;
- (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate.

5L.4 The Corporation shall also secure that the drawing up or revision of a code by virtue of this clause is in accordance with guidance issue by OFCOM as to-

- (a) the times when the code is to be drawn up or reviewed with a view to revision;
- (b) the consultation to be undertaken before a code is drawn up or revised;
- (c) the publication of every code or revised code.

5L.5 A code drawn up by the Corporation or a revision of such a code shall have effect for the purposes of this clause only if agreed.

5L.6 Subclause 5L.5 shall be construed in accordance with, and have effect subject to, clause 13C.

5L.7 OFCOM-

- (a) shall issue and may from time to time revise guidance for the purposes of this clause;
- (b) shall ensure that there is always guidance for those purposes in force;
- (c) shall, before issuing their guidance or revised guidance, consult the providers of licensed public service channels, persons who make independent productions (or persons appearing to OFCOM to represent them), the Corporation and the Welsh Authority; and
- (d) shall publish their guidance or revised guidance in such manner as they think appropriate.

5L.8 Guidance issued by OFCOM for the purposes of this clause shall be general guidance and shall not specify particular terms to be included in agreements to which the guidance relates.

5L.9 OFCOM may by a direction to the Corporation specify that a code which-

- (a) was drawn up by the Corporation before the date on which the insertion of this clause into this Agreement has effect; and
- (b) is identified in the direction,

shall be treated as drawn up in pursuance of this clause and agreed in accordance with subclause 5L.5.

5L.10 For the purposes of this clause-

“independent productions” has the meaning which it has for the time being for the purposes of paragraph 1 of Schedule 12 to the Communications Act 2003;

“licensed public service channel” has the meaning which it has for the time being for the purposes of Part 3 of that Act; and

“The Welsh Authority” means the authority whose name is, by virtue of section 56(1) of the Broadcasting Act 1990, Sianel Pedwar Cymru.”

3. There shall be inserted after clause 7 the following:-

“7A: INTERNATIONAL OBLIGATIONS

7A.1 The Corporation shall comply with the requirements notified to it from time to time by OFCOM for the purpose of securing that the relevant international obligations of the United Kingdom are complied with in respect of the Public Broadcasting Services.

7A.2 The requirements to be notified by OFCOM under this clause are those which OFCOM consider appropriate for the purpose mentioned in subclause 7A.1.

7A.3 Before notifying any requirement to the Corporation under this clause, OFCOM shall give the Corporation a reasonable opportunity of making representations to them about that requirement.

7A.4 For the purposes of this clause, “relevant international obligations of the United Kingdom” mean the international obligations of the United Kingdom which have been notified to OFCOM by the Secretary of State for the purposes of this clause.

7B: EQUAL OPPORTUNITIES AND TRAINING

7B.1 The Corporation shall make arrangements for promoting, in relation to employment in a relevant capacity with the Corporation, equality of opportunity-

- (a) between men and women; and
- (b) between persons of different racial groups.

7B.2 The Corporation shall make arrangements for promoting , in relation to employment in a relevant capacity with the Corporation, the equalisation of opportunities for disabled persons.

7B.3 The Corporation shall make arrangements for the training and retraining of persons whom it employs in a relevant capacity.

7B.4 The Corporation shall, in relation to the arrangements made for any of the purposes of this clause, -

- (a) take appropriate steps to make those affected by the arrangements aware of them (which may include publishing them in such manner as the Corporation may consider appropriate);

- (b) from time to time, review the arrangements; and
- (c) from time to time (and at least annually) publish, in such manner as it considers appropriate, its observations on the current operation and effectiveness of the arrangements.

7B.5 For the purposes of this clause,-

“disabled” has the same meaning as in the Disability Discrimination Act 1995;

“in a relevant capacity” means in or in connection with-

- (a) the provision of any of the Public Broadcasting Services; or
 - (b) the making of programmes to be included in any of those Services;
- and

“racial group” has the same meaning as in the Race Relations Act 1976 or, in Northern Ireland, the Race Relations (Northern Ireland) Order 1997. “

4. There shall be Inserted after clause 10 the following:-

“10B: AUDIT COMMITTEE

10B.1 The Governors shall ensure that the Audit Committee maintained under Article 7(1)(i) of the Royal Charter examines the value for money achieved by the Corporation in using the sums paid to it under subclause 10.1.

10B.1 For the purposes of carrying out the examination mentioned by subclause 10B.1, the Audit Committee shall-

- (a) discuss with the Comptroller and Auditor General the possible scope of an audit programme and which individual reviews within that programme would be particularly suited to the National Audit Office;
- (b) take all reasonable steps to agree with the Comptroller and Auditor General the information needed to conduct such a discussion and how it is to be accessed;
- (c) decide upon an audit programme for the period ending on 31 December 2006,

which includes in particular the activities of the Corporation which will be subject to individual reviews in the course of the programme.

10B.3 Following its decision upon an audit programme under subclause 10B.2(c), the Audit Committee shall-

- (a) enter into suitable arrangements, including those with-
 - (i) the National Audit Office, on terms which require the factual content of any report to be submitted under subclause 10B.3(b) to be agreed by the Corporation before submission but allow the National Audit Office to retain full discretion over the report's conclusions and recommendations, and
 - (ii) other suitable organisations,

to carry out individual reviews in accordance with the audit programme, for such period or periods as the Audit Committee shall determine;

- (b) ensure that any arrangements entered into under subclause 10B.3(a) require an organisation, on completion of a review, to report exclusively to the Audit Committee on that review;
- (c) consider any report submitted under subclause 10B.3(b) and the extent to which it contains in the Audit Committee's view anything which ought to be taken into account in examining value for money for the purposes of subclause 10B.1;
- (d) decide what action should be taken in the light of any report submitted to the Audit Committee and as necessary make appropriate recommendations to the Board of Governors;
- (e) from time to time review and, if they think necessary, revise the audit programme.

10B.4 The Governors shall lay any report submitted to the Audit Committee under subclause 10B.3(b) (whether by the National Audit Office or by any other organisation) before Parliament together with any response to that report that they consider appropriate. Such laying shall take place where possible with the presentation of the Annual Report pursuant to Article 18 of the Royal Charter having regard also to the merits of carrying it out in a timely manner.

10B.5 For the purposes of this clause “the Comptroller and Auditor General” means the officer appointed under section 6 of the Exchequer and Audit Departments Act 1866.”

5. There shall be inserted after clause 13 the following:-

“13A: RETENTION AND PRODUCTION OF RECORDINGS

13A.1 It shall be the duty of the Corporation-

- (a) in respect of every programme included in any of the Public Broadcasting Services, to retain a recording of the programme in an agreed form, and for an agreed period;
- (b) to comply with any request to produce such recordings to OFCOM for examination or reproduction; and
- (c) to comply, to the extent that they are able to do so, with any request to produce to OFCOM a script or transcript of a programme included in any of the Public Broadcasting Services.

13A.2 Any period agreed for the purposes of subclause 13A.1 shall-

- (a) in the case of a Public Television Service, be a period not exceeding 90 days; and
- (b) in the case of a sound programme service, be a period not exceeding 42 days.

13A.3 This clause shall be construed in accordance with, and have effect subject to, clause 13C.

13B: CO-OPERATION WITH OFCOM

The Corporation shall have the general duty of co-operating with OFCOM, and furnishing them with such information and other assistance as they may reasonably require from the Corporation, in connection with any function of OFCOM’s under section 198 of the Communications Act 2003.

13C: AGREEMENTS BETWEEN THE CORPORATION AND OFCOM

13C.1 In clauses 5D, 5F, 5G, 5H, 5I, 5K and 13A, and in subclause 5L.5,-

“agreed” means agreed from time to time between the Corporation and OFCOM; and

“the parties” means OFCOM and, subject to the obligations imposed upon it by subclause 13C.2, the Corporation.

13C.2 The Corporation shall do all it can to secure and maintain the agreement of OFCOM to anything which is, for any purpose of those clauses or that subclause, to be agreed, and shall from time to time, for the purpose of securing or maintaining such agreement,-

- (a) make proposals to OFCOM; and
- (b) liaise with OFCOM to such extent as may be necessary to secure or maintain such agreement.

13C.3 In relation to any Public Television Service which-

- (a) is provided with the approval of the Secretary of State under Article 3(b) of the Royal Charter,; or
- (b) was commenced with the agreement of the Secretary of State under subclause 2.3 of this Agreement,

anything agreed for any purpose of clauses 5F, 5G, 5H or 5I shall have effect from time to time subject to any terms and conditions subject to which the Secretary of State gave that approval or agreement (including the effect of any such terms and conditions as varied from time to time under subclause 16.2 of this Agreement or Article 24(1) of the Royal Charter, as the case may be.)

13D: OFCOM DIRECTIONS TO TAKE REMEDIAL ACTION

13D.1 This clause applies if OFCOM are satisfied-

- (a) that the Corporation has, in relation to any of its services, contravened a relevant enforceable requirement; and
- (b) that the contravention can be appropriately remedied by the inclusion in that

service of a correction or a statement of findings (or both).

13D.2 OFCOM may from time to time direct the Corporation to include a correction or statement of findings (or both) in the service.

13D.3 A direction may require the correction or statement of findings to be in such form, and to be included in programmes at such times, as OFCOM may determine.

13D.4 OFCOM are not to give the Corporation a direction under this clause unless they have given it a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the giving of the direction.

13D.5 Where the Corporation includes a correction or a statement of findings in a service in pursuance of a direction under this clause, it may announce that it is doing so in pursuance of such a direction.

13D.6 If OFCOM are satisfied that the inclusion of a programme in a service involved a contravention of a relevant enforceable requirement, they may direct the Corporation not to include that programme in that service on any future occasion.

13D.7 Where OFCOM-

- (a) give a direction to the Corporation under subclause 13D.2, or
- (b) receive representations from it by virtue of subclause 13D.4,

they shall send a copy of the notice or representations to the Secretary of State.

13D.8 For the purposes of this clause, “relevant enforceable requirement” has the meaning given in clause 13F.

13E: IMPOSITION OF FINANCIAL PENALTIES BY OFCOM

13E.1 If OFCOM are satisfied that the Corporation has contravened a relevant enforceable requirement, they may serve on the Corporation a notice requiring it to pay them, within a specified period, a specified penalty.

13E.2 The amount of the penalty that may be imposed on any occasion under this

clause shall not exceed the maximum specified for the time being in subsection 198(5) of the Communications Act 2003.

13E.3 OFCOM are not to serve a notice on the Corporation under subclause 13E.1 unless they have given it a reasonable opportunity of making representations to them about the matters appearing to them to provide grounds for the service of the notice.

13E.4 Where OFCOM-

- (a) serve a notice on the Corporation under subclause 13E.1, or
- (b) receive representations from it by virtue of subclause 13E.3,

they shall send a copy of the notice or representations to the Secretary of State.

13E.5 An exercise by OFCOM of their powers under subclause 13E.1 does not preclude any exercise by them of their powers under clause 13D in respect of the same contravention.

13E.6 For the purposes of this clause, “relevant enforceable requirement” has the meaning given in clause 13F.

13F: RELEVANT ENFORCEABLE REQUIREMENTS

13F.1 For the purposes of clause 13D and 13E, the relevant enforceable requirements are all requirements imposed on the Corporation by or under the following-

- (a) clause 5A (fairness code);
- (b) clause 5B (applicable programme code standards);
- (c) clause 5D (news and current affairs programmes);
- (d) clause 5F (programming quotas for original productions);
- (e) clause 5G (regional programming);
- (f) clause 5H (regional programme-making);

- (g) clause 5I (code relating to provision for the deaf and visually impaired);
- (h) clause 5J (power to modify targets for the purposes of clause 5I);
- (i) clause 5K (quotas for independent productions);
- (j) clause 5L (code relating to programme commissioning);
- (k) clause 7A (international obligations);
- (l) clause 13A (retention and production of recordings);
- (m) clause 13B (co-operation with OFCOM);
- (n) paragraph 1 of Schedule 12 to the Communications Act 2003 (quotas for independent productions);
- (o) paragraph 2 of Schedule 12 to the Communications Act 2003 (duty to publicise complaints procedures etc.)

13F.2 In addition, for the purposes of clause 13E only, the relevant enforceable requirements include all requirements imposed on the Corporation by direction under clause 13D (OFCOM directions to take remedial action.) “

THE CORPORATE SEAL OF THE SECRETARY	}	
OF STATE FOR CULTURE, MEDIA AND SPORT	}	
hereunto affixed is authenticated as the corporate	}	TESSA JOWELL
seal of the Secretary of State for Culture, Media	}	(L.S.)
and Sport by and in the presence of-	}	

ANDREW RAMSAY

A duly authorised official in the Department for
Culture, Media and Sport

THE CORPORATE SEAL OF THE BRITISH }
BROADCASTING CORPORATION was } (L.S)
hereunto affixed in the presence of- }

GAVYN DAVIES
Chairman

GREG DYKE
Director-General