

Wales and Ofcom

**A Report by an Advisory Group to the
Minister for Culture, Sport and the Welsh Language,
Welsh Assembly Government**

27th March 2003

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Wales and Ofcom - Executive Summary

This report was prepared at the request of Jenny Randerson AM, the Minister for Culture, Sport and the Welsh Language within the Welsh Assembly Government. The report considers the possible future role and functions of Ofcom in relation to Wales, and provides an assessment of issues of importance to Wales and Ofcom in light of the reform of the regulatory environment for broadcasting and telecommunications. The terms of reference and membership of the Advisory Group are outlined on page 4.

The first chapter of the report provides an outline of current issues in relation to broadcasting and telecommunications in Wales. The chapter outlines Wales' political culture and governmental arrangements, and draws attention to its unique bilingual identity and distinct cultural context. Media consumption patterns are distinct from those in England and Scotland, as are certain aspects of broadcast content. Attention is drawn to the particular problems associated with broadcast delivery in Wales as a result of topography and population dispersal, and the issues raised by this in terms of democratic accountability. There are also particular issues for Wales in terms of telecommunications infrastructure, and the roll out of digital broadcasting and advanced telecommunications.

The second chapter assesses the extent to which UK Government intentions in relation to Nations and Regions issues, as contained in the Policy Statement on the draft Communications Bill, are reflected on the face of the Bill. Particular attention is drawn to the fact that the Bill does not place any duty on Ofcom in relation to consulting on appointments, and on expressly dealing with nation-specific issues as part of its annual factual and statistical report. The Bill also fails to place a specific duty on Ofcom to ensure that its consultative procedures embrace specific arrangements for including the devolved administrations, nor the need to hold meetings in different parts of the country. The Group note that many of the issues which fail to appear on the face of the Bill are to be addressed in a Memorandum of Understanding between Ofcom and the territorial Secretaries of State and/or the devolved administrations.

The third chapter outlines the existing accountability arrangements for broadcasters and broadcasting and telecommunications regulators in Wales. In establishing the Ofcom Wales National Office and working arrangements in Wales, the Group emphasises the importance to Ofcom of working with the grain of devolution. The Group provides an assessment of the areas of regulatory responsibility on which the Ofcom Wales office will have an input, and also suggests other possible tasks which could be delegated to the Ofcom Wales office. The Group further considered whether there should be any advisory structure to sit alongside the executive Ofcom Wales office. The Group considered two options: [1] the establishment of an Ofcom Wales Communications Council to advise and assist the executive team in Wales, and [2] that the executive team should be reliant on a structured relationship with the National Assembly and the Welsh Assembly Government. A majority of the group were firmly of the view that option 1 should be pursued, and there is an assessment in relation to the establishment and operation of an Ofcom Wales Communications Council.

The fourth and final chapter considers the issues facing Wales and Ofcom. One of the first major exercises for Ofcom is its review of public service broadcasting. Such a review should not only look at the totality of provision made in Wales for Wales, across both languages, but also to the totality of television provision accessible in Wales, and their relationship to each other. The Bill requires each Channel 3 regional licence holder to produce a Statement of Programme Policy and the Group notes that there will need to be a sincere commitment on the part of broadcasters and vigilance on the part of the regulator to ensure that self-regulation achieves credibility.

It is extremely difficult to achieve universal coverage in Wales, both in terms of broadcast media and telecommunications. Ofcom will face major challenges in Wales to ensure that consumers have the same range and choice of digital services as those in the rest of the UK. The Group sees a strong case for a holistic examination of these issues as they face Wales with the aim of identifying the fastest routes to optimal digital coverage and broadband access. Attention is also drawn to Electronic Programme Guides and the important principle of ‘due prominence’ for public service broadcasting in general, and in particular to regional and national services within the UK. It is crucially important that the regional or national variations of UK services are regarded as the primary, default services for that region or nation.

Ofcom will need to ensure that there is some real gain for the viewing public from any Channel 3 merger and should ensure that the gap between programme funding at network and regional level does not continue to widen. The Group emphasised the importance of the Welsh production sector participating in programme-making at the highest level, and to this end emphasised the importance of Ofcom collecting regular data on network output across the whole of the UK so that patterns of production become wholly transparent. In particular, Ofcom will wish to familiarise itself with the distinct independent production sector in Wales and the issues particular to this sector. Ofcom should also ensure that it does all that it can to encourage radio development in Wales, particularly Access Radio.

Ofcom will need to familiarise itself with the distinctive telecommunications issues facing Wales. The public sector support for broadband development in Wales is very different from other areas in the UK and Ofcom will need to take this into account. It is also crucial that particular Welsh interests are taken into account in future spectrum licensing rounds. Improving mobile telephony coverage in Wales requires different approaches from those appropriate to urban areas, and a coordinated effort will be required from various bodies and agencies, including Ofcom.

In light of the possible consolidation of ownership in radio and television, and cross media ownership between broadcast and print media, the Group felt it important that Ofcom conduct an early study of local news infrastructures. Ofcom’s UK-wide research would need to provide robust regional breakdowns, and Ofcom would also need to devise research programmes specific to Wales itself, in collaboration with its stakeholders in Wales. In developing media literacy, Ofcom would need to have particular regard to specific Welsh circumstances.

Ofcom Group - Terms of Reference and Membership

In January 2003, the Minister for Culture, Sport and the Welsh Language, Jenny Randerson AM, announced that she was establishing a group of experts in the field of broadcasting and telecommunications to advise her on issues of importance to Wales in light of the Communications Bill and the establishment of an Ofcom Office for Wales.

The Group was tasked with preparing a report which would be submitted to the Minister for her consideration, prior to her writing formally to the Chair of Ofcom regarding the aforementioned matters.

The terms of reference of the group were as follows:

- To advise the Minister for Culture, Sport & the Welsh Language on the possible future role and functions of Ofcom in relation to Wales in the light of the Communications Bill.
- To prepare, for the Minister's consideration, a checklist of issues of importance for Wales in light of the Communications Bill and the establishment of an Ofcom Office for Wales.

The Chair of the Group was Geraint Talfan Davies, the Welsh Member of the Radio Authority and formerly the Controller of BBC Wales, and Head of Programmes at Tyne Tees Television. The other members were:

- Leighton Andrews, Lecturer at the Department of Journalism, Media and Cultural Studies at Cardiff University, a consultant to PACT, the Producers Alliance for Cinema and Television and a former Head of Public Affairs at the BBC responsible for the UK and European media policy issues.
- Delyth Evans AM, Labour Member for Mid and West Wales, and Deputy Minister for Culture, Sport and the Welsh Language. Previously a journalist with the BBC, HTV, ITN and Sky News.
- Arwel Ellis Owen, Chief Executive of Cambrensis Communications Ltd, an independent production company, and formerly a broadcaster with the BBC.
- Professor Mike Tedd, Chairman of the Welsh Advisory Committee on Telecommunications and formerly a Professor of Computer Science and Vice-Principal at the University of Wales, Aberystwyth. Professor Tedd has also chaired OFTEL's Consumer Panel.

The Group met on 3 occasions (13th February, 4th March and 17th March 2003) and consulted with broadcasters, regulators and other stakeholders in preparing its report.

1 Background

1.1 The same but different

Neither broadcasting, nor telecommunications, nor the regulation of competition are devolved functions in Wales, Scotland or Northern Ireland. The arguments for holding all these functions centrally are powerful: a framework of EU directives and policies - addressing the internal market, competition, information and telecommunications - the international regulation of frequencies, the international nature of many media and technology businesses, one BBC licence fee across the UK, cross-border transmission and ITV licences (Border, HTV and UTV), the UK spread of most media.

That said, members of all the devolved institutions are intensely interested in many of the issues that arise: broadcasting, because it touches the lives of their constituents so directly and is the main means of communication between the elected and their electors; the roll-out of new technologies, because it is seen as a key issue in present and future competitiveness; the development of media and creative industries, because they are an increasingly important component of the Welsh economy; competition issues, because choice is usually more limited in weaker economies and more susceptible to monopolies or quasi-monopolies.

As a result the Welsh Assembly Government argued strongly that Wales should be represented, along with Scotland and Northern Ireland, on the main Ofcom Board, the Content Board and the Consumer Panel. It also supported the proposal that Ofcom offices should be established in the three countries. The justification for such provisions remains powerful.

1.2 Political structures

The governance of the UK is now more complex. Extensive but differing powers have been granted to the three devolved bodies. The Scottish Parliament has a broad range of legislative powers, as does the Northern Ireland Assembly (currently suspended). The National Assembly for Wales has no primary legislative powers, but does have power over an extensive range of secondary legislation. A commission has been established under the chairmanship of Lord Richard to examine the powers of the Welsh Assembly. This may be a prelude to the granting of additional powers. Moreover, there is already a patchwork of accountability arrangements within the three countries in the sectors covered by Ofcom.

The three-party pattern of politics is not replicated outside England: Scotland and Wales each having a fourth main party in the form of the SNP and Plaid Cymru respectively, and Northern Ireland having even more complexity within both the nationalist and unionist traditions. The creation of the devolved bodies has also heightened a long-standing sensitivity about the provision of party political broadcasts in each country.

1.3 Culture and Content

There are also significant differences in the cultural contexts of each country. Although reference to the three Celtic nations as a group is common, it should not be assumed that they share the same features. They are as different from each other as each is different from England. Each of the executives of the devolved bodies includes a Minister for Culture. The Welsh Assembly and the Welsh Assembly Government, in particular, have both placed great stress on the development

of cultural policy from the outset. This is partly because it is one area of policy where they can be seen to make a significant difference, swiftly, in return for a relatively small investment, unlike health or education.

1.4 Language

Language is a political and cultural issue in all three countries, although taking very different forms. Arguably, Wales is the only country that could be called bilingual in any meaningful sense with 20.5 % (580,000) recorded as Welsh-speaking in the 2001 census, an increase of two per cent (78,000) on 1991. Other surveys regularly indicate the existence of a further 6-10 per cent. Moreover, Welsh speakers are spread through more than 50% of households, giving the language a much wider purchase across the community as a whole. For instance, in the central valleys of south Wales, only 8% of the population was recorded as Welsh speaking in the 1991 census, but in the mid 1990s 26% of primary school children were in Welsh language schools.

All public bodies are required to observe the Welsh Language Act, and to register with the Welsh Language Board operational arrangements to enshrine the concept of equal treatment for both languages. Moreover, the National Assembly is developing further active policies to foster the language. This is within a context of some renewed linguistic tension, as a result of both the real and perceived decline of ‘heartland’ communities where Welsh has been the language of the overwhelming majority. In broadcasting, the primary providers for the Welsh language are S4C in television and BBC Radio Cymru in radio. In addition, many of the independent radio stations in north, mid and West Wales have Welsh language commitments in their formats.

1.5 Media consumption

Media consumption patterns differ across the three countries. Scotland has greater media self-sufficiency – more than 90% of daily newspapers sold in Scotland are produced in Scotland, with greater diversity of ownership. Hitherto, Scotland has also retained a greater level of indigenous ownership of broadcast media. In contrast, Wales is deeply penetrated by UK media, with less than 20% of daily newspapers sold in Wales being produced within the country. In terms of ownership of indigenous titles, Trinity Mirror enjoys an overwhelming dominance: it owns the only two morning newspapers, the only Sunday newspaper, together with a top selling tabloid - the *Welsh Mirror* – and evening and weekly papers. Most of the larger radio groups own radio stations in Wales, but only one station is indigenously owned. There is considerable cross-border overlap of radio and television signals, the length of eastern Wales. It is technically possible for 40% of the Welsh population to receive television signals from transmitters in England. The comparable figure for Scotland is 2.8%. In Northern Ireland there is a high degree of media penetration of the border, in both directions, and broadcasting is an important element in the North-South provisions of the Good Friday agreement.

1.6 Broadcast content

Despite the highly centralised nature of broadcasting organisation in the UK, significant differences exist in the constituent countries. In television, the English situation - whereby the quantity of ITV’s regional output far outstrips that of the BBC – is not replicated in Scotland, Wales or Northern Ireland where the BBC’s output for each nation matches the ITV regional output in quantity and, on the whole, is better resourced. In television, Wales has, in S4C, an additional public service broadcaster charged with providing a service in the Welsh language. Uniquely, it receives a significant portion of its programming – not less than 10 hours a week -

from the BBC free of charge, as well as from the ITV franchisee and independent producers under normal commercial arrangements. The ITC's recent Charter for Nations and Regions provides for a higher quantity of regional output in Scotland, Wales and Northern Ireland than in the English regions. The three countries also place great store by the need to sustain and increase output to the UK networks, on economic grounds and on the grounds of equitable cultural representation.

In radio, Wales, Scotland and Northern Ireland, in common with many parts of England, enjoy considerably less choice than in the larger English metropolises, although the Scottish central belt may be an exception. The BBC does not operate local radio stations in Scotland or Wales (other than some local news opt-outs in Scotland), preferring to provide national stations – Radio Scotland, Radio Wales and Radio Cymru (in Welsh). In Northern Ireland, the more compact geography gives BBC Radio Ulster the advantages of local radio in addition to a more elevated role for the province as a whole.

1.7 Broadcast delivery

The difficult topography of both densely populated (the south Wales Valleys) and sparsely populated (rural Wales) areas of Wales has meant that Wales is the most transmitter intensive part of the UK. It has 5% of the UK population and 20% of all transmitters. Analogue reception of both television and radio has been problematic to a degree. In television this has resulted in large numbers choosing to receive their signals from English transmitters. For some this has meant voluntarily cutting themselves off from sources of Welsh news. Research into analogue television viewing patterns has shown that around 40% of the Welsh population can receive signals from English transmitters. Around 10% of the Welsh population choose to receive signals solely from those transmitters. A further 30% of the Welsh population receive signals from transmitters in both England and Wales. About a third of these choose to receive regional variations from England, one third choose to receive Welsh services, with the remaining splitting their viewing. This is a significant obstacle to an informed democracy, and one that particularly affects the Welsh Assembly.

Wales's disproportionate difficulties with analogue transmission, when compared with most other parts of the UK, seem set to be replicated in some of the new transmission technologies, exacerbated by the fact that roll-out of these technologies is increasingly influenced by commercial considerations. The limited roll-out of digital terrestrial transmission, for both radio and television, and the limited spread of cable, are only marginally offset by high take-up of digital satellite services.

1.8 Telecommunications

All the devolved bodies are concerned that their countries are not disadvantaged in any way in terms of telecommunications, either in the roll-out of digital broadcasting or of advanced telecommunications. In Wales the Welsh Assembly Government, along with both the Culture Committee and the Economic Development Committee of the Assembly, have stressed the need to ensure that Wales does not lag behind the rest of the UK in the deployment of these services. The relative poverty of Wales, when compared with metropolitan areas of England, means that market forces alone will deliver advanced services only very slowly, if at all.

Intense policy focus has brought some successes: all telephone exchanges in Wales are now digital and support services such as call line identification (CLI), ISDN and advanced services such as BT's Metro VPN are available throughout the country. Most lines will support dial-up access to the Internet. Principal current concerns surround the availability of broadband and poor coverage of mobile telephony. However, the pace of technological change will present the public, telecommunications providers and policy makers with constantly moving targets.

In these circumstances the principle of universality has particular salience in Wales across the whole field, with both the Wales Advisory Committee on Telecommunications (WACT) and the Welsh Assembly Government making representations in favour of a Universal Services Fund. Furthermore, in the words of WACT, "The careful regulation of telecommunications is vital, especially in areas where there is little prospect of effective competition in telecommunications infrastructure".

2 Government Intentions

2.1 Policy Statements

Although it has not conceded representation for Scotland, Wales and Northern Ireland on the main Ofcom Board, the UK Government has shown a high degree of sensitivity to the issue of their representation elsewhere in Ofcom's structures. The Government's policy statement that preceded the Bill contains many references to representation and consultation elsewhere in the structure.

These are dominated by three clear proposals:

- Scottish, Welsh and Northern Irish representation on the Content Board
- Scottish, Welsh and Northern Irish representation on the Consumer Panel
- The establishment of Ofcom offices in each country.

In addition, the following numbered statements are drawn from the Policy Statement on the draft Communications Bill, published in May 2002. (Cm 5508-111) The boxes that follow summarise the current content of the Bill, as brought from the House of Commons on 5th March 2003.

“4.4.1.2 Ofcom...must have regard to the different interests of people in the different parts of the United Kingdom. This responsibility will rest equally on all members of the Ofcom Board.....there will be a major national and regional dimension to many of the Board's activities and these need to be fully reflected in all of the Board's work.”

Clause 3 – Subsection 3(l) – Ofcom must have regard, in particular, to such of the following as appear to them to be relevant in the circumstances....(l) the different interests of persons in the different parts of the UK and of those living in rural and urban areas.....

“4.4.1.5Ofcom will be expected to carry out consumer and audience monitoring research to ascertain the opinions of people in Scotland, Wales, and Northern Ireland and will report regularly through the specific advisory and consultative machinery to the relevant Secretaries of State. These advisory and consultative arrangements will be broader in their remit than the existing arrangements.”

Clause 13 – Consumer Research
Clause 14 – Duty to publish and take account of research
Clause 15 – Consumer consultation
Clause 16 – Membership of the Consumer Panel - Subsection 6a – It shall be the duty of the Consumer Panel in carrying out their functions to have regard to the following interests: a) the interests of persons from different parts of the United Kingdom....

“4.4.1.6Ofcom will be expected to establish offices in each nation. This will provide a visible service covering the whole range of Ofcom's functions and an important means of communication within each nation.”

Clause 1 – Subsection 6 – Ofcom must establish and maintain separate offices in each of the following parts of the United Kingdom (a) England; (b) Wales; (c) Scotland; and (d) Northern Ireland.

“4.4.1.7 ...The Government expects Ofcom to consult the relevant Secretary of State and devolved administrations in making appointments of members representing the interests of the devolved nations to its committees and other ad hoc bodies....

Comment: Although the Bill currently makes no reference to any duty on Ofcom to consult with the relevant Secretary of State or devolved administrations in making appointments representing the interest of the devolved nations, a concordat does exist between the Department for Culture, Media and Sport and the Welsh Assembly Government that deals with consultation on such appointments. There is a need to ensure that the effect of the concordat is extended to appointments made by Ofcom itself. This could be done either via the Bill, amendment of the concordat or through the proposed Memorandum of Understanding between Ofcom and the devolved administrations.

CONTENT BOARD

Clause 11 – Subsection 4 – In appointing persons to be members of the Content Board, Ofcom must secure that, for each of the following parts of the United Kingdom (a) England, (b) Wales, (c) Scotland, and (d) Northern Ireland, there is a different member of the Board capable of representing the interests and opinions of persons living in that part of the United Kingdom.

CONSUMER PANEL

Clause 16 – Subsections 2 – The approval of the Secretary of State [UK] is required for the appointment of a person to be Chairman or another member of the panel.

Clause 16 – Subsection 3 - In appointing persons to be members of the Consumer Panel, Ofcom must secure that, for each of the following parts of the United Kingdom (a) England, (b) Wales, (c) Scotland, and (d) Northern Ireland, there is a different member capable of representing the interests and opinions of persons living in that part of the United Kingdom.

“...Ofcom’s annual report will also need to address Scottish, Welsh and Northern Irish issues. We expect cross-border issues unique to Northern Ireland to be addressed by specific Ofcom arrangements....

Comment: Clause 351 sets out Ofcom’s duty to publish an annual factual and statistical report. However, it makes no specific mention of the need, expressed above, to deal with Scottish, Welsh and Northern Irish issues.

Clause 351 - Annual factual and statistical report

- (1) It shall be the duty of Ofcom—
 - (a) as soon as practicable after the end of the period of twelve months beginning with the commencement of this section, and
 - (b) as soon as practicable after the end of every subsequent period of twelve months, to satisfy for that period the review and reporting requirements of this section.
- (2) For any period those obligations are—
 - (a) to carry out a review of the provision of the television and radio services available for reception by members of the public in the United Kingdom during that period; and
 - (b) to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided.
- (3) In carrying out a review for any period under this section, Ofcom must

consider, in particular, each of the following—

- (a) the extent to which programmes included during that period in television and radio services are representative of what Ofcom consider to be the principal genres for such programmes;
- (b) the extent to which codes made by Ofcom under this Part or Part 4 or 5 of the 1996 Act (listed events and fairness) have being complied with during that period;

“...In addition, Ofcom will be expected to hold regular meetings in different parts of the country and ensure that its consultative procedures embrace specific arrangements for including the relevant administrations.

Comment: The Bill makes no specific reference to a duty to ensure that its consultative procedures embrace specific arrangements for including the devolved administrations, nor to the need to hold meetings in different parts of the country.

“8.2.8.1...S4C, like the BBC, will be subject to regulation by Ofcom in relation to negative content requirements and industry-wide quotas and obligations. Like the BBC, S4C will remain self-regulating on matters such as impartiality and the fulfilment of its tier three remit.”

Clause 331 & Schedule 12 enshrine corresponding rules for the BBC and Welsh Authority

“8.2.8.3a power for the Secretary of State, at intervals of no less than five years, to review the performance of S4C against its tier three remit, having regard to any relevant views expressed by Ofcom, S4C and the Welsh Assembly.”

Clause 332 - Review of fulfilment by Welsh Authority of Public Service Remit

- (1) The Secretary of State may carry out a review of the performance by the Welsh Authority of their duty to secure that each of the following public service remits—
 - (a) that for S4C;
 - (b) that for S4C Digital; and
 - (c) that for each of the television programme services provided by them with the approval of the Secretary of State under section 200, is fulfilled in relation the services to which it applies.
- (2) The first review carried out under this section—
 - (a) shall be a review relating to the period since the passing of this Act; and
 - (b) must not be carried out before the end of the period of five years beginning with the day of the passing of this Act.
- (3) A subsequent review—
 - (a) shall be a review relating to the period since the end of the period to which the previous review related; and
 - (b) must not be carried out less than five years after the day of the publication of the report of the previous review.
- (4) On a review under this section the Secretary of State—
 - (a) shall consult the National Assembly for Wales and the Welsh Authority on the matters under review; and
 - (b) shall have regard to their opinions when reaching his conclusions.

- (5) The Secretary of State shall also consult such other persons as he considers are likely to be affected by whether, and in what manner, the Welsh Authority perform the duty mentioned in subsection (1).
- (6) As soon as practicable after the conclusion of a review under this section the Secretary of State must publish a report of his conclusions.

In addition to the reference to representation in the policy statement, statements about local digital television services and the content and character of radio services may be particularly relevant for Wales.

“8.3.2.1 The White Paper stated that there is more scope for local television services, but acknowledged that Restricted Service licensees (RSLs) face a problem of spectrum uncertainty. The Government has affirmed that a post switchover plan will be developed to give RSL organisations a clearer indication of long-term prospects for local television services. We need therefore to enable Ofcom to licence digital local television services if spectrum is available for this purpose.”

Clause 241 - Local digital television services

- (1) The Secretary of State may by order provide for—
- (a) any of the provisions of this Part (apart from this section and the provisions relating exclusively to sound services), or
- (b) any provision of Part 1 of the 1990 Act or of Part 1 of the 1996 Act (regulation of television services),

to have effect, in relation to services of such descriptions as may be set out in an order under this section, with such modifications as he considers necessary or appropriate for services of that description.

- (2) The Secretary of State is not to make an order under this section in relation to a description of services except where—
- (a) the description is of services to be provided in digital form with a view to their being included in a television multiplex service;
- (b) the description is confined to services falling within one or both of subsections (3) and (4); and
- (c) the Secretary of State is satisfied that the making of an order under this section in relation to that description of services will make possible, facilitate or encourage the provision of services so falling.
- (3) Services fall within this subsection if they are—
- (a) intended for reception only at a particular establishment or otherwise on particular premises; or
- (b) provided for the purposes only of a particular event.

“8.3.2.2 The draft Bill therefore gives the Secretary of State the power to provide by order for any of the provisions relating to television services under this Act, under Part 1 of the Broadcasting Act 1990 and Part 1 of the Broadcasting Act 1996 to apply to local television services. Local television services are defined as services which are to be included on digital multiplexes; which provide for a particular establishment or event; or are for reception in a particular area or locality and have the following key characteristics:

- they are likely to provide social and economic benefits to the area where they are likely to be received or to persons living or working in the area;
- they are likely to broaden the range of programmes available in the area or locality, and
- they are likely to increase programmes about the area or the number of programmes made in the area.”

Clause 241 (4) Services fall within this subsection if the Secretary of State considers that they are services in relation to which all the following conditions are satisfied—

(a) they are intended for reception only within a particular area or locality;

(b) their provision meets, or would meet, the needs of the area or locality where they are received;

(c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and

(d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.

(5) Services shall be taken for the purposes of subsection (4) to meet the needs of an area or locality if, and only if—

(a) their provision brings social or economic benefits to the area or locality, or to different categories of persons living or working in that area or locality; or

(b) they cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of people who do so live and work).

(6) In subsections (4) and (5), the references to persons living or working in an area or locality include references to persons undergoing education or training in that area or locality.

(7) An order under this section in relation to a description of services may, in particular, impose prohibitions or limitations on the inclusion of advertisements in services of that description and on the sponsorship of programmes included in the services.

“8.4.1.8 ...a new duty on Ofcom to promote and protect the local content and character of local radio.”

Clause 307 – Local Content and character of local sound broadcasting services

(1) It shall be the duty of Ofcom to carry out their functions in relation to local sound broadcasting services in the manner that they consider is best calculated to secure—

- (a) that programmes consisting of or including local material are included in such services; and

- (b) that other connections between each such service and the area or locality for which it is provided are established and maintained.
- (2) Ofcom must—
 - (a) draw up a code giving guidance as to how they consider the requirements of subsection (1)(a) and (b) should be satisfied; and
 - (b) have regard to that code in carrying out their functions in relation to local sound broadcasting services.
- (3) The code may, in particular, include guidance as to the relevance for the purposes of subsection (1)(a) and (b) of—
 - (a) different descriptions of local material included in sound broadcasting services;
 - (b) the extent to which locally-made programmes and local advertisements are included in the services;
 - (c) the extent to which use is made of some or all of the factors specified in subsection (4) for establishing and maintaining connections between such a service and an area or locality.
- (4) Those factors are—
 - (a) the employment or other use for the purposes of the service of persons living in, or otherwise having connections with, the area or locality;
 - (b) the provision to such persons, in connection with the provision of the service, of opportunities for training and development;
 - (c) the use of premises within the area or locality as premises from which the service is provided, or as premises from which management or control over the provision of the service is exercised.

In addition to matters which appear on the face of the Bill, it is intended that there should be a Memorandum of Understanding between Ofcom and the territorial Secretaries of State and/or the devolved administrations.

3 Ofcom functions in the nations

3.1 Existing accountability arrangements

BBC

Wales, Scotland and Northern Ireland are represented directly on the Board of Governors by ‘National Governors’. The National Governors are appointed via the DCMS in consultation with the relevant devolved administration. The BBC’s Charter also provides for National Broadcasting Councils that assist the Board of Governors in its overview of the BBC. Appointments to the Councils are made following open advertisement. Council Members are non-executive and part time, and are chosen to reflect a wide range of experience and interests. Appointments to the National Broadcasting Council are made by an Appointments panel which includes an independent assessor nominated by the National Assembly for Wales. Each National Governor chairs the respective Broadcasting Council. Each Council meets monthly and has up to twelve members.

The responsibilities of the Broadcasting Council for Wales are set out in the BBC’s Charter. In summary, they are to:

- establish and monitor public opinion about programmes and services through audience research
- advise the BBC on how the objectives reflect the interests of Wales
- assist the Corporation in formulating objectives, monitor them and help in the allocation of funding for programmes and services within the overall budget for Wales
- make representations to the BBC in the event of any significant change to the Corporation’s resource base
- ensure that any comments, proposals and complaints made by audiences in Wales are properly handled
- review and comment on programmes produced by BBC Wales as part of the Annual Performance Review report
- ensure that in general the needs of the licence fee payers are being met
- comment on the competitive and political context in Wales as it affects BBC Wales programmes and services

The Council has appointed an Education Advisory Committee which is known as the Educational Broadcasting Council for Wales, and the Wales Appeals Advisory Committee, advising on charitable appeals and social action policies.

S4C

The S4C Authority is an independent broadcasting authority established by statute. It is responsible for ensuring that S4C is provided as a public service and in a manner which complies with its statutory remit. It approves S4C’s broad programme strategy and the balance between the English and Welsh components of the service. The Authority is also the regulatory body for programmes broadcast on S4C. It therefore makes sure that arrangements are in place to ensure compliance with the various broadcasting codes and to investigate complaints. The Authority is also charged with providing oversight of S4C’s activities more generally and with ensuring that there are effective management arrangements in place, including those relating to financial management. The Authority also approves the extent and the nature of S4C’s commercial activities and is required to make arrangements for researching the opinions of viewers. Members of the Authority are appointed by the DCMS in consultation with the Welsh Assembly

Government. It does not operate any formal advisory bodies. S4C is funded through the DCMS and by the free provision of ten hours of programmes per week from the BBC.

ITC

Wales, Scotland and Northern Ireland are directly represented on the Commission. The three representatives are each appointed by the DCMS in consultation with the relevant devolved administration. The ITC has an office in Cardiff, Glasgow and Belfast, each with a staff of 3/4. The office for Wales also covers the West of England because one franchise area covers both Wales and the West. There is no office in the West of England. Until 2002, the ITC had Viewers' Consultative Council (VCCs) for each nation. These have now been wound up in advance of new arrangements to be put in place under Ofcom.

The Radio Authority

Wales, Scotland and Northern Ireland, are represented directly on the Authority. The three representatives are each appointed by the DCMS in consultation with the relevant devolved administration. The Authority does not maintain any offices outside London.

Broadcasting Standards Commission

Wales, Scotland and Northern Ireland are represented directly on the Commission. The three representatives are each appointed by the DCMS in consultation with the relevant devolved administration. The BSC has no offices outside London.

The Radiocommunications Agency

The Radiocommunications Agency is an executive agency of the DTI. It has offices in each country (Cardiff, Falkirk and Belfast). The Northern Ireland office also deals with the Isle of Man. The office in Wales has a staff of nine. They plan and manage radio spectrum in Wales, including the investigation of interference problems, processing standard local PMR licences, inspecting installations at customers' premises, help and advice with radio problems and offer a paid diagnostic service to commercial and domestic radio users. The Agency has also established a Customer Panel in each of the nations and regions, and in Wales meets twice a year. Membership of the panel includes the emergency services, the Maritime and Coastguard Agency, local authorities, local businesses and radio suppliers.

Oftel

Oftel has no regional offices, but is advised by Welsh, Scottish and Northern Irish Advisory Committees on Telecommunications. Their members are appointed by the Secretary of State for Trade and Industry. Their chairmen, together with the chairmen of the other three UK advisory committees meet with the Director General of Oftel as the Telecoms Advisory Panel.

3.2 Future arrangements in the nations

3.2.1 Going with the grain of devolution

Decisions on Ofcom's arrangements in the three countries – structures, protocols and staffing - will need to take into account not only functional considerations but also the dynamics of the system of devolved government. These considerations will include:

- the need to work with the grain of devolved government rather than against it

- the impact of non-devolved functions on devolved functions – especially economic development, culture and education
- the formal and informal relationships between, on the one hand, the devolved body and, on the other hand, that country's Ofcom national officer, its representatives on the Content Board and Consumer Panel and members of any additional advisory body such as an Ofcom Wales Communications Council
- the desirability of delegating functions within Ofcom itself and the extent of such delegation
- the Ofcom Board's own responsibility to have regard to the interests of the nations and regions across the whole range of its work.

The convergence of regulation will mean that the Ofcom offices in the three countries will have a more far-reaching function, and a higher profile, than either of the existing separate offices – ITC and RcA. The importance of these offices would increase still further were the BBC (and in Wales, S4C) to be brought fully under the Ofcom umbrella at a later stage.

Although responsibility for broadcasting is not devolved to the National Assembly, or to the other devolved administrations, the senior Ofcom officer in each country will inevitably have a relationship with the following departments in the devolved bodies at both civil servant and ministerial level: culture, economic development and education. The same will apply to the representatives on the Content Board and the Consumer Panel. All three are likely to have a public profile forced upon them.

The accountability of the senior officer in each country will involve a clear managerial line into the central structures of Ofcom. The scale of their responsibilities will be substantial and unprecedented in these fields. To be effective they will need an appropriate seniority, preferably as part of the Chief Executive's senior management team.

3.2.2 Ofcom National Office Functions

The following Ofcom responsibilities will involve input from the national office in Wales. The three-tier system of regulation is covered by the powers in Clauses 259-339 of the Bill.

Broadcasting

Tier 1 – basic requirements for broadcasting services

- Standards of programme content – fairness, impartiality etc.
- Advertising standards and rules on sponsorship
- Equal opportunities and training
- Sub-titling, sign language and audio description

Tier 2 – specific requirements of public service broadcasters

- Quotas for independent, original and regional production
- Provision of high quality news and current affairs in peak time
- Provision of party political broadcasts
- Schools programmes
- The protection of localness in radio

Tier 3 – self-regulation of public service broadcasters

- Formulation of the general public service remit
- Specific remits for individual public service broadcasters
- Duty of Ofcom to review and report on public service broadcasting
- Obligation on each public service broadcaster to publish an annual statement of programme policy and an annual report on performance, to be reviewed by Ofcom
- Enforcement powers for Ofcom to remedy deficiencies

Research and Media literacy

- The formulation and interpretation of Ofcom research programmes
- Management of specific research programmes
- Audience monitoring
- Development and promotion of media literacy programmes

Technical and Competition issues

- Frequency planning
- Licensing fixed wireless access
- Universal service obligations and funding
- Telecommunications consumer complaints
- Spatial dimension to spectrum trading effects

Other possible functions of Ofcom office for Wales

- Input on licensing of independent radio
- Input on the licensing of Access Radio
- Input on the licensing of RSLs
- Handling of complaints – content and consumer
- Relationship with Welsh Assembly Government / National Assembly
- Annual report on Ofcom responsibilities as it affects Wales
- Organisation of programmes of public meetings

Ofcom will be named under the Welsh Language Act 1993 and will therefore need to prepare a statutory Welsh Language Scheme for approval by the Welsh Language Board. The Ofcom office in Wales will need to have the capacity to function fully bilingually.

3.2.3 An advisory structure?

Given the unprecedentedly wide range of Ofcom's remit we have considered whether any advisory structure should sit alongside the executive team within the Ofcom Office for Wales. We have considered two scenarios:

Option 1: That an Ofcom Wales Communications Council should be established to advise and assist the executive team in Wales.

Option 2: That no advisory structure be created by Ofcom, and that the executive team in Wales should be reliant instead on a structured relationship with the National Assembly and the Welsh Assembly Government.

3.2.4 Option 1 - The case for an Ofcom Wales Communications Council

The case for establishing an advisory council for Ofcom in Wales is based upon the belief:

- that, the accountability of the national office/officers should be wider than a strictly managerial accountability to the centre
- that the office for Wales should have regular access to specialist local knowledge and expertise

and that an Ofcom Wales Communications Council would:

- strengthen the legitimacy of the Ofcom Office for Wales, both with the public and with the devolved institutions
- create a greater potential for the delegation of tasks to national offices to the Welsh level, *but within a unified UK system of regulation*
- provide support for the Ofcom team– both executive officers and the individual Welsh representatives on the Content Board and Consumer Panel
- be an effective means of connecting with other relevant areas of civil society in each country, and improve Ofcom intelligence on the ground
- ensure that Ofcom arrangements are not less satisfactory than those of the BBC with its National Broadcasting Councils or the ITV companies with their new regional advisory boards and councils.

Wales Communications Council functions

The functions of an Ofcom Wales Communications Council might include the following:

The provision of advice on

- Tier 1, 2 and 3 issues
- issues connected with the review of public service broadcasting
- Welsh language issues and the review of S4C
- the protection of localness in radio
- the independent radio licensing programme
- the licensing of Access Radio
- the licensing of television and radio Restricted Service Licences (RSLs)
- the content of research programmes
- media ownership and cross-media issues
- telecommunications issues, such as broadband delivery
- media literacy programmes within the distinct educational contexts and languages of each country
- handling of complaints on content and consumer issues

With such an advisory structure in place, Ofcom would also be able to give consideration to the appropriateness of delegating specific tasks to the Wales Communications Council. Properly managed, this should not and need not lead to inconsistency across the country. It is fundamental to any devolutionary approach that decisions should be made on the basis of the best possible local information, but consistency across the UK is also important, and it would be the task of the officers in each country to guarantee this consistency through effective contacts with staff in all divisions of Ofcom. To this end we anticipate that centrally-based staff would attend meetings of any advisory council whenever appropriate.

3.2.5 Ofcom Wales Communications Council – Consequential matters

In the event of the creation of an Ofcom Wales Communications Council, the following consequential matters need to be considered:

a) *Membership and structure*

If an advisory Council is created a secondary question arises: whether all these functions, both content and consumer, can be rolled into one Ofcom Wales Communications Council or whether there is a need for any additional body.

The Content Board will be firmly part of Ofcom, with delegated powers; the Consumer Panel will have a more independent status, with only powers to advise. It can be argued that a single Welsh Communications Council would find it difficult to encompass both the content and consumer mindsets, particularly since content issues, that tend to engender wider public interest, may predominate. There is a case for separating content and economic issues under separate advisory bodies. We believe it is crucially important, even at the level of the devolved nations, that the consumer dimension is accorded due importance.

On the other hand, there is also a need to have regard to two important factors: the need to converge thinking, implicit in the converged nature of Ofcom itself, and the need for economy of administration and clarity of presentation. The above section on existing accountability arrangements lists an array of bodies in the broadcasting and telecommunications fields. There is a strong argument that one Ofcom Wales Communications Council would provide clarity and simplicity for all parties – the Ofcom Board, devolved administrations, other stakeholders and the public. This has additional force at a time when the workload and linkages to other parts of Ofcom are not yet established.

We have also had to consider whether the semi-independent status of the Consumer Panel, as envisaged in the Bill, (and particularly given the Panel's explicit power to establish its own national sub-committees) would be a bar to the creation of a unified Council. In our view, the *advisory* nature of the powers we envisage for a national council means that this should not be an obstacle.

Our preference, therefore, would be for one council, but with a sufficient number and range of members to establish two standing sub-groups, dealing with content and consumer issues respectively. This would allow the same integration across Ofcom functions within Wales as is being sought at the centre, while also allowing for specialisation. With these objectives in mind a Council would need to be not less than 10 but not more than 12 people.

Some have suggested that the Council should also embrace other stakeholders, such as the BBC Broadcasting Council, the S4C Authority and the Welsh Consumer Council. We feel sure that

Ofcom will wish to give every encouragement to the creation of constructive relationships and collaborative agendas - such as coordinated research programmes – as well as the creation of wider consensus around policy proposals. Nevertheless, it will be important to maintain a proper separation between the regulator and the regulated, especially in smaller national communities.

The creation of such a Council would not obviate the need for a structured relationship with the National Assembly as set out in Option 2 below, but it would have the intention of preserving the necessary distance between Government and a powerful media regulator.

b) *Relationship with the National Assembly*

Although functions covered by Ofcom lie outside the range of devolved functions, they impinge very directly on many devolved functions across all the devolved institutions in Wales, Scotland and Northern Ireland. The most obvious impacts are in the cultural field, economic development and education, but the extension of electronic modes of operation across the whole range of government and related public institutions – not least the health service - means that the devolved institutions will themselves be directly affected by many of Ofcom’s decisions.

For these reasons it is our view that strong and effective links must be developed between Ofcom and the National Assembly – both with its subject committees and the Welsh Assembly Government – to ensure:

- that the regulatory framework provides the right conditions for the effective delivery of Assembly policies across all its functions
- that the Assembly is fully aware of regulatory issues and developments as they affect its functions, with a timeliness that allows a proper input to policy formulation as well as delivery
- that Ofcom has proper regard to the interests of the people of Wales, as represented democratically by the National Assembly.

For these reasons structured contacts between Ofcom and the National Assembly at various levels would be necessary whether or not Ofcom has its own advisory body. A listing of these contacts is set out below under Option 2.

c) *Legal basis for an Ofcom Wales Communications Council*

The Communications Bill currently makes no reference to the possible existence of Ofcom National Councils in Wales, Scotland and Northern Ireland. Any such Councils would, therefore, exist at the discretion of the Ofcom Board. We do not believe that this is desirable. If advisory Councils are to exist it is important that they have a statutory basis.

The existence of the three BBC National Broadcasting Councils is enshrined in the BBC’s Royal Charter. The S4C Authority has a statutory basis enshrined in a succession of Broadcasting Acts. The Gaelic Broadcasting Committee in Scotland also has a statutory basis. Ofcom National Councils should not have a lesser status than the bodies in whose regulation they assist, either in whole or in part.

Second, a statutory basis for the Councils will, by placing their existence and standing beyond question, materially and beneficially alter the relationship between Ofcom centrally and the respective countries, providing reassurance and stability over the long timescales implied in much of the content of the Communications Bill.

The right of such unified, converged Councils to exist in Wales, Scotland and Northern Ireland should be enshrined in the Bill.

d) *Chair of the Council*

The logical extension of our preference for a unified Council is that the role of the Chair of the National Council could be vested either in the national representative on the Content Board or in the national representative on the Consumer Panel. The selection of the Chair should lie with Ofcom in consultation with the devolved administration. Whichever of the two representatives were not chosen would act as vice-chairman.

e) *Appointments*

The important range of functions envisaged here for a Wales Communications Council dictates that the appointment of members should be via the normal Nolan procedures, and should involve formal consultation between Ofcom and the Welsh Assembly Government. We believe that the absence of specific provision for consultation on appointments between Ofcom and the devolved administrations is a serious omission from the Bill that should be rectified.

3.2.6 Option 2 – No Ofcom advisory structure

Under this option, the Ofcom Office for Wales would have no advisory council, but would rely instead on the establishment of a direct relationship, as necessary, between, on the one hand, the Ofcom management team in Wales and the individual Welsh representatives on the Content Board and Consumer Panel and, on the other hand, the National Assembly. The case for relying on this arrangement would be based on a belief that

- the National Assembly is the only democratically elected body representing Wales alone, and therefore provides the best forum for determining Welsh input into communications issues
- the only bodies with democratic legitimacy to make such inputs are the National Assembly and, in Parliament, the Welsh Affairs Select Committee and the Welsh Grand Committee
- that any further representation of Welsh opinion can be achieved via ‘proxy’ measures, such as citizens’ juries
- that an Ofcom advisory structure would hinder the National Assembly from developing a specialist body of knowledge in the communications field
- the existence of an advisory council would blur lines of accountability and divert attention and resources from the management tasks of the national office.

Under this option it would be particularly important to establish clear lines of communication between the National Assembly and the Ofcom Office for Wales. These are likely to be at three different levels within each organisation:

Ofcom

- Ofcom Board
- Ofcom National Office for Wales
- Welsh Member - Content Board / Welsh Member – Consumer Panel / National Council

National Assembly

- Welsh Assembly Government
(primarily Culture and Economic Development Ministers)
- Assembly officials
(primarily Culture and Economic Development Divisions)
- Assembly members
(primarily Culture and Economic Development Committees)

The frequency of meetings at the various levels will be dictated in part by the needs of the agenda. However, we anticipate that there will be regular outputs from Ofcom, relevant to Wales, emanating both from the centre and from the national officers and Council in Cardiff, and that it would, therefore, be beneficial to establish a pattern of formal contact. In particular, we would expect that Ofcom would produce an annual report on its activities in Wales in addition to its UK Annual Report, and that both documents would be laid before the Assembly, through the Culture Committee.

This suggests the following as a possible pattern of contacts at the various levels:

Ministerial level

A regular formal meeting (probably annual) between the Minister and the Chair of Ofcom and/or any main board members charged with specific responsibility for the nations and regions. Regular formal meetings (probably six-monthly) with the Welsh representatives on the Content Board and Consumer Panel.

Officer level

Regular meetings between senior Assembly officials and the Ofcom senior officer for Wales, as often as is necessary to maintain informed and productive relationships and to enable both sets of officials to be abreast of relevant current issues arising from each party.

Assembly Committees

The Welsh members of the Content Board and Consumer panel should be invited to present, at least annually, to the relevant subject committees of the Assembly.

3.2.7 Conclusion

A majority of our group are strongly of the view that option 1, the establishment of an Ofcom Wales Communications Council, should be the preferred option.

4 Issues facing Wales and Ofcom

4.1 Issues raised by the National Assembly for Wales

The range of Ofcom's remit is unprecedentedly wide. Its work will touch our daily lives as individuals and as communities, as consumers and as citizens. It will touch on the health of our economy, our culture, and our democracy. Our terms of reference do not require us to seek answers to complex and often interlocking questions, but rather to identify issues and questions to which we all need to be alert. We have sought here to list issues that particularly affect Wales, and which Ofcom and other bodies, including the National Assembly, will need to address in different ways.

We have also taken note of the issues identified in a paper to the Culture Committee of 5th February 2003, namely:

- The importance of regional programming and production
- Explicit quotas on number of hours, proportion and investment in regional programming and production
- Ensuring that investment continues in Wales on C3 and C5 up to and beyond 2014
- Balancing de-regulation of media ownership with duty to ensure quality
- Access issues

4.2 Public service principles

The challenging topography of Wales, along with the eccentric distribution of its population, has not made it an easy place for commercial media or the establishment of telecommunications, either at local or national level. Wales has, therefore, been particularly reliant on the principles and practice of public service in all its forms, including the principle of universality of coverage, to fulfil its communications needs and, in broadcasting, to find expression for the talents, culture and values of its people.

While there is a strong economic case for strengthening commercial provision in Wales across the range of communications activities, Wales will continue to depend heavily on sustaining public service principles whether in the production of relevant programming or in guaranteeing access to new technologies. Ofcom will be required to act as a guardian of those principles on several fronts.

4.3 Reviews of public service broadcasting

Clause 260 obliges Ofcom, within 12 months, “to carry out a review of the extent to which the public service broadcasters have, during that period, provided relevant television services which (taking them all together over the period as a whole) fulfil the purposes of public service television broadcasting in the United Kingdom.....with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom.”

According to this clause the fulfilment of the purposes of the public service must include
 “that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music and by the treatment of other visual and performing arts....”

“that those services (taken together) include what appears to Ofcom to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom....

“that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to Ofcom to be an appropriate range and proportion of programmes made outside the M25 area.”

Included within the range of this section are the BBC, S4C, every Channel 3 service, Channel 4 and Channel 5 and the public Teletext provider. It is the content of this public service broadcasting (psb) review that will guide Ofcom in its oversight of the annual statements of programme policy that all public service broadcasters will be obliged to publish and against which they will be measured.

The provisions of these clauses remind us that psb is not synonymous with the BBC, although the BBC, as the recipient of the licence fee, should be the leader in the field. Important public service functions are also performed by independent television and radio at local and national level, and well as by S4C in Wales. In the case of commercial providers, the substance of these public obligations are not mere bonuses offered to the public but are part of the price necessarily paid by those providers for access to valuable but limited spectrum space.

The review obliges Ofcom to view the output of the public service broadcasters “taken as a whole”. By the same token Ofcom, and any proposed Wales Communications Council, will have to have regard not only to the totality of provision made in Wales for Wales, across both languages, but also to the totality of television provision accessible in Wales, and their relationship to each other. It will have to assess not only how well the broadcasting organisations in Wales serve the public, but also how well UK services “taken as a whole” reflect “the lives, concerns....cultural interests and traditions” of Wales and other parts of the UK.

This is not a new debate, but the Bill makes it a duty of the regulator, as never before, to assess these issues across a very wide front. Since this will have to be carried out before the end of 2004 - so that it can inform the debate on the renewal of the BBC’s Royal Charter – it will be one of Ofcom’s first major exercises. However, given all that the new regulator has to do, it is unlikely that it will have had time fully to build the base of research upon which such fundamental judgments can be made. It is not too early, therefore, for organisations in Wales to be preparing themselves to respond to these fundamental questions.

The following research should be a starting point:

- Examine the operation of the public service channels, and the relationships between them, in Wales explicitly, as part of the review of psb across both languages
- Map the current extent of Welsh programming and production (hours, proportion and investment) on the public service channels in both languages, and make recommendations for improvement where this is felt to be deficient
- Commission audience research on performance of psb channels and gaps in audience satisfaction both in services and programmes

Clause 332 empowers the Secretary of State (for DCMS) to carry out of a review of the performance of S4C in fulfilling its public service remit, both in relation to the S4C analogue service and S4C Digital. However, section (2) of the clause states that this must not be carried out earlier than five years following the passage of the Act, and that the review must relate only to that five year period. There would subsequently be further quinquennial reviews. The Secretary of State (DCMS) is obliged to consult the National Assembly and the S4C Authority as part of these reviews.

There are three important reviews that will be important to the future of psb in Wales: the review of the whole of psb that Ofcom must carry out in its first year, the review of the BBC's Royal Charter that will be initiated by the Secretary of State before 2006 and the discrete review of S4C's performance which will take place not earlier than 5 years from the enactment of the Bill. It is important that in all these reviews, the relationship between the S4C and BBC should be carefully considered. All Welsh people, whatever their language proficiency and preference consume services in both languages. Moreover, the BBC is a major contributor to the S4C public service. Recommendations affecting the BBC might well have an impact on S4C. The psb review will also provide an early opportunity for detailed consideration of the current financial constraints around S4C and its future funding.

4.4 Statements of programme policy (SPP) and self-regulation

The Bill formalises the growing practice amongst public service broadcasters of publishing Statements of Programme Policy. In the case of ITV, the Bill requires that an SPP be published for each regional licence area, reminding us that although the Bill does allow for further consolidation of ownership, it does not allow the consolidation of licences. It does, however, call into question the need for continuing the link between Wales and the West of England under one licence, originally conceived as a response to frequency availability and as a commercial prop to a Welsh transmission area then of doubtful viability.

In the context of SPPs, it should also be remembered that two other ITV franchises broadcast into Wales – the Carlton service from the Midlands and the Granada service from the north west of England. Of these, the Granada overlap into north Wales is much the most significant. To the extent that Granada regards parts of north Wales as lying within its core area, thought should also be given as to what programme obligations might flow from that, particularly in the area of news. This is very relevant to the 'democratic deficit' argument raised in relation to the transmission overlaps that really little or no news of Welsh governmental action.

The BBC as a whole is required, as part of the BBC Agreement, to publish its own SPP. Although there is no requirement in the Agreement that the BBC should produce an SPP for each nation and region, its statements have, hitherto, included sections relating to Wales, Scotland and Northern Ireland.

The SPP process raises the issue of self-regulation, or co-regulation of broadcasters. Under the Charter for Broadcasting in the Nations and Regions, agreed by the ITC and the ITV companies in 2002, each licence area will have its own managing director who lives in the region. In HTV's case this could be Cardiff or Bristol. We believe that Ofcom should consider whether the distinctive nature of broadcasting should not demand the presence of a managing director in Cardiff. Each licence area board will contain at least one non-executive director, but with two or more for Scottish, Grampian, HTV and UTV. In addition, each licence area will be covered by a regional advisory group. HTV has established two councils, one for Wales and one for the West Country.

A sincere commitment to the process on the part of the broadcasters and vigilance on the part of regulator and public will be required to ensure that self-regulation achieves credibility. The BBC has suffered from widespread scepticism about the distance between the Board of Governors and the management. There is even more danger that small, unpaid advisory boards could be subject to corporate capture. It is not always easy to achieve the balance implied in the concept of the ‘critical friend’.

4.5 Universal coverage?

Broadcast media

If Wales has been unduly dependent on public sector broadcasting provision for its national services in radio and television in both languages, it is no less dependent on the public service principle in the technical delivery of those services. Without a strong continuing commitment to the principle of universality of coverage, it is likely that the advent of new technologies will increase the relative disadvantage from which Wales has traditionally suffered. We have described earlier how Wales is the most transmitter intensive part of the UK. It has taken several decades to extend UHF television coverage and FM radio coverage across the whole country. Yet, in television, the percentage of the population covered remains lower in Wales for all television services than any of the four countries of the UK. To this is added the complication that a significant portion of that television coverage is from transmitters outside Wales that do not carry programming that reflects Welsh life and governance.

This shows no sign of improving with the shift to digital. Indeed, there are some indications that the current deficiencies will be exacerbated. Currently, of Wales’s 207 television transmitters and relays, only nine have been converted to digital. While 75% of households in the UK can receive digital terrestrial signals, the core coverage figure in Wales is barely over 40%. Of these the BBC has estimated that some 14% can only select reception from England, although this estimate has yet to be verified. The new Freeview DTT service needs to prove its appeal, yet it is not even available in several of the densely populated south Wales valleys – a matter of increasing concern. The spread of cable (again constrained by topography) also lags behind. Cable TV is available mainly in the urban centres of south Wales, while the National Assembly has commented that in north Wales there is little interest in cabling even the larger towns. The corollary to this is that take-up of digital satellite services has moved significantly ahead of the rest of the UK almost from the outset, at one point at double the take up rate of the English Midlands.

The digital radio (DAB) situation is even less satisfactory. The UK national multiplexes, for both the BBC and independent radio, are currently broadcast from only three transmitters in Wales – Moel y Parc in the north east, Wenvoe near Cardiff and Kilvey Hill in Swansea. However, multiplexes delivering more local services for both BBC and independent radio (on a shared multiplex) are currently limited only to the south east Wales coastal belt.

Telecommunications

The 1984 Telecommunications Act formalised the concept of Universal Service in telecommunications. Recent EU directives have taken this further. Universal Service Obligations (USOs) are currently placed on BT (and on Kingston Communications in Hull) to make basic telephone services available to everybody upon reasonable request and at an

affordable price. Under the new Bill, the Secretary of State for Trade and Industry will prescribe what facilities must be provided under Universal Service. Ofcom will designate which operators must supply these services, and take appropriate measures to enforce the USOs.

Universal Service in Telecommunications is used to make available to everyone – subject to reasonable cost - facilities that are already available to most people, and which are needed for full social and economic participation. As time goes by, new forms of telecommunications will meet these criteria. For example, it is now recognised that a line capable of “functional Internet access” should be covered by Universal Service, and OFTEL is currently consulting on how this should be implemented. This is particularly important for Wales, where dial-up access is the only method of Internet access available to more than half the population. On the other hand, the nature of the Welsh network makes it relatively difficult for BT to implement this USO. At present, OFTEL expects BT to meet its USOs without special funding, arguing that the benefits of being seen to be the provider of Universal Service are comparable with the costs. At some stage this may be no longer true, as costs rise and BT’s market share declines, and then a Universal Service Fund, with contributions from all operators, would need to be established to meet the costs of Universal Service. The early establishment of such a fund would benefit Wales, because it would provide a source of support for network improvements, particularly in rural Wales.

These circumstances present Ofcom with its major challenge in Wales – to ensure that consumers in Wales have access to the same range and choice of digital services as do those in the rest of the UK. There is a strong case for a holistic examination of these delivery issues as they affect Wales with the aim of identifying the fastest routes to optimal digital coverage and broadband access. At the very least Ofcom will be faced with the following questions:

- 1 How can the organisation and funding of digital television and radio roll-out be arranged so as not to disadvantage the viewing and listening public in Wales, when compared with the population of the rest of the UK, and without penalising indigenous broadcasting and programme making?
- 2 If the roll-out of digital terrestrial television transmission is to fall well short of analogue coverage levels for the foreseeable future, is it acceptable that large parts of Wales should be wholly reliant on a monopoly satellite provision?
- 3 When the Government sets a target minimum for digital coverage, as a precursor to analogue switch-off, will that minimum be expressed solely as a percentage of the UK population? If so, what provision will be made for areas that fall well short of that minimum?
- 4 Since the full extension of DTT may have to await the release of some analogue frequencies, what steps will be taken to anticipate the full requirements of a national community such as Wales before spectrum is dedicated to other purposes?
- 5 Will frequency planning for DTT in Wales seek to reduce and minimise the number of people in Wales unable to receive television signals of Welsh services, even if this means transmitting Welsh services from some transmitters based in England?
- 6 Is it acceptable that DAB services for Wales should not be available simultaneously with both BBC and Independent UK digital radio networks?

- 7 Is it acceptable that the roll-out in Wales of DAB radio services for Wales (ILR, BBC Radio Wales and BBC Radio Cymru) should be governed entirely by the capacity of commercial radio operators to fund the transmission system, with the result that DAB services for Wales will be confined mainly to the south Wales coastal belt? Should a new and different technical solution or funding arrangement between the BBC and Ofcom (as the successor to the Radio Authority) be sought?
- 8 Would there be any benefits to be gained by looking at the delivery of broadcast media and telecommunications as a single problem?

4.6 Electronic Programme Guides (EPGs)

Electronic Programme Guides are now an indispensable tool for the viewer of multi-channel television. They vary in their sophistication and in their approach to the listing and grouping of services. They can influence viewing patterns in subtle ways. The Communications Bill gives Ofcom considerable powers to regulate their operation. It requires Ofcom, in Clause 304, to draw up a Code of Practice which must include the “giving of such degree of prominence as Ofcom consider appropriate...to the listing and promotion, or both the listing and promotion of the programmes included in the public service channels”.

This principle of “due prominence” is crucially important for public service broadcasting in general, but in particular for regional and national services within the UK. Given the investment in programmes for Wales made by both publicly funded and advertising funded public service broadcasters, and the extent to which they are valued by audiences, it is important that those who control EPGs are not allowed to bury these services far down in their listings.

Hitherto, BBC and ITV services for Wales have fared reasonably well, but on ntl’s cable service S4C is found not at 104 but at 752, with S4C2 - carrying the BBC’s live coverage of the National Assembly - at 853, lodged between entirely unconnected services rather than more logically grouped with the Parliamentary channel.

On March 12, 2003 the BBC announced its decision to transmit all its services, including regional variations, unencrypted, so that they can be received in all parts of the UK. While this decision seemed to be driven in part by a dispute between the BBC and Sky over the price of access, it is not yet clear whether services for Wales, along with Scotland, Northern Ireland and English regions, will be victims of the change, in terms of their status and visibility on the Sky EPG.

The BBC’s announcement of this change says: “With Sky’s assistance, we can ensure that viewers can choose to get the regional service they want through slots 101 and 102 on the EPG – where BBC1 and BBC2 are now. This would require a very simple software upgrade to allow existing - or new - satellite viewers *to opt* for the regional service they want”. (Our italics.) However, it admits that a beneficial outcome from these changes “depends in part on the policy and the legislative framework” and says that it will be supporting an amendment “to create greater certainty over the Bill’s ‘due prominence’ rules to ensure that public service broadcasters’ national and regional variations are easily accessible to viewers”.

It is crucially important that the regional or national variations of the UK services, where they exist, are regarded as the primary, default services for that region or nation. Viewers should not be forced to hunt for a reflection of their own lives and community in the basement floors of

EPGs. While the outcome may depend to some extent on Ofcom's powers over access pricing, it is important that Ofcom is given and exercises specific powers in relation to EPGs, sufficient to put these matters beyond doubt.

4.7 ITV and ownership consolidation

The consolidation of ownership within the ITV system has been a long drawn out process. It is now entering its final phase, at least in terms of domestic ownership. If no objections are raised by the competition authorities, and the merger of Carlton and Granada proceeds, the bulk of the system, including HTV, will come under one ownership. HTV will have had five owners in six years. There is, of course, no guarantee that this final merger will result in a long period of stability for the system, given that the Bill opens up the possibility of foreign ownership. But Ofcom must ensure that there is some real gain for the viewing public from this merger. The impact of Wales of any changes to the ownership of Channel 3 and Channel 5 should be monitored carefully.

ITV will, of course, wish to invest more in its network schedule in order to remain competitive, but Ofcom should also ensure that the gap between programme funding at network and regional level does not continue to widen. Regional programmes, too, must be competitive in quality, not only with the regional programmes of the BBC but with the network output on the same channel. Ofcom might wish to consider whether the agreements on regional output, reached with the ITV companies last year in the middle of a severe advertising recession, should be reviewed when economic conditions improve.

4.8 Network output from Wales

We have referred earlier to the way in which the Bill, in defining public service, requires of the public service channels, taken as a whole, "*a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom...*" and that they include "what appears to Ofcom to be *an appropriate range and proportion of programmes made outside the M25 area.*" (Our italics.)

While this opens the way to many subjective judgments, there are already some benchmarks in place to guide Ofcom. An ITC report in 2002 recorded that both the BBC and Channel 4 sourced broadly a third of their programmes from outside the M25. It also claimed that 56% of ITV's output came from outside the M25. This was a highly misleading comparison since the 56% figure includes all ITV's regional programme output, although it was excluded from the BBC figure. Channel 4, of course, has no regional output as such.

There are also issues specific to Wales, Scotland and Northern Ireland. Much of the output from outside the M25 comes from substantial production centres in England – particularly Bristol, Birmingham, Manchester and Leeds. The total contribution to UK networks from outside England has been significantly less than one might have expected on any normal criteria. It is important that regular data is available, so that these patterns of production become wholly transparent. In this context we should stress our belief that the existence of S4C does not relieve Channel 4 of any obligations to Wales in this regard.

The question for Ofcom will be whether these benchmarks are sufficient and whether their application should be widened. It is proposed that a target for production from outside the M25 should also be imposed on Channel 5. There is, in our view, no reason why such a target for Channel 5 should be any less than for the other public service channels.

These issues are of cardinal importance for Wales, for both economic and cultural reasons. We need to ensure that our production sector participates in programme making at the highest level, in terms of both quality and monetary value. It is only by doing so that producers in Wales will be able to maximise their contribution to UK and international markets as well as to the economy of Wales.

The important questions for Wales and Ofcom, as well as for Scotland and Northern Ireland, would be:

- 1 What proportion of ITV's *network* output is sourced from outside the M25, when regional output is excluded?
- 2 What proportion of the network output of the BBC, Channel 3, Channel 4 and Channel 5 is sourced from UK producers outside England?
- 3 At what level should the target for each public service channel or organisation be set? Should not the targets be set in terms of value, as well as hours, to correspond to the specification for independent quotas?
- 4 Should not each Channel be required to report in detail on production from outside the M25, making clear what has been sourced from each region and nation, defined by hours and value?
- 5 What more needs to be done to ensure that the production sector in Wales is fully equipped to take advantage of these opportunities?

4.9 Independent production

The fulfilment of the potential implied in the Bill's provisions for network production from the nations and regions, will require a healthy and vigorous independent production sector in Wales. The sector has benefited from the presence in Wales of an additional public service broadcaster, S4C, and from the fact that, with a few exceptions, S4C is not itself a producing company. Yet it has to be said that, in these circumstances, Welsh producers - naturally much concerned with production for Wales in both languages - have not made the inroads into wider markets that one might have expected. There are, of course notable exceptions to this - animation driven by S4C being the prime example - but the wider point still has force. Producers in Wales, as well as development agencies, need to consider urgently what more needs to be done to strengthen the capacity of the sector to take full advantage of any non-metropolitan production targets.

The Bill introduces independent production quotas for S4C for the first time. However, the application by the Bill of one quota level of 25% on all public service broadcasters takes no account of the fact that in recent times independent producers have supplied not less than 60% of S4C's analogue output. This rose to nearly 80% following the launch of S4C's digital service. output. There is an anomaly here that should be addressed during the passage of the Bill.

The issues for Wales arise from the need

- to complete the market investigation begun through the ITC's Programme Supply Review
- to establish terms of trade between broadcasters and independent producers that allow independent producers to develop a proper financial foundation

- to consider any competition issues particular to the Welsh production sector
- to ensure that those terms of trade are relevant not only to higher cost UK network production, but also to more modestly resourced regional output
- to ensure that the proposed new Codes of Practice do establish consistent practice across all broadcasters
- to map the current extent of programme supply from Wales to all television networks, including non-PSB channels
- to consider whether greater consolidation of the independent sector in Wales is desirable
- to consider whether greater encouragement should be given to joint ventures between Welsh independents and larger independent production houses outside Wales.

4.10 Radio development

Radio has not received the attention it deserves given its great popularity. Not only has the total number of radio stations in the UK and in Wales risen sharply over the last decade in analogue and more recently in digital (DAB) form, total listening hours have increased 10% since the beginning of 1999. More surprisingly, total listening in weekday evenings – when television has its biggest audiences - has grown by 12.4% in the same period. This has been assisted by the trend to listen to radio in new ways. Some 12% of adults now listen to the radio via the Internet, with 15% listening via the television and 2% via a mobile phone.

The debate around radio development has not received sufficient attention in Wales, where the growth of new independent radio stations, though significant, has not reached the levels found in many parts of England – largely on economic grounds in a country where transmission costs are high and the population, in many parts, thinly spread.

The Bill seeks to provide strong protection for the localness in independent radio – a localness that has come under some pressure over the last decade. Ofcom should do all that it can to ensure that the spirit of that clause is reflected in the performance of all radio stations in Wales. To that end, there would be value in an early assessment of the performance of radio broadcasters against local content provisions of Clause 304.

In the field of radio in Wales there are two key issues to bear in mind:

- 1 The need to address the coverage issues – referred to in section 4.5 above – to ensure that the development of digital radio does not fall behind the rest of the UK and does not place Wales's own national and local stations at a competitive disadvantage to UK radio networks already transmitting from the main masts.
- 2 The need to take full advantage of the opportunities created by the Bill for the development of Access Radio. The Radio Authority is currently conducting 15 pilot exercises in Access Radio around the UK. One of the pilots is in Wales – GTFM, a partnership between the Glyntaff Residents Association in Pontypridd and the University of

Glamorgan's student radio station. Results from these pilots have proved encouraging, to the extent that the Government has confirmed its intention of introducing Access Radio as a new tier of radio.

This is a new form of not-for-profit community radio, usually operating over a very small area (a radius of about five kilometres) that should be well suited to Welsh conditions. Community organisations throughout Wales would do well to study the potential closely so that the maximum community advantage can be drawn from them. The Assembly would also be well advised to examine how this tier of radio can assist its Communities First initiative.

4.11 Telecommunications

It is widely recognised that broadband telecommunications are important for economic development, for education, and for social activity of many kinds. About 40% of the homes and businesses in Wales can have broadband through ADSL technology and cable modems. This compares with a UK average of about 70%. Recognising the urgency of addressing this gap, the Welsh Assembly Government has launched the Broadband Wales programme, which will spend £115M on a balanced programme of demand-side and supply-side stimulation measures aimed at making broadband ubiquitous throughout Wales. Such levels of public-sector support make the broadband scene in Wales very different from that in other areas of the UK, and it will be important to ensure that Ofcom takes account of this. Wireless systems have an important part to play in the rollout of broadband in Wales, which means that the licensing arrangements for suitable radio spectrum are critical. The recent 3.4GHz spectrum licensing decision - to split Wales into four parts, each linked with larger and more prosperous parts of England - was taken against advice from Wales, demonstrating the importance of making strong representations on behalf of Wales in future licensing rounds.

The coverage of second generation mobile telephony in Wales is worse than in most other areas of the UK. Away from the main urban areas and major highways, reception is very patchy, and this has real and growing economic and social implications. Many organisations have developed a culture that depends upon mobile phone use; small businesses, especially sole traders, rely on mobile phones for contacts from potential customers; voluntary organisations use mobiles to coordinate their operations. Improving mobile coverage will require approaches very different from those appropriate in urban areas, and a coordinated effort by agencies in Wales, Ofcom, and other bodies.

Roaming between networks, currently not allowed, may have a role to play, and well as support from public funds. Problems obtaining planning permission for masts may need to be addressed. BT has an effective monopoly in most of Wales. This monopoly extends over most of the local loop and over much of the long-haul network; only within the ntl franchise in South Wales is there much competition. The low levels of economic activity (through both sparseness of population and relative poverty) make rural Wales unattractive to new entrants who might invest in new telecommunications networks.

Thus for the foreseeable future BT will retain a dominant position in telecommunications infrastructure in rural Wales. At the wholesale level, the usual demand for greater competition - explicit in Ofcom's purposes - may need to be weighed against the more urgent need to extend advanced services in normally unviable areas. On the other hand, competition will develop at the retail level.

4.12 News, newspapers and ownership

In a recent report for the ITC on news provision and consumption in the UK, Professor Ian Hargreaves, now a member of the Ofcom Board, came to the conclusion that in an era of “ambient news” where we have recently seen continuous live coverage from the war front in Iraq, “people feel least well informed about their localities.” He added, “This may point to an emerging crisis of local news infrastructures and could help explain why so many people find so much politics meaningless or difficult to engage with, because they are not able to judge its effect on their own communities”.

This conclusion is particularly relevant to Wales, where BBC and HTV news services concentrate on the Welsh national level, where independent local radio outside the more populous south has been less aggressively developed, and where the similar socio-geographic factors have limited the development of print-based media.

We would support the recommendation contained in his report that “Ofcom might be encouraged to undertake an early study of these issues, with a view to making recommendations upon the rules applying to local newspaper mergers, the role of access radio in news, a strategy for local television and a possible regime for public service internet news operations at the local level.”

This is particularly important now that the Communications Bill opens up the possibility of consolidation of ownership in radio and television, and of cross-media ownership between broadcast and print media. Despite economic conditions in Wales, we do not believe that these issues and the dilemmas they create will pass Wales by entirely.

4.13 Media literacy

Clause 10 places a duty on Ofcom to bring about greater public understanding of:

- The nature and characteristics of material carried on the electronic media
- The process of selection and material for publication
- Better public awareness of the available systems of accessing electronic material
- The ability of individuals to control the reception of such material
- The use of technologies and systems for regulating access to such material

In interpreting this duty Ofcom should have regard also:

- for the citizenship aspects of media literacy
- for the need for additional educational materials in the Welsh language
- for the curriculum differences in Wales

4.14 Research

Examination of all of the issues listed above will entail significant quantities of research. In devising its research programme Ofcom must ensure that it can obtain a clear picture not only of the UK as a whole but of its constituent parts. To do this it will need to ensure that samples for UK-wide research are of a size that render robust regional breakdowns. It will also need to devise research programmes that are specific to Wales itself. We envisage that this would be central to the work of the Ofcom Office for Wales.

In tackling this task we believe it would be to the benefit of Ofcom if the maximum degree of collaboration could be established with its stakeholders in Wales. All the broadcasters have their own research programmes and budgets, and while some work may be commercially sensitive, much other work could be shared, enhancing the volume and range of research and avoiding unnecessary duplication and cost.

Ofcom Group 27-3-2003

The Minister for Culture, Sport and the Welsh Language submitted the Advisory Group's Report to the Lord Currie, Chair of Ofcom, on 3-4-2003