



# Draft listed events code and regulations

## **Consultation**

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## Section 1

# Summary

- 1.1 The Broadcasting Act 1996, as amended by the Communications Act 2003, requires Ofcom to draw up a code and regulations dealing with listed events.
- 1.2 Listed events are sports events of national importance which have been “listed” by the Secretary of State for Culture Media and Sport in accordance with the 1996 Act. The current list is at annex 1 to the draft code (see Annex 4).
- 1.3 The purpose of the listed events rules is to restrict the acquisition by television broadcasters of exclusive rights to these events and the broadcasting of television coverage of the events on an exclusive basis so as to ensure as far as possible that there is wide public access to them.
- 1.4 The code also contains requirements relating to broadcasters under the jurisdiction of the UK which broadcast to other EEA states where rules have been drawn up on listed (or designated) events.
- 1.5 The draft code and regulations follow closely the approach taken by the ITC in its Code on Sports and Other Listed and Designated Events, drawn up under the 1996 Act.
- 1.6 Ofcom is not proposing to re-open debates on the listed events rules which are not affected by the Communications Act and which have been tried and tested over time.
- 1.7 The purpose of this consultation is therefore to seek views only on the specific changes to the code and on the wording of the regulations which cover certain matters previously covered by the ITC code.
- 1.8 The code and regulations will be kept under review by Ofcom in the approach to digital switch over.

## Section 2

# Scope of consultation

## Draft Code

- 2.1 The draft Ofcom code is attached at Annex 4. This is based closely on the ITC code which has been in place since 1996 and has been revised in the light of experience. The ITC code has been shown to work well on the whole and is generally accepted by broadcasters and rights holders. In the light of this and of the fact that the 2003 Act does not introduce significant changes, we have decided to keep the changes to the code to a minimum.
- 2.2 Apart from incorporating references to Ofcom and the new Act as appropriate, the main changes are:
- to reflect the formal separation of Group A and Group B events under the 2003 Act and the statutory provisions for the latter (paragraphs 3 and 10 of draft code). Previously this was done using the Secretary of State's general discretion under the 1996 Act;
  - to remove the sections dealing with the rules for Group B events and the definition of "live". These are now covered by the draft regulations (see below), as required by the 2003 Act; and
  - to take account of the amendment of section 99 of the 1996 Act prohibiting contracts between broadcasters and rights holders which grant exclusive rights for live coverage (paragraph 7 of draft code). This now only applies to Group A events.
- 2.3 The opportunity has also been taken to clarify the meaning of the code and to follow more closely the wording of the legislation in certain areas. However, this does not change the effect of the code.
- 2.4 Sections containing the main items of new text are underlined in the code.

**Question 1:** *Are broadcasters, rights holders and other interested parties satisfied that the changes to the code are appropriate to reflect the changes in the Communications Act and to provide additional clarification or follow more closely the wording of the legislation?*

- 2.5 Please note that Ofcom is not seeking views on the listed events rules themselves which have not been changed but only on the specific amendments to the code.
- 2.6 Section 104 of the 1996 Act provides for Ofcom to review the code from time to time. Ofcom intends to do this, and also to review the regulations (see below), in the light of the move to digital switch over.

## Draft Regulations

- 2.7 The requirement to produce regulations is new in the 2003 Act. However, in practice they deal with matters which were already covered in the ITC code. Ofcom is not proposing to change the fundamental approach taken by the ITC either in defining what constitutes live coverage or the rules for Group B events. However, a different form of words has been adopted as required for regulations of this kind. See Annex 5.

**Question 2:** *Are broadcasters, rights holders and other interested parties satisfied that the wording of the draft regulations is appropriate to maintain the approach taken by the ITC towards the matters covered?*

## Section 3

# Regulatory impact assessment

- 3.1 This section represents a Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003. You should send any comments on this RIA to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- 3.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally we have to carry out RIAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.
- 3.3 Ofcom is required by statute to regulate listed events. The general aim is to ensure as far as possible that there is wide public access to major events of national interest but the rules achieve this in a way which also furthers competition as far as possible by treating the two categories of broadcasters, as defined in the 1996 Act, equally.
- 3.4 Although the removal of regulation in this area is not an option, it would be possible for Ofcom to set less stringent requirements than the ITC. For example for Group B events the ITC code and Ofcom regulations set maximum limits on the period which can elapse between the end of live coverage on a cable/satellites channel and the start of highlights on a terrestrial channel with national coverage of the UK. This is to ensure that viewers to terrestrial television have a reasonable level of access to the event and do not have to wait a very long time before they can watch the highlights. It would be possible for Ofcom to allow a longer delay which would benefit cable/satellite broadcasters by making their live coverage more attractive. However, this would disadvantage viewers to terrestrial television.
- 3.5 Another option would be to set more stringent requirements. To use the above example, Ofcom could shorten the delay between the end of live coverage and the start of highlights. This would benefit viewers to terrestrial television but would disadvantage cable/satellite broadcasters.
- 3.6 It is not possible to quantify the costs and benefits of the approach being taken by Ofcom or of the different options which are open to Ofcom. The main impact of the listed events rules arises from the fact that events are listed, that some are placed in Group A rather than Group B, and that broadcasters are divided into two categories according to whether or not they have national coverage of the UK and are provided free to air. These are matters for the Secretary of State and the legislation, not Ofcom. The matters within Ofcom's discretion, such as that outlined above, are unlikely to have a major impact in our view. In any event, as indicated above, we feel that the existing rules have been proven over time and are generally accepted by broadcasters and rights holders. We are not therefore proposing to change them.

## Section 4

# Responding to this consultation

## How to respond

- 4.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Thursday 4 November**.
- 4.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- 4.3 Please can you send your response to [michael.johnson@ofcom.org.uk](mailto:michael.johnson@ofcom.org.uk).
- 4.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Johnson  
Content & Standards  
5th floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7981 3806

- 4.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- 4.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

- 4.7 If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Michael Johnson on 020 7981 3870.

## Confidentiality

- 4.8 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm this is acceptable).
- 4.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any

confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

- 4.10 Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.
- 4.11 Please also note that copyright in responses will be assumed to be assigned to Ofcom unless specifically retained.

### Next steps

- 4.12 Following the end of the consultation period, Ofcom intends to publish final versions of the code and regulations in early 2005.
- 4.13 Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### Ofcom's consultation processes

- 4.14 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
- 4.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- 4.16 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)



## Annex 1

# Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A1.1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A1.2 We will be clear about who we are consulting, why, on what questions and for how long.

A1.3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A1.4 We will normally allow ten weeks for responses, other than on dispute resolution. However, in this instance, given that the proposed changes from the existing code are minor, we have decided to shorten the consultation period to five weeks.

A1.5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A1.6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A1.7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 2

# Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Draft listed events code and regulations

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 3

# Consultation questions

**Question 1:** *Are broadcasters, rights holders and other interested parties satisfied that the changes to the code are appropriate to reflect the changes in the Communications Act and to provide additional clarification or follow more closely the wording of the legislation?*

**Question 2:** *Are broadcasters, rights holders and other interested parties satisfied that the wording of the draft regulations is appropriate to maintain the approach taken by the ITC towards the matters covered?*

**Annex 4**



# Draft Ofcom Code on Sports and Other Listed and Designated Events

Annex 4

**Consultation**

Publication date: **July 2004**

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## Section 1

# Foreword

1. Part IV of the Broadcasting Act 1996, (as amended by the Television Broadcasting Regulations 2000, SI 2000/54 as amended (“the Broadcasting Regulations”) and by sections 299 to 302 of the Communications Act 2003) (“the Act”), contains provisions relating to the broadcasting of listed and designated events. Under section 104 of the Act, Ofcom is required to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture Media and Sport. This Code has been produced by Ofcom, after consultation with broadcasters, sports bodies, the holders of sports rights and other interested parties, for the purpose of fulfilling this statutory duty. The Code incorporates the requirements of directive 89/552/EC as amended by 97/36/EC (the ‘Television Without Frontiers Directive’).
2. The Act restricts the acquisition by television programme providers of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage. Ofcom has powers to impose a financial penalty on its licensees if the relevant restrictions on broadcasting live coverage of listed events (or of designated events) have not been observed or if, in connection with an application for consent to broadcast live coverage of a listed event (or of a designated event), Ofcom has been given false information or if material information has been withheld with the intention of causing Ofcom to be misled (section 102 of the Act). In the case of the BBC and S4C, Ofcom must report the matter to the Secretary of State. Ofcom will have regard to the provisions of the Code in exercising these powers.
3. ‘Listed events’ are drawn up by the Secretary of State in accordance with the Act and the current list is at Appendix 1. The list is divided into two categories, referred to as Group A and Group B. Group A events are those events which may not be covered live on an exclusive basis unless certain criteria are met. The criteria and matters to be taken into account by Ofcom are set out at paragraphs 16-20. Group B events are those events that may not be broadcast live on an exclusive basis unless adequate provision has been made for alternative coverage. The minimum standard of alternative coverage which Ofcom will regard as adequate provision, is set out in The Coverage of Listed Events Regulations 2004 (SI 2004/[ ]) (“the 2004 Listed Events Regulations”). The Secretary of State may add events to and delete events from the list, or move events between Groups A and B, at any time, but only after consultation with the BBC, the Welsh Authority, Ofcom and the holder of the rights for the event in question.
4. A separate voluntary code of conduct for sports events has been drawn up by the Major Spectator Sports Division of the Central Council of Physical Recreation in consultation with the Sports Council. The central principle of this voluntary code is to ensure that, assuming interest on the part of broadcasters, television coverage of major sporting events generally, i.e. not only the listed events, will be available to the general public in live, recorded and/or highlights programmes.
5. Certain requirements are also placed on broadcasters by Article 3a paragraph 3 of the Television Without Frontiers Directive as applied in the Act following the Broadcasting Regulations. These requirements, set out in paragraphs 23-28, are designed to ensure that broadcasters under the jurisdiction of the UK and broadcasting to other

EEA states do not circumvent the rules on listed (or 'designated') events which apply in those states. Reciprocal arrangements exist for preventing broadcasters established in other EEA states from circumventing the UK listed events rules.



## Section 2

# Listed Events

### General provision and background relating to listed events

6. For the purpose of the live broadcasting of listed events, section 98 of the Act defines two categories of television programme services:
  - The first category consists of television programme services and EEA satellite services which for the time being satisfy the qualifying conditions. The qualifying conditions are defined as (a) that the service is provided without any consideration being required for reception of the service; and (b) that the service is received by at least 95 per cent of the population of the United Kingdom (these are referred to in this Code as ‘the first category’)
  - The second category consists of all other television programme services and EEA satellite services (these are referred to in this Code as ‘the second category’).

Television programme services and EEA satellite services which fall within the first category will appear in a list published from time to time by Ofcom pursuant to section 98(5) of the Act – see Appendix 2.

7. Section 100 of the Act requires that any contract for televising live coverage of a listed event which is entered into by a broadcaster must state that the rights are available for showing the event on a service falling within only one of the two categories, i.e. separate contracts must exist for each category. Any contract under which rights are acquired to televise the whole or any part of a Group A listed event live for reception in the United Kingdom or in any area of the United Kingdom, entered into after the commencement of Section 99 of the Act, is void if it purports, in relation to the whole or any part of the event or in relation to reception in the United Kingdom or any area of the United Kingdom, to grant those rights exclusively to any one television programme provider (as defined in section 99 (2) of the Act).
8. Section 101 of the Act prohibits a broadcaster who is providing a service (‘the first service’) in either category with a view to its being available for reception by members of the public in the United Kingdom (or any area of the United Kingdom), from showing live coverage of the whole or any part of an event unless it is authorised by subsection (1A), (1B) or (1C).
9. Subsection (1A) authorises live coverage if a broadcaster providing a service in the other category (‘the second service’) has acquired the right to show live coverage of the event or the same part of the event; and the area served by the second service consists of or includes all or almost all of the area for which the first service is provided. The first and second services may be provided by licensees in the same ownership, but between them they must be provided by a broadcaster in each of the two categories described above.
10. Subsection (1B) authorises live coverage if Ofcom has consented in advance to inclusion of that event; and subsection (1C) authorises live coverage of Group B events if (a) rights have been acquired by one or more persons in addition to the provider of the first service; and (b) the additional coverage constitutes adequate alternative coverage; and (c) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements of the 2004 Listed Events Regulations.

11. Section 99 (in relation to contracts for exclusive rights) and the restrictions contained in section 101 apply only to rights acquired after the commencement of those sections, i.e. 1 October 1996 or after the Secretary of State began to consult rights holders about changes to the list i.e. 25 November 1997 or 24 January 2001 as shown in Appendix 1, as appropriate.
12. An event may be listed because it is of 'national' interest within England, Scotland, Wales or Northern Ireland separately. This is the basis on which the Scottish FA Cup Final, for example, has been listed. The Act allows for those events to be shown only in the relevant part of the UK in which there is likely to be most viewer interest. The reference to Channel 3 in Appendix 2, therefore, means individual or groups of regional Channel 3 services, or Channel 3 as a whole.
13. The Act is concerned with providing an opportunity for live coverage to be made available. It is important to emphasise that the Act do not require or guarantee live coverage of listed events, including coverage on Channel 3, Channel 4 and the BBC. Nor does the Act prohibit exclusive live coverage of listed events on these or other services subject to Ofcom being satisfied that certain criteria have been met (see paragraphs 16-20 below).
14. The specific guidance which Ofcom is required to give is set out below. Ofcom will keep this guidance under review and may amend it in the light of experience.
15. The 2004 Listed Events Regulations (made under Section 104ZA of the Act) sets out the circumstances in which the televising of listed events generally, or of a particular listed event, is or is not to be treated as "live"; and what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage and the requirements that must be satisfied for the purpose of Section 101(1C)(d) by persons who have acquired rights to provide adequate alternative coverage.

**Note:** This Code is for guidance only. It should not be interpreted in any way that would produce a result contrary to the requirements and objectives of the relevant parts of the 1990 and 1996 Broadcasting Acts or the Television Without Frontiers Directive. Broadcasters and other interested parties are advised to read carefully the relevant parts of the Acts and Directive, together with this Code, and to obtain their own professional advice as necessary.

#### **Matters to be taken into account in giving or revoking consent for exclusive coverage of listed events**

16. Under Section 104(1)(a) of the Act Ofcom is required to draw up (and from time to time may revise) a Code giving guidance as to the matters it will take into account in determining whether to give or revoke its consent to a broadcaster providing a service in one category (the first service) to provide exclusive live coverage of an event (or part of an event) for the purposes of Section 101(1B) of the Act.

17.

In deciding whether to give its consent it may be sufficient for Ofcom to establish that the availability of the rights was generally known and no broadcaster providing a service in the other category had expressed an interest in their acquisition to the rights holder, or had not bid for the rights. However, Ofcom will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms and, in reaching a view, will take account of some or all of the following criteria:

- any invitation to express interest, whether in the form of public advertisement or closed tender, in the acquisition of the rights must have been communicated openly and simultaneously to broadcasters providing services in both categories;
  - at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring the rights and all material terms and conditions, including what rights were available;
  - if the rights to the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services in one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, e.g. to highlights, delayed transmissions, other events;
  - the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service;
  - the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. What is a fair price will depend upon the rights being offered and the value of those rights to broadcasters. A wide range of prices is likely to be regarded as fair but when required to make its own judgement on the matter Ofcom will have regard to, inter alia:
    - previous fees for the event or similar events;
    - time of day for live coverage of the event;
    - the revenue or audience potential associated with the live transmission of the event (e.g., the opportunity to sell advertising and sponsorship; the prospects for subscription income);
    - the period for which rights are offered; and
    - competition in the market place.
  - such other facts and matters as appear to Ofcom to be relevant, in the particular circumstances that have arisen.
18. A genuine opportunity to acquire the rights also requires that broadcasters are given a reasonable time in which to do so. What constitutes a reasonable time will depend upon the circumstances of each case, including the complexity of the negotiations and the production and transmission of the programme surrounding the event, and the proximity of the event to the date on which the rights are offered. The time allowed should give all parties a realistic opportunity to negotiate and reach agreement, but should not be unduly protracted, thereby preventing or restricting broadcasters from complying with this Code.
19. Ofcom's consent is also required where the area for which the service is to be provided does not consist of or include the whole, or substantially the whole, of the area for which the other service is to be provided. In considering whether to give its consent Ofcom will take account of the interests of the viewers in the different areas and the transmission coverage areas of the different broadcasters.
20. Consent will normally be given for the full period for which rights are acquired in recognition of the fact that the price paid will, inter alia, reflect the duration of the rights.

However, Ofcom will revoke its consent if the broadcaster to whom the consent has been given requests it, or if the consent has been given on the basis of false or misleading information. Additionally, Ofcom will consider revoking its consent if it appears that rights have been acquired for an extended period in order to circumvent the spirit of the Act. In determining what is an extended period Ofcom will have regard to precedents for this and similar events, including the periods for which rights are granted to non-UK broadcasters for overseas transmissions.

### **Adequate alternative coverage**

21. The situation may arise where a second service is unable or unwilling to provide adequate alternative coverage or any alternative coverage at all. Ofcom will then consider whether to give its consent to exclusive live coverage without alternative coverage and the same or similar matters as set out in paragraphs 16-20 will apply in order to check that broadcasters have had a genuine opportunity to acquire the rights either for live or alternative coverage on fair and reasonable grounds.

### **Circumstances in which sanctions might or might not be imposed**

22. Section 104(1)(b) of the Act, , also requires Ofcom to draw up and from time to time revise a Code giving guidance on the matters which it will take into account in determining for the purposes of Section 102(1) or 103(1) whether in all the circumstances it is unreasonable to expect a television programme provider to comply with the provisions of Section 101(1) and therefore whether sanctions should be imposed if the restrictions are not observed. Given the long lead times which are generally available for offering, selling and acquiring the rights, Ofcom believes that there are very few circumstances in which it would be reasonable for a broadcaster to proceed with exclusive coverage without Ofcom's consent. A broadcaster who proceeds to broadcast a listed event live without Ofcom's consent and where this is not in compliance with Section 101(1), will need to convince Ofcom that for legitimate reasons the period between the rights becoming available and the event taking place was too short for this consent to be obtained or that he believed he had complied but that belief was based on false information. In the latter situation, however, Ofcom will need to be convinced that the broadcaster had taken all reasonable steps to satisfy himself that another broadcaster providing a service in the other category had acquired the rights.

## Section 3

# Designated Events

## Requirements relating to designated events

23. Ofcom's consent is also required in certain circumstances before a broadcaster transmits coverage of an event to another EEA state and the event in question has been designated in that state.
24. In this section of the Code, a "designated event" has the meaning ascribed to it under Section 101A of the Act. It is the responsibility of broadcasters to check, in advance of acquiring the rights and in any event prior to transmission, whether the event in question has been designated and if so, in what terms. It is important to emphasise that the terms of designation may relate either to live or deferred coverage, or both. Broadcasters should inform Ofcom that they have acquired the rights to an event designated by another EEA state as soon as this happens.
25. Ofcom's consent to the exercise of the right to broadcast a designated event is required in the circumstances set out in Section 101B of Broadcasting Act 1996. In summary, consent is required where a substantial proportion of the public of the EEA State in question is deprived of the possibility of following that event by live or deferred coverage on free television, as determined by that State. This applies to any rights acquired on or after the day on which the event became a designated event. This requirement should be read in conjunction with Article 3a paragraph 3 of the Television Without Frontiers Directive.
26. In deciding whether or not to grant consent to the exercise of rights to broadcast a designated event, Ofcom shall have regard to the following:-
  - a. The circumstances in which the rights were acquired, for example whether other broadcasters were given an opportunity to acquire the rights on fair and reasonable terms, and did in fact try to do so. For example even if the rights were acquired in an auction process in which free broadcasters reaching a substantial proportion of the population were able to take part, it may be appropriate for these free broadcasters to be given a further opportunity to acquire the rights;
  - b. The manner in which the broadcaster proposes to exercise the rights acquired and the steps taken to try to ensure that a substantial proportion of the population is not deprived of the possibility of following the event;
  - c. The legislation of the EEA State in question and the extent to which (if at all) the rights holder has sought to comply with that legislation. Ofcom considers it desirable that the protection afforded to a designated event should, as far as possible, take account of the system of regulation applying in the EEA State which actually designated the event;
  - d. The practicality of steps that would enable the rights holder to comply with the objectives of the Television Without Frontiers Directive, namely achieving the transmission of the event on free television so that it can be received by a substantial proportion of the population of the EEA State in question;

- e. Such other facts and matters as appear to Ofcom to be relevant, in the particular circumstances that have arisen, including the facts and matters set out in paragraph 17 above to the extent applicable to designated events.
27. Ofcom shall consult on the request for consent in such manner as it considers appropriate. Ofcom may seek, and have regard to, the views of the broadcasting authorities, economic regulators and other television service providers in the EEA State which designated the event.

## Section 4

# Provisions relating to both listed events and designated events

## Provision of Information

28. 28. Although authorities in other EEA states are not required to consult Ofcom when one of their broadcasters has acquired exclusive rights to a UK listed event, Section 104A of the Act confers a power on Ofcom to request information relating to rights to televise UK listed events which it considers appropriate regarding any contract which a UK broadcaster has entered into relating to an event which is a designated in relation to an EEA state other than the United Kingdom. Ofcom shall, if so requested by another EEA state, provide such information to the competent authorities of that state in order to enable them to exercise their obligations under the Television Without Frontiers Directive. Equally, reciprocal rights enable Ofcom to request information of another EEA state to prevent broadcasters under their jurisdiction from circumventing the UK listed events rules. Ofcom is conscious of the need to respect the confidentiality of certain information which may be provided by broadcasters, for example about the acquisition of rights and the scheduling of programmes. However, it is also important to prevent the circumvention of the UK listed events rules. As much information as possible will therefore be made available to the relevant authorities including whether consent has already been given by Ofcom for exclusive live coverage of the event, whether complaints have been received from broadcasters that they were not given a reasonable opportunity to acquire the rights and an estimate of the value of the rights, together with information about how this estimate was calculated.

## Procedures for seeking consent in relation to both listed and designated events

29. A request for Ofcom's consent for exclusive live coverage of a listed event or a designated event must be made in writing to Ofcom's Secretary by the broadcaster wishing to transmit the event and be accompanied by full reasons and justification for the request and all relevant supporting information. Requests should be made not less than three months prior to the date of the event. In circumstances where the broadcaster requesting consent only acquires the rights to the event within three months of proposed transmission, the request for consent shall be made within seven days of the rights being acquired. In any event, a broadcaster who is unable to meet the three month deadline should keep Ofcom informed about the progress of negotiations. Broadcasters should be aware that Ofcom may not be able to consider applications for consent which are received very close to the date when the event takes place and in exceptional circumstances this may mean that consent cannot be given.
30. As a first step in considering the request Ofcom will normally issue a public notice inviting broadcasters, rights holders and other interested parties to comment on the request. Depending on the response to this and any other consultations and on Ofcom's own investigations into the matter, the applicant may be asked to supply additional information in writing and/or to attend a meeting with Ofcom staff.

31. fcom will respond as quickly as possible to any request. Ofcom will normally publish its decisions and its reasons, but, in doing so, will have regard to the legitimate interest of the parties in the protection of confidentiality.

July 2004



## Annex 1

# UK Listed Sporting Events

### GROUP A

The Olympic Games  
The FIFA World Cup Finals Tournament  
The FA Cup Final  
The Scottish FA Cup Final (in Scotland)  
The Grand National  
The Derby  
The Wimbledon Tennis Finals  
The European Football Championship Finals Tournament  
The Rugby League Challenge Cup Final \*  
The Rugby World Cup Final \*

### GROUP B

Cricket Test Matches played in England  
Non-Finals play in the Wimbledon Tournament  
All Other Matches in the Rugby World Cup Finals Tournament \*  
Six Nations Rugby Tournament Matches Involving Home Countries\*\*  
The Commonwealth Games \*  
The World Athletics Championship \*  
The Cricket World Cup – the Final, Semi-finals and Matches Involving Home Nations' Teams  
\*  
The Ryder Cup \*  
The Open Golf Championship \*

\* Restrictions apply to rights acquired after 1 October 1996 except for those events marked by an asterisk where the relevant date is 25 November 1997.

\*\* The list was amended in 2001 following the change of name of this event to the Six Nations Rugby Tournament. The relevant date for this event is therefore 24 January 2001

## Annex 2

# List of Services meeting the 'Qualifying Conditions' as set out in the Television Regulations 2000

CHANNEL 3 (ITV1)

CHANNEL 4

BBC 1

BBC 2

## Annex 5

# Draft Regulations

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### STATUTORY INSTRUMENTS

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**2004 No. XXXX**

## **BROADCASTING**

### The Coverage of Listed Events Regulations 2004

<i>Made</i>	- - - -	<i>2004</i>
<i>Coming into force</i>	- -	<i>2004</i>

Whereas the Office of Communications (“OFCOM”) have given notice of their proposal to make these Regulations in accordance with section 403(4)(a) of the Communications Act 2003<sup>(1)</sup>, have published notice of their proposal in accordance with section 403(4)(b) and have considered the representations made to them before the time specified in the notice:

Now, therefore, OFCOM, in exercise of the powers conferred upon them by section 104ZA of the Broadcasting Act 1996<sup>(2)</sup> hereby make the following Regulations:

#### **Citation, commencement and extent**

1. These Regulations may be cited as the Coverage of Listed Events Regulations 2004 and shall come into force on [ ] 2004.

#### **Interpretation**

2.—(1) In these Regulations —

“Group B listed event” is to be construed in accordance with section 97(1) and (1A) of the Act;

“the Act” means the Broadcasting Act 1996;

“the first service” means a service that falls within a category of service set out in section 98(1) of the Act;

“the second service” means a service that falls into a different category from the first service and is provided for an area that consists of or includes all or almost all of the area for which the first service is provided;

“listed event” is to be construed in accordance with section 97(1) of the Act; and

“scheduled duration” has the meaning given in regulation 3 of these Regulations.

<sup>(1)</sup> 2003 c.21; section 104ZA(3) of the Broadcasting Act 1996 (1996 c.55), inserted by section 302(1) of the Communications Act 2003 applies section 403 of the 2003 Act (procedure for regulations and orders made by OFCOM) to the power of OFCOM to make regulations under section 104ZA.

<sup>(2)</sup> 1996 c.55.

(2) For the purposes of these Regulations, the requirements in relation to the coverage of a listed event apply to the coverage of a part of a listed event as they apply to the coverage of the whole of that event.

### **Meaning of “scheduled duration”**

**3.—**(1) Subject to paragraph (2), in these Regulations, “scheduled duration” means the period during which a listed event or part of a listed event on any day is scheduled to take place beginning with the time the listed event or part of the listed event on any day is scheduled to commence and ending with the time it is scheduled to finish.

(2) Where a listed event has a number of component activities taking place concurrently, “scheduled duration” means the period that elapses between the scheduled beginning of the first component of the listed event taking place on any day and the scheduled finish of the last component of the listed event on that day.

### **Circumstances in which the televising of listed events is to be treated as live**

**4.** Television coverage is to be treated as live (except for the purposes of section 101B of the Act) where —

- (a) coverage of a listed event which is a single event is simultaneous with the play or activities in the listed event as the play or activities is or are taking place;
- (b) coverage on any day of a listed event which is a single event scheduled to last over several days is simultaneous with the play or activities on that day as the play or activities is or are taking place;
- (c) coverage of a listed event which consists of separate games or matches is simultaneous with each separate game or match as the game or match is taking place; or
- (d) coverage of a listed event which consists of separate component activities, games or matches that overlap in time is simultaneous with each component activity, game or match as the activity, game or match is taking place.

### **Provision of adequate alternative coverage**

**5.—**(1) Coverage of a Group B listed event shall be taken to represent the provision of adequate alternative coverage where —

- (a) rights have been acquired to include coverage in the second service of edited highlights or delayed coverage in accordance with the requirements of this regulation and regulation 6;
- (b) rights have been acquired for live radio coverage in accordance with the requirements of regulation 6;
- (c) coverage of the edited highlights or delayed coverage amounts to a minimum of at least 10 per cent. of the scheduled duration; and
- (d) where a listed event lasts an hour or more or where the scheduled duration of a listed event on any day lasts an hour or more, coverage of the edited highlights or delayed coverage amounts to a minimum of 30 minutes or 10 per cent. of the scheduled duration, whichever is the greater.

(2) Where a restriction has been imposed by the rights holder in relation to the alternative coverage, preventing coverage by the second service of the edited highlights or delayed coverage until after a specified period has elapsed, coverage of the edited highlights or delayed coverage shall be taken to represent the provision of adequate alternative coverage —

- (a) where the scheduled duration ends at a time after midnight and before 8.00am, coverage of the edited highlights or delayed coverage commences by no later than 10.00am;
- (b) where the scheduled duration ends between 8.00am and 8.30pm, coverage of the edited highlights or delayed coverage commences within 2 hours of the scheduled finish time;
- (c) where the scheduled duration ends at a time between 8.30pm and 10.00pm, coverage of the edited highlights or delayed coverage commences by no later than 10.30pm;
- (d) where the scheduled duration is between 10.00pm and midnight, coverage of the edited highlights or delayed coverage commences within 30 minutes of the scheduled finish time.

(3) In this regulation “specified period” means any period of delay that is required under the contract granting rights for provision of the alternative coverage and is a period which commences immediately after the end of the scheduled duration.

**Requirements to be satisfied for the purposes of section 101(1C)(d) of the Act by persons who have acquired rights to provide adequate alternative coverage**

6. For the purposes of section 101(1C)(d) of the Act, the person who has acquired rights to provide the alternative coverage is a broadcaster providing the second service and —

- (a) subject to regulation 5(2) the provider of the second service has editorial control in relation to the content and scheduling of the edited highlights or delayed coverage; and
- (b) the right to provide live radio coverage of the listed event has been acquired by a radio station with national coverage or by an organisation providing a sports service to radio stations which form a national (or near national) network.

*Name*

Date

For and by authority of the Office of Communications

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 104ZA of the Broadcasting Act 1996 (“the Act”) which was inserted by section 302 of the Communications Act 2003. Under section 104ZA OFCOM may make regulations about the coverage of listed events.

These Regulations specify —

- (c) the circumstances in which the televising of listed events generally, or of a particular listed event, is to be treated as live;
- (d) what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate alternative coverage; and
- (e) the requirements that must be satisfied for the purposes of section 101(1C) of the Act by persons who have acquired rights to provide adequate alternative coverage.

A regulatory impact assessment is available from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the OFCOM website at [www.ofcom.org.uk](http://www.ofcom.org.uk).

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