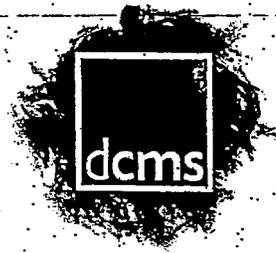


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THE COMMUNICATIONS WHITE PAPER

GOVERNMENT RESPONSE TO THE SECOND REPORT FROM THE CULTURE, MEDIA AND SPORT SELECT COMMITTEE, COMMONS SESSION 2000-2001

Introduction

The Government welcomes the Committee's report and its contribution to the debate on the Communications White Paper – A New Future for Communications (Cm 5010).

Since the publication of the Report, the Government has brought forward the Office of Communications Bill which it introduced in the House of Lords. This Bill allows for the establishment of the Office of Communications (OFCOM), which will prepare itself to take on the duties to be conferred upon it later as the new single regulator for the media and communications industries.

Published jointly by the Department for Culture, Media, and Sport and the Department of Trade and Industry, the Bill makes it possible to set up a small board for the new body and for OFCOM to begin the preparatory and practical work necessary for it to be in a position to take on regulatory functions in due course.

A draft Communications Bill, containing the Government's proposals for the regulatory framework which OFCOM will apply, is to be published in the spring of 2002. This will provide an opportunity for further public consultation on the implementation of the policies set out in the White Paper. OFCOM will take up its regulatory functions only when the Communications Bill itself becomes law, which could not be before 2003 and would depend on Parliamentary time being available in the 2002-2003 session.

The Office of Communications Bill therefore effectively facilitates the continuation of the work begun between the regulators themselves and with the Government to prepare for OFCOM. OFCOM would ultimately take on the responsibilities of the five existing authorities in the sector: Oftel, the Independent Television Commission, the Radio Authority, the Broadcasting Standards Commission and the Radiocommunications Agency. In summary, the OFCOM Bill allows the formal establishment of OFCOM; allows OFCOM to prepare for the assumption of regulatory powers; and places on a formal footing the work of the two Departments and the existing regulators on developing OFCOM.

This response represents the Government's current thinking on the issues discussed by the Committee, but work continues on many of these issues. The Government will, where appropriate, add to this response when it publishes the draft Communications Bill.

Context and debate

- (i) Having ourselves recommended the creation of a single regulator in 1998, we have no hesitation in supporting the proposal for a new unified regulator contained in the Communications White Paper (paragraph 13).

The Government welcomes the Committee's continued support for the creation of a single regulator and is grateful for the detailed analysis and research undertaken and recommendations formulated by the Select Committee over recent years which have contributed valuably to the policy-making process.

- (ii) In future, the delivery of public services direct to the citizen in his or her home must be central to public policy in this area. We see insufficient signs of such centrality in the Communications White Paper (paragraph 17).
- (iii) We recommend that, in its response to this Report, the Government set out its views on the relationship between the development and regulation of new services in the communications market and the electronic delivery of public services. We further recommend that, in the same document, the Government set out its views on the scope for the new regulator to have a specific duty to pursue the interaction between the two (paragraph 18).

The Government agrees that the new technologies offer great potential for delivering public services in new ways and these are central to the Government's e-strategy. We remain committed to providing access to all Government services electronically by 2005. The regulatory framework set out in the White Paper is designed to facilitate the wide availability of the necessary technologies, but, other than through the broadcasters who have accepted licence conditions to do so, it is not the function of the regulator to ensure the delivery of particular content direct to the public by any particular means: this is for the public or private service provider on-line just as it is off-line.

- (iv) We recommend that a statutory duty be imposed on the new regulator to conduct and lay before Parliament an annual audit of performance in relation to the stated Government objective of making the United Kingdom "home to the most dynamic and competitive communications and media market in the world". We envisage that this audit would look beyond sectors subject to direct oversight by the new regulator, to the film industry, for example, to broaden understanding of relations between the sectors (paragraph 21).

The Office of Communications Bill sets out that the regulator will report annually on how it has carried out its functions and on its proceedings during that year. Each report will be laid before Parliament.

The White Paper proposals envisage a very clear focus for the regulatory functions of OFCOM in relation to the broadcasting and telecommunications sectors and, bearing in mind also the many related creative and other industries in which it could have an interest, we believe that to expand its remit even further by placing on OFCOM specific duties in the new sectors of the kind proposed by the Committee would risk losing its clarity of purpose and reducing its effectiveness.

- (v) We are not convinced that inflexible legislative provisions relating to training expenditure by all licensed broadcasters are desirable, but we

~~support the granting of a power to the new regulator to promote training activities, where appropriate with specified universities, that are proportionate to the public service obligations and privileges of particular licensed broadcasters (paragraph 23).~~

We made clear in the White Paper our intention to ensure that support for training continues so that the broadcasting industry has the skills needed to compete effectively in the world media market place. We agree with the Committee that inflexible provisions relating to training expenditure are undesirable. We also agree that OFCOM should have a role in promoting support for training, working closely with Skillset, the National Training Organisation for the sector, and with the industry itself. This will be underpinned by requirements, in the first tier of the proposed new regulatory structure, for broadcasters to set out plans in this area.

- (vi) We recommend that the new regulator be given distinct objectives relating to consumer protection and to the promotion of open and competitive markets. We further recommend that the Government prepare policy guidelines for the new regulator on matters affecting the priority of its different objectives to be debated as part of the legislation giving effect to the proposals in the White Paper (paragraph 27).

The Government agrees that consumer protection and the promotion of competition deserve to be stated as distinct objectives and the Communications Bill will provide for that. These and the other objectives set out in the White Paper will all be important for OFCOM, however, and we do not consider that it would help OFCOM to strike the right balance between them if one objective were to be given priority over the others. Where there is a conflict between them, it will be for OFCOM to resolve it case by case.

- (vii) We support the proposals in the White Paper to grant sector-specific powers to the new regulator. The exercise of these powers will have a vital role to play in the continued development of accessible networks and fair and competitive markets. It is appropriate that such powers be exercised by the new regulator (paragraph 31).

The Government welcomes the Committee's support for continuing sectoral regulation where this is necessary or appropriate.

- (viii) We recommend that, notwithstanding the proposed removal of specific legislative barriers to further ITV consolidation above and beyond the general provisions of competition law, separate licences be retained for each ITV region, including provisions relating to regional production and the contribution of each region to network programming. We further recommend that there be a legislative obligation upon the new regulator to maintain a network of offices in the nations and regions of the United Kingdom to facilitate effective monitoring of compliance with regional obligations by broadcasters (paragraph 34).

The retention and strengthening of the regional dimension to public service broadcasting is an important strand of White Paper policy (section 4.4) and the Government does not propose to alter the present statutory requirement for Channel 3 services to be separately licensed on a regional basis.

Requirements for regional programming and production by public-service broadcasters will be included in tier two of the proposed new regulatory structure and we agree with the Committee that effective monitoring of compliance with regional obligations by OFCOM will be important. The detailed organisational and administrative arrangements to achieve this will, however, be a matter for OFCOM to determine.

- (ix) We do not believe that the case for specific restrictions on radio ownership at national level has been made and we recommend accordingly that legislation giving effect to the White Paper proposals should remove all such restrictions (paragraph 36).
- (x) We consider existing rules on cross-media ownership contained in the Broadcasting Acts 1990 and 1996 to be increasingly unnecessary in a more diverse and competitive media market in which general competition law, sector-specific regulatory powers and content regulation by licensing all apply. We view restrictions based on "share of voice" as quite impractical even if they were desirable. We consider that matters of such parliamentary and public importance as media ownership and control should not be open to significant amendment by means of secondary legislation. A certain inflexibility is inherent in primary legislation, but this is a price worth paying for full scrutiny. The inflexibility inherent in such controls in primary legislation is a compelling reason why specific controls should be maintained in forthcoming legislation only if the case for such controls is overwhelming and enduring (paragraph 45).

In preparing for the draft Communications Bill, the Government is giving careful consideration to the wide range of views expressed on media and cross-media ownership.

- (xi) The new regulator is best placed to judge the impact of new BBC services on the development of open and competitive markets, and also to weigh that impact in the balance against the regulatory objective of "maintaining high quality of content, a wide range of programming, and plurality of public expression". The new regulator should be able to reach such decisions transparently and in a manner that is free from any imputation of political interference. The decisions relate precisely to the type of issues that the new regulator is being established to regulate. We recommend that, from the time of its establishment, the new regulator assume the powers to approve and to review new BBC licence fee-funded services currently held by the Secretary of State for Culture, Media and Sport. We expect that the new regulator would be given powers to ensure that, while the BBC retained the right and the ability to continue with services and to launch new services funded from the licence fee, such services would be conducted on the basis of fair competition (paragraph 54).

As noted in the White Paper, it is important that OFCOM advise the Secretary of State formally on the market impact of any proposals for new BBC public services, but it is important that Ministers retain the final power of decision on the extent of BBC public provision from the licence fee agreed by Parliament.

- (xii) The Government has already responded to criticism of the failure to make new proposals about digital television and analogue switch-off in the

Communications White Paper by announcing initiatives to promote digital television in the Competitiveness White Paper published on 13 February 2001 (paragraph 56).

- (xiii) The task of developing a clear labelling scheme for digital television sets is urgent. We recommend that the Government aim to establish a scheme for "kite-marking" integrated digital television sets no later than October 2001 and report on progress on consultation with the industry about achieving that aim in its response to this Report. This scheme should ensure that potential purchasers of non-digital television sets are warned about the limited life expectancy of their television sets without the purchase of additional equipment in view of the advent of analogue switch-off in the near future (paragraph 61).

Following discussions with the Government, manufacturers, retailers and broadcasters have agreed to promote the Digital Video Broadcasting (DVB) logo to identify those TVs which are genuinely digital receivers. UK manufacturers and retailers have been working together to ensure that all new digital TVs carry the logo, clearly visible on the screen of all digital TVs in retailers as well as on boxed digital TVs, and that sales staff in the shops are trained to understand and explain the advantages of digital TVs over analogue sets and so called 'digital ready' sets. The early results of this campaign were promising, and led to a two-fold increase of the sales of integrated television sets.

- (xiv) We recommend that, by October 2001, the Government agree with the television industry the text of a leaflet on digital television to be distributed to every home in the United Kingdom. We further recommend that this be backed up by a public information campaign on all free-to-air television channels, ideally with the same content on each channel (paragraph 64).

The Government agrees that it is very important for consumers to be well informed about what digital television is and how they can gain access to it. This should be a key area to be developed by public and private sector stakeholders in the digital television Action Plan. It is a condition of the approval given to the BBC for new digital services that they promote digital television vigorously and we expect them to do so on air as soon as possible. More general information is provided on the DCMS website, and a "digitaltv.culture.gov.uk" website has also been launched. While targeted information leaflets may have their place in the overall strategy, we do not at present consider that a leaflet to every home would be the most effective way of informing consumers about digital television.

- (xv) While the Government will not wish to take precipitate action that might threaten the development of the commercial market in digital television, it is important for the Government to keep an open mind on all options that might assist in facilitating early analogue switch-off, particularly those options that would have the added advantage of advancing other Government objectives relating to universal access to the Internet and to the wider development of broadband (paragraph 68).

Agreed. The digital television action plan will ensure that all Government objectives to which digital television can contribute are co-ordinated effectively.

- (xvi) The new regulator must see it as a priority to ensure that the market

delivers a range of competitive packages for unmetered access as an essential component if the Government's objective of universal access to the Internet by 2005 is to be realised (paragraph 71).

The Government agrees with the Committee that unmetered access packages are an increasingly popular and important way for consumers to access the internet. The UK has some of the cheapest access packages in the world. For example, a recent OFTEL Benchmarking study reported that:

"The UK is cheaper than the US and Germany for unmetered residential access (unmetered PSTN dial up services are not available in France and Sweden)"

The ready availability of these low-cost services in the UK is a result of the effective competition regime run by OFTEL. We expect OFCOM's central objectives will include responsibility to promote consumer choice and effective competition. It is for the competitive market to deliver attractive packages to consumers.

- (xvii) Access to the Internet can be an important driver of the take-up of digital television, and the expansion of digital television services can be fundamental to achievement of the Government's objective of universal Internet access by 2005. We are concerned that these links are not readily apparent in the two separate Government policies at present. We recommend that the promotion of Internet access through digital television become a more prominent element in Government policy for the Internet and that the promotion of digital television by the Government and the industry lay greater stress than is currently evident on digital television as an easy and affordable gateway to the Internet (paragraph 72).

Again, the digital television action plan should ensure that the synergies between Internet access, digital television and the delivery of Government services electronically are developed. Linked with a 'phone line, the television (analogue or digital) can provide an easy means of gaining access to the Internet for those without a personal computer (PC). Much of the material available on the Internet, however, is designed for access through a PC, and we must be careful to see that consumers are not deterred from using the Internet by a poor early experience through the television.

- (xviii) Current universal service provision of both television and telephony service provides a vital unifying factor in British society and in the British economy. It is of paramount importance that this unifying force is maintained in the digital era (paragraph 87).

The Government welcomes the Committee's support for its policies of continuing to ensure universal access to public service TV channels and to telephone services in use by the majority and necessary for full social and economic inclusion.

- (xix) The Government is right to think in terms of a future universal obligation to provide high bandwidth digital services. We accept that, given the early stage of development of broadband in this country, it would be wrong for the Government to put all its eggs in one technological basket or to set a firm timetable for a new universal obligation when it is far from clear what form such an obligation will eventually take. However, we are

deeply disappointed that the Government's broadband strategy appears to be developing in virtual isolation from the public and consumer needs and opportunities created by analogue switch-off. The role of both digital television and of Internet-based broadcasting as consumer services in driving broadband take-up is largely neglected in that strategy. We believe this reflects a broader underestimation by both Government and industry of consumer demand for broadband services. Despite the protestations of close and effective working between the Department of Trade and Industry and the Department for Culture, Media and Sport, the Government's business-oriented broadband strategy and its consumer-oriented strategy for analogue switch-off do not intersect as they must if the Government is to respond to and harness the opportunities of the converged world. We expect the Government to tackle these weaknesses as a matter of urgency (paragraph 90).

The Government welcomes the Committee's acknowledgment that the market is at too early a stage for a universal service obligation for high bandwidth services.

The Government recognises the interface between the development of digital television and broadband access markets. There is some substitution between the two ranges of services which they can deliver; but there are also some unique features. We believe that it is for a competitive market to discover which services are valued by consumers and which technology is able to deliver them at a price which is attractive.

As discussed above the digital television action plan should ensure that the synergies between Internet access, digital television and the delivery of Government services electronically are developed.

- (xx) We recommend that, in its response to this Report, the Government set out the proposed role for the new regulator in taking forward the Government's objectives for analogue switch-off and broadband provision. We further recommend that a statutory duty be imposed upon the new regulator to conduct and lay before Parliament an annual audit of progress towards the Government's objectives for analogue switch-off and for broadband (paragraph 91).

Section 33 of the Broadcasting Act 1996 provides for the Secretary of State to keep under review the appropriateness of continuing analogue television broadcasting and sets out the key considerations - provision and availability of services and ownership or possession of the relevant receiving equipment. In conducting his review the Secretary of State is required to obtain reports from the BBC and the regulator. We intend to retain those provisions.

OFCOM will have general responsibilities to promote effective competition in the communication services sector and to protect the interests of consumers. The Government will expect OFCOM to exercise these powers in the broadband market as it will in any other emerging market. From time to time the Government has asked OFTEL to provide benchmarking information on the state of UK telecommunications markets. In 'UK online: the broadband future' we asked OFTEL to continue international benchmarking of broadband prices and roll-out in the G7. We would expect OFCOM to fulfil similar roles where and when appropriate.

- (xxi) We recommend that, in its response to this Report, the Government set

out its assessment of the main factors to be borne in mind in reaching a decision on radio analogue switch-off (paragraph 93).

Section 67 of the Broadcasting Act 1996 already provides for the Secretary of State to keep under review the appropriateness of continuing analogue sound broadcasting and sets out the key considerations - provision and availability of services and ownership or possession of the relevant receiving equipment. In conducting his review, the Secretary of State is required to obtain reports from the BBC and the regulator. We propose to retain this section.

- (xxii) There is an enduring future for public service broadcasting, provided it is recognised that that future will not be like the past (paragraph 94).

Agreed.

- (xxiii) Public service broadcasting is a constantly changing phenomenon. Accordingly, it is not appropriate to criticise the White Paper on the grounds that the document has failed to provide a simple definition of public service broadcasting. However, we consider that there are three general principles which should guide the future provision of public service broadcasting that are not fully reflected in the White Paper (paragraph 96).
- (xxiv) The first principle is that, while the combination of funding arrangements, status and regulatory positions of the "privileged broadcasters" - the BBC, ITV, Channel 4 and Channel 5 - means that they will continue to produce considerable public service content for the foreseeable future, it does not follow that the output of those broadcasters can be equated with public service broadcasting (paragraph 97).
- (xxv) The second principle that should inform the future development of public service broadcasting is that the current position of the "privileged broadcasters" brings with it very considerable costs, both in terms of direct and indirect charges upon the public and in terms of the impact on the development of a competitive and dynamic market, and that these costs should be transparently identified and continuously assessed against other means of achieving the desired ends in terms of public service content (paragraph 102).
- (xxvi) The third principle is that the focus in future should be on ensuring the provision of public service content from whatever source is most appropriate rather than on protecting the privileges of certain broadcasters for their own sake (paragraph 105).

The framework for public service broadcasting laid down in the Broadcasting Acts assumes that privileges are required by broadcasters in return for the acceptance of positive content obligations imposed in licences or the BBC Charter and Agreement. Those broadcasters on whom such obligations are imposed are described as public service broadcasters. They are holders of Channel 3, Channel 4 and Channel 5 licences; the BBC and S4C. The Government does not believe that the ability of broadcasting to continue to inform, educate and entertain to the standards that the public has come to expect can be maintained without imposing positive obligations on broadcasters, while accepting that the position of the current holders of public service broadcasting licences should not necessarily be guaranteed

indefinitely. It would be difficult to identify any part of their output that was not in response to those obligations, so was not in some sense "public service".

The Government agrees that greater transparency about the costs would be desirable. It is for this reason that the White Paper announced that spectrum used by broadcasters would be valued.

(xxvii) We recommend that, as a matter of urgency, the Radio Authority identify pilot schemes for expanded community radio projects for launch in advance of the introduction of legislation to give effect to the proposals in the White Paper. We envisage that pilot schemes would include projects focused on distinct neighbourhoods for periods significantly more than 28 days and extensions of the scope of school-based projects with current restricted service licences (paragraph 109).

(xxviii) We are convinced that there is both a strong need and an overwhelming case for the establishment of a permanent community radio sector in the United Kingdom, distinct from and complementary to commercial radio. We support the creation of an "Access" Fund both to assist in the establishment of new projects and to provide continuing funding to reflect the fact that funding of the sector will not be primarily commercial. We expect that the level of this Fund would reflect the two distinct functions of support for launch and continuing financial support. In the light of the likely level of demand, we recommend that the Fund be financed principally from general taxation (paragraph 111).

The Radio Authority announced on 8 August that it had invited fifteen groups to apply to run Access Radio pilots as part of its experimental scheme. The scheme will evaluate different approaches to the concept to inform the future radio regulator how Access Radio, should it be introduced in the future, might be licensed, regulated, funded, promoted and organised. Conclusions on funding will help inform decisions on the need for an Access Fund.

The fifteen groups reflect all four of the home nations, rural and urban areas, including links with urban regeneration projects, services for ethnic minorities in the Asian and Afro-Caribbean communities, a wide range of age groups from children to older people, Christian-based stations, and a range of financial models.

The maximum length of licences to be offered is twelve months, but some services propose shorter durations. The Radio Authority expects services wanting a twelve month licence to begin in January or February 2002. Those which have requested licences for a shorter period may begin broadcasts later in that year. The Authority will be putting in place formal evaluation of the pilot experiments.

(xxix) We welcome the clear and unequivocal statements that the Government is not seeking to establish any new forms of Internet regulation by means of proposals in the White Paper. We consider, however, that fears on this score arise directly from what can most generously be interpreted as infelicitous drafting in the White Paper. The same mistake must not be repeated in the legislation that follows. We recommend that the new regulator be explicitly excluded by statute from imposing regulatory obligations relating to Internet content. We further recommend that the Government reaffirm its commitment to self-regulation as the best and

only way forward for Internet content regulation and clarify that the Government does not envisage any form of "co-regulation" of the Internet involving additional powers of enforcement that go beyond the principle that the general law should apply online as offline (paragraph 116).

- (xxx) We consider that it would not be appropriate for the new regulator to use its licensing powers for media with spectrum scarcity as a back-door method of Internet content regulation and we recommend that there be a specific statutory prohibition on the new regulator doing so (paragraph 118).

As Ministers stated in their evidence to the Committee, the White Paper proposals do not envisage any extension of statutory regulation into Internet content. The White Paper makes clear [para 6.10.3] that the Government will continue to encourage and support the valuable and widely-admired work of self-regulatory bodies such as the Internet Watch Foundation, but OFCOM will have a duty to promote media literacy and to conduct research on the full range of electronic communications issues. In this context, OFCOM would for example be well placed to promote greater awareness of the work of the IWF and similar bodies and of the availability and use by individuals of rating and filtering devices, which can give users greater confidence in their, and especially their children's, use of the Internet. This is education instead of regulation. We have made our position clear and propose a scheme to give effect to our policy, by excluding from the regulatory regime any system of regulating the Internet. We consider this route preferable to a specific statutory bar on regulation of the Internet which is unnecessary and is also inappropriate since the Internet is not necessarily going to be a stable and readily definable system.

We agree that it would not be appropriate for the new regulator to use its licensing powers for media with spectrum scarcity as a back-door method of Internet content regulation and our proposals seek to avoid that. We aim similarly to make licensing arrangements for other platforms, notably satellite and cable, applicable only to broadcast material. We recognise that in such technologically advanced and fast-developing sectors, there is a particular challenge in framing definitions which will stand the tests of time and change; the longer process of development of and consultation on the draft Communications Bill will provide an opportunity to draw on a wider range of expertise across the industries in order to get this aspect of the Bill right.

- (xxxi) In the future, universal negative content regulation will cease to be possible. As the Internet becomes used increasingly as a medium for broadcast content, there will be an alternative to the licensed broadcasters. The regulatory regime for licensed broadcasters, and for non-scheduled services in particular, must reflect this (paragraph 121).

The White Paper explicitly recognised this and set out an approach to regulation based on people's different expectations of different media, combined with information and education to facilitate informed use of the different media. We note the Committee's specific comments in relation to non-scheduled services and will consider this particular issue further in developing the Communications Bill.

- (xxxii) We expect there to be a continuing case for positive programming requirements for the "privileged broadcasters" and any other licensed broadcasters that may in future be in receipt of direct or indirect subsidy in respect of public service content (paragraph 122).

Agreed (cf response to recommendation xxvi),

(xxxiii) We strongly support the Government's recent proposals to establish more stretching targets for subtitling on digital terrestrial television and to extend such obligations to digital cable and satellite services by means of new primary legislation. We consider that any decision by the new regulator to exempt providers from these targets should be transparent and based on clear criteria (paragraph 123).

The Government fully recognises the importance of access to television services for people with sensory impairments. We welcome the Committee's support for our decision to increase subtitling targets on digital terrestrial television (DTT), and our proposal to extend requirements for subtitling, sign language and audio description on DTT to digital cable and digital satellite channels as part of the Communications Bill. OFCOM will be required to consult on and publish the criteria under which certain broadcasters may be exempted from these obligations.

(xxxiv) There is a real danger that the regulatory régime for broadcasting will be in a state of almost continuous flux and uncertainty from now until 2006. By failing to provide for an integrated approach by the new regulator to all broadcasters including the BBC, the Government has left a large amount of unfinished business. We find it absurd to suggest that Parliament's role in reviewing the BBC's status would somehow be diminished if the BBC were subject to equal treatment with other broadcasters in legislation that will doubtless be subject to extended and detailed consideration by both Houses of Parliament. We recommend that the House of Commons be given a full opportunity early in the next Parliament to consider the future regulation and governance of the BBC as part of the process leading to enactment of the new regulatory régime (paragraph 129).

The White Paper provides that OFCOM will have an important role in relation to the BBC. The principle is to create a more level playing field: the BBC will comply with the same standards as other broadcasters in relation to tiers 1 and 2; and all public service broadcasters will be self-regulating at tier 3. We expect the BBC Governors to work closely with OFCOM to ensure that regulation of the BBC reflects the new conditions in which all broadcasters operate. The Government's policy is a balanced one, ensuring that the BBC maintains its independence and relationship with the Secretary of State and Parliament, while bringing it within the overall regulatory structure.

(xxxv) We recommend that the Prime Minister establish a separate Department of Communications with its own Secretary of State and assuming the relevant responsibilities currently within the Department for Culture, Media and Sport (relating to broadcasting and the media), the Department of Trade and Industry (relating to telecommunications and the Internet), the Cabinet Office (relating to the electronic delivery of Government services) and the Home Office (relating to the regulation of videos) at the earliest possible opportunity (paragraph 132)

As the Committee acknowledges, machinery of government changes are a matter for the Prime Minister. Following the 2001 General Election, he has brought responsibility for the regulation of videos into the Department for Culture, Media and Sport.

(xxxvi) We consider it vital, not least on grounds of public accountability, that the internal structure of the new regulator is set out in the legislation giving effect to the proposals in the White Paper rather than being left to the governing body of the new regulator to determine. In particular, we recommend that the legislation establish a mechanism to provide for greater lay involvement in content regulation than in competition regulation and create a distinct body within the new regulator responsible for radio (paragraph 136).

The Government is creating in OFCOM a convergent regulator to deal with fast-changing markets. It will operate within a clear framework of duties and powers agreed by Parliament, underpinned by a framework of general duties. But OFCOM as an organisation will need substantial flexibility in the way in which it implements these statutory functions, if it is to be well placed to respond to rapid changes in the market and in the public interest issues which arise from these.

These are strong arguments for leaving the details of the internal structure of OFCOM to its Board, and avoiding unnecessary rigidity. This general approach has been widely adopted in the development of regulatory arrangements for other sectors. The Government accepts, nonetheless, that there are powerful arguments for greater lay involvement in content as opposed to competition regulation and notes the particular concerns of the industry that the distinct needs of radio continue to be met as effectively as by the Radio Authority. We shall reflect on the Committee's views and other responses to the consultation on the White Paper in finalising our proposals for OFCOM.

(xxxvii) The powers that the new regulator will have are so extensive that a collegiate approach is more appropriate than regulation by a single individual. We welcome the fact that this is reflected in the White Paper, but regret that a somewhat different approach is implied in the proposed title for the new regulator. We consider that the internal structure would be better reflected if the new regulator were called the Communications Regulation Commission, and we recommend accordingly (paragraph 137).

We have made clear the nature of the governing body proposed for OFCOM, a focused, professional Board of non-executive and executive members, and that is the important issue. We have decided to retain the title "Office of Communications".

(xxxviii) We welcome and support the proposal to establish a consumer panel. We recommend that the panel be empowered to examine and to seek to represent the interests of all consumers and potential consumers and not be narrowly confined to issues of service delivery for customers with a financial relationship to service providers (paragraph 138).

The draft Communications Bill which we shall publish next year will set out in more detail the proposed remit and functions of the Consumer Panel.

(xxxix) We recommend that a specific duty be imposed on the new regulator to ensure that its governing body and its sub-commissions or committees meet in public unless the governing body is satisfied that, in the case of any particular issue under consideration, the interests of public disclosure are outweighed by the need for commercial confidentiality.

With such a need to weigh these factors in the balance, we would not expect all meetings concerning commercial activities to be held in private. We further recommend that legislative provision be made to ensure that, where any decision is reached by vote, the voting records are published and to require that all meetings with broadcasters to discuss their annual reports on delivery of programme statements are held in public (paragraph 139).

The White Paper made clear that the Government will expect OFCOM to follow better regulation principles including the need for transparency and openness. OFCOM will have to consider a significant amount of commercially confidential matter and needs to be able to engage in free and open debate, but the Committee is right that the wide power of the new body will require checks and balances to ensure openness and accountability to the communications sector and the public more generally.

(xl) We consider that close scrutiny of the establishment of the new regulator and its work will be a crucial task for the relevant select committee or select committees of the House of Commons in the next Parliament (paragraph 140).

The Government agrees and looks forward to the contributions of the relevant Select Committees to the development of the founding statute of OFCOM.

November 2001