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COMMUNICATIONS BILL : MEMORANDUM FOR LP
COMMITTEE MEETING

Issue

1 A discussion of the Communications Bill at LP Committee has been provisionally scheduled for 7 March. You will need to send a memorandum setting out progress on the Bill.

Recommendation

2 A draft memorandum is attached.

3 Some names are suggested as possible candidates to chair the Joint Committee. You will want to consider whether you would like to put any of these names forward, and whether there are other candidates who you would like to put forward.

Timing

4 The memorandum needs to issue by 1 March.

Background

5 The primary purpose of this discussion is to get LP to agree that we can move forward on setting up a joint committee of both Houses to undertake pre-legislative scrutiny of the Bill when it is published.

6 The draft memorandum provides a basic update of progress on the Bill, as well as promising that we will deliver on the formal requirements to get LP approval to publish the draft Bill when we go back to LP in April. The draft memorandum contains a two statements on consultation with the devolved administrations (both on the broad provisions of the Bill itself, and on the provisions in the Bill for National representation within OFCOM) which are awaiting views from Ministers. We will update these sections of the memorandum before 1 March.

7 The LP Secretariat have indicated that LP will want in particular to consider whether it is possible in practical terms to get the draft Bill ready in time for publication in April, as Parliamentary Counsel have indicated that they believe this is now an unrealistic deadline. The draft memorandum sets out clearly what remains to be done and the timescale on which we are aiming to do it. LP will clearly be concerned about the potential for delay on cross-media ownership where policy has yet to be finalised.

8 LP will want to consider what options there are for leaving some parts of the Bill out of the published draft, and filling in the gaps with text. The most obvious part of the Bill for this sort of treatment would be media ownership, which is a stand-alone policy not affecting the structure of the rest of the Bill and on which policy decisions have yet to be taken. A further option might be to delay revision of the radio clauses until after publication. There may also be a number of small, peripheral, issues that could be left out of the Bill at publication, but these are not what LP has in mind. It is our intention in any case to publish alongside the draft Bill a policy statement setting out the context of the Bill which can be used to clarify any points that are outstanding when the Bill is published.

9 Briefing for the meeting will be provided by 1 March.

PLS Committee – Who should chair?

10 Once LP give agreement to the setting up of the pre-legislative scrutiny committee, you will want to think about potential names for chairmanship of the Committee.

11 Our preliminary thoughts are that we should be looking for someone who is:

- reasonably sympathetic to the Government's proposals, in particular in favour of the concept of OFCOM, but who would not be seen as too slavish;
- able to command respect from all three parties;
- able to speak with some authority (though is not necessarily an expert) on both broadcasting and telecommunications;
- independent of particular interest groups, companies or regulators;

- not a likely contender for the Chair of OFCOM.
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12 The Chair of a joint committee of this sort is normally a peer, but this is not necessarily always the case.

13 The progress of the OFCOM paying Bill through Parliament have provided an ideal opportunity to see Parliamentarians in both Houses speak on OFCOM issues. A number of potential names have been identified from the House of Lords:

- Lord Lipsey
- Lord Gordon
- Lord Borrie
- Lord Currie

14 Lords Borrie and Currie might want to be in the running for the Chairmanship of OFCOM itself, though we do not know that at this stage. Lord Dubbs is ruled out by his position as Chairman of the BSC. Lord Bernstein has expressed an interest in being involved in the Committee, but he does not give the impression of being good Chairmanship material since he did not take part in any of the OFCOM debates and has a shareholding (though we don't know how substantial) in the Granada Group.

15 If Ministers are inclined to consider whether an opposition peer would be an option for Chairing the Committee then a possible name would be Lord Inglewood. He has not demonstrated any particular interest in the Communications Bill to date, but his experience, particularly as a former Minister of Broadcasting, makes him a potential candidate.

16 No one in the Commons particularly stood out as a likely candidate for the PLS Chairmanship. Indeed, the only name that seems worthy of consideration at this stage is Chris Smith, who may have ruled himself out already by his recent statements on the position of the BBC.

17 It is not necessary to have firm views on this issue in time for LP Committee, but you may be asked and it is necessary that you are in a position to suggest names to the Chief Whip as soon as permission to establish the PLS Committee is granted.



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MINISTERIAL COMMITTEE ON THE LEGISLATIVE PROGRAMME

THE COMMUNICATIONS BILL

Memorandum by the Secretary of State for Trade and Industry and the
Secretary of State for Culture, Media and SportSummary

We are seeking LP's approval to invite Parliament to set up a Joint Committee to undertake pre-legislative scrutiny of the draft Communications Bill.

Background

- The Communications Bill establishes a new regulatory framework for the whole of the Communications sector. It transfers the functions of four existing regulators and one executive Agency of the DTI to the new converged communications regulatory authority OFCOM, set up by this session's Office of Communications Bill. The Bill also streamlines the regulatory environment across the sector. In particular the Bill removes the requirement for licensing of telecommunications networks and introduces instead a system of general authorisation. Provision is made to allow spectrum trading which will lead to much more efficient use of the available radio spectrum. A new, more coherent, structure for broadcasting regulation is introduced that is specifically geared to dealing with the digital age, making more use of self-regulation where appropriate. Whilst the bulk of the Bill is concerned with electronic communications it will also address newspaper ownership.
- The Communications Bill was given advance drafting approval in February 2001.
- The Queen's Speech announced that we would publish the Communications Bill in draft this Session, and we aim to do this in late April. Drafting is well under way. More detail is provided below.
- During the passage of the OFCOM Bill Ministers in both Houses have promised Parliament that there will be an opportunity for pre-legislative scrutiny of the Communications Bill by a joint committee of both Houses. This has been widely welcomed by Members from all sides in both Houses.

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- In order for the Bill to be ready for introduction in November this year, it is important that the pre-legislative scrutiny committee is able to report before the summer recess so that we can make changes to the Bill over the Summer/Autumn. This would avoid the undesirable risk of a large number of Government amendments having to be made to the Bill while it is before Parliament if early introduction is possible.
- In order to give the pre-legislative scrutiny committee sufficient time to consider the draft bill and report before the recess, it would need to be set up in time to make an early start as soon as the Bill is published in draft.
- The business manifesto committed the Government to bringing OFCOM into operation by 2003. Ensuring that pre-legislative scrutiny of the Bill can start as soon as possible is an important step in achieving that goal.
- LP will be asked in April to approve the draft Bill for publication.

Territorial extent and devolution

The provisions of the draft Communications Bill almost exclusively cover areas where policy is reserved (the exceptions being training and equality of opportunity in broadcast employment). It is intended that the Communications Bill will extend to Scotland, Wales and Northern Ireland, with the power to extend by Order to the Channel Islands and Isle of Man. The devolved administrations have already been consulted on the training and equality of opportunity provisions. However, the issues covered in the Bill may be perceived to have some implications for devolved areas, including culture and enterprise. [For this reason the devolved administrations will be consulted on the terms of relevant parts of the draft Bill prior to publication.]

The Bill, when published in draft, will include proposals for the interests of Scotland, Wales, Northern Ireland and the English regions to be taken into account by OFCOM. The draft Bill will set out appropriate ways to ensure that consumers, citizens and businesses in the devolved nations have proper access to OFCOM and that their interests are fully taken into account. [We are currently in the process of consulting colleagues on these issues, and will report at the Committee's meeting on progress.]

Costs to business and regulatory impact

The draft Communications Bill will establish new regulatory structures for electronic communications and broadcasting, and introducing the potential for spectrum trading. The main thrust of these proposals is intended to be deregulatory, with licensing being replaced in relation to communications networks and services with a system of automatic authorisation subject to conditions and broadcasting regulation being rationalised. Detailed Regulatory Impact Assessments covering policy developments since the White Paper are being prepared, and will be agreed with the Regulatory Impact Unit before we seek agreement to the publication of the draft Bill.

European Convention on Human Rights

We intend to make a formal declaration that the draft Bill is compatible with the ECHR when we seek agreement to publication of the draft Bill. There are a number of proposals in the draft Bill that raise ECHR questions and these will be addressed

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in the memorandum submitted to LP at that stage. We do not envisage any difficulties in making the declaration.

Handling

(i) *Readiness of the Bill*

- Over half of the Bill has been drafted – 124 clauses and 11 schedules – but this does not include anything on television broadcasting. Instructions to refine the current draft and to provide for television broadcasting were delivered in January.
- Further instructions will be needed on a number of issues. Policy decisions have been taken and instructions are imminent on Light Touch Regulation, Local TV, Must Offer/Must Carry, Teletext and Digital Services, Structure and Regulation of the Welsh Authority and Channel 4 Structure. It is recognised that, in the light of the instructions provided on television broadcasting, the radio clauses will need to be reviewed and minor changes to the basis of TV set licensing may be needed.
- We hope to receive a first draft of the bulk of the television broadcasting material by the end of February.
- Some new policy issues have arisen as a result of the final agreement of the EC electronic communications directives and the recent publication of the Cave review of spectrum management. New instructions will be delivered very soon on the appeals process, but we do not intend to reflect in the draft Bill any changes which may result from the Cave review – rather we will provide text alongside the Bill to indicate areas where policy is under review.
- Media ownership issues are more difficult. We are currently discussing options with the No. 10 and will report on progress shortly. Text on this should be in the draft Bill by the time we seek approval for publication. In the event that this text is not ready on time it would be desirable to go ahead with publishing the Bill on the planned timetable whilst announcing policy on media ownership alongside the Bill and promising draft clauses to follow. There would, of course, be presentational disadvantages to this approach.

(ii) *Timing*

- The Communications Bill is a substantial piece of legislation and can be expected to take some time in Committee. Consequently introduction early in the session would be advisable to ensure that it can complete its passage before the end of the session.
- Any changes recommended by the pre-legislative scrutiny committee should be made before introduction of the Bill, thus avoiding the need for large numbers of Government amendments.
- In order to incorporate changes recommended by the pre-legislative scrutiny committee in time for introduction early in the Session, a report from the Committee would be needed before the Summer recess.
- This means that, if the Committee is to have a reasonable time in which to do its job, the Committee will need to be set up during the course of March.

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and April, so that it can commence work as soon as the draft Bill becomes available.

- The public consultation will run in parallel with the PLS process. This leads to some problems, since a public consultation should run for 3 months, whilst if we are seeking a PLS report by the summer recess we will only be allowing 10 weeks for the PLS process. This would not provide the PLS Committee with the opportunity to see all responses to the consultation. We do not believe that this provides an insuperable difficulty – the PLS Committee can call witnesses to ensure that they have heard the views of key players, and can encourage consultees to submit their views early and, if required, direct to the Committee, since it will be to the advantage of consultees to get the Committee on their side.
- Publication of the PLS report in the early autumn might be an option, but it would make it very difficult to guarantee that the Bill would be ready for introduction, incorporating any changes resulting from the PLS process, by November.

(iii) *Potential areas of controversy*

- The highest profile provisions in the draft Bill will be those covering cross media ownership.
- A likely point of controversy will be why the BBC continues to be regulated through the Charter, administered by the Governors. Parliamentary consideration of the OFCOM Bill has shown that this is an issue of great concern in both Houses, and that these concerns cross the party boundaries. The policy in the draft Bill will be as set out in the Communications White Paper published in December 2000. The key argument to get across will be that overall the BBC will be subject to much greater external regulation than at present but in a way which takes account of its distinctive role and constitution.
- Apart from the above there is general support for the principles of the draft Bill on all sides of both Houses, although the detail will generate a good deal of debate.
- A Lords handling strategy will be prepared for the introduction of the Bill.

Presentation and publicity

Publication of the draft Bill is eagerly anticipated by the media, by the communications industries and by many in Parliament. Moving forward on setting up the PLS Committee will indicate that publication of the Bill is indeed going to be 'in the Spring' as promised, and may encourage speculation on both the date of publication and the likely contents of the Bill, in particular in relation to media ownership.

A full press handling strategy for the publication of the draft Bill will be provided when we seek permission to publish the Bill.

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Any strategy associated with establishing the PLS Committee should focus on emphasising the Government's commitment to the PLS process and to improving the quality of legislation, and on indicating that the Bill will be published shortly.

Recommendation

The Committee is invited to:

- note progress on the Bill; and
- agree that the requisite steps be taken to invite Parliament to set up a joint committee of both Houses to be in a position to begin to undertake pre-legislative scrutiny of the Communications Bill immediately following publication.

Rt. Hon. Patricia Hewitt MP

Rt. Hon. Tessa Jowell MP

[Date circulated]

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