



# Consultation: Designation of Television Selection Services

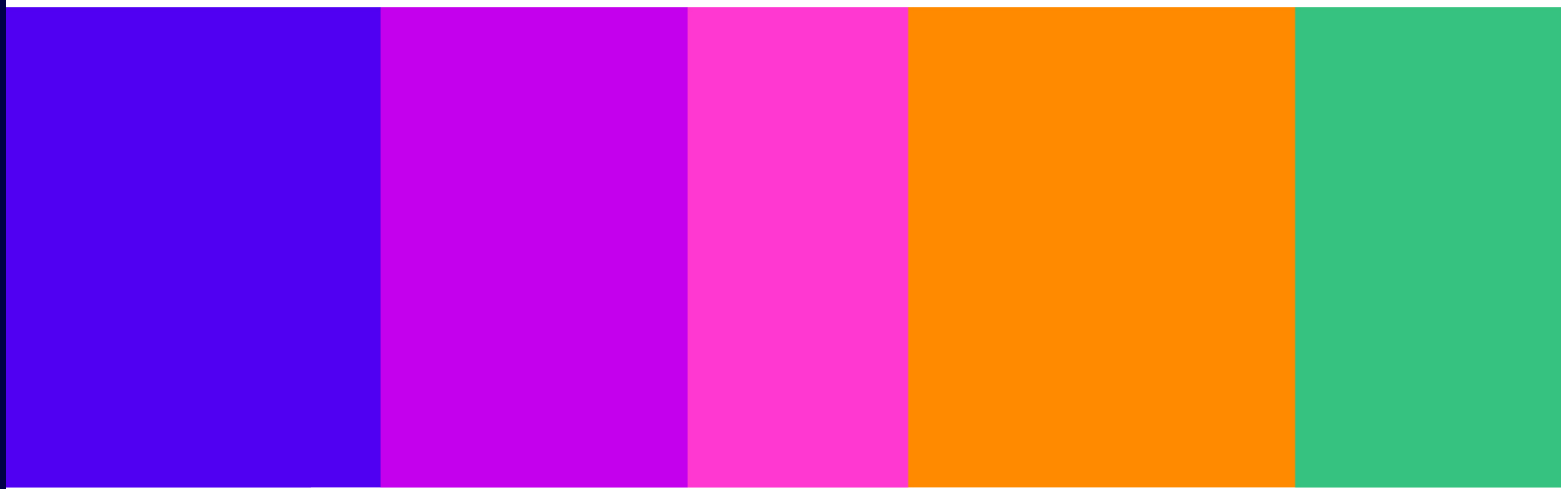
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The principles and methods Ofcom will apply when preparing reports for the Secretary of State

## Consultation

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# 1. Overview

- 1.1 Public service broadcasters (PSBs) hold a unique place in UK society. They provide trusted and accurate news, and a diverse range of high-quality content by, for, and about people in the UK, which brings audiences together. Our research has consistently shown that people across the country continue to value this content and turn to it, whether for day-to-day news and entertainment or significant national and international events.<sup>1</sup> It is therefore critical that viewers can easily find and discover public service content.
- 1.2 The regulatory framework specified in the Communications Act 2003 has ensured that the PSBs' linear television channels (namely, all of the BBC's public broadcast television services, each Channel 3 service, Channel 4, Channel 5 and S4C) have been widely available and easy to find in electronic programme guides for decades. However, until the passing of the Media Act 2024, there were no rules to secure the prominence of public service content in online media environments.
- 1.3 The Media Act 2024 has introduced a new online availability and prominence regime focused on connected TV platforms that enable people to select and access TV apps, or to select between programmes provided via those apps. This new regime will require connected TV platforms designated by the Secretary of State to ensure that BBC iPlayer,<sup>2</sup> any other PSB TV apps designated by Ofcom, as well as their public service content, are available, prominent, and easily accessible.
- 1.4 Connected TV platforms that could fall in scope of these new rules are referred to in the legislation as 'television selection services' (TSS). Before designating any of them, the Secretary of State must have first received a report from Ofcom setting out our recommendations on designation of these services. We intend to consult on and publish that report in 2025.
- 1.5 Before doing so, Ofcom must publish a statement about the principles and methods we will apply when making our recommendations. That statement is the subject of this consultation, which explains the reasons for our proposed approach.
- 1.6 This consultation is structured as follows:
  - a) **Section 2** summarises the legislative framework<sup>3</sup> and our plan for implementing the new availability and prominence regime.
  - b) **Section 3** explains the definition of a TSS and provides related context on the connected TV market.
  - c) **Section 4** presents our proposed framework for making recommendations to the Secretary of State, including our views on the matters that the legislation requires us to consider.
- 1.7 Finally, our draft Statement of Principles and Methods is contained in **Annex 1**.

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<sup>1</sup> Ofcom, 2024, [Public service media review: terms of reference](#); and Ofcom, 2023, [Public service media tracker](#) [accessed: 09 December 2024].

<sup>2</sup> BBC iPlayer will be automatically designated (section 362AA(1)(a) of the Communications Act 2003).

<sup>3</sup> More details on the legal framework are included in Annex 3.

- 1.8 We welcome responses to this consultation by **5 February 2025**. Once we have considered responses, we will publish a finalised Statement of Principles and Methods as soon as possible thereafter.
- 1.9 In addition to the consultation questions, we have asked several supplemental questions. These seek views on our emerging thinking on how we may approach our first report setting out our recommendations on designation of TSS if the principles and methods proposed in this consultation are implemented.<sup>4</sup> We intend to consider any information provided in response to these questions for that purpose.
- 1.10 We will then consult on our proposed recommendations before submitting our first report to the Secretary of State.

### What we are proposing – in brief

We propose a **set of principles and methods** that we will apply when making reports to the Secretary of State with recommendations for designation of TSS.

These principles and methods reflect the following matters that we must assess when preparing our reports:

- **The number of people using a TSS in the UK and whether that number is significant.** In measuring the number of users in the UK, we will use the best available evidence. This may mean using a proxy if we consider individual user numbers cannot be measured reliably. When determining if a number of users is significant, we will consider whether our decision contributes to the policy objective to make public service content widely available. We will set the threshold in a proportionate way that takes account of the potential benefits and regulatory obligations on the providers of regulated TSS and on the PSBs whose TV apps are designated. While we will seek regulatory stability for designated services, determining what level of use is significant is context-dependant and we will therefore consider market conditions and other relevant factors each time we prepare a report.
- **The manner in which a TSS is used.** In assessing the ways in which TSS are used, we recognise that people may own different devices to access TV apps but not use them equally and may not use some devices at all. We will generally take account of the extent of active use of the TSS. We will consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.
- **The technical functionality of a TSS.** We will generally consider a TSS to be capable of functioning as a regulated TSS if it can carry the designated PSB apps, it can present TV apps and programmes with different levels of prominence, and it can include features to ensure apps and programmes are accessible to people with disabilities. We recognise that there could be technical limitations with certain older versions of TSS and associated older devices still available in the market, and we will consider industry practice and other relevant matters to inform our report.

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<sup>4</sup> The consultation questions and supplemental questions are outlined in section 4 and a summary list is included in Annex 4.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on, and our reasoning are set out in the full document.

## 2. Background

### The Media Act introduces a new online availability and prominence regime

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- 2.1 The past decade has been a period of radical change in the way we access news, information, and entertainment. Although live broadcast TV and radio services continue to be widely used and valued, the expanded level of choice enabled by technological change and embraced by audiences has gone hand in hand with declines in linear viewing and listening.<sup>5</sup>
- 2.2 After several decades where their services were structured around linear distribution, broadcasters have been adapting to the expectations of audiences today. The UK's PSBs have each developed TV apps offering original content, as well as some exclusive and licensed programming, which can be accessed on a wide range of connected devices. The legislation refers to these types of apps as 'internet programmes services' (IPS).<sup>6</sup>
- 2.3 Prior to the Media Act 2024, the rules largely reflected the technology and audience usage patterns of the 1990s and early 2000s. Until now, the PSBs' IPS have been absent from the regulatory framework. As a result, in terms of prominence, the rules only protected the placement of the linear PSB channels on TV guides.
- 2.4 The new regime introduced by Part 2 of the Media Act – which inserted Part 3A into the Communications Act 2003 (the Act) – reflects recommendations we made to the UK Government in 2021, and builds on the existing prominence framework for linear television.<sup>7</sup> The core objective of this new approach is for PSB services and content to continue to be “available to the overwhelming majority of the population.”<sup>8</sup>
- 2.5 To achieve this, the new regime will bring into scope connected TV platforms<sup>9</sup> that Ofcom has not previously regulated. It is focussed on what the Act calls 'television selection services' (TSS). TSS must be provided in connection with specific types of 'internet television equipment' (ITE), which it is for the Secretary of State to define in regulation.<sup>10</sup> The initial

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<sup>5</sup> Ofcom, 2024, [Review of public service media. Terms of reference](#); and Ofcom, 2024, [Media Nations UK 2024](#) [accessed: 09 December 2024].

<sup>6</sup> “Internet programme service” is defined in section 362AA(10) and (11) of the Act.

<sup>7</sup> Ofcom, 2021 [Small Screen: Big Debate. Recommendations to Government on the future of public service media](#) [accessed: 09 December 2024].

<sup>8</sup> Media Act 2024, 2024 [Explanatory Note: Policy Background](#) [accessed: 09 December 2024]. The Explanatory Notes were prepared by the Department of Culture, Media and Sport to assist readers in understanding this new Act of Parliament. They provide background information on the development of policy, but do not form part of the Act and are not endorsed by Parliament.

<sup>9</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#) [accessed: 09 December 2024].

<sup>10</sup> Section 362AE(2) of the Act.

regulations, made in October 2024,<sup>11</sup> specify ‘smart TVs’<sup>12</sup> and ‘streaming devices,’ such as set-top-boxes and streaming sticks,<sup>13</sup> as ITE.

- 2.6 The new statutory framework will require designated television selection services (referred to as ‘regulated television selection services’ or ‘RTSS’)<sup>14</sup> to ensure that the designated IPS (DIPS)<sup>15</sup> are available and prominent on them.<sup>16</sup> RTSS providers must also ensure that the DIPS and content that contributes to the delivery of the PSB remits<sup>17</sup> are prominently located on their services<sup>18</sup> and that these services are accessible to people with disabilities.<sup>19</sup>

## Implementation of the new regime

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- 2.7 The first phase of our implementation work is focussed on the designation of TSS. The Secretary of State will make regulations to designate TSS, and before designating any of them, the Secretary of State must have first received a report from Ofcom setting out our recommendations on designation of these services.<sup>20</sup>
- 2.8 Before doing so, Ofcom must publish a statement about the principles and methods we will apply when making our recommendations.<sup>21</sup> This document explains the rationale for our proposed approach to this Statement of Principles and Methods, a draft of which is at **Annex 1**. We assess the impact of our proposals at **Annex 2**. **Annex 3** contains a summary of our relevant statutory duties, including a description of the legal framework for designating TSS and the obligations to which RTSS providers will be subject.<sup>22</sup> We have had regard to these duties in developing our proposals for the draft Statement of Principles and Methods.

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<sup>11</sup> [The Internet Television Equipment Regulations 2024](#) (2024/1056).

<sup>12</sup> Article 2(2) of the regulations say that “smart television” means “a television which is (a) capable of connection to the internet; and (b) designed primarily for (i) enabling the user to select and access programmes; and (ii) displaying programmes”.

<sup>13</sup> Article 2(2) of the regulations say that “streaming device” means “apparatus which is (a) capable of connection to the internet; (b) designed primarily for (i) enabling the user to select and access programmes; and (ii) displaying programmes; and (c) not able to display programmes by itself”.

<sup>14</sup> Section 362AF(1) of the Act.

<sup>15</sup> As defined in section 362AA(1) of the Act.

<sup>16</sup> Sections 362AK and 362AO(1) of the Act.

<sup>17</sup> Each PSB has a public service remit that they are required to fulfil, further information on these remits is set out at paragraphs A3.5 of Annex 3.

<sup>18</sup> The reference to a DIPS being given an appropriate degree of prominence within a RTSS includes a reference to “an appropriate degree of prominence” being given to “public service remit content” and “any listed channel included in that DIPS, so far as the prominence of that content or channel is capable of being affected by the operation of the RTSS” (section 362AO(3) of the Act). The implementation of the PSBs IPS will be subject of a separate consultation. For more information on our timeline see: Ofcom, 2024, [Media Act Implementation](#).

<sup>19</sup> Section 362AO(4) of the Act.

<sup>20</sup> We may prepare a report on our own initiative, or the Secretary of State may ask us to prepare one, in which case we must do so (section 362AG(1), (3) and (6) of the Act). Where the Secretary of State seeks Ofcom’s advice, they may provide us with a particular description of TSS to be designated. Section 4, paragraphs 4.2-4.3, and Annex 3 paragraphs A1.3, and A1.12-A1.13, discuss the designation powers in more details.

<sup>21</sup> Section 362AG(9) of the Act. We may revise or replace that statement but must publish the revised or replaced statement (section 362AG(10) of the Act).

<sup>22</sup> This legal framework will also be annexed to our Statement of Principles and Methods when the final version is published.

- 2.9 We plan to publish our final Statement of Principles and Methods in early 2025. We will then consult on our first report to the Secretary of State and plan to finalise and publish our report in the second half of 2025.<sup>23</sup>
- 2.10 While it is for the Secretary of State to designate TSS, it is Ofcom’s responsibility to decide whether the IPS of the PSBs<sup>24</sup> meet the criteria for designation specified in the Act.<sup>25</sup> We intend to publish our first consultation about our approach to the designation of IPS in early 2025.<sup>26</sup>
- 2.11 The second phase of implementation will focus on preparing the Codes of Practice, which will set out how RTSS providers can comply with their prominence and accessibility duties.<sup>27</sup> We will also prepare our Guidance on how RTSS providers and PSBs can act consistently with the objectives that must be met when they are negotiating carriage arrangements.<sup>28</sup> We plan to consult on these documents towards the end of 2025.

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<sup>23</sup> For a detailed timeline of our implementation process see: Ofcom, 2024, [Media Act Implementation](#).

<sup>24</sup> BBC iPlayer will be automatically designated (section 362AA(1)(a) of the Communications Act 2003).

<sup>25</sup> Section 362AA(2) of the Act.

<sup>26</sup> For more information on our broader implementation timelines, see: Ofcom, 2024, [Media Act Implementation](#) [accessed: 09 December 2024].

<sup>27</sup> Section 362AP of the Act.

<sup>28</sup> Sections 362AL and 362AM of the Act.



# 3. What are television selection services

- 3.1 In this section we set out the context in which we will be advising the Secretary of State about the designation of TSS. We:
- a) describe the increasing importance of online viewing in the way people watch TV;
  - b) set out the role which software platforms play in enabling viewers to access and discover content; and
  - c) explain how the statutory definition of TSS applies to software platforms.

## UK viewers are watching more TV content online, primarily through smart TVs and streaming devices

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- 3.2 The habits of UK viewers have changed significantly over the last decade. People are watching more TV online, driven by the mass take-up of broadband, a range of different video-enabled connected devices, and new platforms and services providing vast on-demand catalogues, including big-budget original programmes.<sup>29</sup>
- 3.3 Most UK homes today contain a device for watching TV over the internet and the vast majority (86%) of primary TV sets<sup>30</sup> can be used to watch TV content online.<sup>31</sup> In particular, 16% of primary TV sets, or more than 4 million units, rely solely on internet-delivered content, as they are not connected to a traditional broadcast network (digital terrestrial television, satellite or cable).<sup>32</sup> This proportion is forecast to increase to more than a third by 2030.<sup>33</sup>
- 3.4 People can use various types of devices connected to the internet to watch TV.<sup>34</sup> The most used are:
- a) **Smart TVs:** internet-enabled TV sets that allow people to access online TV content directly without additional hardware.
  - b) **Streaming devices:** external devices that connect to a TV set and allow people to access online content. The most common type of streaming device are **set-top boxes**, which allow people to view broadcast and pay TV content on a TV set. Set-top boxes are connected to the internet and allow people to access online TV content, including third-party content. They are typically provided by pay-TV operators to their subscribers.

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<sup>29</sup> More detailed analysis of these broad trends is provided in Ofcom's [Future of TV Distribution](#) and [Media Nations 2024](#) reports [accessed: 09 December 2024].

<sup>30</sup> 'Primary TV set' includes the TV set that is used the most in each household and only those TV sets that are in active use.

<sup>31</sup> Ofcom, 2024, [Future of TV Distribution](#) report, paragraphs 3.30-3.31 (3 Reasons, MTM analysis conducted for such work).

<sup>32</sup> Ofcom, 2024, [Future of TV Distribution](#) report, paragraphs 3.30-3.31 (3 Reasons, MTM analysis conducted for such work).

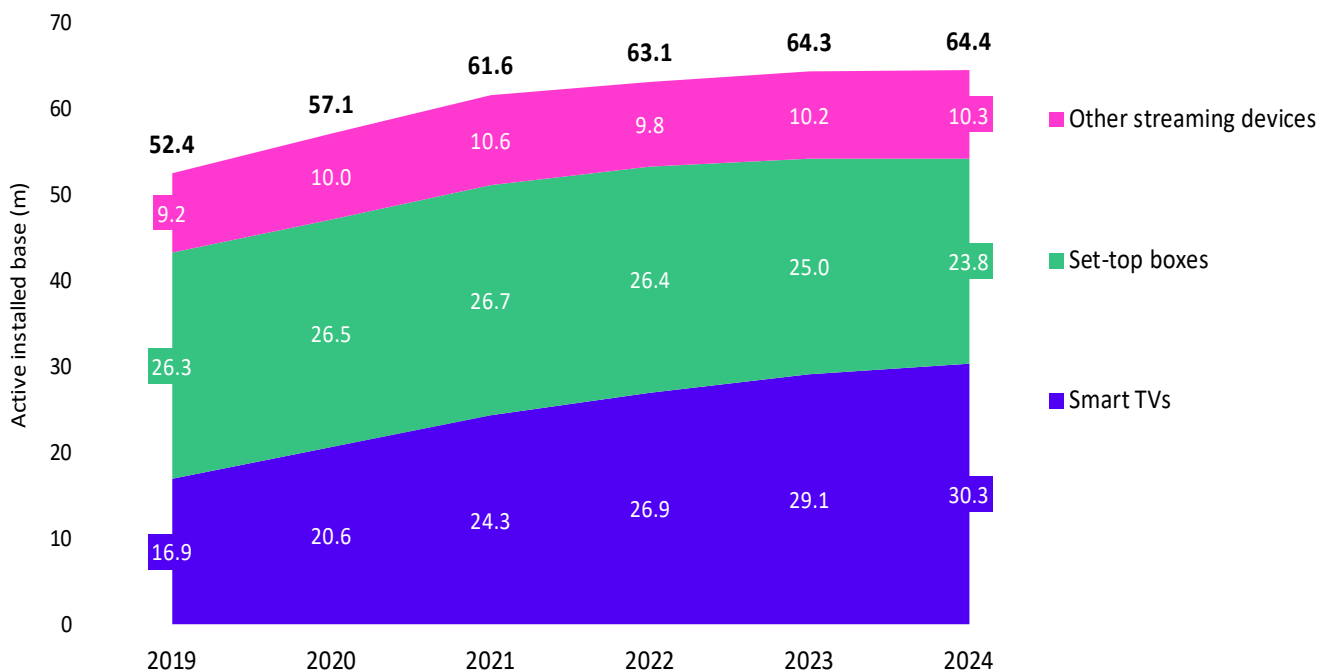
<sup>33</sup> Ofcom, 2024, [Future of TV Distribution](#) report, paragraph 3.32 (3 Reasons, MTM analysis conducted for such work).

<sup>34</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#), pp. 8-9.

Other commonly used streaming devices are **streaming sticks**, which people can purchase at relatively low cost without a subscription.

- 3.5 Evidence shows that smart TVs and streaming devices, which have been specified by the Secretary of State as ITE,<sup>35</sup> are used by a high proportion of UK households to watch TV online.<sup>36</sup> As shown in **Figure 1**, the use of these devices has become commonplace: in 2024, more than 64 million are in active use in UK homes, up from 52 million in 2019.<sup>37</sup>
- 3.6 However, the picture is not fixed. While the number of smart TVs has been growing steadily in recent years, set-top boxes in active use have begun to decline as other streaming devices are increasingly used. At the same time, people are also accessing TV content by connecting their TVs to a mobile phone, a games console, or a computer, although currently fewer do so.<sup>38</sup>

**Figure 11: Main types of devices for watching TV online, and number of units in active use (millions): 2019-2024**



Source: Omdia. 'Other streaming devices' refers to dedicated streaming sticks and boxes/pucks. Note: The streaming devices data presented here includes NOW-branded sticks/boxes until 2021, the year in which they were discontinued by Sky; their exclusion from the data following this results in an overstated decline in streaming devices in 2022.

<sup>35</sup> Regulation 2(1) [of the Internet Television Equipment Regulations 2024](#) (2024/1056).

<sup>36</sup> However, as viewing habits change and new technology emerges, it is open to the Secretary of State to make new regulations to change what devices may be within scope of the regime as set out in section 362AE(2) and (7) of the Act.

<sup>37</sup> Omdia, 2024.

<sup>38</sup> According to Ofcom's [Technology Tracker survey](#) (pp.650-651), games consoles (11%), smartphones (10%), laptops/PCs (8%) and tablets (6%) are used by lower proportions of people to stream content to a TV set than smart TVs (42%), set-top boxes (25%) and streaming devices (17%).

3.7 These trends mean that people are spending less time watching TV through traditional means. The combined viewing of live TV and recordings of broadcast channels fell to 50% of total TV and video viewing in 2023, down from an estimated 70% in 2017.<sup>39</sup> Streaming and video-on-demand (VoD) viewing accounts for the vast majority of the other 50% of viewing time, driven primarily by subscription VoD services like Netflix, video-sharing platforms like YouTube, and broadcaster VoD services like BBC iPlayer, ITVX or Channel 4 player.<sup>40</sup>

## Software platforms allow viewers to access and discover content

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3.8 Although hardware devices, such as those discussed above, are the physical tools which viewers use to access content on their TVs, it is the software platforms integrated into those devices that enable viewers to navigate, select and watch programmes.<sup>41</sup>

3.9 Each software platform has two core components<sup>42</sup> relevant to the presentation of content:

- a) **A user interface**, which viewers use to find and select content, usually with the assistance of a remote control. User interfaces typically organise streaming apps, on-demand services and content into tabs and rows, which may include recommended content areas based on algorithms (e.g. a 'watch next' row) as well as content areas that content providers can curate themselves (e.g. a row of programming 'now available on ITVX').
- b) **An operating system (OS)**, which manages the device resources and operations and controls the user interface. Among other functions, it determines what content is shown to viewers by managing search, display functions and recommender systems.<sup>43</sup> Content providers need to develop apps, like the IPS offered by the PSBs, which are compatible with the operating system.

3.10 **Figure 2** illustrates the relationship between the hardware and software, the interface between content providers and viewers, and examples of the different components and functions of each.

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<sup>39</sup> Ofcom analysis of TV and video viewing data. Data source for 2023 data is Barb as-viewed on TV sets and other devices in the home; 2017 data is estimated based on Barb, Touchpoints and ComScore.

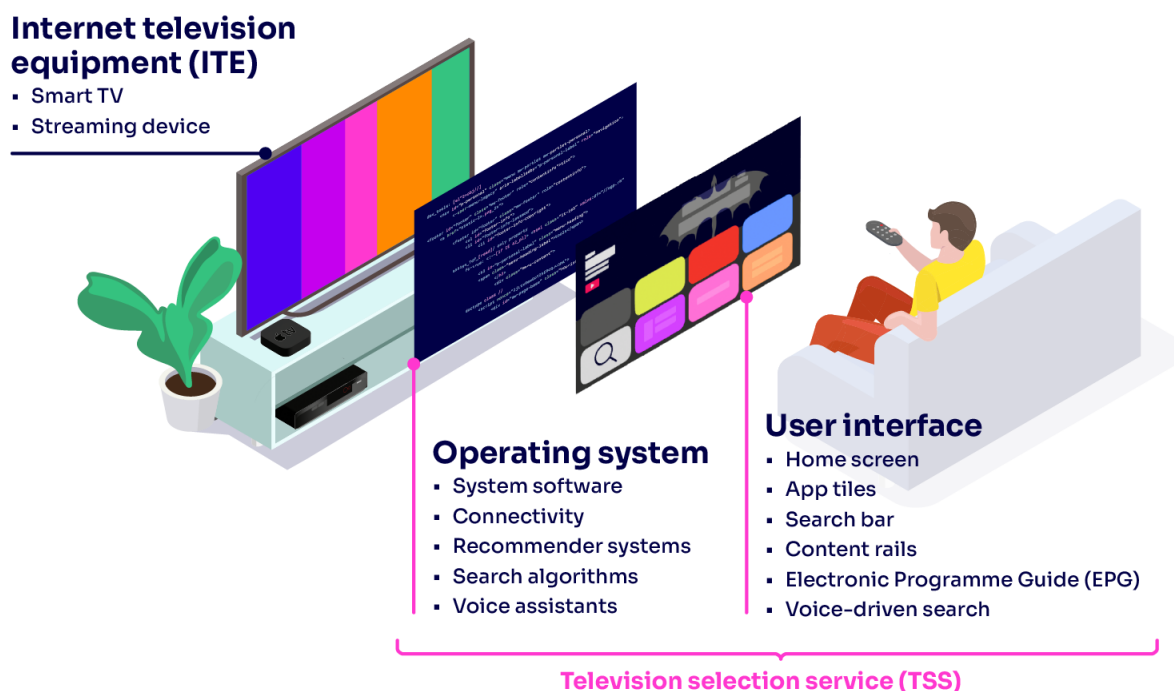
<sup>40</sup> Ofcom analysis of TV and video viewing data. Data source is Barb as-viewed on TV sets and other devices in the home.

<sup>41</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#), pp. 9-10

<sup>42</sup> For a more in-depth discussion of these features see Ofcom, [The connected TV platforms market. An update on our work](#); and MTM, [Review of TV user interfaces in the UK market: current offering and future developments. Final report for Ofcom](#), 2019.

<sup>43</sup> Recommender systems are algorithms to suggest content to viewers based on their preferences and behaviours.

**Figure 2: Components of ITE devices and software platforms relevant to the presentation of content to viewers**



Source: Ofcom.

- 3.11 It is the providers of these software platforms that usually have control as to what content is accessible and how it is presented on the viewers' TV screen.<sup>44</sup> As described in our recent work on connected televisions, generally platform operators negotiate with content providers, including the PSBs, over both the commercial and technical terms of carriage, including the level of prominence given to a content provider's app and individual programming.<sup>45</sup>
- 3.12 There are a number of different platforms available in the UK. **Figure 3** shows the main platforms with estimates of the associated number of devices in active use in 2024, including a breakdown by type of ITE on which each platform is used. The largest platform providers include Sky, Google (which provides Google TV and Android TV)<sup>46</sup> and Samsung, which between them are used on more than 33 million devices, just over 50% of the total. They are followed by LG, Amazon, and Virgin Media, each used on over 5% of the existing devices, and then several other providers.<sup>47</sup>

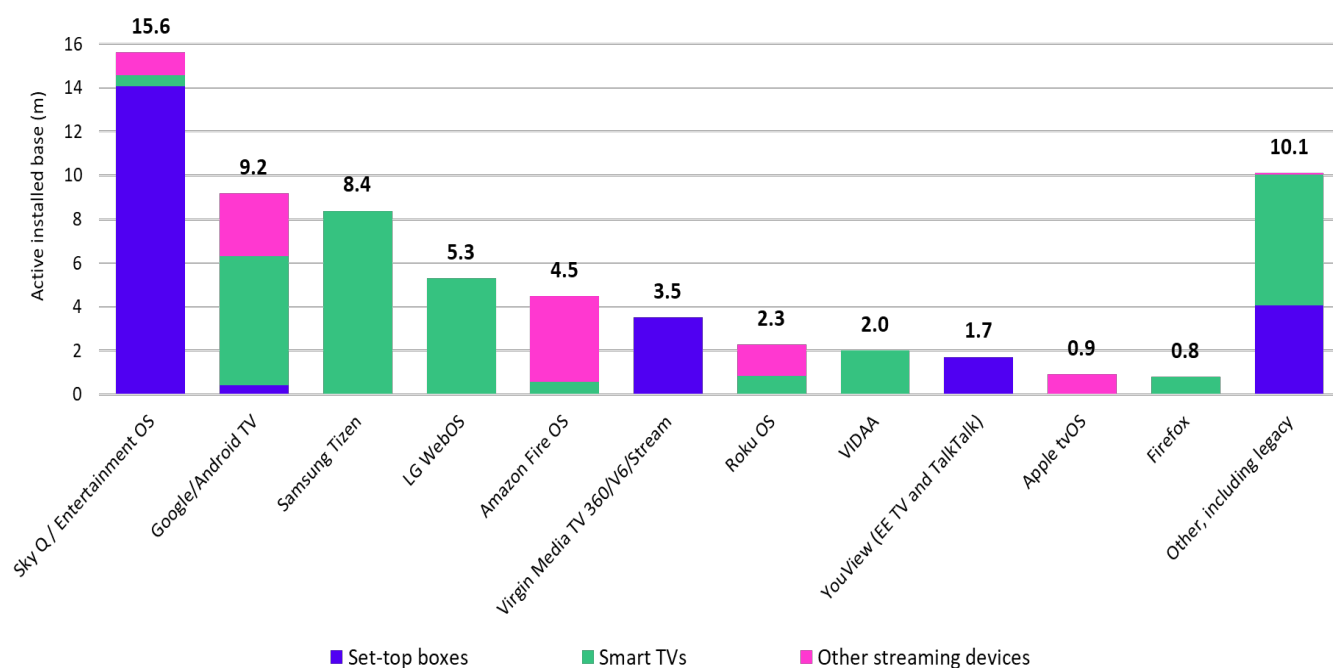
<sup>44</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#); and MTM, [Review of TV user interfaces in the UK market: current offering and future developments. Final report for Ofcom](#), 2019.

<sup>45</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#), pp. 16-19

<sup>46</sup> Google TV is a rebranded evolution of Android TV. Google states on its website that "Google TV is powered by an underlying operating system called Android TV OS. Some smart TVs and streaming devices are powered by Android TV OS but do not have the Google TV interface. These devices are referred to as Android TV devices" (Google TV, 2024, [Google TV FAQs](#) [accessed : 09 December 2024]).

<sup>47</sup> For a more in-depth analysis of this market see Ofcom, 2024, [The connected TV platforms market. An update on our work](#), 11-13.

**Figure 32: Platforms in the UK, and related number of devices in active use (millions): 2024**



Source: Omdia. Notes: All devices in active use, including on secondary TV sets – for pay-TV providers like Sky, this includes ‘multiroom’<sup>48</sup> set-top boxes. ‘Other’ includes some platforms for which the data cannot yet be measured accurately, some of which may include the platforms listed in the figure. It also includes ‘legacy’ devices.<sup>49</sup>

3.13 Most of the major software platforms are designed to be used on that platform provider’s own brand of device. As shown in **Figure 4**, examples include Samsung’s smart TVs which use its Tizen platform, or LG’s smart TVs which operate that company’s own proprietary platform. However, that is not the case across the board as some companies also license their software platform to third-party hardware companies. For example, Google licenses its software platforms to device manufacturers such as Sony for its Sony smart TVs, while the Amazon Fire platform and Roku platform are used on smart TVs manufactured by other hardware companies.<sup>50</sup>

<sup>48</sup> ‘Multiroom’ refers to a type of pay-TV subscription add-on where the customer is provided with one or more additional set-top boxes for use on additional TV sets in the home.

<sup>49</sup> ‘Legacy’ devices in this dataset refers to older devices that manufacturers / platform operators are likely to have ceased providing operating system updates for, as well as older generations of set-top boxes and associated platforms that have more limited functionality and are being phased out by the operators running them in favour of newer connected TV products. Devices no longer receiving OS updates may still be able to support popular apps such as YouTube, Netflix, or BBC iPlayer; support for smaller content apps is likely to have ceased or will cease over time.

<sup>50</sup> Ofcom, 2024, [The connected TV platforms market. An update on our work](#), pp. 13-15.

Figure 4. Examples of different TSS and associated ITE

	Examples	
	<b>Smart TV using own TSS</b>	Samsung smart TV with Tizen OS LG Smart TV with WebOS
	<b>Smart TV using third-party TSS</b>	Sony smart TV with Google OS
	<b>Set-top-box using own TSS</b>	Sky Stream with Sky Entertainment OS
	<b>Streaming stick using own TSS</b>	Chromecast with Google OS Amazon Fire Stick with Fire OS

Source: Ofcom.

## We consider these software platforms to be TSS under the Act

- 3.14 The Media Act defines a TSS on the basis of four cumulative criteria. A TSS must be:
- “provided via the internet”;
  - “provided in connection with ITE”;
  - “consist of the presentation of IPS”;
  - “enable a user to select between and access IPS or programmes provided by those IPS, or both.”<sup>51</sup>
- 3.15 We consider that the software platforms used on smart TVs and streaming devices meet these criteria. As explained above, these platforms are essential in enabling viewers to access TV apps and their content and are the means by which this material is presented. They are also provided via the internet and through the use of devices (smart TVs, and streaming devices such as set-top boxes and streaming sticks) which the Secretary of State has specified as ITE.<sup>52</sup>

## Establishing who has ‘general control’ over a TSS

- 3.16 As explained above, the Secretary of State will designate RTSS.<sup>53</sup> It is then the provider of each RTSS that must comply with the statutory duties in relation to that service. The Act states that there may only be one provider of a TSS, which is “the person who has general

<sup>51</sup> Section 362AE(1) of the Act.

<sup>52</sup> Section 362AE(2) of the Act.

<sup>53</sup> See section 2, paragraph 2.7 of this document (section 362AF(1) of the Act).

control” over the ways in which that service presents TV apps to its users.<sup>54</sup> This means that legally there can only be one person responsible for complying with the relevant statutory duties for a particular RTSS. Establishing who has general control is therefore relevant to the designation process.

- 3.17 We explain above that some providers license their software platforms to third-party hardware companies (see examples in **Figure 4**). Where a company retains general control over the licensed software platform, we will generally consider the platform to be a single TSS across all the different brands of hardware on which it is installed. As an illustration, where company A licenses its software platform to hardware companies B and C, if company A retains general control, then its software platform would be considered a single TSS under the Act and it would be company A that must comply with the Act if its TSS was designated.
- 3.18 We recognise that, in certain cases, a company will license its software platform to third-party hardware companies granting them general control over the way IPS are presented on such platform. In these cases, each hardware company will carry an individual TSS and, if designated, they will be responsible for compliance with the regime in relation to the TSS on their hardware. By way of example, where company X licenses its software platform to hardware companies Y and Z, and hardware companies Y and Z have general control over such platforms as installed on their hardware, it means there are two separate TSS. Hardware company Y will be responsible for the TSS operating on its hardware, and hardware company Z will be responsible for the separate TSS on its devices.

## Considering different versions of a TSS

- 3.19 We also recognise that the same TSS is usually carried across a range of different devices and models. This means that, for example, smart TVs from the same hardware company may operate with different versions of a certain TSS.<sup>55</sup> In general, we will consider these different versions of a service to constitute a single TSS under the Act.
- 3.20 However, we understand that older versions of TSS may have technical limitations which could prevent a TSS provider from being able to comply with its regulatory obligations in respect of such versions. In section 4, we explain our proposed approach to the consideration of TSS functionalities when making preparing a report.<sup>56</sup>

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<sup>54</sup> The ‘provider’ under the Act is “The person, and the only person, who is to be treated for the purposes of this Part as providing a television selection service is the person who has general control over the manner in which the service presents to its users IPS that are included in the service” (section 362AE(5) of the Act).

<sup>55</sup> For instance, a smart TV available in the market may operate with a TSS 1.0 or 2.0. In general, we will consider such versions to be the same TSS.

<sup>56</sup> See section 4 paragraphs 4.32-4.43 of this document.

## 4. Proposed framework for designation

- 4.1 This section discusses the framework we propose to use when we prepare our report to the Secretary of State on the designation of TSS. We:
- a) briefly explain the two different approaches to designation in the Act;
  - b) discuss how we propose to consider the matters that we must assess under the Act as well as additional matters that we consider relevant to our assessment.

### Recommending which types of TSS may be designated

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#### Designation powers

- 4.2 Under the Act, the Secretary of State will designate TSS by regulations using two powers: by specifying individual TSS, or by describing TSS.<sup>57</sup> Individual designation regulations will name individual TSS to be regulated. Designation by description regulations will set out a description of TSS to be regulated, and any TSS that meets that description will be designated.<sup>58</sup>
- 4.3 The Secretary of State may only make designation regulations after having received a report from Ofcom setting out our recommendations on the exercise of the relevant designation power.<sup>59</sup> We may recommend that the Secretary of State designate TSS using one or both powers.<sup>60</sup> To ensure transparency, we will explain in our report why we have recommended the exercise of a particular power.

#### Matters for assessment

- 4.4 Where Ofcom prepares a report making recommendations on individual designation, we must assess: (a) the number of UK users of a particular TSS and whether that number is significant; (b) the manner in which the service is used; (c) whether the service is capable of functioning as a RTSS, including any necessary modifications; and (d) any other matters we consider likely to affect these issues.<sup>61</sup>
- 4.5 The Secretary of State may only designate an individual TSS if they consider it to be used by a significant number of people in the UK.<sup>62</sup>
- 4.6 As set out in paragraph A1.25 of **Annex 1**, the Secretary of State may prepare a description of TSS that they consider should be designated, or we may do so on our own initiative.<sup>63</sup> In

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<sup>57</sup> Section 362AF(1) of the Act.

<sup>58</sup> Providers of TSS that meet the description must notify Ofcom under section 362AH of the Act. However, designation is not dependent on notification – a TSS becomes designated as soon as it meets the description.

<sup>59</sup> We may publish a report on our own initiative, or the Secretary of State may ask us to prepare one, in which case we must do so. Where the Secretary of State seeks Ofcom’s advice, they may provide us with a particular description of TSS to be designated (section 362AG(6) of the Act).

<sup>60</sup> Section 362AG(1) of the Act.

<sup>61</sup> Section 362AG(4) of the Act.

<sup>62</sup> Section 362AF(2) of the Act.

<sup>63</sup> Section 362AG(1) of the Act.



either case, we must prepare a report on which TSS are likely to meet the description and any other matters that we consider relevant to this assessment.<sup>64</sup>

- 4.7 As set out in the Act, designation by description regulations may, in particular, be framed in relation to: (a) a TSS being used, or used in a specific way, by a certain number of people in the UK; (b) the date on which a TSS is first made available; or (c) the functions that a TSS is capable (or may be made capable) of carrying out.<sup>65</sup>
- 4.8 The following sub-sections set out further detail on the principles and methods that we propose to use when assessing the above matters for both individual designation and designation by description.

## Number of UK users

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- 4.9 We propose to make an assessment of the number of people using a TSS in the UK when producing a report to the Secretary of State on individual designations, and in cases where the number of users is part of a possible designation by description on which we are reporting.<sup>66</sup>
- 4.10 People watch TV in various ways. In some households, a single TV is shared among several family members, while in others, multiple TVs and streaming devices are used to different extents. We recognise that we would ideally base our report on individual user numbers, to ensure that our assessment of the audience benefits of recommending the designation of a particular TSS is as accurate as possible. However, variations in usage mean it is not straightforward to precisely measure the number of people using a particular TSS, and we are not currently aware of a reliable data source for individual usage.
- 4.11 We are nevertheless aware of several methods to measure TSS usage which rely on a proxy to assess user numbers. Given current limitations on measuring actual usage, we may consider it is appropriate to use a proxy which includes data on a broad range of TSS at this time and provides the most objective and reliable basis for measuring user numbers. This breadth of data is important to ensure that we are treating TSS providers fairly.
- 4.12 An important consideration when deciding which method to adopt for assessing user numbers is the extent to which data is available for the broad range of TSS that are eligible for designation. To ensure fair treatment, the dataset we use would ideally include data on all TSS, collected according to a consistent methodology. While this is one of the matters we propose to take into account when deciding which method and data to use to assess user numbers, we recognise there may be circumstances where we consider it appropriate to refer to different datasets in order to assess the user numbers of all relevant TSS.
- 4.13 In all cases, we would make sure we apply a consistent methodology to assessing user numbers to ensure we are treating TSS providers fairly.

## Proposal

- 4.14 We propose to apply the following principles and methods when assessing the number of users of TSS in the UK:

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<sup>64</sup> Section 362AG(5) of the Act.

<sup>65</sup> Section 362AF(3) of the Act.

<sup>66</sup> Section 362AG(4)(a) of the Act.

- a) We will use the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a TSS.
  - b) We may use a proxy for user numbers if we consider individual user numbers cannot be measured reliably.
  - c) We will apply a consistent methodology to our assessment of each TSS to ensure fair treatment.
- 4.15 These principles and methods are set out in the draft Statement of Principles and Methods in **Annex 1** at paragraph A1.16 in relation to recommendations on individual designation, and in paragraph A1.28 when a designation description refers to user numbers.

### Consultation Question 1

Do you agree with our proposed principles and methods for assessing the number of UK users of a TSS?

## Significant number of users

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- 4.16 When making recommendations on individual designation, Ofcom must assess whether the number of users of a TSS is significant before recommending its designation.<sup>67</sup>
- 4.17 The aim of the new prominence and availability regime is to maximise audience benefits by ensuring public service content is available to “the overwhelming majority of the population.”<sup>68</sup> PSBs provide a range of benefits to UK audiences, including socially valuable content that can educate viewers and inform democratic debate.<sup>69</sup> As people watch more TV online, making public service content easy to access and discover on TSS is fundamental to achieving this objective. When we consider what constitutes a ‘significant’ number of users, we consider that we would seek to ensure public service content is widely available to a broad range of audiences in the UK.
- 4.18 However, any threshold we recommend must be proportionate. We recognise that designating TSS as RTSS will impose regulatory obligations on the providers of those services. RTSS providers will be subject to statutory duties, including to carry, make prominent and make accessible DIPS and their content, and to comply with certain objectives when carrying out commercial negotiations with the PSBs whose IPS are designated. RTSS providers may also benefit from the obligation on PSBs to offer their DIPS.
- 4.19 For PSBs, designation of TSS may bring benefits in terms of increased availability and prominence of their DIPS. However, it may also impose additional obligations: the greater the number of RTSS, the more providers to which the PSBs will be required to offer their DIPS. For a TSS with relatively low user numbers, RTSS designation could mean that the impact of the regulatory obligations for both the RTSS providers and DIPS providers may not be justified if there are only limited audience benefits arising from designation. We

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<sup>67</sup> Section 362AG(4)(a) of the Act.

<sup>68</sup> Media Act 2024, 2024, [Explanatory Note: Policy Background](#).

<sup>69</sup> Ofcom, 2024, [Public service media review: terms of reference](#); Ofcom, 2021 [Small Screen: Big Debate. Recommendations to Government on the future of public service media](#).

therefore propose that we would strike an appropriate balance between the audience benefits and the impact of the regulatory obligations arising from designation.

- 4.20 We recognise that what is a ‘significant’ number of users is context dependent and may change over time due to market conditions, such as a new entrant changing market dynamics and reducing the market share of its competitors. As such, what we consider to be a significant number of users at one time may change in the future. We propose that our assessment of significance would take this into account when we are preparing future reports for the Secretary of State.
- 4.21 Generally, we would recommend the designation of TSS at or above whatever level we consider to be a significant number of users. However, there may be reasons that we would consider it appropriate not to recommend the designation of a TSS that meets the threshold. For example, we might not recommend the designation of such a TSS if evidence suggests that its user numbers are declining and are unlikely to be over the threshold for a reasonable period of time after designation. A designation in such a case would likely have limited audience benefits and would not be in the interests of regulatory stability.
- 4.22 In our report, we would explain why we consider it appropriate to designate a TSS that meets the significance threshold. We would also explain why we consider it appropriate not to designate such a TSS.

## Proposal

- 4.23 We propose to apply the following principles and methods when considering what is a significant number of UK users of a TSS:
- a) When setting this threshold, our policy objective will be to ensure that public service content is widely available.
  - b) We will consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have given previous recommendations, we will consider if the threshold used in that report is still appropriate.
  - c) We will determine the threshold in a proportionate way. We will seek to ensure that our recommended designations benefit a wide range of audiences, recognising that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of DIPS, but may also bring benefits to both in terms of ensuring the availability and prominence of DIPS and their programmes.
- 4.24 These principles and methods are set out in the draft Statement of Principles and Methods in **Annex 1** at paragraph A1.17. In paragraph A1.18 we explain that, while in general we would recommend the designation of TSS at or above the threshold, we might in some circumstances consider it appropriate not to do so. In either case, we would explain why we have taken a particular approach.

### Consultation Question 2

Do you agree with our proposed principles and methods for assessing whether the number of UK users of a TSS is significant?

## Potential approach for our first report

For our first report setting out our recommendations on designation of TSS, we may consider the **‘number of TSS installed on ITE devices in UK homes’ as a potentially suitable proxy for ‘the number of members of public in the UK who use a TSS’** for both designation powers. This is because currently data on ITE sales and shipments, and the TSS installed on them, are readily available and can be collected using a robust methodology.<sup>70</sup>

Other ways of measuring number of users which we have identified are generally based on consumer tracking and survey data. Our current view is that consumer surveys are likely to be less appropriate estimates for usage as they generally rely on a participant’s recall rather than actual usage. Such surveys also typically only measure device usage rather than TSS usage, as people tend to be less aware of the software platform than the device on which it operates. Alternatively, consumer tracking data may also measure the time people spend on each TSS, but we are not aware of any consistent industry-wide measures of time people spend watching TV online using all the different TSS and related devices available on the market.

Based on this potential proxy, there are several potential methods for setting a significance threshold for number of users.

**We consider that using an absolute number of users of TSS in the UK could be an appropriate method.** That means we could recommend designation of TSS with over, for example, ‘X million’ units of ITE operating a given service. Based on the available evidence, this method would be objective and transparent as data on absolute number of TSS used by ITE should be readily available.

We have also considered other methods, including using a market share threshold, or recommending designation of a set number of the largest TSS providers (for example the five TSS providers with the greatest number of users).

In our view, these methods are less appropriate than an absolute number because they would require knowledge of total market size and the relative sizes of all TSS. Such data may not be publicly available. Also, it may be difficult to collate the data in a consistent manner as TSS providers use a range of sources of information and can estimate the size of the market and related market shares in different ways. Moreover, market size and the market share of individual competitors can change quickly, so these methods are less likely to be as futureproof and relying on them could create uncertainty for industry.

**Supplemental Question 1:** We welcome views on this potential use of ‘number of TSS installed on ITE devices in UK homes’ as a proxy, and on the potential use of an absolute number of UK users when setting a threshold for significant use in our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.

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<sup>70</sup> Shipment data track the movement of products from warehouses to retail and distribution centres and ultimately to the customer.

## Manner of use of TSS

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- 4.25 Ofcom must consider the manner in which a TSS is used when making recommendations on individual designation, and where a designation description refers to manner of use.<sup>71</sup>
- 4.26 We recognise that people may own different devices to access IPS and therefore may use multiple TSS, but they do not use them equally and may not use some of them at all. Taking into account unused or rarely used TSS could therefore lead to overstating the number of users.
- 4.27 To ensure we are basing our recommendations on appropriate evidence and to strike the right balance between the benefits and costs of designation for both TSS and PSBs, we consider that in most cases it would be appropriate to assess this matter based on *active* usage of TSS.
- 4.28 While we recognise that there may be limitations to measuring active usage in individual cases, we would consider the available data and may rely on estimates and/or modelling if appropriate.<sup>72</sup> If different approaches for assessing use of TSS on different types of ITE are more suitable, we would seek to take the most appropriate approach.

## Proposal

- 4.29 We propose to apply the following principles and methods for assessing the manner of use of TSS:
- a) We will generally take account of the extent of active use of the TSS. We will consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.
  - b) If different approaches for assessing use of TSS on different types of ITE are more suitable, we will seek to take the most appropriate approach.
- 4.30 These principles and methods are set out in the draft Statement of Principles and Methods in **Annex 1**, at paragraphs A1.19, A1.20, and A1.28.

### Consultation Question 3

Do you agree with our proposed principles and methods for assessing the manner of use of a TSS?

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<sup>71</sup> Section 362AG(4)(b) and (5)(a) of the Act.

<sup>72</sup> The Secretary of State can change the equipment that is to be treated as ITE by amending the existing ITE regulations or making new ones. Thus, given the varied nature of the devices on which people can watch television, we recognise that it may not be appropriate to assess usage in the same way on every type of ITE. We may therefore take a different approach for different ITE.

## Potential approach for our first report

There are different ways of assessing manner of use of TSS, including the frequency and duration of use.

To inform our first report setting out our recommendations on designation of TSS, we have commissioned analysis from a market research company, Omdia, to consider the available data relevant to the use of TSS in the UK.

Omdia measures the **'active installed base' of TSS** by considering the number of ITE shipped into the UK, the TSS installed on those ITE, and statistical modelling and consumer research to estimate those that are being actively used. This data covers all TSS with a consistent approach and is regularly collected.

We are minded to **use this measure as a possible estimate of active usage of TSS** in our first report.

**Supplemental Question 2:** We welcome views on this potential approach to assessing the manner of use of a TSS for our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.

## Technical functionality of TSS

- 4.31 When preparing a report recommending individual designation, Ofcom must “assess whether a TSS is capable of functioning as an RTSS,” or “whether it can be made so capable.”<sup>73</sup> Similarly, when designation is made by description, the description may refer to “the functions that a TSS is capable, or may be made capable, of carrying out.”<sup>74</sup>
- 4.32 RTSS providers will have to comply with the following duties related to the functionality of the service: making DIPS available on the RTSS;<sup>75</sup> giving appropriate prominence to DIPS and their public service content;<sup>76</sup> and incorporating features enabling accessibility for disabled people.<sup>77</sup>
- 4.33 Therefore, we propose that we would generally consider a TSS to be capable of functioning as an RTSS if it is technically capable of complying with these duties. Consequently, if a TSS can carry DIPS, give prominence to IPS and content, and include accessibility features – then we would consider it capable of functioning as an RTSS.
- 4.34 As set out in section 3, we consider that for the purposes of designation, different versions of a TSS should be treated as a single service across all devices which carry it.<sup>78</sup> However, we also recognise that the fast pace of technological change means that hardware – and

<sup>73</sup> Section 362AG(4)(c) of the Act.

<sup>74</sup> Section 362AF(3)(c) of the Act.

<sup>75</sup> Section 362AK of the Act. If we are preparing a report before any IPS have been designated then we will consider an appropriate alternative, which may include assessing whether the TSS is capable of carrying the PSBs' IPS.

<sup>76</sup> Section 362AO(1) to (3) of the Act.

<sup>77</sup> Section 362AO(4) of the Act.

<sup>78</sup> See section 3, paragraphs 3.19-3.20 of this document.

the associated TSS running on it – can become outdated. For instance, in the case of smart TVs, our review of the available evidence and engagement with stakeholders indicates that consumers replace their TVs every seven to ten years on average.<sup>79</sup> Meanwhile, most TSS providers will provide software functionality updates for one or two years from market launch, and security updates for around five years.<sup>80</sup>

- 4.35 This means that smart TVs and streaming devices from the same supplier may operate with older versions of a certain TSS, because, for example, of certain technical limitations or because the manufacturer has released new devices with an updated version of the TSS.
- 4.36 Hardware limitations may prevent the TSS from being updated beyond a certain point. As devices improve, companies will seek to update their TSS to take advantage of improvements in device technology. New versions are usually introduced each year for new smart TV models, though some may be updated less regularly. Streaming devices such as set-top-boxes and streaming sticks face similar limitations.
- 4.37 This means that there are people using older devices on which a particular version of a TSS is no longer updated and supported, either because the hardware is technically incapable of supporting the latest version of the TSS, or because the TSS provider has made a commercial decision to no longer support it.<sup>81</sup>
- 4.38 Content providers can also face similar issues as they often update their IPS to incorporate new features and functionalities. In certain cases, such updates (for example, upgraded security features) can be costly or impossible to roll out for the versions of their IPS available on older devices. This can lead to the IPS becoming incompatible with those older TSS versions, and in some cases, users may no longer be able to access the IPS.<sup>82</sup>
- 4.39 In our report, we propose to consider the implications of including older versions of TSS in a designation. For example, the Act specifies that a designation description may refer to the date on which a TSS is first made available to users in the UK. Setting such a date by reference to the average period after which a UK consumer replaces ITE may lead to high number of people benefitting from the regime. However, it may also impose a burden on TSS and DIPS providers by requiring them to maintain versions of their services that they would not otherwise maintain, to comply with the Act.
- 4.40 Alternatively, setting the date by reference to the length of time that TSS and IPS providers generally maintain different versions of their services may exclude users of older versions of TSS from the benefits of the regime.
- 4.41 To inform any recommendation in this area, we would likely consider the following matters:

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<sup>79</sup> See for instance [Future of TV Distribution](#), a report by the University of Exeter with the University of Leeds, MTM, 3 Reasons and Real Wireless, issued to DCMS on 7 October 2024. TechUK, [DMB0061 Written evidence submitted by TechUK](#), 2023.

<sup>80</sup> Each software and hardware company often sets out the specifications of the different versions of their software platforms and related devices on their websites (see for instance: Samsung, 2024, [Samsung Developer: general specifications](#); Amazon, 2024, [Fire OS Overview](#); and Sky, 2024, [Software or build versions and Sky boxes](#)). Information about functionality and security updates can be also included in the warranty and guarantee documents of their respective devices and services.

<sup>81</sup> See for instance: House of Commons Culture, Media and Sport Committee, [Draft Media Bill: final report](#), 2023; TechUK, 2023, [DMB0061 Written evidence submitted by techUK](#) [accessed: 09 December 2024].

<sup>82</sup> See for instance: House of Commons Culture, Media and Sport Committee, 2023, [Draft Media Bill: final report](#); UK Parliament, 2023, [Media Bill: written evidence submitted by Paramount to the Media Bill Public Bill Committee](#) [accessed: 09 December 2024].

- a) Data on use of older versions of TSS available in the market;
- b) Industry practice in relation to supporting older versions of TSS; and
- c) Industry practice in relation to ensuring that IPS are compatible with older versions of TSS.

## Proposal

- 4.42 We propose the following principles and methods for assessing the functionality of a TSS:
- a) We will generally consider a TSS to be capable of functioning as an RTSS if :
    - i) It is capable of carrying DIPS, as defined in section 362AA(1) of the Act;
    - ii) It is capable of presenting IPS and programmes with different levels of prominence;  
and
    - iii) It is capable of including features to ensure it is accessible to people with disabilities.
  - b) In considering if a TSS is capable of functioning as an RTSS, we will take into account its current capabilities and any modifications that may be needed for the TSS to carry out the functions above.
- 4.43 These principles and methods are set out in the draft Statement of Principles and Methods in **Annex 1** at paragraphs A1.21 and A1.22. In paragraph A1.30 we explain that we will apply these principles and methods when advising on a description that refers to the functions that a TSS is capable of carrying out or may be made capable of carrying out.

### Consultation Question 4

Do you agree with our proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be made capable of carrying out?

### Supplemental Question 3

We welcome views and supporting evidence for our first report setting out our recommendations on designation of TSS on:

- The number of people using older versions of TSS that are no longer supported by their provider;
- When TSS providers release a new version of their service, for how long do they normally support it?
- When IPS providers release a new version of their service, for how long do they normally support it?
- The technical limitations and/or costs that are associated with supporting older versions of TSS and older versions of IPS still available in the market.



## Additional relevant matters

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4.44 In our report we must also include our assessment of any other matters that we consider to be relevant to the above matters.<sup>83</sup>

### Proposal

- 4.45 We propose to consider, on a case-by-case basis, whether there are any additional matters that it would be appropriate for us to consider, taking into account our relevant statutory duties. These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which public service content is accessed. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report.
- 4.46 These principles and methods are set out in the draft Statement of Principles and Methods in **Annex 1** at paragraphs A1.23-A1.24 and A1.31.
- 4.47 Finally, we also propose the following general principles at paragraphs A1.32 to A1.35 of the Statement of Principles and Methods in **Annex 1**:
- a) We will explain why we have taken a particular approach in our report and how this approach is consistent with the principles and methods in the statement.
  - b) We may, however, consider it appropriate to depart from the principles and methods in the statement. If we do this, we will explain why we have followed different principles and methods.
  - c) We may use our information gathering powers<sup>84</sup> to inform our report.
  - d) We will publish the reports that we give to the Secretary of State.<sup>85</sup>

#### Consultation Question 5

Do you agree with our proposed principles and methods for assessing any other additional matters?

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<sup>83</sup> Section 362 AG(4)(d) of the Act.

<sup>84</sup> Section 362AS of the Act.

<sup>85</sup> Section 362AG(8) of the Act.

# A1. Draft statement of principles and methods

## About this document

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A1.1 This document is the Statement of Principles and Methods to be applied by Ofcom when preparing a report which makes recommendations to the Secretary of State regarding the designation of television selection services (TSS) under section 362AF(1)(a) or (b) in Part 3A of the Communications Act 2003 (the Act).<sup>86</sup> Section 362AG(9) of the Act requires Ofcom to produce this statement.

## Legal framework

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A1.2 The aim of the prominence regime in Part 3A of the Act is to ensure that public service content is available, prominent, and easily accessible on widely used TSS. To achieve this, the providers of designated TSS (referred to as regulated TSS or RTSS) must ensure that the designated internet programme services (designated IPS or DIPS)<sup>87</sup> of the public service broadcasters (PSBs),<sup>88</sup> and their public service content, are made available and prominent on the service.

A1.3 The Secretary of State may make regulations which designate TSS either by: (a) naming individual TSS to be designated under section 362AF(1)(a) (individual designation); or (b) specifying a description of TSS to be designated under section 362AF(1)(b), in which case TSS that meet the description will be designated (designation by description).<sup>89</sup>

A1.4 The Secretary of State must have received a report from Ofcom before making or amending designation regulations.<sup>90</sup> Our report must set out recommendations on how the Secretary of State should exercise their regulation making powers.<sup>91</sup> We may decide to prepare such a report on our own initiative.<sup>92</sup> Alternatively the Secretary of State may ask us to prepare a report, in which case we must do so as soon as practicable.<sup>93</sup>

A1.5 The Act provides Ofcom with information gathering powers that can be used to obtain information that we consider necessary to inform our report to the Secretary of State.<sup>94</sup>

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<sup>86</sup> Part 3A of the Act was inserted by Part 2 of the Media Act 2024.

<sup>87</sup> “IPS” is defined in section 362AA(10) and (11) of the Act and “DIPS” is defined in section 362AA(1) of the Act.

<sup>88</sup> The BBC’s IPS is automatically designated. Ofcom has the power to designate the IPS of the other PSBs: the providers of the Channel 3 services (currently ITV and STV), Channel 4, S4C, and Channel 5 (section 362AA(2) of the Act). Designated on-demand players will be referred to as designated internet programme services or DIPS. Ofcom will be consulting on its statement on the methods to be applied in designating DIPS in early 2025 as set out in section 2 of this consultation document.

<sup>89</sup> Providers of TSS whose TSS is or becomes a service of the description will have to notify Ofcom (section 362AH of the Act).

<sup>90</sup> Section 362AG(2) of the Act

<sup>91</sup> Section 362AF(4) of the Act.

<sup>92</sup> Section 362AG(1) of the Act.

<sup>93</sup> Section 362AG(2) and (3) of the Act.

<sup>94</sup> Section 362AS of the Act.

These powers allow Ofcom to require information to be obtained or generated by the person receiving the request.<sup>95</sup>

A1.6 Ofcom must publish a statement about the principles and methods it will apply when preparing a report for the Secretary of State. This document is that statement. We may revise or replace this statement.<sup>96</sup>

A1.7 A more detailed legal framework is set out in **Annex 3**.<sup>97</sup>

## Principles and methods for preparing our report on designation of regulated TSS (RTSS)

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### What is a TSS?

A1.8 A TSS is a service, or a dissociable section of a service, which:

- a) is provided via the internet;
- b) is provided in connection with internet television equipment (ITE);
- c) consists of the presentation of IPS; and
- d) enables the user to select between and access those IPS or programmes provided by those IPS, or both.<sup>98</sup>

A1.9 A TSS is not the device on which IPS, or programmes are accessed – the device is ITE. A TSS is the service which enables the user to access the available IPS and to discover programmes provided by those IPS.

A1.10 When making recommendations Ofcom will refer to the definition of ITE as set out in the most recent regulations made by the Secretary of State under section 362AE(2) of the Act.<sup>99</sup>

A1.11 As at the date of this statement, the most recent regulations are the Internet Television Equipment Regulations 2024.<sup>100</sup> These define ITE as:

- a) Smart televisions; and
- b) Streaming devices, which includes streaming sticks and set-top boxes.

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<sup>95</sup> Section 362AS(3) and (4) of the Act.

<sup>96</sup> Section 362AG(9) and (10) of the Act.

<sup>97</sup> For the purposes of this consultation, Annex 3 serves as the legal framework to both the consultation document and this draft statement. The legal framework will be annexed to the final version of this statement when published.

<sup>98</sup> Section 362AE(1) and (2) of the Act. The Secretary of State may modify the definition of “television selection service” under section 362AE(7) of the Act. Ofcom will apply the definition in force at the time of preparing a report.

<sup>99</sup> The Secretary of State may modify the definition of “internet television equipment” under section 362AE(7) of the Act. Ofcom will apply the definition in force at the time of preparing a report.

<sup>100</sup> [The Internet Television Equipment Regulations 2024](#) (2024/1056).

## Secretary of State's designation powers

- A1.12 As set out above, there are two powers under which the Secretary of State may designate TSS as RTSS: regulations under section 362AF(1)(a) (individual designation) or regulations under section 362AF(1)(b) (designation by description).
- A1.13 As the Act does not prescribe the circumstances in which the powers should be used, we may make recommendations in relation to either or both powers. To ensure transparency, we will explain why we have recommended a particular designation power.

## Principles and methods when preparing a report on exercising the power in section 362AF(1)(a) (individual designation)

- A1.14 Section 362AG(4)(a) to (d) set out the matters Ofcom must consider when preparing a report under section 362AF(1)(a) (individual designation):
- The number of members of the public in the UK using a TSS and whether that number is significant;<sup>101</sup>
  - The manner in which the TSS is used;
  - Whether the TSS is capable of functioning as an RTSS, and whether it can be made so capable; and
  - Such matters as Ofcom considers likely to affect the above matters.
- A1.15 We set out below the principles and methods we will apply when assessing these matters.

### (a) The number of members of the public in the United Kingdom using the service and whether that is significant

- A1.16 In order to assess this matter, Ofcom will need to assess the number of members of the public in the UK using the service. To achieve this, we:
- Will use the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a service.
  - May use a proxy for user numbers if we consider individual user numbers cannot be measured reliably.
  - Will apply a consistent methodology to our assessment of each TSS to ensure fair treatment.
- A1.17 Using the measure developed according to the principles and methods in paragraph A1.16, we will set a threshold that we consider to be significant:
- When setting this threshold, we will seek to ensure that public service content is widely available.
  - We will generally consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have previously given recommendations, we will consider if the threshold used in that report is still appropriate.

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<sup>101</sup> The Secretary of State must consider that a TSS is used by a significant number of people in the UK in order to specifically designate it (section 362AF(2) of the Act).

- c) We will determine the threshold in a proportionate way. We will seek to ensure that our recommended designations benefit a wide range of audiences. We will take into account that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of designated IPS (DIPS) but may also bring benefits to both in terms of ensuring availability and prominence of DIPS and their programmes.

A1.18 Generally, we will recommend the designation of TSS at or above what we consider to be a significant number of users. However, taking into account the other principles and methods in this statement, we may consider it appropriate not to recommend the designation of such a TSS. For example, we may not recommend the designation of such a TSS if evidence suggests that its user numbers are declining and are unlikely to be over the threshold for a reasonable period of time after designation. We will explain why we have or have not recommended the designation of TSS that are at or above the threshold.

### **(b) The manner in which that service is used by such persons**

A1.19 We will generally take account of the extent of active use of the TSS. We may consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.

A1.20 If different approaches for assessing use of TSS on different types of ITE are more suitable, we will seek to take the most appropriate approach.

### **(c) Whether that service is capable of functioning as a regulated television selection service and the modifications, if any, that are needed to make it so capable**

A1.21 We will generally consider a TSS to be capable of functioning as an RTSS if :

- a) It is capable of carrying DIPS, as defined in section 362AA(1) of the Act;<sup>102</sup>
- b) It is capable of presenting IPS and programmes with different levels of prominence; and
- c) It is capable of including features to ensure it is accessible to people with disabilities.

A1.22 In considering if a TSS is capable of functioning as an RTSS, we will take into account its current capabilities and any modifications that may be needed for the TSS to carry out the functions above.

### **(d) Such matters as Ofcom considers likely to affect the matters referred to in (a) to (d)**

A1.23 We will consider whether it would be appropriate to assess any other factors that are likely to affect the matters referred to above, taking into account our relevant statutory duties.<sup>103</sup>

A1.24 These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which public service content is accessed. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report.

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<sup>102</sup> If we are preparing a report before any IPS have been designated then we will consider an appropriate alternative, which may include assessing whether the TSS is capable of carrying the public service broadcasters' IPS.

<sup>103</sup> Our relevant statutory duties are set out in the annex to this statement.

## Principles and methods when preparing a report on the exercise of the power in section 362AF(1)(b) (designation by description)

- A1.25 The Secretary of State may prepare a description of TSS that they consider should be an RTSS or ask Ofcom to do so. In either case, Ofcom must produce a report containing recommendations about the exercise of the power in section 362AF(1)(b).
- A1.26 Section 362AG(5) sets out the matters Ofcom must consider when preparing a report under section 362AF(1)(b):
- a) Which TSS are likely to fall within the description in question; and
  - b) Such matters as Ofcom considers relevant to that assessment.
- A1.27 Section 362AF(3) states that regulations made under section 362AF(1)(b) may refer to:
- a) A TSS being used, or being used in a manner specified in the regulations, by no fewer than such number of members of the public in the UK as may be specified in the regulations;
  - b) The date on which a TSS is first made available to members of the public in the UK; and
  - c) The functions that a TSS is capable of carrying out or may be made capable of carrying out.

### (a) Which TSS are likely to fall within the description of TSS in question

- A1.28 Where the description refers to the matter in paragraph A1.27(a), Ofcom will need to assess the number of members of the public in the UK using the service, or the number of people using the service in the manner specified in the regulations. In order to do this, we will assess usage with the same principles and methods as set out at paragraph A1.16; and assess manner of use with the same principles and methods as set out at paragraphs A1.19 and A1.20.
- A1.29 If a description also or alternatively refers to the matter in paragraph A.1.27(b), we will use the best available evidence to determine the TSS that meet that description.
- A1.30 Where a description also or alternatively refers to the matter in A1.27(c), we will consider whether it is capable of functioning as an RTSS, applying the principles and methods in paragraph A1.21 and A1.22 and assessing any other functions that may be specified in the description.

### (b) Such matters as Ofcom considers relevant to the assessment described in paragraph (a)

- A1.31 We will consider whether it would be appropriate to assess any other factors that are likely to affect which TSS are likely to fall within the description, taking into account our relevant statutory duties.

## General principles

- A1.32 We will explain why we have taken a particular approach in our report and how that approach is consistent with the principles and methods set out in this statement.
- A1.33 However, we may consider it appropriate or necessary to follow different principles and methods to those set out in this statement. If we follow different principles and methods, then we will explain why we have done this.

- A1.34 We may use our information gathering powers in section 362AS of the Act to gather evidence to inform our report.
- A1.35 We will publish the reports that we give to the Secretary of State.<sup>104</sup>

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<sup>104</sup> Section 362AG(8) of the Act.

# A2. Impact assessments

## Assessing the impact of our proposals

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- A2.1 Section 7 of the Communications Act 2003 (the Act) requires us to carry out and publish an assessment of the envisioned impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom’s activities. Impact assessments help us to understand the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in the least intrusive way.<sup>105</sup>
- A2.2 The Statement of Principles and Methods is prepared for the purposes of an advisory function where the decision on how the recommendations in our report will be implemented will be taken by the Secretary of State. Having clear and appropriate principles on which we will base our report will ensure that the Secretary of State will have full and appropriate information on which to base their designation decisions.
- A2.3 The impact assessment carried out for this consultation is woven into section 4 where we have considered the potential impacts of the principles and methods we intend to apply when preparing our report, as well as the impacts of the possible approaches we could take to the matters the Act requires us to consider in our report.
- A2.4 We will carry out a further impact assessment when producing a report of recommendations for the Secretary of State.

## Equality impact assessment

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- A2.5 Section 149 of the Equality Act 2010 (the 2010 Act) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to protected characteristics under the 2010 Act.<sup>106</sup> The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- A2.6 Ofcom has separate but complementary duties under Northern Ireland’s equality legislation.<sup>107</sup> This requires Ofcom to screen policies for their impact on equality of opportunity and/or good relations in each of the nine equality categories identified for Northern Ireland.
- A2.7 As set out above, the Statement of Principles and Methods is being prepared in relation to an advisory function. We do not expect the principles and methods we are proposing to have any adverse equality impacts. One purpose of the new regime is to require accessibility features on TSS that are designated, and this will benefit users of these TSS who have disabilities.

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<sup>105</sup> Ofcom, [Impact assessment guidance](#), 2023.

<sup>106</sup> These protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

<sup>107</sup> Section 75 of the Northern Ireland Act 1998.



A2.8 We will also carry out an equality impact assessment when preparing a report for the Secretary of State.

## Welsh language impact assessment

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A2.9 The Welsh language has official status in Wales.<sup>108</sup> To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards in relation to the use of Welsh, including the general principle that Welsh should not be treated less favourably than English in Wales.<sup>109</sup> Accordingly, we have considered the potential impact of our review on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language.

A2.10 We consider that the principles and methods we have proposed would not treat the Welsh language differently to the English language or have any impact on opportunities for persons to use the Welsh language. We expect that for Welsh language speakers, the new regime will benefit them by ensuring they have access to PSB content catering to Welsh speaking audiences. We will also carry out a Welsh language impact assessment when producing our report for the Secretary of State.

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<sup>108</sup> Section 1(1), Welsh Language (Wales) Measure 2011.

<sup>109</sup> The [Welsh language standards](#) with which Ofcom is required to comply are available on our website.

# A3. Legal Framework

## Legal framework

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- A3.1 This Annex sets out the statutory framework regarding the designation of television selection services (TSS) under Part 3A of the Communications Act 2003 (the Act), which was inserted into the Act by Part 2 of the Media Act 2024. This Annex is only a summary of the relevant provisions, it is not a substitute for reference to the statute.
- A3.2 Also relevant are Ofcom’s general duties in carrying out its functions, to further the interests of citizens in relation to communications matters and consumers in relevant markets, where appropriate, by promoting competition.<sup>110</sup> In doing so, Ofcom must have regard to a number of matters including the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK, the desirability of encouraging investment and innovation in relevant markets and the needs of persons with disabilities.<sup>111</sup>
- A3.3 In performing its general duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, and any other principles appearing to Ofcom to represent the best regulatory practice.<sup>112</sup>
- A3.4 As explained further below, TSS that are designated by the Secretary of State (regulated TSS or RTSS) will have to comply with various statutory obligations related to making available and prominent the internet programme services (IPS)<sup>113</sup> of the UK public service broadcasters (PSB) which are designated by Ofcom (designated IPS or DIPS).<sup>114</sup>
- A3.5 Each PSB has an individual remit which they are required to fulfil.<sup>115</sup> The BBC is required to fulfil its mission to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and

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<sup>110</sup> Section 3(1) of the Act.

<sup>111</sup> Section 3(4)(a), (d) and (i) of the Act.

<sup>112</sup> Section 3(3) of the Act.

<sup>113</sup> An IPS is a reference to (a) an on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet; (b) a non-UK on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet; or (c) a service which satisfies the following requirements: (i) that the principal purpose of the service is the provision of programmes; (ii) that the programmes viewed by a user of the service are accessed by the user by means of the internet; and (iii) that the programmes it provides to a user of the service are contained in (1) such on-demand programme service as is described in part (a) of this footnote or such non-UK on-demand programme service as is described in part (b) of this footnote; and (2) another service which is, or two or more other services each of which is, such an on-demand programme service, such a non-UK on-demand programme service, or a service (other than those kinds of service) that consists of, or has as its principal purpose the provision of, programmes (section 362AA(10) and (11) of the Act).

<sup>114</sup> A DIPS is (a) an IPS provided by the BBC; (b) an IPS provided by a public service broadcaster other than the BBC and designated by Ofcom; or (c) an IPS provided by a person associated with a PSB and designated by Ofcom (section 362AA(1) of the Act).

<sup>115</sup> For each PSB, the programmes with which they fulfil their individual remits should be capable of being taken into account for the purposes of assessing the extent to which the UK TV remit is fulfilled and should constitute an adequate contribution to the fulfilment of the UK TV remit (section 264(4) of the Act).

entertain.<sup>116</sup> The individual remit for Channel 3 services, C4C and Channel 5 is to make available a range of high quality and diverse programmes.<sup>117</sup> The individual remit for S4C is to make available a broad range of high quality and diverse programmes, with a substantial proportion in Welsh.<sup>118</sup>

## Television selection services

- A3.6 The services that may be designated are referred to as TSS. The Act defines a TSS as “a service or dissociable section of a service, provided by means of the internet and in connection with Internet Television Equipment (ITE), which consists of:
- a) the presentation of the IPS included in the service or the dissociable section of the service; and
  - b) a facility that enables the user: (i) to make a selection between those IPS or programmes provided by those IPS or both; and (ii) to access the IPS or programme selected or both.<sup>119</sup>
- A3.7 As set out in Regulation 2 of the Internet Television Equipment Regulations 2024, ITE means smart TVs, set top boxes and streaming devices.<sup>120</sup>

## Regulated television selection services

- A3.8 The Secretary of State has the power to designate TSS to be regulated and therefore subject to the statutory obligations set out in the Act. The Secretary of State may make regulations which:
- a) designate individual TSS (which we refer to as ‘individual designation’); or
  - b) set out a description of TSS to be designated (which we refer to as ‘designation by description’).<sup>121</sup>
- A3.9 The Secretary of State may not designate a TSS by individual designation unless they consider that it is used by a significant number of members of the public in the UK.<sup>122</sup>
- A3.10 In regulations that designate by description, the Secretary of State may frame a description of TSS by reference to:
- a) a TSS being used by no fewer than such number of members of the public in the UK as may be specified in the regulations;
  - b) the date on which a TSS is first made available to members of the public in the UK; and

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<sup>116</sup> Paragraph 5 of the Royal Charter for the continuance of the British Broadcasting Corporation, December 2016.

<sup>117</sup> Sections 265(2) and 265(3) of the Act. For C4C these programmes in particular must demonstrate innovation, experimentation, and creativity; appeal to the tastes and interests of a culturally diverse society include a significant amount of educational content; and have a distinctive character.

<sup>118</sup> Paragraph 3(2) of Part 2 of Schedule 12 to the Communications Act 2003.

<sup>119</sup> Section 362AE(1) of the Act. The Secretary of State may lay regulations to amend the definition of “television selection service” or “internet television equipment” (section 362AE(7)).

<sup>120</sup> [The Internet Television Equipment Regulations 2024](#) (2024/1056).

<sup>121</sup> Section 362AF(1) of the Act.

<sup>122</sup> Section 362AF(2) of the Act.

- c) the functions that a TSS is capable of carrying out or may be made capable of carrying out.<sup>123</sup>

## Ofcom's report to the Secretary of State

- A3.11 Before the Secretary of State can make designation regulations, the Secretary of State must have received a report from Ofcom, containing Ofcom's recommendations on the exercise by the Secretary of State of their powers to make regulations to individually designate or to designate by description.
- A3.12 Ofcom may decide on its own initiative to provide the Secretary of State with a report, and may make recommendations in relation to the exercise of either or both powers.<sup>124</sup> Alternatively, the Secretary of State may request a report from Ofcom, in which case we must provide one.<sup>125</sup> When making such a request, the Secretary of State may provide Ofcom with a description of TSS they propose to designate and seek advice on that description.
- A3.13 If recommending individual designation, Ofcom's report must include our assessment of:
- a) the number of members of the public in the UK using the TSS in question and whether that number is significant;
  - b) the manner in which that TSS is used by such persons;
  - c) whether that TSS is capable of functioning as an RTSS and the modifications, if any, that are needed to make it so capable; and
  - d) such matters as Ofcom considers likely to affect the matters referred to above.<sup>126</sup>
- A3.14 If recommending designation by description, Ofcom's report must include our assessment of:
- a) which TSS are likely to fall within the description of TSS set out in the report; and
  - b) such matters as Ofcom consider relevant to that assessment.<sup>127</sup>
- A3.15 Ofcom's role in preparing reports for the Secretary of State is limited to recommendations on the Secretary of State's power to designate TSS. There is no statutory power for Ofcom itself to designate a TSS.<sup>128</sup>
- A3.16 Any TSS that is designated by individual designation regulations will become an RTSS. Any TSS that meets a description set out in designation by description regulations will become an RTSS, and a provider of a TSS<sup>129</sup> must give notice to Ofcom if the TSS is, or becomes, a

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<sup>123</sup> Section 362AF(3) of the Act.

<sup>124</sup> Section 362AG(1) of the Act.

<sup>125</sup> Section 362AG(2) and (3) of the Act.

<sup>126</sup> Section 362AG(4) of the Act.

<sup>127</sup> Section 362AG(5) of the Act.

<sup>128</sup> The position is different as regards the designation of IPS, where Ofcom has the power to designate IPS itself (section 362AA(2) of the Act).

<sup>129</sup> The only person who is to be treated as providing a TSS is the person who has general control over the way the service presents to its users the IPS that are included in the service. This is the case regardless of whether the TSS uses an algorithm to determine the prominence given to an ISP or any programmes provided by an ISP included in the service (section 362AE(5) and (6) of the Act).

TSS that falls within the description.<sup>130</sup> Likewise, any RTSS must give notice where it considers that it ceases to be covered by the description specified in the regulations.<sup>131</sup>

## Ofcom's statement of principles and methods

- A3.17 Ofcom must prepare and publish a statement about the principles and methods we will apply in preparing a report to the Secretary of State making recommendations about the exercise of their powers to make designation regulations.<sup>132</sup>
- A3.18 We may revise or replace that statement and must publish the revised or replaced statement.<sup>133</sup>

## Effect of designation

- A3.19 Where IPS and TSS are designated, the providers of those DIPS and RTSS must comply with the new regime. The provider of a DIPS will be the relevant PSB, or person associated with that PSB.<sup>134</sup> The provider of an RTSS will be the person who has general control over the manner in which the TSS presents to its users the IPS that are included in the service.<sup>135</sup>
- A3.20 In order for an IPS offered by a PSB, other than the BBC, to be designated, Ofcom must be satisfied that it is appropriate to designate the service. Ofcom must also believe that the service makes, or would if designated, be capable of making a significant contribution to the fulfilment of the public service remit for the PSB channel; and that the public service remit content included is readily discoverable and is promoted by the IPS.<sup>136</sup>
- A3.21 Providers of DIPS will be subject to a “must-offer” obligation, and providers of RTSS will be subject to a “must-carry” obligation:
- A3.22 The “must-offer” obligation means that a DIPS provider must offer its DIPS to every RTSS provider.<sup>137</sup> The DIPS provider must do its best to secure that, in relation to every RTSS, agreements are entered into and kept in force that ensure the service is included in the RTSS.<sup>138</sup>
- A3.23 The “must-carry” obligation means that an RTSS provider must, in respect of each DIPS, enter into arrangements with the provider of the DIPS for the RTSS to include that DIPS and keep such arrangements in force.<sup>139</sup> RTSS providers will also be required to ensure that the

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<sup>130</sup> Section 362AH of the Act. A TSS is designated and subject to the statutory obligations of an RTSS as soon as it meets a description in regulations, whether or not the relevant provider notifies Ofcom. Failure to notify Ofcom would be a breach of the duty in section 362AH; failure to comply with the statutory obligations would amount to separate a breach of the relevant duties.

<sup>131</sup> On commencement of the new regime, Ofcom will publish and maintain an up-to-date list of RTSS (including the RTSS providers). The lists will be published on a publicly accessible part of the Ofcom website (section 362AI of the Act).

<sup>132</sup> Section 362AG(9) of the Act.

<sup>133</sup> Section 362AG(10) of the Act.

<sup>134</sup> Section 362AA(2) of the Act.

<sup>135</sup> Section 362AE(5) of the Act. Section 362AE(6) of the Act says that the fact a TSS relies to any extent on algorithms to determine the prominence given to an IPS or any programme provided by the IPS does not prevent a person from having general control.

<sup>136</sup> Section 362AA(2) - (5) of the Act.

<sup>137</sup> Section 362AJ(1) of the Act. Section 362AJ(1) to (3) does not apply to the BBC.

<sup>138</sup> Section 362AJ(2) of the Act.

<sup>139</sup> Section 362AK of the Act.

DIPS and, where appropriate, content on the DIPS that contributes to the delivery of the PSB’s remit are given an appropriate degree of prominence on their services.<sup>140</sup> These services must also be accessible to those with disabilities (particularly those affecting sight or hearing).<sup>141</sup> The Act requires Ofcom to issue a code of practice recommending actions that RTSS providers should take when seeking to ensure that the presentation of IPS to its users are compliant with those accessibility obligations.<sup>142</sup>

- A3.24 Providers of both DIPS and RTSS have a duty to act consistently with the “agreement objectives” when negotiating the arrangements required to meet the requirements of their “must carry” and “must offer” obligations.<sup>143</sup> The agreement objectives are that: (a) DIPS are given an appropriate degree of prominence within an RTSS (which includes public service remit content and any listed channel included in the DIPS);<sup>144</sup> (b) the arrangements between the providers do not adversely affect the ability of the provider of the PSB to fulfil the public service remit for its channel; and (c) arrangements do not disproportionately restrict how the provider of an RTSS may make innovations in the ways that users may select and access IPS.<sup>145</sup> The Act requires Ofcom to prepare and publish guidance about how providers of DIPS and providers of RTSS may act consistently with the agreement objectives.<sup>146</sup>
- A3.25 The Act gives Ofcom a dispute resolution function<sup>147</sup> and enforcement powers.<sup>148</sup>

## Economic growth duty

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- A3.26 Section 108 of the Deregulation Act 2015 sets out Ofcom’s duty to have regard to the desirability of promoting economic growth when exercising its regulatory functions. In order to consider the promotion of economic growth, Ofcom will exercise its regulatory functions in a way that ensures that:
- a) regulatory action is taken only when it is needed; and
  - b) any action taken is proportionate.<sup>149</sup>
- A3.27 The government’s statutory guidance on this duty recognises drivers of economic growth to include innovation and competition.

## Public sector equality duty

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- A3.28 Section 149 of the Equality Act 2010 (the 2010 Act) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination,

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<sup>140</sup> Section 362AO(1) and (3) of the Act.

<sup>141</sup> Section 362AO(4) of the Act.

<sup>142</sup> Section 362AP(1) of the Act.

<sup>143</sup> Sections 362AJ(3) and 362AK(2) of the Act.

<sup>144</sup> Section 362AM(2) of the Act.

<sup>145</sup> Section 362AM(1) of the Act.

<sup>146</sup> Ofcom’s guidance must also include how the BBC may act consistently with the agreement objectives in carrying out any of its duties under the BBC Charter and Agreement that are comparable to the requirement on other DIPS providers under section 362AJ(3) (section 362AL(2) of the Act).

<sup>147</sup> Sections 362AT to 362AY of the Act.

<sup>148</sup> Sections 362AZ to 362Z5 of the Act.

<sup>149</sup> Section 108(2)(b) of the Deregulation Act 2015.

harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

- A3.29 Section 75 of the Northern Ireland Act 1998 (the 1998 Act) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.

## Welsh language duty

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- A3.30 The Welsh Language (Wales) Measure 2011 established a legal framework to impose duties on certain organisations to comply with standards in relation to the Welsh language. The standards issued to Ofcom are listed in Ofcom's compliance notice<sup>38</sup> effective from 25 January 2017.
- A3.31 The Welsh Language Policy Making Standards require Ofcom to assess (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language, when formulating a new policy or reviewing or revising an existing policy.

# A4. Consultation questions

Please tell us how you came across about this consultation.

- Email from Ofcom
- Saw it on social media
- Found it on Ofcom's website
- Found it on another website
- Heard about it on TV or radio
- Read about it in a newspaper or magazine
- Heard about it at an event
- Somebody told me or shared it with me
- Other (please specify)

A4.1 The box below presents the questions that we posed in this consultation document.

**Question 1:**

Do you agree with our proposed principles and methods for assessing the number of UK users of a TSS?

**Question 2:**

Do you agree with our proposed principles and methods for assessing whether the number of UK users of a TSS is significant?

**Question 3:**

Do you agree with our proposed principles and methods for assessing the manner of use of a TSS?

**Question 4:**

Do you agree with our proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be made capable of carrying out?

**Question 5:**

Do you agree with our proposed principles and methods for assessing any other additional matters?

A4.2 In addition to the consultation questions, we have asked several supplemental questions. These seek views on our emerging thinking on how we will approach our first report setting out our recommendations on designation of TSS if the principles and methods proposed in this consultation are implemented. These are set out in the box below.

**Supplemental Question 1:**

We welcome views on this potential use of 'number of TSS installed on ITE devices in UK homes' as a proxy, and on the potential use of an absolute number of UK users when setting a threshold for significant use in our first report setting out our



recommendations on designation of TSS. Please provide evidence to support your views.

**Supplemental Question 2:**

We welcome views on this potential approach to assessing the manner of use of a TSS for our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.

**Supplemental Question 3:**

We welcome views and supporting evidence for our first report setting out our recommendations on designation of TSS on:

- The number of people using older versions of TSS that are no longer supported by their provider;
- When TSS providers release a new version of their service, for how long do they normally support it?
- When IPS providers release a new version of their service, for how long do they normally support it?
- The technical limitations and/or costs that are associated with supporting older versions of TSS and older versions of IPS still available in the market.

A4.3 We intend to consider information provided in response to these supplemental questions when developing our recommendations for the Secretary of State, rather than to finalise our Statement of Principles and Methods. As outlined in this consultation document and in our implementation timeline,<sup>150</sup> we will consult on our proposed recommendations before submitting our first report to the Secretary of State.

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<sup>150</sup> Ofcom, 2024, [Media Act Implementation](#).

# A5. Responding to this consultation

## How to respond

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- A5.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 5 February 2025.
- A5.2 You can download a response form from <https://www.ofcom.org.uk/tv-radio-and-on-demand/public-service-broadcasting/consultation-designation-of-television-selection-services/>. You can return this by email or post to the address provided in the response form.
- A5.3 If your response is a large file, or has supporting charts, tables, or other data, please email it to [mediaact.part2@ofcom.org.uk](mailto:mediaact.part2@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet. This email address will be used for this consultation and subsequent consultations concerning the implementation of Part 3A of the Communications Act 2003 (the Act), which was inserted into the Act by Part 2 of the Media Act 2024.
- A5.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Content Policy Team  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A5.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- > send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
  - > upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A5.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A5.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A5.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A5.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at **Annex 4**. It would also help if you could explain why, you hold your views, and what you think the effect of Ofcom's proposals would be.
- A5.10 If you want to discuss the issues and questions raised in this consultation, please contact the team by email to [mediaact.part2@ofcom.org.uk](mailto:mediaact.part2@ofcom.org.uk).

## Confidentiality

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- A5.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A5.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we do not have to edit your response.
- A5.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A5.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A5.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

## Next steps

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- A5.16 Following this consultation period, Ofcom plans to publish a statement in early 2025.
- A5.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

## Ofcom's consultation processes

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- A5.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 6.
- A5.19 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A5.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

# A6. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

## Before the consultation

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1. Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

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2. We will be clear about whom we are consulting, why, on what questions and for how long.
3. We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
4. When setting the length of the consultation period, we will consider the nature of our proposals and their potential impact. We will always make clear the closing date for responses.
5. A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
6. If we are not able to follow any of these principles, we will explain why.

## After the consultation

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7. We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

# A7. Consultation coversheet

## Basic details

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Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## Confidentiality

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Please tick below what part of your response you consider is confidential, giving your reasons why

- > Nothing
- > Name/contact details/job title
- > Whole response
- > Organisation
- > Part of the response

If you selected 'Part of the response,' please specify which parts:

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If you want part of your response, your name, or your organisation not to be published, 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)?

Yes  No

## Declaration

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I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. 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)