

Consultation on revised Guidance for Public Service Broadcasters on Commissioning Codes of Practice

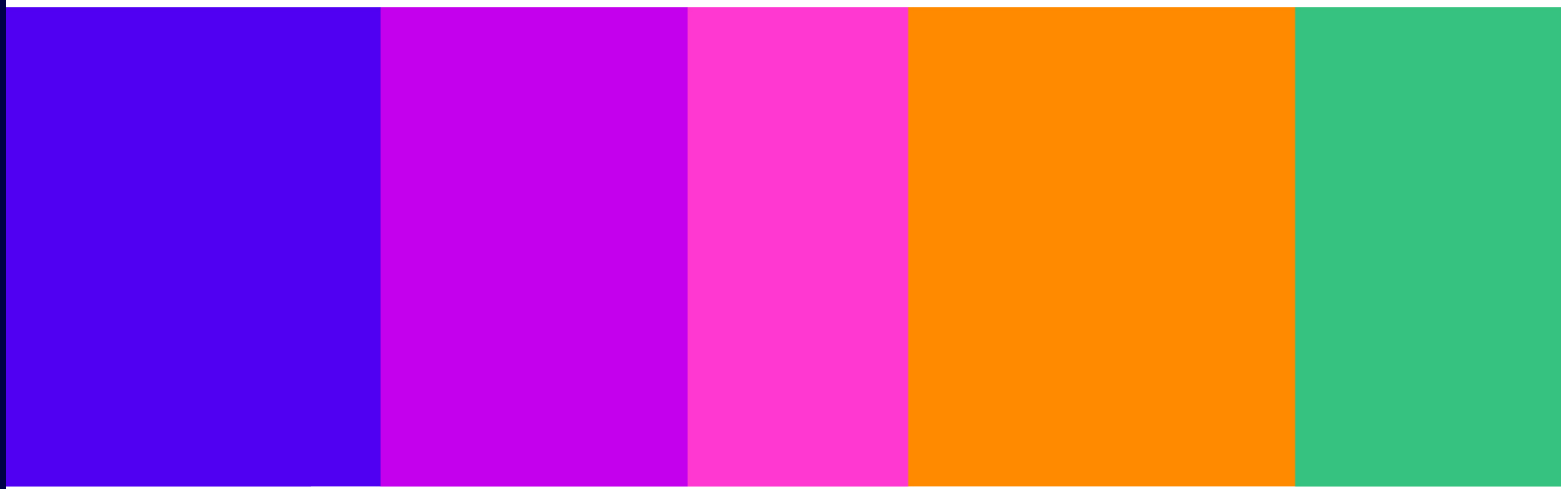
Implementing the Media Act 2024

[Welsh version available](#)

Consultation

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1. Overview

- 1.1 Independent productions are an important element of public service media ('PSM'). They make a vital contribution to the high-quality, creative, and diverse range of content made available by the public service broadcasters ('PSBs') to meet the needs and satisfy the interests of audiences across the UK. The PSBs both support and rely on the UK's independent production sector to produce PSM content that meets evolving audience needs and represents the diversity of the UK.
- 1.2 This is underpinned by the regulatory framework for PSBs which imposes certain obligations on the BBC, S4C, and the licensed PSBs (the Channel 3 licensees, Channel 4 Television Corporation ('C4C') and Channel 5), in respect of independent productions. This includes the requirement that PSBs have a Code of Practice ('Code') which they follow when commissioning independent productions and which reflects guidance from Ofcom ('Guidance').
- 1.3 As a result of changes introduced by the Media Act 2024 ('the Media Act') to update the regulatory framework for PSBs, we are proposing to revise our Guidance. The changes we are proposing reflect PSBs' greater flexibility and freedom in how they deliver their quotas for independent productions, by enabling them for the first time to count independent productions commissioned in accordance with our Guidance and made available on their on-demand players. The Media Act also introduces a new transparency measure to ensure that the PSBs provide information to independent producers about the application of their Codes. We have not revised our Guidance since 2007 so are proposing further changes to update the language and reflect market developments and current commissioning practices.
- 1.4 This consultation sets out our proposals for a revised version of this Guidance. The remainder of this consultation document is structured as follow:
 - **Section 2** explains regulatory and market context, including how the Media Act has changed the remit and requirements on PSBs;
 - **Section 3** explains our proposals and our reasoning;
 - **Annex 1** sets out details of the legal framework;
 - **Annex 2** sets out our assessment of the impact of our proposals; and
 - **Annexes 3-5** provide details on how to respond to this consultation.
- 1.5 The [draft Guidance](#) is available on our website.
- 1.6 We invite views from stakeholders on our consultation by 10 March 2025. Once we have considered responses, we will publish a statement and our final Guidance in summer 2025.

What we are proposing – in brief

PSBs are required to have a Code which they follow when commissioning independent productions and which reflects Ofcom's Guidance.

We are proposing changes to our Guidance as part of our implementation of changes introduced by the Media Act which enable PSBs to use their on-demand players to meet independent production quotas.

We are also proposing to make provision in our Guidance to ensure that independent producers are aware of the PSB's Code ahead of negotiating a commissioning contract with that PSB.

To update our Guidance more generally so that it reflects market developments, we have made the following proposals:

- to update the objectives of the Guidance to take account of the PSBs' revised remits, at the heart of which is to meet the needs and satisfy the interests of different audiences across the UK;
- to qualify the prohibition on a PSB linking the acquisition of primary rights to the negotiation of secondary rights so that it may be waived with the express consent of the independent producer. We are also proposing to remove the prohibition on a PSB including a requirement in its commissioning contract for matching rights;
- that PSBs retain sufficient information about commissions to demonstrate compliance with its Code, rather than sending us annual reports about this; and
- to make minor updates to language used in the Guidance.

The overview section in this document is a simplified high-level summary only. Our reasoning is set out in the full document.

2. Regulatory and market context

Introduction

- 2.1 Ofcom’s overarching aim when it comes to regulating PSBs is to further the interests of viewers, in accordance with our general duties set out in [section 3 of the Communications Act 2003](#) (the ‘2003 Act’).¹ Further details on these duties can be found in Annex 1. Having a sustainable PSB collective, which delivers on its remit – to provide a wide range of informative and entertaining programmes that reflect the diversity of the nations and regions of the UK – is crucial. In fulfilling their remit, PSBs commission much of their content from the UK’s independent production sector and this is underpinned by the obligations imposed under the regulatory framework for PSBs.
- 2.2 These obligations include a quota for each of the PSBs in respect of the amount of independent productions they transmit. The definition of ‘independent production’ can be found in [The Broadcasting \(Independent Productions\) Order 1991](#). The PSBs must also each have a Code setting out the principles they will follow when agreeing terms for commissioning independent productions.² The PSBs must revise their Codes as necessary to take account of revisions to Ofcom’s Guidance.³
- 2.3 Before outlining the relevant changes made by the Media Act, we first explain how programmes are commissioned by the PSBs, and the role of the PSB’s Code and our Guidance in that process.

How programmes are commissioned

- 2.4 When a PSB commissions an independent producer, it will negotiate a licence to acquire specific rights to use the programme that is made. For example, these may include exclusive rights to broadcast a programme a defined number of times, and/or to be available on-demand for a particular period. The rights that are granted in the licence to the broadcaster (the ‘primary licence’) are known as primary rights. They may also encompass the agreed exclusivity period in which a programme can be ‘held back’, preventing the

¹ These include: our principal duty when carrying out our functions to further the interests of citizens and consumers in relevant markets, where appropriate by promoting competition; our duty to secure the objectives in section 3(2), which include the availability of a wide range of high quality television services, calculated to appeal to a variety of tastes and interests, as well as our duty set out at section 3(4)(a) to have regard when performing our general duties to the desirability of promoting the fulfilment of the public service remit for TV in the UK.

² For the licensed PSBs, see section 285(3) of the 2003 Act; for S4C, see paragraph 10(4), Schedule 12 to the 2003 Act; for the BBC, see section 198 of the 2003 Act and paragraph 8 of Schedule 3 to the Framework Agreement. In this consultation, references to section 285 of the Act are to be construed as including the equivalent provisions which apply to S4C and the BBC.

³ See section 285(2) of the 2003 Act for the licensed PSBs; for S4C, see paragraph 10(3)(c) of Schedule 12 to the 2003 Act; for the BBC, see paragraph 8(2) of Schedule 3 to the BBC Framework Agreement. Amendments made by the Media Act to Schedule 12 of the 2003 Act will place the requirement for the BBC to comply with a Code on a statutory basis but are not yet in force (see amendments to paragraph 1(1)(a) of Schedule 12).

producer from selling rights to make the content available on other UK channels or on-demand services. Rights outside of the primary licence are referred to as secondary rights and these may include: the right to sell and distribute content internationally; the right to sell the content formats for adaptation in international markets; and the right to broadcast content on channels or on-demand services other than the original commissioning channel, after any exclusivity period.⁴

- 2.5 As detailed in our [Review of Public Service Media \(2019-23\)](#), different types of rights have become more important to PSBs as they accelerate their digital strategies, making their on-demand players a vital part of how they deliver for audiences. The PSBs have renegotiated their standard commissioning terms over the years and generally obtained more extensive primary rights to show content on their on-demand services.
- 2.6 There have also been other market developments which may have a bearing on the rights acquired by the PSB and those retained by the independent producer, including evolution in the funding of commissioning for PSBs. For example, to reduce the cost of commissioning some programmes PSBs and other broadcasters have been making more use of co-productions. This is where a PSB partners with an international broadcaster or a subscription video on-demand ('SVoD') service to fund a programme, with each partner taking certain agreed rights. UK broadcasters typically acquire a licence to the primary rights in the UK and the partner may acquire rights to other countries or to exploit the content at a later date.
- 2.7 Other funding models make a wider use of deficit funding, where the commissioner does not pay the full cost of the production (with a potential consequent impact on the rights acquired by the PSB or producer). This allows the PSBs to access higher cost programming than they may be willing to fully fund, particularly where those programmes have value in the secondary rights market (e.g. in drama and premium factual). These are often complex deals involving multiple parties across different territories.
- 2.8 There is evidence that there have been some changes in the materiality of PSB commissions for the independent production sector as a whole, contrasting with the growth of SVoD services in the last decade. For example, from 2013 to 2023, PSB commissions declined in both the amount and share of total commissioning revenues, dropping from 65% (£1.7 billion) to 51% (£1.5 billion).⁵ In contrast, revenue from SVoD and international commissions has accelerated, growing from 24% (£0.6 billion) in 2016 to 39% (£1.1 billion) in 2023.⁶

⁴ Pact, 2024, [Pact Census 2024](#) page 6.

⁵ All monetary figures mentioned in this paragraph are converted to 2023 prices using [ONS CPI](#). Note, figures referring to independent producers here include both qualifying and non-qualifying producers (for the purposes of the independent production quota).

⁶ Ofcom Analysis using Pact census 2024 (Pact figures converted to 2023 prices using [ONS CPI](#)). Note: The 4 PSB network groups includes the main and portfolio channels for the BBC, Channel 4, Channel 5, ITV. For completeness, UK multichannel commissioning during this period declined from 20% (£0.5 billion) to 10% (£0.3 billion). For further context, in 2007, PSBs' share of independent producers' commissioning revenue was 82% (from [Review of the operation of the television production sector \(2015\)](#) and [the Communications Market 2006](#)). Similarly, in 2008, primary international commission revenues as a share of the commissioning revenue were 16% (see [Pact Census 2009 \(pages 14 and 21\)](#)). Note that while these figures have value on an indicative basis, they are not directly comparable to similar figures from later years due to a methodology change in PACT Census figures.

2.9 More generally, viewing patterns and competition for content have evolved significantly since 2007, when many people still relied on analogue television and less than 2% of viewing was time-shifted.⁷ Audiences are watching more content online, with on-demand viewing, including of back-catalogue content, playing a much more significant role than in the past.⁸ This includes a broader growth in the importance of SVoD services for audiences.⁹ Related to this, secondary rights have become more significant - for example, producer revenues from international secondary rights, part of which being attributable to the growing SVoD market, grew significantly from £33 million to £64 million from 2013 to 2023.¹⁰

The regulatory framework for PSB commissioning

2.10 This applies to the commissioning by PSBs of independent productions, providing broad parameters for the negotiation of rights packages, to secure, for example, that there is an appropriate degree of transparency about the PSB's negotiation process, and the rights being acquired. [Ofcom's Guidance](#) about how the outcomes listed in [section 285 of the 2003 Act](#) are to be achieved, must be general and must not specify particular terms to be included in the commissioning agreements to which the Guidance relates.¹¹ The Guidance also sets out Ofcom's oversight role, by setting out principles for reporting and monitoring of compliance by the PSB with its Code. Further details of the legal framework are provided in Annex 1.

2.11 Each PSB's Code must set out the principles which the PSB will apply when agreeing terms for the commissioning of independent productions, in line with the Guidance. In practice, each PSB has standard commissioning terms known as the Terms of Trade ('ToT') which it has negotiated with producer bodies Pact and TAC (in the case of S4C).

Implementation of the Media Act amendments

2.12 In this section we summarise two changes made by the Media Act to the regulatory framework for commissioning independent productions set out in section 285 of the 2003 Act.

Capturing content commissioned for on-demand players to meet quotas

2.13 Until now, Ofcom's Guidance has been clear that the PSB's Code only applied to the commissioning of content intended for use on their public service television channel and so did not cover programming commissioned specifically for use on other services such as on-demand players.¹² As a result of amendments made by the Media Act to section 285(1) of

⁷ See [Review of the operation of the television production sector \(2015\)](#) and [Barb's Catch-up Viewing](#).

⁸ See for example, Ofcom 2024, [Review of Public Service Media \(2019-23\)](#), Section 3 and Ofcom 2024, [Media Nations: UK 2024](#), TV and video audience trends.

⁹ For example, Netflix household penetration has risen from 16% to 58% between Q1 2015 and Q1 2024. Ofcom 2024, [Media Nations: UK 2024](#), Figure 16.

¹⁰ Ofcom Analysis using Pact census 2024 (Pact figures converted to 2023 prices using [ONS CPI](#)).

¹¹ Ofcom, 2007. [Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers](#), Annex 1, which we refer to as the current Guidance.

¹² See paragraph 9 of the current Guidance.

the 2003 Act, the PSBs' Codes will apply to the commissioning of independent productions for transmission on the designated on-demand players of PSBs,¹³ where that content is intended to count towards the relevant PSB's independent production quota.

2.14 There are now two sets of circumstances when the PSB's Code is to apply in relation to the commissioning of independent productions:

- a) any independent production that is broadcast on the main PSB channel.¹⁴ This includes any commission of an independent production where rights are granted to the PSB for broadcast both on the main PSB channel and other portfolio channels.
- b) any independent production which is intended for transmission on the PSB's on-demand player¹⁵ and where the PSB intends this to count towards its independent productions quota. Therefore, if an independent production is shown on the PSB's designated on-demand player, the PSB will only be able to use that programme as counting towards its independent production quota if the production in question was commissioned in accordance with its Code.

2.15 The Media Act provisions which enable independent productions shown on a designated on-demand player to be counted towards PSBs' independent productions quota have yet to be implemented.¹⁶ Nonetheless, the period between commission and transmission can be a lengthy one. PSBs may wish to commission programmes for their on-demand players now in accordance with their Codes so that that they can later use such programmes to meet quota requirements.

Securing transparency for independent producers about the Codes

2.16 The Media Act introduces a new transparency requirement that PSBs must fulfil, namely that their Code secures that the PSB provides such information as we consider appropriate about the application of its Code to independent producers that it commissions.¹⁷

¹³ Examples of an on-demand player include BBC iPlayer, Channel 4 On-demand/Stream, and ITV X. Under the amendments made by the Media Act, a PSB can apply to Ofcom for an on-demand player (referred to in the legislation as an 'internet programme service') to be designated so that it may then benefit from new rules in relation to prominence and availability.

¹⁴ The 2003 Act provides that 'television broadcasting services' are the main PSB channels. (see s.232 of the 2003 Act). These channels are all BBC television channels, S4C, each of the regional Channel 3 services of the Channel 3 licensees, Channel 4, and Channel 5.

¹⁵ 'Qualifying audiovisual services' includes on demand programme services which are, or form part of, a designated internet programme service. See section 278B(6) of the 2003 Act (as amended by the Media Act). It also includes any other relevant audiovisual service which is specified, or falls within a description specified, in regulations made by the Secretary of State. At the time of publication, no such regulations have been made.

¹⁶ For a detailed timeline of our implementation process see: Ofcom, 2024, [Media Act Implementation](#).

¹⁷ Section 285(3)(h) of the 2003 Act.

3. Our analysis and proposals

Introduction

- 3.1 We are committed to implementing the Media Act rules as quickly as possible, in a way that is fair, proportionate, and effective. We have reviewed our current Guidance in light of the new legislative provisions introduced by the Media Act and in accordance with our general duties, taking account of our overarching objective for PSB regulation of furthering the interests of viewers.
- 3.2 We spoke with PSBs, Pact, and TAC last year to understand views on the current Guidance. There is support for the Guidance, but stakeholders have said there is scope to bring it up to date to reflect the current practices in the sector, particularly when it comes to some of the language used. We have reflected on what changes might be appropriate, taking account of market developments. We have also considered the objectives of the Guidance as well as the reviewing and reporting arrangements that the PSB should put in place under its Code.
- 3.3 Our draft Guidance¹⁸ sets out details of the legal framework, the objectives of the Guidance, and how the PSB's Code should secure the outcomes specified in the 2003 Act,¹⁹ namely:
- a) a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - b) there is what appears to Ofcom to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
 - c) there is what appears to Ofcom to be sufficient transparency about the amounts to be paid in respect of each category of rights;
 - d) what appear to Ofcom to be satisfactory arrangements are made about the duration and exclusivity of those rights;
 - e) procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
 - f) those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;
 - g) provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate; and
 - h) that such information about the application of the code as Ofcom consider appropriate is given to persons who make independent productions that are to be commissioned in accordance with the code.²⁰
- 3.4 In this section we set out the details of our proposals, first discussing our revisions to the objectives of the Guidance and then our proposed revisions to the Guidance itself.

¹⁸ Given the number and nature of the drafting changes, our draft Guidance is set out as a 'new' document (rather than a markup against the current Guidance).

¹⁹ See section 285(3) of the Act and paragraph A1.15 of Annex 1.

²⁰ Section 285(3)(h) of the 2003 Act.

Revising the objectives of the Guidance

- 3.5 Given the diversity of PSBs, independent producers, and commissions, it would not be appropriate for the Guidance to be unduly prescriptive about the way in which the PSBs' Codes must meet the statutory requirements. Similarly, it is important that the Codes are sufficiently flexible to accommodate different circumstances and the evolution of relevant markets. We therefore consider it helpful to retain a set of objectives to explain Ofcom's objectives in drawing up and revising the Guidance and for the PSBs to take into account when revising their Codes, their ToT, and negotiating and commissioning programmes.
- 3.6 We have reviewed the list of objectives in the current Guidance and propose to make revisions which reflect the changes to the PSBs' remits under the Media Act and take account of market developments since the Guidance was last revised.
- 3.7 As a result of changes made by the Media Act, the importance of meeting the needs and satisfying the interests of different audiences across the UK is now clearly at the heart of the PSBs' remits. This applies to both the nature of the content that they make available and the services that they use to do so. In light of this, and in accordance with our overarching objective for PSB regulation of furthering the interests of viewers, we are proposing that Ofcom's high-level objective in drawing up and revising the Guidance for the draft Guidance should be:

"To support the PSBs in fulfilling their individual remits and the public service remit, meeting the needs and satisfying the interests of different audiences across the UK; and meeting their quota obligations in respect of independent productions."²¹

- 3.8 This represents a change of focus from the high-level objectives in the current Guidance, which centre on (i) supporting the volume and value of original commissioning in the UK and (ii) removing barriers to the development of new markets for content distribution.²² We consider the first of these is integral to the achievement of the high-level objective we are proposing – supporting a vibrant and diverse independent production sector is critical to the PSBs being able to fulfil their remits successfully. However, we think the second is now outdated, given the way the market has evolved and the increasing shift of audiences to other content distribution platforms. Through their revised remits, PSBs are now tasked with delivering their content when and where audiences want it and therefore it is important that the PSBs are able to acquire the content rights they need to achieve this.
- 3.9 We are also proposing to amend the objectives that the PSBs should seek to secure through their Codes and commissioning practices, as follows:

"In revising their Codes and applying them when negotiating commissions of independent productions, the PSBs should have regard to the need for the following:

- 1. a flexible framework that is platform and technology neutral;*
- 2. clarity on the commissioning process, allocation of rights between broadcasters and producers, and use of different distribution platforms;*
- 3. not distorting the commissioning decision as between internal and external producers;*

²¹ See paragraph 2.10 of the draft Guidance.

²² See paragraph 3 of the current Guidance.

4. *preserving the exclusivity in distribution required by broadcasters in the primary licence, while preserving the scope for secondary exploitation by producers;*
5. *facilitating the exploitation of a range of [audiovisual] AV services for the distribution of the content, with a view to meeting the needs and satisfying the interests of as many different audiences across the UK as practicable; and*
6. *furthering the interests of viewers, by supporting investment and innovation in content available to viewers, and efficient exploitation and distribution.”²³*

3.10 In terms of the changes, we are proposing:

1. We have simplified the language of the first proposed objective but have not changed its meaning.
2. The second proposed objective includes the need for clarity on the commissioning process as a whole and on the allocation of both primary and secondary rights between broadcasters and producers.
3. We have not made any substantive changes to the third proposed objective.
4. The fourth proposed objective focuses on preserving distribution in the primary licence for PSBs and secondary exploitation by producers. We do not propose to retain the words *‘and expanding where possible’* in relation to secondary exploitation by producers. This reflects our view that the market context has moved on since this objective was set in the current Guidance in 2007.
5. We are proposing to revise the fifth objective to update the language and to link the exploitation of rights with meeting the needs and satisfying the interests of different audiences across the UK. This is consistent with our proposed revision to the high-level objective of the draft Guidance discussed at paragraph 3.7 above.
6. We are also proposing to refine the language of the sixth objective to align with our proposed high-level objective. Taking account of the way content distribution markets are changing, including the evolution of new funding models, we are proposing that the objective should be reframed as *“supporting investment and innovation in content available to viewers”*.

3.11 More generally, we propose to update the language used in the objectives - for example, by removing references to *‘new’* distribution platforms and including a reference to AV services.

3.12 We recognise that the revised objectives have a greater focus on facilitating the PSBs to fulfil their revised remits. We expect our proposed changes will be beneficial for both PSBs and independent producers. The fulfilment of the PSBs remit supports the independent production sector in the UK and content distribution markets more broadly. Importantly, we consider the draft Guidance should support effective commercial relationships between PSBs and independent producers, to the overall advantage of both while serving the interests of audiences.

Other changes to reflect the revised objectives

3.13 In line with our proposed revisions to the objectives of the Guidance, we are proposing to make certain additional changes to underline that PSBs’ commissioning contracts should be

²³ See paragraph 2.11 of the draft Guidance.

responsive to changing audience needs. We do not expect any significant impacts to arise from these changes.

- 3.14 In particular, we are proposing the following amendments, highlighted in bold, to the Guidance:

*“A key principle underlying our approach to the Codes is that producers should retain rights in the programmes unless these are explicitly sold to a PSB and/or to other parties. **We also expect PSBs to be able to acquire the rights they need to deliver on their remits and meet changing audience needs.**”²⁴*

*“PSBs have a legitimate right to seek to protect the value of their brand **in delivering their remit** and are entitled to a degree of exclusivity in relation to the rights that they acquire **to meet audience needs**. However, PSBs should not use this to foreclose **competition or the development of new markets by producers and third parties.**”²⁵*

*“The Code may reserve the right of the PSB to revisit the scope of the primary rights package as **new** distribution platforms **emerge and audience demand or needs change**”²⁶*

Revisions to the Guidance on securing the statutory outcomes

- 3.15 We now explain the changes we proposing to make to the Guidance about how the PSBs should secure the outcomes listed in section 285(3) of the Act. We cover four main topics in turn:
- Implementing legislative changes made by the Media Act;
 - Updates in response to market developments;
 - Reviewing and reporting arrangements and dispute resolution; and
 - Other minor updates.

Implementing legislative changes made by the Media Act

- 3.16 Our review of the Guidance is principally to ensure that it is consistent with the legislative changes made by the Media Act, which are explained in Section 2. There are two main amendments we propose to make to the Guidance to reflect these legislative changes.
- 3.17 First, we propose changes to make clear that the Guidance (and PSB Codes) will apply to independent productions intended for (i) the main PSB channels and (ii) the PSB’s designated on-demand players (where that content is intended to count towards meeting the relevant PSB’s programming quotas for independent productions).²⁷
- 3.18 Second, we are proposing to add the following text on the information PSBs should provide to independent producers about the application of their Codes, to reflect changes made by the Media Act²⁸:

²⁴ See paragraph 2.16 of the draft Guidance.

²⁵ See paragraph 2.36 of the draft Guidance.

²⁶ See paragraph 2.19 of the draft Guidance.

²⁷ See paragraphs 2.5, 2.17-2.18, 2.20-2.22 of the draft Guidance for examples of this.

²⁸ See [section 285\(3\)\(h\) of the 2003 Act](#).

“The PSB should make the producer aware of its Code before negotiations have commenced....

The PSB’s Code and all relevant documents should be readily available and easily accessible on the PSB’s website (the PSB should take into account disabilities and other accessibility needs). The Channel 3 licensee in Wales, C4C, Channel 5 and S4C may publish their Codes in Welsh and English.”²⁹

- 3.19 We consider that this will improve the transparency of the PSB’s Code for independent producers negotiating or considering a commission from the PSB. We consider that any administrative burden arising from this change is likely to be minimal.
- 3.20 In addition, to reflect changes to 285(6)(c) of the 2003 Act, we intend to replace ‘Welsh Authority’ with ‘S4C’ throughout the draft Guidance.

Updates in response to market developments

- 3.21 A PSB’s Code must provide sufficient clarity about the different categories of rights that are being acquired by the PSB when it commissions an independent production.³⁰ In this regard, our Guidance currently says, among other things, that:
- a) *“the Codes should confirm that negotiations relating to the acquisition of primary rights and the exploitation of such rights in the primary licence will not be linked to negotiations for rights for subsequent exploitation”* (secondary rights)³¹; ³² and
 - b) *“there should be no terms in contracts making them conditional (actually or in effect) on the acceptance by producers of a bundled deal or on the use of a broadcaster’s own distribution arm”*.³³
- 3.22 We are proposing revisions to these aspects of the Guidance. The provisions offer support for independent producers’ ability to retain and exploit secondary rights with third parties or the PSB. However, we consider there are a number of reasons why it is now appropriate to loosen these constraints on negotiations.
- 3.23 First, we have taken account of the market developments outlined in Section 2, namely: the reduction in the share of independent commissions represented by PSBs and the significant increase in independent commissions from SVoDs and other international content commissioners. This reflects the shift in the viewing habits of audiences as they move increasingly online and access content from a wide range of platforms, in addition to PSB services.
- 3.24 Second, in response to these changes, the Media Act enables the PSBs to provide their content across a range of different services as well as their PSB broadcast channels. This is underpinned by their revised remit, as laid out in section [264\(4\) of the 2003 Act](#): in addition to providing content which meets the needs and satisfies the interests of as many different

²⁹ See paragraphs 2.42 and 2.43 of the draft Guidance. Where there are related documents referred to in the Code, we are proposing that these should have a corresponding weblink to make them accessible – see paragraphs 2.13 – 2.14 of the draft Guidance.

³⁰ Section 285(3)(b) of the 2003 Act.

³¹ The value associated with secondary rights has increased and rights is also known as bundling of primary and secondary rights. This refers to an agreement where primary and secondary rights are grouped together and negotiated or sold as a single package, rather than individually.

³² Paragraph 26 of the current Guidance.

³³ Paragraph 27 of the current Guidance.

audiences as possible, the PSBs must do so in a way which takes account of when and how audiences access such content. We therefore consider it important that the PSBs are in a position to negotiate the acquisition of rights to meet their new obligations. We understand from stakeholder engagement that the restrictions set out above in the Guidance may make it difficult for PSBs to commission content on terms which deliver for viewers.

- 3.25 Third, as described in Section 2, the funding mechanisms for commissions by PSBs and other services has evolved since the Guidance was last updated (for example with the emergence of co-productions and deficit funding), which increases the benefits of greater flexibility in how primary and secondary rights are negotiated.
- 3.26 Accordingly, we are proposing the following amendments, highlighted in bold, to the Guidance:
- (1) *“The Code should confirm that, **unless the independent producer expressly consents**, negotiations relating to the acquisition of primary rights and the exploitation of such rights in the primary licence will not be linked to negotiations for rights for subsequent exploitation.”*³⁴
- (2) *“The Code should not prescribe a particular funding arrangement nor allow for any automatic bundling of rights as between primary and secondary exploitation unless this is agreed by both parties. There should be no terms in contracts making them conditional (actually or in effect) on the ~~acceptance by producers of a bundled deal or~~ use of a ~~broadcaster’s PSB’s own distribution arm”~~”*³⁵
- 3.27 The proposed amendments remove the absolute prohibition on linked or conditional offers for primary and secondary rights so give greater flexibility for the negotiation of a wider set of rights by PSBs. They also preserve the ability of independent producers to reject offers where the acquisition of primary rights is conditional on the acquisition of secondary rights.
- 3.28 This amendment would mean that PSBs will have the potential to commission programming across a wider set of services in conjunction with funding partners. Our view is that it would improve their ability to compete with global streaming services that are not subject to restrictions on the scope of the rights packages which they are able to negotiate, improving the package available to audiences in the process. Producers may benefit from higher upfront investments from PSBs, allowing for content to be commissioned which may not have previously been possible.
- 3.29 We recognise that some producers may be concerned that this change to our Guidance would weaken their ability to retain and exploit secondary rights. However, we consider that both PSBs and producers are, taken as a whole, are likely to benefit from such an amendment. For example, they could benefit from the greater flexibility to negotiate bundled deals when both parties perceive it to be in their interests. It may also be that PSBs or producers benefit from reduced costs associated with less complex or fewer rounds of negotiations. We therefore consider that the changes we are proposing will, in the round, be beneficial and consistent with our overarching goal of furthering the interests of viewers.

³⁴ See paragraph 2.24 of the draft Guidance.

³⁵ See paragraph 2.25 of the draft Guidance.

We are proposing to remove the ‘matching rights’ provision

3.30 We propose to remove the text highlighted in bold from the Guidance:

*“The Code should not preclude a PSB from acquiring different or additional rights packages should they wish to do so and should the independent producer wish to make them available. A PSB should always be able to seek to secure more rights packages subject to commercial negotiation. **However, PSBs should not seek to secure “matching rights” provisions which have that effect. We believe that such provisions could stifle competition.**”³⁶*

3.31 When the current Guidance was implemented, Ofcom considered that a matching rights provision (giving PSBs the ability to match third-party offers for certain rights to content they have commissioned) could stifle competition. We concluded that *“such clauses could have the effect of foreclosing the access of third party service providers to content rights and of dampening competition for such rights”*, as laid out in our [2007 consultation](#).³⁷

3.32 However, as discussed in footnote **Error! Bookmark not defined.** and paragraph 2.9 above, viewing patterns and competition for content have evolved significantly since 2007. Now, when multichannel and SVoD providers collectively are able to spend twice as much as PSBs on UK-originated drama and include providers operating with global content budgets in the billions,³⁸ we consider there is no longer a sufficient case for believing, as a general principle, that the inclusion of matching rights provisions in PSB commissions might have a material adverse impact on competition.

3.33 Matching rights may also have the benefit of securing (or making it easier to secure) the consistent presence of independently produced content on PSBs, therefore better serving the viewer interest where that content has become associated with the PSB. We therefore propose to remove the prohibition on ‘matching rights’ provisions in PSB commissioning contracts on the grounds that such provisions are unlikely to have a material adverse effect on competition and may have other benefits in some contexts.

Reviewing and reporting arrangements and dispute resolution

3.34 In this sub-section, we set out our proposals in relation to the requirements that a Code must: set out procedures for reviewing arrangements made under that Code and demonstrating compliance with it;³⁹ include provisions about reporting to Ofcom;⁴⁰ and make provision for resolution of disputes arising in respect of provisions of the Code.⁴¹

Reviewing arrangements under the Code and reporting information to Ofcom

3.35 We have, in the main, made only minor drafting amendments to the section of the Guidance dealing with procedures for reviewing arrangements made under the Code.⁴² We have clarified that if a PSB wishes to modify their Code, or a linked document where this

³⁶ See paragraph 28 of the current Guidance and paragraph 2.26 of the draft Guidance.

³⁷ See Ofcom’s [Consultation on guidance for PSBs in drawing up Codes of Practice for commissioning from independent producers \(2007\)](#), paragraph 4.22.

³⁸ See Ofcom, 2024, [Review of Public Service Media \(2019-23\)](#), Figure 20.

³⁹ Section 285(2)(e) of the 2003 Act.

⁴⁰ Section 285(2)(f) of the 2003 Act.

⁴¹ Section 285(2)(g) of the 2003 Act.

⁴² These are set out in paragraphs 41 and 42 of the current Guidance and revised in paragraphs 2.37 and 2.38 of the draft Guidance.

would impact the information the PSB is required to provide under this Guidance, they must seek approval from Ofcom. We are also proposing to clarify that it may be appropriate for Ofcom to revise the Guidance from time to time. Currently, the Guidance sets out that we may revise the Guidance following an issue raised in an application by a PSB to modify its Code.⁴³ We propose to clarify in our Guidance that we may also consider it to be appropriate to revise the Guidance from time to time because of other circumstances.

3.36 In relation to requirements for monitoring and compliance, we have reflected on what the Guidance says about the information the PSBs should provide Ofcom. Currently, PSBs are required to report annually to Ofcom on a range of information covering the eight key areas the Codes must address.⁴⁴

3.37 We propose to move away from an annual reporting requirement⁴⁵ and instead require PSBs to:

“collect, record and retain sufficient information to demonstrate compliance with the provisions set out in the Guidance. This information should be retained for a minimum of three years. Examples of the kind of information could include the prices paid for commissions and the relevant indicative tariff ranges, and the duration of rights.”⁴⁶

3.38 While we propose to give the PSBs discretion about the information they retain, we provide examples of the type of information that this is likely to include. These examples are not intended to be exhaustive, and it is likely to be appropriate for PSBs to retain other information in order to be in a position to demonstrate compliance.

3.39 We are proposing that the Codes should provide a minimum retention period for this information of three years to allow for trends to become apparent. Although we initially considered that a period of five years to align with the timeframe of our PSM reviews would be appropriate, we are conscious of the regulatory burden an extended provision could have on stakeholders. We would welcome views as to whether this constitutes an appropriate time frame to retain this information.

3.40 Overall, we consider the changes will remove the burden of an annual reporting requirement under the Code with less onerous information retention measures to allow us to maintain oversight in a more targeted way. We do not expect this to result in any impacts on producers or audiences.

3.41 Alongside this, we will continue to engage with stakeholders on a regular basis to ensure we are aware of any issues, so that these may feed into our PSM reviews. We continue to receive reports from PSBs in accordance with our other functions, including information we collect to inform our annual statutory reporting on the TV market, as well as data from broadcasters that demonstrates their compliance with quotas.

⁴³ See paragraph 42 of the current Guidance.

⁴⁴ See paragraphs 43-46 of the current Guidance.

⁴⁵ See paragraph 46 of the current Guidance.

⁴⁶ See paragraph 2.39 of the draft Guidance.

Arrangements for dispute resolution

- 3.42 It is a requirement that a PSB's Code contains provision for the resolution of disputes which relate to the application of the Code.⁴⁷ We propose to make only minor drafting rather than substantive changes to this section of the Guidance.⁴⁸
- 3.43 However, we note that one of the PSBs has queried the practicality of the suggestion, retained in the draft Guidance, that "*a non-executive director of a PSB could be brought in as final arbiter in a dispute*".⁴⁹ We would welcome views on this point.

Other minor updates

- 3.44 We propose to make other minor changes, for example to update terminology to reflect the evolution of technology and industry practice, and to streamline drafting. We do not consider that the proposed changes discussed below have a material effect.

Updating terminology and simplifying language

- 3.45 We propose to remove or amend obsolete terminology, for example, references to 'new' distribution platforms emerging that are now commonly understood and accepted⁵⁰ as well as outdated references to 'alternative distribution platforms',⁵¹ 'new media' and 'new media rights'.⁵²
- 3.46 We propose to remove paragraph 30 of the current Guidance⁵³ in the interests of streamlining the drafting. We do not consider that this alters the substance of our Guidance.
- 3.47 We are also proposing to remove the first part of paragraph 40 of the current Guidance⁵⁴ which says:
- "Ofcom recognises that broadcasters are concerned that the exploitation of new media rights by producers might have the potential to affect their ability to maintain and develop their brand and channel proposition. Ofcom also recognises that broadcasters are concerned that, where exploitation of new media rights in independent productions they have originally commissioned takes place outside their control, there could be important implications for their underlying business models."*
- 3.48 As noted, the terminology of new media rights is outdated. Further, to the extent that PSBs continue to have such concerns, paragraph 40 of the current Guidance does not set out any measure which their Codes may incorporate in light of it. We therefore consider that there

⁴⁷ Section 285(3)(g) of the 2003 Act.

⁴⁸ See paragraph 47 and 48 of the current Guidance and the revised text at paragraphs 2.40 – 2.41 of the draft Guidance. We have proposed tweaks to the text from broadcaster to PSB, from Codes of Practice to Code.

⁴⁹ Paragraph 2.41 of draft Guidance.

⁵⁰ For example, at paragraphs 21 of the current Guidance.

⁵¹ For example, at paragraphs 3 and 4 of the current Guidance.

⁵² For example, at paragraphs 1, 3, and 40 of the current Guidance.

⁵³ Paragraph 30 of the current Guidance states, "*Ofcom expects that over time a greater degree of understanding of the value of different categories of rights will emerge as packages of rights are increasingly traded. However, Ofcom recognises that there may be considerable uncertainty as to the value of different categories of rights and therefore does not consider it appropriate to be prescriptive about the way in which different categories of rights should be priced.*"

⁵⁴ See paragraph 2.36 of the draft Guidance.

is scope to streamline the drafting by removing the text above, without altering the substantive effect of the Guidance.

- 3.49 We propose to make further minor amendments⁵⁵ to paragraphs 2.13 – 2.15 and 2.31 of the draft Guidance, with a view to simplifying the drafting. We do not consider these substantively alter the effect of the provisions in the Guidance. We have also clarified the meaning of the term ‘strands’.⁵⁶
- 3.50 The current Guidance provides certain examples to illustrate how a measure might apply or could be implemented, as highlighted in bold below:
- a) *“The assessment of the adequacy of separation would depend on the broadcaster in question **e.g. for smaller licensees, it may not be practicable to have separate in-house/external commissioning editors for regional production.**”*⁵⁷
 - b) *“The Code should make a distinction between the rights required to be secured for linear TV broadcast services (**e.g. first broadcast transmission together with simultaneous streaming over other distribution platforms such as the Internet or mobile devices plus a specified number of repeats**) and other rights e.g. those for non-linear exploitation.”*⁵⁸
 - c) *“However, this would not prevent the PSBs from seeking to develop arrangements for use of independent productions commissioned for the PSB channel on other wholly-owned channels **e.g. one transmission on the main channel being equivalent to (say) 3 transmissions on a secondary channel**, provided that such use was clearly spelt out. If this is the case, the Codes should set out the approach to be used for such arrangements **e.g. defining the numbers of transmissions against specific channels.**”*⁵⁹
 - d) *“The Codes should set out the duration of the initial window and the holdback period in respect of the acquired rights. It is not the case that the duration of these windows has to be the same for every genre or category of rights but where the duration of the windows does vary this should be made explicit e.g. **where the initial window for the exploitation of video-on-demand rights is limited to a fixed period of time around the initial transmission.**”*⁶⁰
- 3.51 Where (as in the highlighted text above) these examples no longer reflect industry practice, we propose to remove them.⁶¹ We do not consider that this alters the substance of our Guidance or adversely affects its clarity.

Other updates

- 3.52 We also propose to remove reference to ToT in the draft Guidance.⁶² Although we recognise that ToTs are an established part of the relationship between producers and PSBs, the role of the Guidance is to set a framework for Codes, rather than ToTs themselves.

⁵⁵ See paragraphs 15 – 17 and 35 of the current Guidance.

⁵⁶ See paragraph 2.18 of the draft Guidance.

⁵⁷ Paragraph 17 of the current Guidance.

⁵⁸ Paragraph 19 of the current Guidance.

⁵⁹ Paragraph 24 of the current Guidance.

⁶⁰ Paragraph 37 of the current Guidance.

⁶¹ In addition to the examples listed at paragraph 3.50, see also paragraph 25 of the current Guidance (as amended at paragraph 2.23 of the draft Guidance).

⁶² For example, at paragraphs 10 and 25 of the current Guidance.

- 3.53 The legal framework is now set out at the beginning of the draft Guidance so that the purpose and scope is clearer.⁶³
- 3.54 We have simplified the subheadings provided at (a)-(g) of the current Guidance, which were previously a direct quote from legislation, to make the document more user friendly.

Next steps

- 3.55 We welcome any views stakeholders have on our proposals and welcome further engagement with interested parties ahead of making our decisions.
- 3.56 To summarise, we are proposing changes to our Guidance as part of our implementation of changes introduced by the Media Act which enable PSBs to use their on-demand players to meet independent production quotas. We propose to make provision in our Guidance to ensure that independent producers are aware of the PSB's Code ahead of negotiating a commissioning contract with the PSB. To update our Guidance more generally so that it reflects market developments, we have made the following proposals:
- to update the objectives of the Guidance to take account of the PSBs' revised remits, at the heart of which is to meet the needs and satisfy the interests of different audiences across the UK;
 - to qualify the prohibition on a PSB linking the acquisition of primary rights to the negotiation of secondary rights so that it may be waived with the express consent of the independent producer. We are also proposing to remove the prohibition on a PSB including a requirement in its commissioning contract for matching rights;
 - that PSBs retain sufficient information about commissions to demonstrate compliance with their Code, rather than sending us annual reports about this; and
 - to make minor updates, including to language used in the Guidance.

Consultation questions

Question 1: Do you have any comments on our approach and proposed draft Guidance?

Question 2: Do you have any comments on our impact assessments in relation to our proposals, as set out in Annex 2?

- 3.57 Parties have until 10 March 2025 to respond to our consultation. Once we have received and considered responses, we intend to publish our statement and final Guidance by summer 2025.

Implementation timeline

- 3.58 Once we have issued our statement and final Guidance in summer 2025, PSBs will need to update their Codes to reflect our final Guidance. PSBs will need to seek Ofcom approval of the changes which need to be in place when the final Guidance takes effect, which we expect to be on 1 January 2026 when the new Media Act provisions and necessary variations to licence conditions will come into force.
- 3.59 We set out indicative timings for the period up to 1 January 2026:

⁶³ See paragraphs 2.1-2.9 of the draft Guidance.

- a) 10 March: deadline for responses to our consultation and draft Guidance;
- b) Ofcom analysis of responses and stakeholder engagement;
- c) Summer: Ofcom issue statement and final Guidance;
- d) Autumn: PSBs prepare updated Codes in line with the final Guidance – seeking Ofcom approval;
- e) Autumn: Ofcom issue necessary variations to licence conditions to reflect the final Guidance; and
- f) By 1 January 2026: Final Guidance takes effect and PSBs updated Codes in place.

A1. Legal framework

- A1.1 In this annex, we summarise the statutory provisions which are relevant to our proposals in this Consultation.
- A1.2 We first set out Ofcom’s general duties under section 3 of the 2003 Act and other duties which we must fulfil when carrying out functions. We then describe the statutory framework applicable to PSBs which is relevant to our Guidance and the PSBs’ Codes.

Ofcom’s general duties

- A1.3 Ofcom’s general duties when carrying out its functions are set out in section 3 of the 2003 Act and include its principal duty to further the interests of citizens in relation to communications matters and consumers in relevant markets, where appropriate, by promoting competition.
- A1.4 In carrying out our functions, we are required to secure certain objectives, including:
- the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - the maintenance of a sufficient plurality of providers of different television and radio services; and
 - the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.
- A1.5 We must also 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 desirability of promoting competition in the relevant markets; and
 - 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.
- A1.6 In addition to Ofcom’s general duties, the following statutory duties are relevant for the purposes of this consultation.

Economic growth duty

- A1.7 [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.⁶⁴

A1.8 The government's statutory guidance on this duty recognises drivers of economic growth to include innovation and competition.

Public sector equality duty

A1.9 [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 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.

A1.10 [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

A1.11 [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](#) effective from 25 January 2017.

A1.12 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.

The relevant statutory framework as regards PSBs

A1.13 The PSBs have a number of different regulatory obligations. These include:

- their collective remit to make available a broad range of audio;
- visual content which meets the needs and satisfies the interests of as many different audiences as possible, considering when and how the programmes are accessed, as well as the nature of the programmes and the subject matters covered by them;⁶⁵

⁶⁴ Section 108(2)(b) of the Deregulation Act 2015.

⁶⁵ Section 264(4) of the 2003 Act. There are additional requirements which state that the content they provide, taken together, must meet in section 264(4) – (6) of the 2003 Act.

- their programming quotas,⁶⁶ including a quota to include in their broadcast public service channel or their designated online player independent productions (as defined in [an order made by the Secretary of State](#)), which represent at least a minimum amount, as specified in an order made by the Secretary of State.
- A1.14 Under their respective regulatory frameworks, each PSB is required to have a Code, which must set out the principles which the PSB will apply when agreeing terms for the commissioning of independent productions.⁶⁷
- A1.15 The Codes must secure, in the manner described in Guidance issued by Ofcom the following outcomes:
- a) a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - b) there is what appears to Ofcom to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
 - c) there is what appears to Ofcom to be sufficient transparency about the amounts to be paid in respect of each category of rights;
 - d) what appear to Ofcom to be satisfactory arrangements are made about the duration and exclusivity of those rights;
 - e) procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
 - f) those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;
 - g) provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate; and
 - h) that such information about the application of the code as Ofcom consider appropriate is given to persons who make independent productions that are to be commissioned in accordance with the code.⁶⁸
- A1.16 We are required to issue guidance to assist PSBs in drawing up their Codes (Guidance).⁶⁹ The Guidance must be general guidance and must not specify particular terms to be included in the commissioning agreements to which the Guidance relates.

⁶⁶ For the licensed PSBs, see [section 277 of the 2003 Act](#); for S4C, see paragraph 7 of Part 2 of Schedule 12 to the 2003 Act; for the BBC, see paragraph 1 of Part 1 of Schedule 12 to the 2003 Act and paragraph 6, Schedule 3 of the Framework Agreement. The Framework Agreement will need to be updated by the Secretary of State to reflect the legislative amendments made by the Media Act.

⁶⁷ See section 285(2) of the 2003 Act for the licensed PSBs; for S4C, see paragraph 10(3)(c) of Schedule 12 to the 2003 Act; for the BBC, see paragraph 8(2) of Schedule 3 to the BBC Framework Agreement. Amendments made by the Media Act to Schedule 12 of the 2003 Act will, in due course, place the requirement for the BBC to comply with a Code on a statutory basis (see amendments made to paragraph 1(1)(a) of Schedule 12, not yet in force). As above, the Framework Agreement will need to be updated by the Secretary of State to reflect the legislative amendments made by the Media Act.

⁶⁸ Section 285(3)(h) of the 2003 Act.

⁶⁹ Section 285 of the 2003 Act.

A1.17 We are required to consult PSBs and persons who make independent productions (or persons appearing to Ofcom to represent them), the BBC and S4C about any revisions we propose to make to this guidance.⁷⁰

⁷⁰ Section 285(6)(c) of the 2003 Act.

A2. Impact assessments

Impact assessment

- A2.1 [Section 7 of the Communications Act 2003](#) 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.
- A2.2 We are required to update our Guidance as part of our work to implement the Media Act. While the requirement to produce Codes is not new, the changes brought about by the Media Act will involve changes to types of commissioning covered by Codes and the addition of a new principle the Codes must achieve (see paragraphs 3.16 to 3.20 of this document which explain our proposed changes to implement the Media Act). As the Guidance has not been updated since 2007, we have also proposed some updates to improve clarity and alignment with the audience interest as well as alignment with the current market context. We are therefore proposing a number of changes to the Guidance as outlined throughout Section 3 of this document.
- A2.3 We have considered the potential impacts of our proposed changes – in particular, on audiences, PSBs and producers. We provide our current view as to the likely overall impact below, as well as our view as to the impact of more substantive, specific changes proposed in this document. We have considered these impacts relative to an alternative (or counterfactual) where we propose only the narrowest set of changes necessary for our Guidance to be consistent with the amendments made to the legal framework by the Media Act.
- A2.4 Overall, we expect our proposed changes are unlikely to lead to any major deviations from current practice or outcomes. We consider that the aggregate impact of the proposed changes will be positive, proportionate, and will fulfil our objectives in the least intrusive way. The most direct impacts fall on PSBs and producers, although we note that some of the relevant benefits may pass through indirectly to audiences (e.g. greater flexibility in negotiations for primary and secondary rights improving the availability or quality of content). We expect there may be some potential for PSB gains and corresponding losses for producers in some instances for some proposed changes. Drawing from our discussion in Section 3 above, our view as to the likely impacts of specific proposed changes are set out below.
- A2.5 **Revising the objectives of the Guidance:** As highlighted in Section 3, our revised objectives have a greater focus on supporting the PSBs in fulfilling their revised remits so as to further the interests of viewers. We expect our proposed changes to objectives to be beneficial for PSBs, independent producers and audiences. This is because the fulfilment of the PSB remit involves support for both independent production sector and ensuring that viewer interests are met.
- A2.6 **Other updates to reflect the revised objectives:** We have proposed some other changes to text to better align with the revised objectives. We do not expect any significant impacts to arise from these changes but think any impacts which do arise will be beneficial by

clarifying the importance of rights packages evolving in line with audience needs while balancing the interests of PSBs, producers and audiences.

- A2.7 **Transparency related amendments:** As discussed in Section 3 (see paragraph 3.18 of this document and footnote 33) our proposed change to ensure the Codes are transparent by requiring PSBs to include links to relevant documents on their website is likely to benefit producers by making information more easily accessible relative to current practice. Any increase in the administrative burden for PSBs is likely to be minimal and we expect the net impact to be positive. We do not expect this to result in any detrimental impact on audiences.
- A2.8 **Updates in response to market developments:** We have proposed the following changes in response to market developments:
- a) we have proposed to allow PSBs to seek bundling of primary and secondary rights in negotiations if a producer expressly consents to this;
 - b) we have proposed to remove the provision that there should be no terms in contracts making them conditional (actually or in effect) on the acceptance by producers of a bundled deal; and
 - c) we have proposed to remove the prohibition on a PSB including a requirement in its commissioning contract for matching rights.
- A2.9 In terms of (a) and (b), we expect these changes will provide greater flexibility in negotiations for PSBs and producers and in addition should also increase efficiency of negotiations for both parties. As highlighted in Section 3, some producers may be concerned that this change could weaken their ability to retain and exploit secondary rights. However, we consider that both PSBs and producers would, taken as a whole, likely benefit from these amendments, given the greater flexibility they would have to negotiate bundled deals and the potential for reduced costs of negotiations for both sides. In terms of (c) we consider that this will provide the benefit of securing (or making it easier to secure) the consistent presence of independently produced content on PSBs, therefore better serving the audience interest where that content has become associated with the PSB.
- A2.10 **Reporting arrangements:** In terms of our proposed changes to reporting arrangements, we propose to require that PSBs retain necessary information to demonstrate compliance with the Code rather than produce and submit an annual report. We believe this will reduce the administrative burden on PSBs relative to the current requirement to produce and submit annual reports. We do not anticipate any impacts from our proposal on producers or audiences.
- A2.11 **Other minor updates:** We have proposed a number of other minor updates to the Guidance. These include making updates to outdated terminology and illustrative examples that do not align with the current market context such as reference to 'new media'. We have also sought to provide clarity on what certain concepts mean by providing definitions, such as for 'strands', and made some minor structural amendments to the Guidance. We expect any impacts arising in relation to these proposals to be positive by making the Guidance easier to understand for PSBs, producers and other stakeholders.

Equality impact assessment

- A2.12 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.⁷¹ 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.
- A2.13 Ofcom has separate but complementary duties under Northern Ireland’s equality legislation.⁷² 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.
- A2.14 We have given careful consideration to whether the proposals in this document will have a particular impact on persons sharing protected characteristics (including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.
- A2.15 We consider that some of our proposals are likely to have a positive impact on certain groups - specifically, groups with accessibility requirements. This is because we propose to require that the Code and all relevant documents to be readily available and easily accessible on the PSB’s website, and that the PSB should take into account disabilities and other accessibility needs. We consider that our other proposals are likely to have a neutral impact in respect of persons sharing other protected characteristics.

Welsh language

- A2.16 The Welsh language has official status in Wales.⁷³ 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.⁷⁴ 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. To the extent we have discretion in the formulation of our proposals for the updated Guidance, we have considered the potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English where relevant. In particular, in relation to the requirement that PSBs publish their Codes, we have highlighted that the Channel 3 licensee in Wales, C4C, Channel 5 and S4C may do so in Welsh and English. To this extent, we consider our proposals are likely to have positive effects or increased positive effects on opportunities to use Welsh and treating Welsh no less favourably than English.

⁷¹ These protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

⁷² Section 75 of the Northern Ireland Act 1998.

⁷³ Section 1(1), Welsh Language (Wales) Measure 2011.

⁷⁴ The Welsh language standards with which Ofcom is required to comply are available on our website.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 10 March 2025.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/tv-radio-and-on-demand/public-service-broadcasting/consultation-revised-guidance-for-public-service-broadcasters-on-commissioning-codes-of-practice/>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to mediaact.part1a@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.
- A3.4 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
- A3.5 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.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 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.
- A3.8 It would help if your response could explain why you hold your views, and what you think the effect of Ofcom’s proposals would be.
- A3.9 If you want to discuss the issues and questions raised in this consultation, please contact the team by email to mediaact.part1a@ofcom.org.uk.

Confidentiality

- A3.10 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.
- A3.11 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 don't have to edit your response.
- A3.12 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.
- A3.13 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.
- A3.14 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

- A3.15 Following this consultation period, Ofcom plans to publish a statement in summer 2025.
- A3.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at 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.
- A3.19 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

A4. Ofcom's consultation principles

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

Before the consultation

- A4.1 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

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 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.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 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.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 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.

A5. Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

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:

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

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)