

Media Bill – Impact Assessment Update

The Government has now published the Impact Assessments for the draft Media Bill as published on 29 March 2023. As is usual practice, an updated set will be submitted to the Regulatory Policy Committee for independent scrutiny, and published at Bill Introduction.

Title: A principles-based framework for a new prominence regime for PSB online services. IA No: RPC Reference No: RPC-DCMS-5151(1) Lead department or agency: Department for Culture, Media & Sport Other departments or agencies: N/A	Date: 29/6/2023
	Stage: Final
	Source of Intervention: Domestic
	Type of Measure: Primary legislation
	Contact for enquiries: enquiries@dcms.gov.uk
	RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net Cost to Business per Year	Business Impact Target Status Qualifying provision
N/A	N/A	N/A	
<p>What is the problem under consideration? Why is government action or intervention necessary?</p> <p>Although linear TV remains the most popular means of viewing TV content, viewer behaviour and the wider market are changing rapidly. The growth in internet-enabled connected devices, coupled with faster broadband speeds, has helped stimulate the growth of new on-demand TV platforms and devices. As viewing shifts towards online, it is critical to extend the prominence regime to ensure that public service broadcaster (PSB) services/content remain easily discoverable for UK audiences. PSBs are uniquely positioned to bring UK audiences together for national ‘shared moments’ and provide an important source of news and information (clearly demonstrated during the Covid-19 pandemic). The Government needs to ensure that British PSB content is available and easily accessible for British audiences as this trend continues, by legislating for a new regime to protect the prominence of PSB services (i.e. their on-demand and livestream programme services). It is also vital that regional prominence for regional PSBs is secured, recognising the social and economic contribution of services provided by STV and S4C. PSBs have been calling for legislative change to facilitate prominence online since 2015. In 2018 Ofcom consulted on how the prominence regime may need to change to ensure PSB content remains discoverable regardless of how consumers are accessing it, which recommended that a new legislative and regulatory framework should be established for prominence on-demand.</p>			

What are the policy objectives of the action or intervention and the intended effects?

The Government's overall objective is a regime which gives PSBs appropriate prominence regardless of how consumers are accessing PSB content. In delivering that objective, it is necessary for the intervention to be adaptable and proportionate; to ensure that PSB services/content are included on and easily discoverable across major TV platforms/devices and to deliver positive outcomes for UK audiences. We are considering three key aspects of prominence: 'discoverability'; 'availability' (or 'inclusion'); and 'fair value'.

1. Giving PSB services protected prominence online: ensuring viewers can continue to find PSB services easily as viewing increasingly shifts online from linear TV.
2. Approaching regulation proportionately: to also deliver the best outcomes for the wider broadcasting sector, and to not put non-PSBs at a significant disadvantage.
3. Supporting the delivery and future sustainability of public service broadcasting: making sure the balance of obligations and benefits is still worthwhile for PSBs.
4. Introducing a regime which is deliverable/enforceable for Ofcom as the regulator: ensuring flexibility to remain effective and relevant in the future.

What policy options have been considered, including any alternatives to regulation? Please justify the preferred option (further details in later in the document).

Option 0: Do nothing option: the Government does not intervene to secure the 'discoverability', 'availability' and 'fair value' of PSB services.

Under this scenario PSBs' linear prominence would continue under existing legislation, and it is expected that availability for some of the more high profile PSB services on TV platforms would likely continue, given there is demand from UK viewers to watch PSB content online - although there are cases where PSBs services have not been carried by major platforms. However, the discoverability (the ease with which these services can be found and accessed) would not be guaranteed. Also, smaller services are likely to be more acutely impacted with the fact that the livestream and on-demand content of regional PSBs' (S4C and STV) is likely to be unavailable on the majority of TV platforms. The 'availability' of these PSB services would not be mandated, which means there's a risk that they are not made available in the first place to be made prominent. The growing commercial power of 'gatekeepers' also increases the likelihood that PSBs would be put at an increasing competitive disadvantage relative to global services, and efforts to compete are likely to see increasing value transfers from the UK based institutions like the BBC and ITV to overseas.

Option 1: (preferred): A principle-based framework enforced by Ofcom which requires a legislative intervention. This is a framework which allows the policy objectives to be met successfully, and complies with recommendations made by Ofcom.

Early policy development by Ofcom and DCMS considered different levels of legislative intervention that could be employed in order to achieve prominence. A long list of options has been considered, but the preferred option complies with Ofcom's findings that an overly-prescriptive intervention could harm investment and innovation, and therefore a principles-based framework has been chosen. Alternatives to regulation are not applicable here.

Will the policy be reviewed? It will not be reviewed by DCMS. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible



Date: 23 June 2023

Summary: Analysis & Evidence

Policy Option 1 (*Preferred*)

Description: A principle-based framework enforced by Ofcom which requires a legislative intervention. This is a framework which allows the policy objectives to be met successfully, and complies with recommendations made by Ofcom.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

Ofcom will have to familiarise themselves with the legislation, and will have to incur the significant transitional, set up costs associated with the new regime for the availability and prominence of PSB internet programme services. These include the costs associated with drafting and consulting on guidance, setting up the dispute resolution and enforcement procedures, the designation of PSB services and providing recommendations on in-scope platforms/devices, as well as introducing any IT/supporting infrastructure arrangements. Public Service Broadcasters (PSBs) and TV platforms will likely have to incur the costs of familiarising themselves with the new regime, which is estimated at approximately £1,490,000 in total, but these costs will be dependent on the nature of the regime that Ofcom set.

Other key non-monetised costs by 'main affected groups'

TV platforms generally already make the larger and more high profile PSBs' services available on their platforms. As a result we estimate there are no costs when compared to the do nothing option where carriage for larger services would continue in absence of legislation. However, the smaller PSBs' services, in particular those provided by regional PSBs, are not universally available on TV platforms. Legislating to ensure that the regional PSBs' services have to be carried will bring costs to platforms.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by ‘main affected groups’		
N/A		
Other key non-monetised benefits by ‘main affected groups’		
<p>The availability of designated PSB services will continue to be the result of independent commercial negotiations, as is precedent. However, Ofcom will provide guidance and a dispute resolution mechanism which are expected to introduce savings to all parties as a result of shorter and simpler negotiations. This intervention will ensure smaller PSBs are appropriately prominent on TV platforms and remove the risk that larger PSBs lose the position they may currently hold. Guaranteeing prominence of designated PSBs’ on-demand and/or livestream programme services will help boost viewership and engagement, resulting in increased viewer exposure to high-quality UK PSB content. This in turn provides social benefits to individual viewers and UK society as a whole.</p>		
Key assumptions/sensitivities/risks (%)	Discount rate	N/A
<p>This assessment is underpinned by the assumption that certain PSBs on-demand/livestream services are already widely accessible on TV platforms, even without legislative intervention. This is a robust assumption which has been informed by extensive market analysis.</p> <p>It is assumed that Ofcom guidance and dispute resolution function will provide cost savings for all parties involved. This has been confirmed through extensive stakeholder engagement, although one stakeholder indicated that a regulatory backstop may disincentivise agreements, in doing so perversely increasing the time and cost associated with the negotiations.</p> <p>Finally, if the guidance set by Ofcom is too prescriptive, then the benefits of the new regime will be lower than expected, and the costs are likely to be higher, particularly in terms of innovation.</p>		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

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1.0 Policy Rationale

Policy background

1. Online prominence forms part of a wider package of reform measures seeking to strengthen the UK's public service broadcasting (PSB) system to ensure that it can continue to thrive in the future, against a backdrop of rapid technological and market change. PSB is important because it brings a range of benefits to UK viewers, including:
 - delivering a wide range of high-quality, original programmes that reflect the UK back to itself;
 - bringing the nation together at important moments;
 - informing, entertaining and educating society, as well as investing in the UK's creative economy.
2. The prominence regime underpins the delivery of PSB by making PSB content easy to find and watch. This is currently achieved for linear broadcasting through rules set out by Ofcom that affect the position (or "prominence") of specific linear channels on an Electronic Programme Guide (EPG) (screen-based list of TV channels)¹. Prominence is provided in exchange for certain obligations such as original programming or local news provision. This balance of obligations and benefits is known as the 'PSB compact' with prominence forming a key element of the compact.
3. The current regulatory framework for prominence does not extend to online PSB services (i.e. their on-demand programme services nor their livestream channels). As audiences watch more content online, PSBs argue they are finding it difficult to maintain their prominence and secure traction (and revenue generating deals) with platforms when seeking carriage for these services. The Covid-19 pandemic further accelerated shifts online, and PSBs are calling for prominence to be extended to cover their livestream and on-demand services, in order to maintain the value of the 'PSB compact' and to ensure their future sustainability.
4. As required by the Digital Economy Act 2017, Ofcom consulted on how the prominence regime may need to change to ensure public service content remains discoverable regardless of how consumers are accessing it². Ofcom published its recommendations to the Government in July 2019 which recommended that a new legislative framework should be established to ensure viewers can continue to find PSB on-demand content easily. Ofcom has since published further recommendations (as part of their 'Small Screen Big Debate' PSB review) in July 2021. On top of their existing prominence recommendations, Ofcom proposed specific 'Must Offer / Must Carry' requirements, and also proposed that commercial deals be underpinned by a dispute mechanism³.
5. Previous Ministers have committed to taking forward Ofcom's proposals; previous Minister for Media and Data John Whittingdale spoke on behalf of the former DCMS Secretary of State Oliver Dowden at the [Royal Television Society \(RTS\) Conference on 15 September 2021](#) announcing the Government's intention to legislate as soon as possible to ensure PSB content was included and easily discoverable across major online TV platforms. Former Secretary of State Oliver Dowden also [announced](#) (23 June 2021) DCMS' intention to publish a

¹ [Section 310 of the Communications Act 2003](#) gives Ofcom specific powers and duties in relation to the granting of prominence to 'designated linear channels' - as it considers appropriate. The 'designated channels': all BBC channels; the Channel 3 services (ITV and STV); Channel 4; Channel 5; S4C and local TV channels

² [Section 311A Communications Act 2003](#) (as inserted by the Digital Economy Act 2017)

³ [Recommendations to Government on the future of public service media, Ofcom 2021](#)

broadcasting White Paper, which was published on 28 April 2022, setting out the Government's legislative proposals for a new online prominence framework.

Problem under consideration and rationale for intervention

6. The prominence regime, which is set out in primary legislation, ensures that PSB content is easy to find and watch. PSBs argue that securing prominence in the new TV ecology is the most important regulatory reform required for their future sustainability.⁴ However, the current regulatory framework does not extend to the PSB on-demand programme services (e.g. BBC iPlayer, ITVX (previously ITV Hub), Channel 4 and My5) nor their livestream channels which are accessed beyond the linear EPG (screen-based list of TV channels), such as on the user interfaces (UIs) of smart TVs.

Changing viewing habits

7. Although linear TV remains the most popular means of viewing TV content, viewer behaviour and the wider market are changing rapidly. The growth in internet-enabled connected devices, coupled with faster broadband speeds, has helped stimulate the growth of new on-demand TV platforms and devices. As viewing shifts towards online, it is critical to extend the prominence benefits to ensure that PSB services/content remain easily discoverable for UK audiences. Broadcast TV audiences have declined, particularly amongst younger viewers, and PSBs are increasingly challenged by global competitors which command an increasing share of viewing. In 2020 broadcast content represented only 32% of total viewing for people aged 16-34, and the long-term downward trend was further accelerated by the Covid-19 pandemic.⁵ Smart TVs are increasingly used to watch PSB content. Ofcom data shows that, in 2021, 44% of UK households used TV apps or services on smart TV's home screens to watch live TV or on demand or streaming services. Whilst 35% used a set-top box such as Sky, Virgin, BT or YouView to access streaming services, a rise of 120 percentage points since 2017. Also, 12% of individuals in the UK use games consoles connected to their TV to access streaming services, and this has fallen 4 percentage points over the last 4 years⁶. We need to ensure that British PSB content is available and easily accessible for British audiences as this trend continues. It is also vital that regional prominence for regional PSBs is secured, recognising the social and economic contribution of services provided by STV and S4C.

Gaps in existing legislation which this legislation seeks to address:

8. While the rationale for PSB prominence continues unabated, this transition away from 'linear' TV viewership explained above has created a clear gap in the existing regime, and that gap will continue to grow. Action to correct this failure is particularly urgent as PSBs state they are finding it difficult to secure fair value for the services they provide when negotiating with TV manufacturers and platforms. Currently the terms around the 'carriage' of PSBs' on-demand

⁴ Channel 4 [written evidence](#) to Lords Democracy & Digital Technologies Committee (Oct 2019)- 'PSB prominence is one of the key interventions which supports PSBs' ability to sustain investment in content and the delivery of their public service missions'; ITV [response](#) to Ofcom's PSM consultation (March 2021) - 'Reform around prominence, inclusion and fair value is the very minimum required if we hope to avoid global platforms dominating the UK media market'.

⁵ [Media Nations 2021](#). SVoD services were used by 60% of all UK households by Q3 2020, up from 49% a year earlier. More than half of UK households subscribed to Netflix in 2020. This was higher than pay-TV take-up, which was 48% of all households by Q3 2020.

⁶ Ofcom Technology Tracker 2021.

services are left entirely to commercial negotiation. In some instances, this has not delivered desired outcomes for PSBs or consumers e.g. in April 2020 a number of LG Smart TVs launched without some PSB on-demand services and this was heavily criticised by consumers. Without primary legislation, there is a risk of increasing incidences of Smart TVs and platforms failing to reach an agreement and therefore not carrying PSB services nor giving them prominence, impacting viewers' ability to find and watch the PSB content that they value.

9. PSBs have been calling for legislative change to facilitate prominence online since 2015. In 2017 Ofcom consulted on how the prominence regime may need to change to ensure PSB content remains discoverable regardless of how consumers are accessing it. To support their work, Ofcom assessed the availability and discoverability of PSB on-demand content on connected devices. Ofcom also commissioned consultancy reports on the availability of PSB content on major TV platforms and the market dynamics of Smart TVs, as well as specific design features and underlying business models. Ofcom considered nearly 40 responses which they received in response to their consultation and published their recommendations to the Government which recommended that a new legislative framework should be established. It has now been nearly 4 years since Ofcom's prominence recommendations and over this time viewing trends have continued to shift.

Market failure: Positive externalities

10. PSBs provide substantial positive externalities which are risked by the current outdated legislation. Without primary legislation, the frequency of Smart TVs and online platforms not carrying PSB services/content or giving it prominence is at risk of increasing, making it more difficult for UK viewers to find the PSB services/content that they value. This legislation is needed to ensure that British PSB content is available to British audiences when carried on devices or platforms (particularly those of large multinationals), removing the risk that PSB content is not made sufficiently available or prominent on these platforms/devices. This measure will strengthen the UK's system of public service broadcasting and ensure that it can continue to thrive against a backdrop of growing global competition, rapid technological, market and viewing habit change. This is vital in ensuring sustainability of PSB and its content which, in addition to contributing to the social and cultural life of the UK through positive externalities, also plays a vital role in supporting the wider film and TV sector that contributed £21.6bn in GVA in 2019⁷.
11. Lack of prominence for PSB services over time may reduce overall viewing, and/or production, of PSB content, impacting the future sustainability of PSB and the mixed broadcasting ecology built around PSBs, and also undermining the societal benefits that PSB delivers. For commercial PSBs - ITV, C4, C5 and STV - a lack of prominence will limit revenues and as a consequence risk their ability to fund PSB commitments. This is particularly challenging for commercial PSBs who have stated that in forthcoming years they project that the net benefits of their PSB licences will be drastically eroded. As stated above, online prominence is identified as the key intervention required to limit the reduction in these net benefits, and in turn to ensure stability in the PSB system and the benefits it provides. Independent research commissioned by one PSB found that EPG prominence is the largest economic benefit of the 'PSB compact', and therefore the lack of extension of prominence to online TV platforms as viewing patterns shift would likely change the net benefit they currently enjoy as a PSB into a net cost. As a result, PSBs would struggle to deliver on their obligations to audiences and the

⁷ [DCMS Economic Estimates](#)

lost revenues illustrated above may lead to reductions in investment in new content. For the BBC, a lack of prominence limits its ability to deliver on its Mission, value and public purposes (covered in more detail further below under non-monetised costs).

12. Public service broadcasting provides positive externalities through bringing a range of benefits to UK viewers, including delivering a wide range of high-quality, original programmes that reflect the UK back to itself; bringing the nation together at important moments. Research has found that the UK public regard the PSBs as uniquely positioned to bring UK audiences together for national 'shared moments'. 7 in 10 people said they relied more on PSBs to keep them informed in terms of news/information than any other broadcaster or on-demand service. Also approximately 8 in 10 agreed that PSBs are good at producing content for UK audiences⁸. The Covid-19 pandemic also served to demonstrate further the important role of public service broadcasting as an important source of news and in countering misinformation.
13. Updating legislation to account for the changing viewing habits of audiences, in order to future proof the prominence of PSB services, is needed to ensure that PSBs can continue to provide these benefits to UK audiences.

Livestream services

14. When watching content online viewers can access both linear and on-demand content on the same platform, and are increasingly streaming linear PSB channels where the main route to that content is not a 'regulated EPG'. This PSB linear content would not be captured by the existing prominence regime nor a purely on-demand framework. Ofcom has argued that if DCMS does not address this regulatory gap, there is a risk that linear PSB content will be harder to find. PSBs have also argued that, as well as extending prominence benefits on-demand, maintaining the prominence of their linear content on these online platforms is also vital to ensuring their future sustainability as a PSB, given prominence is a vital part of the 'PSB compact'. The rationale for this intervention here is to:
 - Ensure that PSB linear services continue to be made available and easily accessible on online platforms where the main route for accessing content is not a 'regulated EPG';
 - Reduce the risk of gaps in regulation
 - Ensure clarity for platform providers and PSB services around what regime/aspect of a regime they need to comply with.

Accessibility

15. As part of a digitally inclusive society, it is important that television content is accessible for all UK audiences regardless of which platform is used to view that content, including those with hearing and visual impairments. There is already a legal requirement under the existing prominence regime to ensure 'regulated EPGs' are accessible to those with disabilities, which should be replicated online. This is to ensure that as viewers increasingly watch TV online their ability to find the content they want to watch is not impacted. Platforms generally provide access services to help those with disabilities to navigate their UI, such as voice search and remote control functionality, screen magnification, and design features to help make text

⁸ Research Findings - Freeview 'Outside the Box' Conference (18 - 20 May 2021)

easier to read on their platform, in recognition of the importance of ensuring everyone who uses their service can easily access the content they want to watch⁹.

Policy objective

16. The Government's overall objective is to enable a regime which gives PSBs appropriate prominence regardless of how consumers are accessing PSB services. In delivering that objective, it is necessary for the intervention to be adaptable and proportionate and to ensure that PSB services are included on and easily discoverable across major online TV platforms/devices and to deliver positive outcomes for UK audiences. The Government's approach follows Ofcom's recommendations and looks at prominence in three parts: 'discoverability'; 'availability' (or 'inclusion'); and 'fair value'.
- 'Discoverability': Ensuring viewers can continue to find designated PSB services (both livestream and on-demand) easily as viewing increasingly shifts online from linear TV;
 - 'Availability': Ensuring designated PSB services are carried or "available" on major content distribution platforms; and
 - 'Fair value': Ensuring PSBs get a fair exchange for their content/services.
17. Our policy outcomes for this new regulatory framework are:
- 1) Giving PSB services protected prominence online: ensuring viewers can continue to find PSB services/content easily as viewing increasingly shifts online from linear TV.
 - 2) Approaching regulation proportionately: to also deliver the best outcomes for the wider broadcasting sector, and to not put non-PSBs at a significant disadvantage.
 - 3) Supporting the delivery and future sustainability of public service broadcasting: making sure the balance of obligations and benefits is still worthwhile for PSBs.
 - 4) Introducing a regime which is deliverable/enforceable for Ofcom as the regulator: ensuring flexibility to remain effective and relevant in the future.
18. Ensuring the ongoing prominence of the UK's PSBs, and in turn the vital content they produce, will also boost regional broadcasting in Scotland and minority language broadcasting in Wales, delivering social and economic benefits across the Union.

Description of options considered

19. **Option 0: Counterfactual**: No intervention to secure the 'discoverability', 'availability' and 'fair value' of PSB services. The carriage of PSB services will continue to be left to the market and the outcome of commercial negotiations, with no consistent guidance on these negotiations, and no backstop should negotiations fail.
20. As stated by previous Ofcom research, we would expect that in this scenario PSBs' linear prominence would continue under existing legislation. Availability for some of the more high profile PSB services on TV platforms would likely occur in the short term, given there is demand from UK viewers to watch PSB content. However, the discoverability (the ease with which these services/content can be found and accessed) would not be guaranteed and smaller services are likely to be more acutely impacted with the on-demand and livestream programme services of regional PSBs (S4C, STV) very likely to be unavailable on the majority

⁹ [Amazon Fire TV](#) and [Samsung](#), for example, provide a number of services and features to ensure accessibility already

of TV platforms. Also, the 'availability' of PSB services would not be mandated, which means there's a risk that these services are not made available in the first place to be made prominent. Given the rapid ongoing changes to the market, this scenario creates the risk that PSBs become less visible in the medium to long term, with the potential for complete exclusion if negotiations fail. Lastly, the growing commercial power of TV platforms as 'gatekeepers' also increases the likelihood that PSBs would be put at an increasing competitive disadvantage relative to global services, and efforts to compete are likely to see value increasingly transfer from the UK based institutions like the BBC and ITV to overseas. There would be an increasingly disproportionate loss for PSBs because there would be the growing risk that they would have to pay increasing amounts (i.e. advertising revenue/data) to TV platforms for inclusion and prominence as TV platforms' market power increases.

21. **Option 1: (preferred): A principle-based framework enforced by Ofcom which requires a legislative intervention.** This is a framework which allows the policy objectives to be met successfully, and complies with recommendations made by Ofcom. Ofcom is best placed to enforce the regime and would need to be provided with necessary enforcement powers, including the ability to impose fines where appropriate.
22. Early policy development by Ofcom and DCMS considered different levels of legislative intervention that could be employed in order to achieve prominence. Whilst policy development has been open to a variety of levers to achieve objectives, Ofcom and DCMS work has not identified any plausible or appropriate non-legislative alternatives, aside from a voluntary approach to the prominence model set out here. Market driven solutions as alternatives to regulation, such as information and education, or incentives/market-based structures are not considered strong enough to achieve the intended policy objective of ensuring that prominence is extended as they would not remove the risk of non-compliance by TV platforms. Self-regulation would also not achieve the objectives, and an independent mediator like Ofcom is needed to enforce rules to prevent non-compliance, which would not be possible under self-regulation. The chosen framework uses elements of the co-regulatory approach; the guidance will be set by Ofcom as part of implementation and will be produced in collaboration with industry through the consultations that have already taken place, and through further engagement following this primary legislation.
23. A prescriptive framework was considered, but discounted at an early stage of policy development as this would be at odds with policy outcome (2) above. Such an approach would entail putting much of the detail of the regime on the face of the Bill (as opposed to in guidance), including prescriptive thresholds for those in scope, as well as setting out specific detail on how and where prominence must be given to designated PSB services on the platform or device. However, we received consistent feedback from PSBs, non-PSBs and Ofcom that it would be difficult to legislate a "one-size fits all" approach, given that prominence will look different across different platforms/devices. Not only that, user interfaces on the same platform/device will look different from one viewer to another (homepages and tiles/rails can be impacted by customer viewing history and time of day). Therefore, an overly prescriptive framework would not give sufficient flexibility in the regime for Ofcom to enforce as the regulator, nor would it give sufficient operability for the different TV platforms to deliver PSB prominence whilst also being able to develop new technology/deliver a good quality service. Furthermore, it was deemed that such an approach would not allow us to future-proof legislation to account for future innovation (in some cases technology which does not exist yet).

24. The preferred option aligns with Ofcom's consultation findings that overly-prescriptive intervention could harm investment and innovation. Ultimately we want a framework which is itself flexible, proportionate and targeted to support and encourage design innovation and consumer choice, all of which benefits viewers, but to also avoid creating commercial disincentives for TV platforms to include PSB services. The principles-based framework would deliver this and is consistent with direct feedback received from both PSBs and non-PSBs, provided through the Ofcom consultation and additional DCMS engagement. This approach is also in line with the objectives outlined previously.
25. Under this option, we are proposing primary legislation that will set out the parameters of the new online prominence framework, i.e. what is given prominence and the scope of the regime. Ofcom will be given the power to designate what PSB services are to be made available and afforded prominence. Affirmative secondary legislation would be needed for the Secretary of State to designate categories of regulated TV platforms, which will be required to give designated PSB services prominence. Legislation will also delegate guidance-making powers to Ofcom, which will set out how the new framework would work in practice, including how designated PSB services are to be displayed prominently. Primary legislation will also give Ofcom the necessary powers to enforce this new regime, including powers to establish a new dispute resolution procedure.
26. The details of what will be considered by Ofcom for the framework are outlined below.

Who is in scope?

27. In line with Ofcom recommendations, the Government envisions that the TV platforms in scope will be organisations that have relevant control of a user interface which is used by a "significant" number of UK viewers to access TV online¹⁰ in the UK. The policy intention is for these regulated TV platforms to include the following:
- Pay-TV services
 - Smart TVs
 - Streaming sticks/set top boxes
 - Potentially relevant games consoles
28. Some examples of the types of providers which we are not proposing to capture include multi-use devices such as smartphones, laptops and computers. Smartphones are not typically the main way that a "significant" number of UK viewers access a range of on-demand services nor is distribution of TV a core feature of the service. Whereas a TV UI is primarily geared towards accessing images and sound including pictures, music or video content, the UI of a multi-use device such as a smartphone is concerned not just with accessing these things but primarily with supporting voice interaction, text messaging, internet browsing, high-resolution cameras, MP3 audio, and mobile TV services. Other distinguishing factors include web browsing which is not a popular task performed on 'TV' platforms; and touch screen interfaces which are popular input devices for mobile phones but not likely to be applicable for TV.
29. Ofcom data shows that 14% of UK individuals watch TV through a smartphone connected to a TV, and the same percent use laptops in this way. This compares to 44% using TV apps or services connected to a smart TV and 35% using a set-top box connected to a TV. More

¹⁰ 'Relevant control' refers to the person who has ultimate control over the structure of the user interface and/or the manner in which content or services are made available and presented to users.

broadly, 92% of UK households have a working TV set on which they watch TV or films, and 68% have a Smart TV which is connected to the internet, showing the overriding dominance of TV sets as a way to consume content.¹¹

30. Furthermore, although there has been an increase in use of smartphones/tablets and computer devices, according to Ofcom research, the main growth in time spent online in 2020 was via connected TVs - whether for video-on-demand viewing, online gaming or watching YouTube/TikTok (although would have to account increased TV watching during initial lockdown in the UK in 2020 as a result of the pandemic)¹². Ofcom's estimates suggest that UK individuals, including children, spent 81 minutes per day watching these services on the TV set in 2020 - an increase of 24 minutes compared to 2019 (56 minutes)¹³. Therefore, in this case, capturing the main route into content (i.e. the smart TV) should be sufficient to achieve the policy objective. However, we recognise that viewing habits will continue to shift over time and new technology will emerge in the future. Therefore we will be legislating to allow for amendments to be made in the future to the designated list of in-scope platforms and devices to ensure the regime can react to changes in the market.
31. For clarity, in this impact assessment the term 'regulated TV platforms' will be used to refer specifically to those TV platforms deemed in scope of the new framework (as opposed to the catch-all term used, TV platforms).
32. The Government is therefore only proposing to capture major 'TV platforms' where their main function is the delivery of TV and which are used by a significant number of viewers as their principal means for watching content. There are no alternatives to this scope and reach of the legislation, as excluding any of these services would detract from the objective of this legislation.
33. DCMS is also proposing that the Secretary of State will prescribe descriptions of providers in scope (i.e. those platforms/devices which are used by a significant number of UK users) via regulations, following recommendations from Ofcom.
34. The intervention could go further to include video-sharing platforms (VSPs). However, it has been decided, as suggested by Ofcom following the findings of their consultation, that a framework should not capture VSPs such YouTube nor social media content given this is mostly user generated/short-form content where the platform does not have direct editorial responsibility.
35. Similarly, the preferred option does not capture subscription Video-on-Demand (SVoD) services - such as Netflix - which do not function as platforms/aggregators. Although Netflix carries disaggregated PSB content such as BBC's 'Peaky Blinders' or ITV's 'Downton Abbey', it does not and would not be expected to carry BBC iPlayer within its own service. The same would apply for Amazon Prime Video which also aggregates content and as such would not be in scope.

¹¹ [Ofcom, Media Nations 2021](#)

¹² Ofcom Online Nations - Ofcom modelling using Comscore September 2020 and ONS data; Comscore MMX Multi-Platform, Total Internet, Age 18+, Sep 2020, UK suggests adult internet users in the UK spent an average of three hours 37 minutes a day online across smartphones, tablets and computer devices in 2020.

¹³ Ofcom Online Nations 2021 - Ofcom estimates modelled from BARB, Comscore and TouchPoints data

36. It would also be disproportionate to legislate for services like Netflix and Amazon Prime to both compete with PSB VoD services for 'real estate' on the homepage of a platform like Sky or on a Smart TV and also legislate to force them to give prominence to PSB content within their service. Government has to strike the right balance between ensuring discoverability of PSB content and also allowing for consumer choice and personalisation.

What is in scope?

37. Only PSB services which have been designated by Ofcom are to be afforded prominence (this will likely cover BBC iPlayer, ITVX, Channel 4, My5), and we are proposing for this to include those services provided by our regional PSBs, S4C and STV.

38. It was deemed that a "service-level approach" would be the most effective way to meet the policy outcomes we want for the new online prominence regime (i.e. ensuring that audiences can continue to discover a wide range of PSB content and a regime that is enforceable for Ofcom as the regulator).

39. The intervention could go further to cover non-PSB on-demand services that include some PSB-like content such as NOW (which is owned by Sky and carries programming from Sky Arts). However, this would require legislation to permit new PSB entrants other than the established PSBs and at this stage there is no evidence that any broadcaster would in fact want to apply for PSB status for any of its non-PSB services.

40. As stated previously, DCMS are now looking to address a regulatory gap by including livestream channels within the new framework. The previous assumption was that the existing prominence regime would continue to apply to linear television, and the new prominence framework would only apply to on-demand television. However, in reality when watching content online viewers can access both linear and on-demand content on the same user interface (UI). Viewers are increasingly livestreaming linear PSB channels via online platforms where the main route to content is not a 'regulated EPG'. This includes access points like a "live" or a "what's on now" section, a rail on the homepage or separate tabs on the UI. This important PSB linear content (which would ordinarily have prominence in the linear broadcast space) would not be captured by the existing prominence regime nor a purely on-demand framework.

41. The livestream TV services to be given prominence - called "listed channels" - are to be listed on the face of the Bill, as is the case in the existing prominence regime. The list of channels mirrors those linear channels which already receive prominence under section 310 Communications Act, which are as follows:

- any service of television programmes provided by the BBC;
- any channel 3 service;
- Channel 4
- Channel 5
- S4C Digital

42. In practice, this would mean where a PSB offers a "listed" livestream main channel as part of a designated PSB service, and it is presented separately (i.e. disaggregated), a regulated TV platform would be required to give it appropriate prominence on its UI. If it is standalone (and is included in a regulated EPG) it would benefit from the existing prominence regime. Where a "listed" livestream channel is not offered as part of a designated PSB service, a regulated TV

platform would not be required to carry or give appropriate prominence to that listed PSB channel.

43. Ensuring the regime captures these PSB livestream main channels is primarily to address a regulatory gap as opposed to introducing additional regulation. This is also to support the wider functioning of the new regime. If we do not address the gap, there could be increasing incidences/disputes which relate to livestream where the scope/obligations would not be clear to either party. It would also make it challenging for Ofcom to enforce the new prominence regime effectively. PSBs have also argued that, as well as extending prominence benefits to on-demand, maintaining the prominence of their linear content - however it's accessed - is also vital to ensuring their future sustainability as a PSB, given prominence is a vital part of the 'PSB compact' (the balance of benefits and obligations).
44. Livestream services have been added to the prominence framework. This document makes clear the costs and benefits that adding livestream services into the framework may have. These changes are also clearly set out in the Media Bill overarching impact assessment, on which the RPC has given a fit for purpose opinion. All impacts identified are for the proposals as they stand for pre-legislative scrutiny. There is potential for the prominence framework to be adapted before Bill introduction as has occurred with livestream. Any changes, and where possible the associated costs and benefits, will be reviewed and reflected in the final impact assessment for Bill introduction.
45. As a result of this addition, where the IA previously referred to an 'on-demand' prominence regime, it will now refer to an 'online prominence framework'. Also, 'PSB on-demand services' in some places changes to "PSB services" to capture both on-demand and livestream.

How will prominence be determined?

46. New rules will require designated PSB services to be made available and easy to find on the user interface. It is our expectation that the detail regarding what an appropriate level of prominence could look like (covering both on-demand and livestream) would sit within Ofcom's accompanying guidance documents as opposed to the framework itself (and Ofcom would need to consult on this guidance).
47. As Ofcom is still yet to consult/develop their guidance, we envisage Ofcom will be looking at how "immediately viewable" PSB services/content are to the viewer in 'high traffic' areas of the UI, which might include the homepage and curated recommendation areas/menus. Given that prominence will look different on different UIs which may change over time, Ofcom should have the flexibility to determine what constitutes an appropriate level of prominence, and to set this out in guidance as opposed to this being prescribed in legislation.
48. The intervention could go further to also regulate for prominence of PSB services also on the app stores of smart TVs or any personalised recommendations on the in-scope devices, in addition to the appearance of the UI. However, the Government believes interventions which impact non-curated/editorial recommendations, i.e. programmes which are based on customer personalisation, could set a dangerous precedent in terms of dictating what viewers should watch and that this would negatively impact the consumer experience, resulting in the opposite of our overall policy objective. Under existing rules consumers remain able to curate 'favourite' channels on services like Sky and Freeview Play, and we see no reason to deviate from this approach when considering prominence online.

49. Ofcom's guidance will set out how the two prominence frameworks will work concurrently, and where they intersect will also set out what their expectations would be to ensure proportionality and clarity for those in-scope. For example, if there is a 'regulated EPG' on a platform already in compliance with section 310 Communications Act 2003, we would expect that it would be disproportionate for the platform to also be required to give prominence to livestream PSB services elsewhere on the UI, as well as their on-demand service.

'Availability' (referred to in the legislation as "must offer / must carry" obligations and sometimes referred to as 'inclusion')

50. New 'Must Offer/Must Carry' rules are required to ensure that PSB content is carried on platforms. These will require PSB providers to offer their designated services to platforms ('Must offer') whilst also requiring platforms to make these services available on their platform ('Must carry'), and ensuring it is made appropriately prominent. Without 'availability' requirements, 'discoverability' objectives cannot be set, as they will be made redundant if PSB services are not carried on the platforms in the first place. It will also ensure that PSBs provide an adequate quality of service.

51. Under this new prominence regime, regulated TV platforms will also be required to carry livestream public service channels and give 'appropriate' prominence to their main PSB livestream channels where it is offered as part of a designated service. The PSB livestream channels which regulated TV platforms will be required to give prominence to will be the same channels which already receive prominence in the linear space. Prominence would be determined in accordance with Ofcom's new Code of Practice.

'Fair value'

52. The new 'Must Offer/Must Carry' rules will incentivise and structure commercial negotiations and will be underpinned by a new dispute resolution function. Ofcom has proposed that prominence legislation sets out high-level parameters, which would allow them to develop and maintain new guidance which sets out clear expectations around the types of terms that would be considered acceptable for commercial negotiations. Where parties fail to reach agreement there could be enforcement action or dispute resolution by Ofcom if required.

53. The intervention could go further to include legislation that defines a set of standard terms to form a core 'regulated' offer.¹⁴ Current 'Must Offer/Must Carry' rules for linear TV govern the availability of the public service channels on platforms such as Virgin and Sky, where current market practice sees availability achieved on a zero net fee basis. Under this proposed approach, the 'regulated offer' would look to include a core form of PSB service provided on terms as approved or set by Ofcom, leaving everything else additional to this for commercial negotiation.

54. However, Ofcom and non-PSBs suggested that a 'regulated' offer could create incentives to take the minimum offer, which would not deliver the best quality service for viewers. TV platforms also argued that legislating for a 'regulated' offer would force them to have to pay for

¹⁴ Zero net fees means the charges PSBs would pay for access to the main platforms; and the charges platforms would pay for PSB content; cancel each other out. This is the approach taken for existing legacy platforms like Sky and Virgin.

the enhanced PSB services their viewers would expect. Ofcom also stated that it would be difficult to set out a fixed minimum/‘regulated’ offer, given that each PSBs and platforms will attribute different values to different things..

55. The guidance approach gives Ofcom sufficient flexibility to adapt to any changes in the commercial/regulatory environment, something that is vital given the continued rate of technical and behavioural change in this market. It is our preference for the PSBs and platforms to pursue mutually beneficial commercial arrangements. However, if for whatever reason that is not possible, then it would be appropriate for the regulator to have the necessary powers to intervene in support of effective negotiations via a dispute resolution function.
56. Figure 1 summarises the details contained within the prominence framework. Alternative options would be more prescriptive than the preferred option, and would involve the new regime going further in the parameters described above. For example, an alternative option could be a regime that goes further to capture VSPs and SVoD services
57. Since the RPC issued their fit-for-purpose rating on this IA, the decision has been made to include disaggregated public service remit content within the new prominence regime - this means regulated TV platforms will be required to give appropriate prominence to this content within their user interface, as well as their designated service (or ‘app’). Previously we had considered PSB content as being out of scope. As the policy/legislation has been developed it has become evident that you cannot separate the content from the service, and indeed, current negotiations between PSBs and platforms do not separate the two. Disaggregated public service remit content shown in different parts of a UI cannot not, therefore, be considered to be separate to the PSB app/service but comprising a part of it and forms part of the same negotiation. We are also seeing that on many TV platforms this content is increasingly being distributed outside the app environment and made available in a more ‘disaggregated’ way e.g. recommended tabs and rails on a UI. Ofcom’s Code of Practice will ultimately determine how prominence could be delivered across the UI, which they will be required to consult on. We expect Ofcom’s Code to ensure proportionality and provide clarity here.
58. We do not expect this to capture any new platforms, and there is no expected change in our estimation of familiarisation costs or our assessment of non-monetised costs and benefits. There may be differences in implementing costs to platforms but these were not quantified in our original submission to the RPC. As the approach mirrors the way commercial negotiations are currently conducted we believe any additional marginal costs will be minimal. Due to uncertainty around Ofcom’s Code of Practice we do not expect there to be clarity on costs until Ofcom begins its consultation after Bill introduction, which provides further opportunities for PSBs and platforms to shape the content and inform Ofcom’s approach to ensure it is proportionate and flexible.
59. These options have been discounted for the reasons set out above.

Figure 1: Long list of options summary table

Sub-Option parameters	New Prominence Framework (Preferred option)	Further options considered in long list option development
<i>Who is in scope?</i>	<p>Those with relevant control over the UI (used by a significant number of UK users to access TV content). To be prescribed in regulations made by the Secretary of State. The intention is for this to cover:</p> <ul style="list-style-type: none"> ● Pay-TV services ● Smart TVs ● Streaming sticks/set top boxes ● Some games consoles 	<p>Those with relevant control over the UI (used by a significant number of UK users to access TV content):</p> <ul style="list-style-type: none"> ● Video-sharing platforms ● SVoD services
<i>What is in scope?</i>	<p>PSBs' services which have been designated by Ofcom. Prominence can also be given to regional PSB online services provided by S4C and STV. PSB livestream channels which already receive prominence under the existing regime (and are not carried in a "regulated EPG") are in scope if offered as part of a designated PSB service.</p>	<p>Only online services which are clearly delivering PSB content. Regional prominence also given to S4C & STV.</p> <p>And non-PSB on-demand services if they include PSB-like content.</p>
<i>How will prominence be determined?</i>	<p>New rules set out in Ofcom guidance will require designated PSB services to be discoverable on the UI (we expect this to cover high traffic areas of the UI, i.e. the homepage and any curated recommendation lists/rails).</p>	<p>New rules will require content/services to be discoverable on the UI (we expect this to cover the homepage and any curated recommendation lists/rails/pages of the UI). This would also stretch to capture app stores or personalised recommendations based on viewing history.</p>
<i>'Availability'</i>	<p>New 'Must Offer/Must Carry' rules are required to ensure that PSB services designated by Ofcom are carried on platforms.</p>	<p>New 'Must Offer/Must Carry' rules are required to ensure that PSB on-demand and livestream services are carried on platforms.</p>

Sub-Option parameters	New Prominence Framework (Preferred option)	Further options considered in long list option development
<i>'Fair value'</i>	The new 'Must Offer/Must Carry' rules will incentivise commercial negotiations and will be underpinned by a new dispute resolution function.	Legislation that defines a set of standard terms to form a core 'regulated' offer.

Summary and preferred option with description of implementation plan

60. The new framework itself will sit in primary legislation - setting out the principles of the new online prominence regime.
61. Primary legislation will give Ofcom the necessary powers to enforce this new prominence regime. This includes the establishment of a new dispute resolution function for Ofcom and the ability to levy fees and impose monetary fines for non-compliance. Ofcom will be given powers to designate which PSB services which will be afforded prominence. Primary legislation will also list PSB livestream channels which would be given an appropriate level of prominence on regulated TV platforms, where it is offered as part of a designated PSB service.
62. Affirmative secondary legislation will give the Secretary of State powers to designate in-scope TV platforms/devices, subject to recommendations/consultation with Ofcom. Further impact assessments will accompany any secondary legislation in the future. At the point of Ofcom's consultation, platforms are likely to have a better understanding of the costs attached, and so we will be able to provide more detail for further impact assessments. This will also provide platforms further opportunity to inform what platforms/devices are captured and shape how prominence is delivered across on-demand and livestream content to avoid disproportionate impacts.
63. The decision has been made to require regulated TV platforms to make their user interfaces (UIs) accessible to those with visual and hearing impairments, so far as is practicable. As is already the case under the linear regime, in-scope TV platforms will be required to ensure their UIs can be used by the hearing and visually impaired for all the same purposes as people without disabilities. DCMS would expect Ofcom guidance to set out what this means in practice and to cover such access features. This is likely to include best practice examples and features which some online devices already provide, i.e. a screen reader which speaks on-screen text out loud as a viewer navigates menu options or text banner displays which help viewers with a limited field view focus on specific titles and/or text.
64. Ofcom, which will be provided with guidance making powers in primary legislation, will need to set out much of the detail of the regime in accompanying guidance - to be published after Royal Assent, following consultation. This will cover:
- What an appropriate level of prominence should look like (this includes accessibility requirements);
 - How Ofcom will enforce the regime and monitor compliance (via a notification system and information gathering powers);

- Guidance on how Ofcom's dispute resolution function will work and what reasonable terms should look like.

Rationale and evidence to justify the level of analysis used in the IA

65. This primary legislation only sets out the principles of the new online prominence regime and gives Ofcom the necessary enforcement powers. Ofcom will subsequently set out much of the detail of what an appropriate level of prominence should look like, enforcement, monitoring and compliance processes, and how the dispute resolution function will work in guidance, following consultation. The primary legislation will give Ofcom the duty to produce this guidance.
66. This impact assessment will provide a best possible estimate of the impacts associated with a new online prominence regime. However, as many of the details will be set out in the future by Ofcom, it is possible that the actual impacts will differ. Affirmative secondary legislation will be needed later to give the Secretary of State powers to designate in-scope TV platforms, subject to recommendations/consultation with Ofcom. Further assessments, carried out by Ofcom when they set out the details of the framework, will follow this primary legislation. Formal impact assessments will be carried out by DCMS if further secondary legislation is implemented.
67. This Impact Assessment aligns with scenario 2 in the RPC's guidance on primary legislation¹⁵. DCMS has provided an indication of the likely scale of impacts but is unable to provide a robust assessment for validation due to the fact that much of the detail of the policy will be set out by Ofcom following this legislation. Following direct engagement with a large number of stakeholders, there is too much uncertainty over the impacts of the proposal, due to the uncertainties regarding the details yet to be set by Ofcom, to provide a meaningful EANDCB figure for validation at this stage. While it is not possible at this stage to provide a fully monetised appraisal of the policy or a verifiable assessment of the EANDCB, every effort is made to provide an indication of the likely scale of impact of the whole policy through presenting illustrative monetised costs, and comprehensive qualitative analysis. This will be addressed at secondary legislation stage, or through Ofcom's analysis during the creation of their guidance and other details of the implementation of the new framework.
68. The steps needed to address the evidence gaps that mean an EANDCB calculation is not appropriate or possible are set out at the end of section 2.

2.0 Costs and Benefits

69. *Option 0: Counterfactual*: No intervention to secure the 'discoverability', 'availability' and 'fair value' of designated PSB services. The carriage of designated PSB services will continue to be left to the market and the outcome of commercial negotiations, with no consistent guidance on these negotiations, and no backstop should negotiations fail.

¹⁵ [RPC case histories](#) – primary legislation IAs, August 2019

70. *Option 1: (preferred): A principle-based framework enforced by Ofcom which requires a legislative intervention.* This is a framework which allows the policy objectives to be met successfully, and complies with recommendations made by Ofcom. Ofcom is best placed to enforce the regime and would need to be provided with necessary enforcement powers, including the ability to impose fines where appropriate.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Structure of the Analysis:

71. In the ensuing analysis, we have not attempted to provide a monetary estimate of how the new prominence regime will impact the net payments made between parties following the outcome of commercial negotiations between the PSBs, and regulated TV platforms for the carriage of designated PSB services.

72. Conducted for a previous impact assessment, analysis by Mediatique on the value transfer (i.e. potential payment settlement outcomes reached through commercial negotiations) between PSBs and pay-TV organisations for the carriage of PSB *linear* channels clearly demonstrated the difficulty and uncertainty involved with estimating the value exchange for linear 'availability'.¹⁶ The study gave a central estimate that a payment equilibrium would exist of between £20m to £220m annually from TV platforms to commercial PSBs if PSBs were to negotiate individually, but the central estimates provided have considerable ranges, with up to £200m between the high and low estimates. Also, the study was unable to confidently conclude which side (PSBs or pay-TV organisations) experienced the net transfer benefit. Although this analysis is outdated, and based on linear prominence, the considerable range shows the difficulty and uncertainty in estimating the value exchange for linear 'availability' and the wide estimates that result.

73. A quantification of this value exchange in the online space is even more challenging due to the number and diversity of TV platform services, and the complex connected TV supply chain.¹⁷ In addition, TV platforms have understandably been unwilling to share the details of the current monetary transfers that take place during commercial negotiations, making it impossible to precisely assess how the value exchange will be impacted by the new regime. Finally, the lack of detail on the specifics of the regime that Ofcom will create adds to this difficulty.

74. As set out in the Green Book, value transfers are not usually considered in impact assessment purposes, because any change in costs or benefits businesses will experience resulting from any change in transfers cancel each other out. However, a number of the PSBs are public bodies, not commercial businesses (albeit bodies who are fully independent of Government and undertake significant commercial activity), and so any swing in the value transfers may represent an overall benefit or cost to business, if the value of payments move to or away from these organisations. We have considered the potential impact on value transfers qualitatively in the following analysis.

¹⁶ DCMS (2015) [Balance of Payments Impact Assessment](#)

¹⁷ Mediatique (August 2020) - [Connected TV gateways: review of market dynamics - a report for Ofcom](#)

75. Aside from any impact on the value exchange, the remaining costs and benefits associated with this intervention can be split into two groups: 1) the costs and benefits to all parties of ensuring the ‘availability’ of designated PSB services on regulated TV platforms, and 2) the costs and benefits to all parties of ensuring the ‘discoverability’ of designated PSB services on regulated TV platforms. These costs and benefits will be compared against the counterfactual, in which PSB services are continued to be determined by commercial negotiations with no guidance or dispute resolution function provided by Ofcom.
76. As set out above, primary legislation will only set out the principles of the new online prominence regime and will give Ofcom the duty to develop guidance and the necessary enforcement powers. The majority of stakeholders were unable to provide robust and specific quantitative estimates of costs and benefits that would arise from the implementation of this legislation - we recognise that this may be due in large part to the uncertainty around the further regulatory detail that will be set out by Ofcom. However, Ofcom will also have a duty to consult on the development of the relevant guidance, to ensure the new regime not only delivers PSB prominence effectively, but that it is also proportionate and operable.
77. This assessment, therefore, will provide a best possible estimate of the impacts associated with a potential new prominence regime. As many of the details will be set out in the future by Ofcom, the estimates provided in this analysis are initial and likely to differ from actual impacts, they do not reflect formal discussions with Ofcom over any future policy choices and they do not indicate any preferences for the final regime.
78. Evidence for this assessment has been gathered through extensive engagement with the PSBs and with TV platforms since 2020/21. It also draws on evidence from Ofcom’s consultation on prominence and research, highlighted above, commissioned as part of their PSB Review. It draws on insights from the analysis commissioned for an Impact Assessment published alongside the 2015 consultation on the balance of payments between television platforms and public service broadcasters in the linear TV space.¹⁸

Main impacted groups:

79. Overall, Ofcom estimates that there may be approximately 30-40 platform providers that could potentially fall in scope of the regime, and some platforms operate more than one service that might be relevant to the regime. The new prominence regime will have consequences for the groups listed below. We do not expect any more businesses to be brought into scope by the inclusion of livestream, as it will only require platforms to give ‘appropriate’ prominence to their main PSB livestream channels where it is offered as part of a designated service. Where a “listed” livestream channel is not offered as part of a designated PSB service, a regulated TV platform would not be required to carry or give appropriate prominence to that listed PSB channel. These channels already receive prominence on regulated EPGs in the linear space (i.e. BBC 1, BBC 2, ITV 1, Channel 4 and Channel 5), so the addition of livestream does not bring into scope any additional channels (i.e. portfolio or FAST channels). Furthermore, the criteria for designation remains unchanged which means only those TV platforms used by a significant number to watch TV content would be considered in scope, and these are the platforms generally have functionality for both on-demand and livestream. For the purposes of

¹⁸ [The balance of payments between television platforms and public service broadcasters: consultation paper](#)

this IA, we have referred to groups 'b'-e' with the catch-all term 'TV Platforms' for simplicity. Meanwhile those in scope of regulation are referred to as "regulated TV platforms".

- a. PSBs and their on-demand services
- b. Pay-TV services
- c. Smart TV manufacturers
- d. Streaming sticks/set top boxesSome games consoles

Figure 2: The main impacted groups and estimated number of businesses that could fall in scope of the new regime. This should not be considered a definitive Ofcom list categorising/sizing the connected TV landscape.

Group	Total Number of Businesses ¹⁹	Number of these that are publicly-owned ²⁰
PSBs	6	3 ²¹
Pay-TV services	2	0
Smart TV manufacturers	15 - 23 ²²	0
Streaming sticks/set top boxes	5 - 10 ²³	0
Relevant game consoles	2	0

80. We have undertaken direct engagement with a number of businesses in each of these five groups to understand the likely costs and benefits associated with proposed changes. Analysis is understandably limited by the uncertainty associated with the final form of Ofcom's guidance and dispute resolution function. Whilst we received feedback on impacts from all PSBs, a number of TV platforms we contacted were unable to provide insights for this IA, including several large technology companies that provide both user interfaces and operating systems involved in TV platforms. This limitation also applies to the addition of livestream to the new prominence regime.

81. Ofcom will also incur costs as a result of this regulation. Ofcom have provided estimates on how much this is likely to cost them. These costs have not been included in this impact assessment. All cost estimates have been reviewed by the RPC in their independent scrutiny.

Option 0 - Counterfactual/Do-Nothing

¹⁹ These numbers are only estimates to give a scale of the potential number of organisations that will fall in scope of the new regime. As set out above, the exact parameters of capture are yet to be set by Ofcom. The following numbers should not be considered a definitive list.

²⁰ Impacts to publicly-owned organisations are not included in the EANDCB for impact assessment purposes.

²¹ BBC, Channel 4 and S4C. For the purposes of this IA, C4 is treated as a public body.

²² The three largest smart TV manufacturers that operate in the UK are Samsung, LG and Sony. Ofcom estimate that there could be around 15-20 smart TV manufacturers that are reliant on third-party operating systems (including HiSense, Toshiba, Panasonic, Philips), and may therefore not be in control of the platform service and set up of the user interface.

²³ Estimate from Ofcom.

82. This do-nothing option represents the current situation, and is the counterfactual option against which our intervention options will be assessed. Generally speaking, the do nothing option means a continuation of business as usual, where the ‘availability’ and ‘discoverability’ of PSB on-demand services is left entirely to commercial negotiation, as is the ‘discoverability’ of livestream PSB channels, and that this is generally achieved for larger PSBs. The main cost associated with the do-nothing option is the risk of the breakdown of these commercial negotiations and the potential economic and social impacts across the UK. The main benefit is the flexibility in the system, and the generally widespread ‘availability’ and ‘discoverability’ of some of the more high profile PSB services.

Costs

Monetised Costs

Transition Costs

83. There are no transition costs associated with the do-nothing option.

On-going Costs

84. There are no monetised ongoing costs associated with the do-nothing option. From concerted engagement with stakeholders we have received some quantifications of potential costs should negotiations fail in the future, and of the cost of not achieving prominence. These are considered in the non-monetised section below as these are initial, non-standardised calculations that are not appropriate to extrapolate to the wider sector.

Non-monetised Costs

‘Availability’ (referred to in the legislation as “must offer / must carry” obligations and sometimes referred to as ‘inclusion’)

Costs to PSBs & regulated TV Platforms:

85. The ‘availability’ and ‘discoverability’ of PSBs’ services on regulated TV platforms are currently a result of independent commercial negotiations. The value of these negotiations is commercially sensitive and has not been disclosed to DCMS. Through engagement with a wide range of stakeholders, however, it is clear that negotiations are complicated and time-consuming. One PSB highlighted that deals generally take a team of 2-4 FTEs 4 months to negotiate, and that these negotiations are becoming more difficult and lengthy as a result of shifting market dynamics. In addition, there is the inherent risk that some PSB services do not appear on the regulated TV platforms if negotiations fail, which is harmful to both parties involved. These instances have been rare in the past, but legislation and subsequent Ofcom guidance and dispute resolution is needed to ensure that this does not happen more frequently in the future.

86. Under the do-nothing option, the carriage of PSB services will continue to be a result of commercial negotiation, with no guidance or dispute resolution function provided by Ofcom. The major cost associated with this is the possibility of commercial negotiations breakdown,

and therefore PSB services not being carried on a regulated TV platform. In addition, there will be no reduction to the current costs associated with protracted and complex negotiations.

87. Both sides should mutually benefit from coming to a negotiated agreement for the carriage of PSB services, and both sides would experience a cost associated with the breakdown of these negotiations. Regulated TV Platforms would suffer as users could cancel their subscriptions or reduce engagement if they no longer carry PSBs - identified in previous research on EPG prominence as 'incremental churn'.²⁴ PSBs would suffer as a result of lost reach to consumers who may not make the effort to access their content if they cannot do so via their go-to platform/device - identified in previous research on EPG prominence as 'viewing impairment'. For the commercial PSBs, lost reach is likely to lead to lower advertising revenue, and potentially lost profit. Whilst benefits will flow to both sides, it is likely that PSBs, particularly smaller PSBs, will benefit more than regulated TV platforms in relative terms given the global scope (and vast revenues) of these organisations, compared to the significant importance of the UK market to PSBs in meeting their objectives and generating revenue.
88. There have been limited incidents in which PSBs and TV platforms have failed to negotiate an agreement in time for product launch. In April 2020, LG Smart TVs launched without PSB on-demand services. This was not well received by Smart TV consumers, who expected these services to be included, and reduced PSB viewership as a result. The reduction in PSB viewership harmed audiences as they were not able to access highly valued public service content on their smart TV. However, the LG experience does not offer a full proxy for assessing the scale of the potential impact of future failures to negotiate agreements, as it affected only a subset of LG TVs - just a proportion of new TVs in 2021 only - with older versions of LG TVs and a substantial proportion of new TVs sold in 2021 still carrying PSB on-demand services.
89. Without legislation, there is the risk that breakdowns in future negotiations could lead to longer and more widespread exclusions of PSB services from TV platforms, leading to significant impacts on viewership and revenue. The magnitude of this risk is increasing as a greater share of viewing takes place via TV platforms, and negotiations becoming more difficult as a result of market dynamics. In the future PSBs are likely to be increasingly reliant on TV platforms, owned by a small number of providers with significant market power, for access to UK audiences.
90. One PSB provided initial analysis on the potential impacts of exclusion from a particular Smart TV provider. This Smart TV provider accounts for c.12% of the PSB's on-demand viewing. If this share was to be lost, and not replaced across other platforms, the PSB would lose out on approximately 2% of their total annual advertising revenue. Evidence was also provided that the cost to PSBs of losing access to services is likely to increase as live TV viewing starts to increasingly take place via IPTV (internet protocol TV) streamed versions of channels on TV Platforms, rather than through Digital Terrestrial Television (DTT). As this becomes more prevalent, more people may choose not to connect to/install TV aerials, in which case the live TV channels will not be available unless the TV platform agrees to host them. It is likely that if there is consolidation in the TV space, with increased prevalence of oligopolies, then the costs of exclusion could grow significantly. This reinforces the policy decision to include PSB livestream channels within the scope of this new prominence framework.

²⁴ [Carriage of TV Channels in the UK: policy options and implications. Report for the Department of Culture, Media and Sport, Mediatique \(2012\).](#)

91. The growing commercial power of TV platforms as ‘gatekeepers’ also increases the likelihood that PSBs would be put at an increasing competitive disadvantage relative to global services, and efforts to compete are likely to increasingly see value transfers from the UK-based organisations such as the BBC and ITV to companies based overseas. There is the risk that PSBs would have to pay increasing amounts to TV platforms for inclusion and prominence as TV platforms’ market power increases.
92. The indirect impact of revenue reduction for commercial PSBs as a result of this occurrence could include a reduction in investment in new content, reducing the economic contribution of PSBs to the Creative Industries across the UK and the social value of new, original content.
93. A regional PSB highlighted that the unavailability of their live and on-demand player on TV platforms has cost them viewers and the opportunity to grow their audiences. For any broadcaster who may have plans to introduce commercial advertising on their on-demand player in the future, advertising revenues will be greatly depressed without availability or prominence on TV platforms. A broadcaster cites independent qualitative research which finds that a key barrier to engagement with their on-demand player is that:
- ‘Audiences cannot access it on their television as an app. This is how many participants watch television programmes. Needing to access [the player] via an alternative device acts as an additional barrier to finding and watching content from [the broadcaster]’.
94. Unlike the larger PSBs, regional broadcasters’ online content is currently not prominent on most TV platforms, and this problem is likely to persist without intervention. One regional broadcaster indicated that availability of their on-demand service is their biggest single priority.
95. Finally, there is a welfare loss to viewers should negotiations fail and PSB services are excluded. PSBs are mandated to deliver impartial and trusted news, UK-originated programmes and distinctive content, including minority language content, with significant social benefits to UK audiences and society - which are set out further below. Research conducted for the BBC by Populus in 2018 finds that 64% of UK adults support PSB prominence on EPG - there is no social research on attitudes towards online prominence.²⁵

‘Discoverability’:

Costs to PSBs & regulated TV Platforms:

96. As set out above, the ‘discoverability’ of PSBs’ services on regulated TV platforms is currently a result of independent commercial negotiations, and regulated TV platforms take their own approaches to provide prominence for PSB services. Research and engagement with stakeholders finds that PSB services are generally prominent on TV platforms, but less so for smaller PSB providers, including regional PSBs (see Figure 3). Although even for those who are prominent on platforms, that prominence is nowhere near as significant or certain as on traditional linear TV. Evidence provided by a regional PSB stated that, even on the occasions where they do negotiate for ‘availability’, they do not benefit from ‘discoverability’.

²⁵ Percentage of UK adults who think PSB channels and their catch-up/on-demand services should be given prominence in on screen TV guides and menus (8% disagree).

	Sky Q	Sky+	Virgin V6	BT TV	Freeview	Freesat	YouView	Samsung	Sony	LG	Fire TV Stick	Apple TV	Now TV	Xbox One	PlayStation 4
BBC iPlayer	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ITV Hub	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗
All4	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓
My5	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
STV Player	✓(2)	✓(2)	✓(3)	✗	✓(3)	✓	✓	✓	✓(4)	✗	✓	✗	✓	✗	✗
S4C Clic	✗	✗	✗	✗	✗	✗	✓	✓	✓(4)	✗	✓	✗	✗	✗	✗

Source: MTM product testing, March 2019. Notes: (1) Table reflects availability of PSB apps. These are often pre-installed, but may have to be installed by the user prior to use in some cases; (2) Launch announced in January 2019; (3) Only available in Scotland; (4) YouView model

Figure 3: Availability of PSB online players. MTM.

97. Without legislation, there is a risk that the larger PSB services do not continue to receive prominence on TV platforms as a result of choices made by TV platforms, or because negotiations fail, leading to reductions in viewership and revenue. Analysis undertaken by FEH Media on behalf of Ofcom in 2012 remains the market’s primary benchmark for calculating the impact of losing front-page prominence, although it is important to note that this research solely considered EPG prominence of linear TV channels.²⁶ This research estimated that Channel 5 would lose between 5.9% - 26.3% of its linear viewing from a loss of prominence, depending on a range of scenarios, and between a 0.2%-15.8% loss for ITV. These wide ranges reflect the difficulty of estimating the impacts of prominence, and the variance between ITV and C5 suggests that impacts may vary across different types of PSB services - in turn indicating that other factors are important in determining viewership. This is even more complicated in a digital context. Mediatique reflect that:

‘prominence on connected TVs has been notoriously difficult to value – and the ways in which content is surfaced (through both home screen but also via additional layers/tiles, previewing, recommended content, voice controls permitting search to by-pass the home screen, etc.) is changing²⁷.’

98. Further engagement has yielded additional estimates. One broadcaster highlighted an immediate 5% reduction in engagement with their on-demand services as a result of a reduction in prominence on a TV platform, and they expect that reduction in engagement to increase over time. A PSB provided detailed calculations on the impact of no prominence on viewership and revenue by comparing the performance of their player with another broadcaster’s. Data provided shows that on TV platforms where their player does not receive prominence and the other broadcaster’s player does, there is a significant disparity in the contribution that their players make to overall viewership, with their player providing a much lower share. On TV platforms where both applications have prominence, their respective contributions to overall viewership are much more in line. Based on this, the broadcaster calculates that prominence of their service on this Smart TV service would uplift stream volumes by 260%, potentially giving rise to several millions of pounds of extra revenue. In

²⁶ [An analysis of the audience impact of page one EPG prominence, 2013](#)

²⁷ Mediatique (August 2020) - [Connected TV gateways: review of market dynamics - a report for Ofcom](#)

addition to these significant opportunity costs, on platforms where their player is not automatically prominent, the broadcaster estimates they are paying the equivalent of £10 per new user in terms of marketing. The value of on-demand prominence has been stressed through stakeholders claiming that commercial organisations can pay sums in the “tens of millions” for prominent slots.

99. A lack of prominence for PSBs would have significant knock-on impacts. PSBs argue that a failure to secure prominence on TV platforms would greatly erode the benefits provided through the ‘PSB compact’. Independent research commissioned by one PSB found that EPG prominence is the largest economic benefit of the ‘PSB compact’, and therefore the lack of extension of prominence to TV platforms as viewing patterns shift (as evidenced in the ‘problem under consideration’ section of this assessment) would likely change the net benefit they currently enjoy as a PSB into a net cost. As a result, PSBs would struggle to deliver on their obligations to audiences and the lost revenues illustrated above may lead to reductions in investment in new content (including regional productions) and socially important but low-value/loss-making content such as news and current affairs²⁸. This, in turn, reduces the economic and social contribution of PSB to the UK.

Cost to regulated TV platforms:

100. The counterfactual brings no additional costs to regulated TV platforms.

Costs to Ofcom:

101. The counterfactual brings no additional costs to Ofcom.

Benefits

102. The current prominence of PSB services provides a number of benefits which are likely to continue in a do nothing scenario. However, this is not guaranteed. The additional benefits to PSBs, regulated TV platforms and consumers associated with guaranteed prominence will be set out in the intervention options appraisals below.

Monetised Benefits

103. There are no monetised benefits associated with the do-nothing option.

Non Monetised Benefits

104. The current system does result in the general prominence of PSB services, and therefore a number of benefits ensue, but these benefits are not guaranteed (as outlined above), which option 1 addresses. Therefore, to avoid repetition, the benefits of prominence - and the benefits which result from guaranteeing that prominence - for PSB services are outlined in the appraisal of option 1.

105. A key benefit of the current system is the flexibility afforded to regulated TV platforms in the ways that prominence can be achieved for PSB services. This is particularly important given

²⁸ Mediatique report on [ITV in the Nations and Regions](#), published in May 2021 sets out the important contribution that PSBs make to the economy outside of London and argues that new measures such as prominence for on-demand content are needed to enable PSBs to sustain TV production in these areas.

the diverse operating dynamics of TV platforms and the multifarious ways in which content can be surfaced. One TV platform cited that the current light touch approach to regulation of video streaming has allowed it to innovate and experiment with models that respond to evolving consumer tastes and interests, and to freely work with the sector to devise the best ways for consumers to discover, interact with and enjoy content. Similarly, other TV platforms highlighted the potential lost benefits that would occur if Ofcom guidance was overly prescriptive - particularly regarding the ability to innovate and personalise their service for customers and to ensure that it reflects their preferences. As set out below, however, we consider that the preferred option is sufficiently flexible to enable the continuation of these benefits, based on a recognition of the risks created by an overly prescriptive intervention.

Option 1: Principles-based framework enforced by Ofcom

Impact summary

106. This legislation, through the future framework for online prominence it enables, will guarantee the prominence of designated PSB services on regulated TV platforms through which an increasing proportion of UK individuals watch content. Ofcom's guidance and dispute resolution function will remove the possibility of commercial negotiations between PSBs and regulated TV platforms failing. This intervention will help to future proof the 'availability' and 'discoverability' of designated PSB services against any risks of them no longer being carried on regulated TV platforms or not easily visible on the user interfaces of these platforms. It will also futureproof the 'discoverability' of PSB livestream main channels (channels which already benefit from prominence under the existing linear prominence regime). It will also simplify and speed up these negotiations, leading to cost savings for all parties.
107. In guaranteeing the prominence of regional PSB's services, which are not universally prominent on TV platforms, the legislation creates significant benefits to these organisations and to wider society. For STV, a commercial regional broadcaster, this will lead to significant increases in revenue as a result of increased viewership. For S4C, the Welsh language broadcaster, prominence via TV platforms would enable them to reach a greater number and more diverse set of audiences within Wales, with social benefits associated with increased engagement with the Welsh language in line with Welsh Government objectives (and a Manifesto Commitment).
108. It is assumed that the additional costs to TV platforms from this legislation will be minimal because they generally already provide PSB on-demand services with prominence as a result of commercial negotiations, and also generally carry/give prominence to PSB livestream services (in some cases via an EPG), which implicitly recognise the value of PSB services to these TV platforms. There will be additional technical costs to regulated TV platforms as a result of having to provide regional PSB on-demand/livestream services with regional prominence, but in the context of the revenues of the large multi-national organisations operating TV platforms, these are not significant.
109. By mandating prominence of designated PSB services, this legislation potentially disadvantages commercial TV providers which would seek to occupy these slots through commercial negotiations with regulated TV platforms - i.e. charging higher fees to non-PSB services for prominence. However, as above, PSB services (which we expect to be designated) are already generally prominent without government intervention, except for regional PSB services on certain TV platforms, and so the additional impact of the new framework on other services - for instance commercial Subscription Video-On-Demand (SVoD) services - is likely to be minimal.
110. Guaranteeing the availability and discoverability of designated PSB services is also mutually beneficial. This is reflected by the fact that prominence is largely secured through the present system of open commercial negotiations without Ofcom intervention. This legislation also removes the risk of breakdown of negotiations, which could lead to exclusion of PSB content from regulated TV platforms, which has costs for both parties.
111. However, it is likely that PSBs will benefit from this legislation relatively more than TV platforms. Through engagement, PSBs have highlighted that guaranteed prominence is a key

issue in the context of their long-term sustainability and ability to serve their audiences.

112. The chosen option will only capture those TV platforms that are used by a ‘significant’ number of UK viewers where distribution of TV is the core feature, so it is therefore not expected that any small or micro business will be in scope of this new framework. More detail is set out in the small and micro business assessment.
113. The inclusion of livestream services into the prominence regime is unlikely to capture any new platforms. For the same reasons set out at para 111, the designation criteria for ‘in scope’ TV platforms remains unchanged and so only those platforms used by a significant number of viewers as a main way of watching TV are expected to be captured. Including livestream within the regime does not change our policy position of ensuring regulation is proportionate and targeted.
114. Furthermore, a regulated TV platform would only be required to carry and give prominence to a “listed” livestream main channel if it is offered as part of a designated PSB service, and it is presented separately (i.e. disaggregated) on its UI. Where a “listed” livestream channel is not offered as part of a designated PSB service, a regulated TV platform would not be required to carry or give appropriate prominence to that listed PSB channel. However it is our expectation that PSBs will want to offer their main channel to ensure it receives prominence (and given their PSB obligations to ensure their content is universally accessible), and we expect those TV platforms to be captured by the framework will in a lot of cases already carry both the on-demand and livestream services of the larger PSBs..
115. This is not anticipated to create significant additional cost, given in most cases these platforms already carry livestream content, and in some cases via an EPG. Where there is not an EPG to deliver livestream prominence on the UI, it would either be a case of carrying a prominently-placed on-demand app or surfacing the livestream PSB channel on relevant parts of the UI (i.e. a rail, tab or section). Ofcom will ultimately determine the appropriate level of prominence across both on-demand and livestream services and will take into consideration proportionately (i.e. it is our expectation that it would be disproportionate for one TV platform to give prominence to the PSB’s designated on-demand service, the EPG and then surface livestream channel elsewhere on the UI). There is no change in our estimation of familiarisation costs or our assessment of non-monetised costs and benefits. There may be slight differences in implementing costs to platforms, but these are not yet quantified, and are unlikely to be quantified prior to Bill introduction due to uncertainty on what will be set out in Ofcom’s guidance. Ofcom will not start their engagement on their Code of Practice (as required by legislation) with businesses until after the Media Bill is introduced, so we are not able to get further clarity on impacts until that time.

Risks

116. Ofcom’s guidance and dispute resolution mechanism will be developed in future. Uncertainty around the precise nature of these elements means that a quantitative appraisal is not possible, and that the nature of the costs and benefits outlined qualitatively in the document may change depending on Ofcom’s work.
117. For instance, one stakeholder stated that Ofcom’s regulatory backstop may actually disincentivise agreements on particular terms, in doing so perversely increasing the time and cost associated with the negotiations. Whilst this was not an opinion shared by any other stakeholders we engaged to appraise costs and benefits, it further highlights the uncertainties

associated with the analysis which can only be addressed in future appraisals when more detailed work has been undertaken.

Main costs

Cost	Scale
Direct transitional costs to business	As detailed below, these are relatively small in scale for the businesses in scope, especially in the context of their annual revenues. For example the estimated familiarisation is approximately £38,000 per business for those in scope of the new regime. Total familiarisation costs to in-scope businesses is estimated at £1,502,000, however this estimate is highly uncertain given that the in-scope organisations are yet to be designated. Also, familiarisation costs will be dependent on the detail of Ofcom's guidance, which is yet to be set. Whilst there is no change to our estimation of familiarisation costs as a result of the inclusion of livestream, there may be a slight difference in implementation costs for platforms. However, these are not yet quantified because there is uncertainty over how the appropriate level of prominence will be determined. Implementation costs are likely to differ depending on how platforms choose to cover on-demand and livestream content, and it is Ofcom's responsibility to determine the appropriate level of prominence, considering differences in access points such as "live" or a "what's on now" section, a rail on the homepage or separate tabs on the UI
The costs to Ofcom associated with setting up and enforcing the new regime, and the resulting cost to business arising from Ofcom having to recover these costs through fees from in-scope businesses.	Ofcom will charge fees on in-scope businesses to recover this cost. It is not possible to estimate the size of these fees at this stage, as explained later in the assessment. Any change in fees is excluded from the EANDCB in impact assessments (statutory exclusion 24(4)(a)). Ofcom have confirmed that their existing cost assumptions will not change as a result of the inclusion of livestream, as it will not significantly change the scale of their work.

Cost	Scale
<p>Cost to regulated TV platforms of providing 'availability' of PSB on-demand services</p>	<p>The additional direct cost is minimal as it is assumed that the vast majority of these services are already made available in the do-nothing option. However, there will be a direct cost of having to provide designated regional PSB services with availability where it is not achieved in the counterfactual. Exact cost data is not available, but a high level estimate based on the costs of providing regional prominence estimated by one platform indicated that the total one-off cost to business could be in the range of £12.6-£16.8m. However, this is highly uncertain, and depends on the number of platforms in scope which is yet to be decided. In the context of the revenues of the large multi-national organisations operating TV platforms, these are not significant costs. We do not expect the addition of livestream to the new prominence regime to capture any new platforms, as platforms will only be required to give prominence to a "listed" livestream PSB channel where it has been offered as part of their designated PSB service. Therefore, we do not expect platforms to incur any additional costs arising from the inclusion of livestream in the new prominence regime.</p>
<p>Cost to regulated TV platforms of providing 'discoverability' of PSB on-demand services</p>	<p>The additional direct cost is minimal as it is assumed that these services are already provided. However, there will be a direct cost of having to provide designated regional PSB services with discoverability online where it is not achieved in the counterfactual. The scale of these costs depends on the guidance on prominence set by Ofcom. The addition of livestream to the new prominence regime could incur costs for platforms where there is not an EPG to deliver livestream prominence. However, we do not expect these to be significant, as the framework will give platforms the flexibility to deliver this. The exact value of any costs this may bring is not possible to estimate until Ofcom's guidance has been produced.</p>

Cost	Scale
<p>The opportunity cost to regulated TV platforms, in terms of lost monetisation of prominent slots, as a result of furnishing PSBs with prominence for free where this does not already occur.</p>	<p>This will be a direct cost which is not possible to estimate at this stage, as it is dependent on Ofcom’s guidance and the decisions on user interface configuration that regulated TV platforms make following this guidance. Existing legislation provides PSBs guaranteed prominence for their main linear channels on traditional broadcasting platforms (like Freeview, Virgin and Sky). PSB’s online services are generally provided prominence by TV platforms for commercial reasons (i.e. as a result of the value of PSB services to viewers). Where prominence of services would be changed as a result of the framework, most likely regarding the two regional broadcasters, this may result in opportunity costs which are not monetisable at this point due to the uncertainty on what will be set out in Ofcom’s guidance. In the hypothetical scenario that Ofcom’s guidance was to be particularly prescriptive, then this opportunity cost could be larger for TV platforms, but still small in context of their revenues.</p> <p>Similarly, it is possible that as a result of including livestream channels, non-PSB services would be competing for slots on TV platforms’ UI. However, we do not expect the additional impact to be significant, specifically for those platforms which already carry a regulated EPG which already gives prominence to PSB livestream main channels.</p>

Main benefits

Benefit	Scale
<p>Cost savings resulting from guidance and dispute resolution function speeding up and simplifying commercial negotiations</p>	<p>Relatively small direct cost savings to both regulated TV platforms and PSBs is likely, although the extent of this impact depends on future Ofcom work. This saving is estimated in the low hundreds of thousands for the PSBs alone. This is likely to be an underestimate considering that these negotiations are becoming more difficult and lengthy as a result of shifting market dynamics, and would likely continue to do so in the absence of intervention. Regulated TV platforms will also experience this cost saving, however, we did not receive quantitative evidence on the resources that TV platforms dedicate to negotiation, nor how this resource might be reduced following this new regime. We do not expect the inclusion of livestream to have an impact on the resource required for negotiations, as PSBs and platforms will routinely negotiate on a single offer of a designated service (which will cover both livestream and on-demand services) together, so the approach of combining livestream with a designated online service makes little difference.</p>

Benefit	Scale
<p>We assume that both PSBs and regulated TV platforms will benefit from guaranteeing prominence of PSBs' on-demand platforms.</p>	<p>Guaranteeing the availability and discoverability of designated PSB services is mutually beneficial, which is why it is largely already secured in some cases. However, it is likely that PSBs, particularly smaller PSBs, will benefit relatively more than regulated TV platforms given the global focus of these organisations and the significant importance of the UK market for PSB. The addition of livestream to the new prominence regime could provide additional benefits to PSBs, as it will provide more opportunity for audiences to find their main livestream channels online - specifically where a platform does not provide access to a regulated EPG which already gives prominence to PSB livestream main channels).</p>
<p>Guaranteed prominence for PSB on-demand services protecting against any future loss of prominence, thereby guaranteeing the benefits of PSBs for audiences.</p>	<p>PSBs have to date secured prominence and guaranteed access to spectrum as the key 'benefits' to offset the legislative 'obligations' of being a PSB (i.e. making and broadcasting news, procuring from the independent production sector or commissioning from across the whole UK - activity which would be at risk if left to purely commercial decision making). Prominence ensures a boost in viewership and engagement. This is the 'PSB Compact' and it is necessary for that compact to remain appropriately balanced.</p> <p>As PSBs' services are generally prominent on the majority of TV platforms, this legislation would provide certainty to PSBs that this will remain and that commercial negotiations will not fail. Because online prominence is key to the financial feasibility of holding PSB licences, the direct benefits of this certainty are significant to PSBs and to the sustainability of the broader PSB system. If PSBs are not convinced that the benefits of remaining a PSB offset the obligations, then there is a material risk to the provision of public service broadcasting, and the commensurate social and societal consequences.</p> <p>A key benefit of the prominence which PSBs currently enjoy is the boost in viewership and engagement that this provides. This results in increased viewer exposure to high-quality UK PSB content, which provides social benefits to individual viewers and UK society as a whole. This legislation removes the risk that these benefits would be reduced should prominence also be reduced.</p> <p>The inclusion of livestream in the new prominence regime could deliver further social benefits, ensuring important linear PSB content - which would otherwise be missed is easy to find.</p>

Benefit	Scale
Guaranteed prominence for regional PSB on demand services	This will deliver significant economic and social direct benefits to regional PSBs and their audiences by increasing the prominence that is currently achieved.

Costs

Monetised Costs

118. As set out above, no EANDCB estimate has been produced for this assessment. However, where possible, monetisation has been used to indicate the potential scale of the impact associated with the intervention.

Transition Costs

Familiarisation costs

119. Through direct engagement a number of organisations have indicated that familiarisation costs could be minimal or suggested that these would simply be absorbed within existing teams without providing a cost estimate. However, to mitigate against optimism bias the following sector estimates are based on the larger and more detailed estimations of familiarisation costs that were provided by stakeholders.

120. Firstly, staff in organisations' policy, regulatory, legal, data and distribution teams will need to familiarise themselves with the new prominence regime, set out in this legislation and in Ofcom's ensuing guidance. It is important to note that a number of the organisations in scope will be large multi-national organisations, and therefore familiarisation is going to need to occur both within the UK, but also internally in other parts of the business and supply chain. Many organisations noted that the cost of familiarisation would therefore be dependent on the extent of the Ofcom guidance and are currently difficult to estimate²⁹. For this assessment, it is estimated that, for each organisation, familiarisation could represent work for up to 8 FTEs, including 2 legal professions. It will also involve briefing senior management and distributing information across the business, potentially to relevant colleagues overseas. Work will involve understanding the regime and implementing internal training for key staff. It is therefore expected that each of the 8 FTEs will dedicate no more than 35 hours (one week) to the tasks. There could also be a cost of additional staff having to engage with Ofcom guidance or any training material associated with the changes created by teams with organisations, but this has not been included at this stage and will be considered further when the details of Ofcom's guidance becomes clearer.

- Each business is estimated to need 6 FTEs at an hourly wage of £20.81³⁰, and 2 legal professions at a median hourly wage of £25.92³¹.

²⁹ Though it is expected Ofcom will take familiarisation costs into account as they develop their guidance.

³⁰ Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

³¹ Annual Survey of Hours and Earnings, ONS.

$$(35 \times 6 \times \text{£}20.81) + (35 \times 2 \times \text{£}25.92) = \text{£}6,185$$

121. Some organisations also suggested they might employ external legal and strategic advisory services, or contract research, following initial familiarisation from staff. Taking the highest estimate provided by the stakeholders on these costs to guard against optimism bias results in an estimated cost of £30k for each organisation in scope.

- An uplift of 22% is also applied to the c.£6k internal cost to cover non-wage labour costs, as per RPC guidance³². Therefore the total familiarisation cost for businesses is:

$$\text{Total cost per business} = (\text{£}6,185 \times 1.22) + \text{£}30,000 = \text{£}37,545.09$$

122. There are an estimated 43³³ businesses in scope of the new framework, so the total one off familiarisation cost for business is approximately £1,614,000. The cost to the 3 public bodies included here needs to be removed from the total cost to business. Removing this cost results in a total cost to in-scope businesses of approximately £1,502,000.

123. It is also likely that any out of scope business would want to commit resources to reading and understanding the legislation and ensuing Ofcom guidance. For example, Video on Demand services (VoDs³⁴) that could be carried on TV platforms would want to be aware of the new regime and how that could impact their ability to compete with the PSB on-demand services. For these businesses, we take a simple assumption that they will each commit 1 FTE for 1 day to read the legislation and Ofcom guidance. An uplift of 22% is also applied to this to cover non-wage labour costs, as per RPC guidance³⁵

$$\text{Total cost per business} = (1 \times 8^{36} \times \text{£}20.81^{37}) \times 1.22 = \text{£}203.11$$

124. There are currently 125 notified ODPS providers currently regulated by Ofcom.³⁸ At this time, there is no way to accurately measure the majority of VoD services across the rest of the world or which audiences they target. However, this will include the 6 PSB on-demand services, which need to be removed to avoid double counting as they are already covered above. At this time, there is no way to accurately measure the majority of VoD services across the rest of the world which target UK audiences and could in theory want to appear on platform

³² [Implementation costs](#), August 2019, RPC.

³³ Based on the high end of the estimates included in table figure 2. This high end estimate is provided to guard against optimism bias.

³⁴ There are different terms used to describe different types of VoD services, often based on their revenue model. For example Netflix, Now, and Amazon Prime Video are known as 'SVoDs' (subscription video-on-demand); and ITV Hub, All 4 and My5 are called 'AVoDs' (advertising video-on-demand). Broadcaster catch-up services such as BBC iPlayer are often called 'BVoDs' (broadcaster video-on-demand); and many services offer 'TVoD' (transaction video-on-demand) where audiences can purchase content on a pay-per-view basis. Ofcom also refers to VoD services using the legal term ODPS (On-Demand Programme Services). For simplicity, throughout this Impact Assessment, the term VoD will be used as a descriptive to capture all services within potential scope.

³⁵ [Implementation costs](#), August 2019, RPC.

³⁶ Assuming the FTE works for 8 hours.

³⁷ Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

³⁸ Ofcom, [List of on-demand programme service \(ODPS\) providers currently regulated by Ofcom](#), October 2022

UIs. This is the best proxy to estimate the number of non-PSBs that could want to appear on platform UIs, and would therefore want to familiarise themselves with legislation and guidance.

Total familiarisation cost to out of scope businesses = 119 x £203.11 = £ 24,170.09.

125. Since these costs were calculated, PSB livestream channels have been brought into scope of the requirement of 'discoverability' under the new prominence regime, but only when the livestream channel is offered as part of a designated PSB service. Regulated TV platforms will already be expected to familiarise themselves with the new prominence regime for on-demand. As livestream and on-demand are carried on the same UI and are generally part of the same negotiation, the addition of livestream should not substantially increase familiarisation costs.

126. It is important to note that in our direct engagement, businesses stated that familiarisation costs will also be dependent on the nature of the framework and regime that Ofcom set. If the regime is far-reaching and prescriptive, then these costs are likely to be higher. However, the above figures represent the best estimate of familiarisation costs based on the information currently available.

Costs to Ofcom:

127. Ofcom have provided cost estimates, within a range, for activities they would need to undertake under the new regime. These cover start-up activities, dispute resolution, enforcement functions and day-to-day running costs (for a year). These costs have not been included in this impact assessment. All cost estimates have been reviewed by the RPC in their independent scrutiny.

On-going Costs

Costs to stakeholders as a result of altered negotiations:

128. To ensure universality, existing "Must Offer / Must Carry" rules for linear TV govern the availability ('inclusion') of the public service channels on TV platforms such as Virgin and Sky.³⁹ However, the terms around the carriage of PSBs' on-demand services including prominence are currently left entirely to commercial negotiation.⁴⁰

129. The preferred option does not stipulate a zero net fees principle, and as a result the availability of designated PSB services will continue to be a result of independent commercial negotiations, as is precedent. However, as set out above, Ofcom will provide guidance and establish a dispute resolution mechanism. This guidance and dispute resolution will most likely introduce savings, covered below, to all parties as a result of shorter and simpler negotiations. The majority of stakeholders reported that they expected savings. However, one stakeholder who held a contradictory view, stated that a regulatory backstop may actually disincentivise agreement on particular terms and in doing so perversely increase the time and cost

³⁹ PSBs "must offer" their content to platform providers. The "must carry" portion of legislation has never been brought into force or legally tested.

⁴⁰ Anecdotally we've been told standard terms for favourable positioning on certain platforms has stipulated 30% of advertising revenue.

associated with the negotiations. This did not reflect the majority view and is a potential cost that we consider low risk.

130. There may be costs to organisations, in the form of transfers, if the guidance and dispute resolution mechanism influences the outcome of these negotiations in favour of either PSBs or regulated TV platforms. Extensive engagement with stakeholders has not provided a clear indication of the nature and magnitude of this value transfer, with many reporting that any impacts on negotiations would only be apparent when Ofcom has taken steps to deliver on its duty.⁴¹ A TV platform that had successfully agreed mutually beneficial deals for availability and prominence of PSB players, said that they would not expect either the guidelines or the dispute resolution function to have any material impact on future negotiations with the PSBs. However, some PSBs suggested that guidance and a regulatory back stop would increase the bargaining power of PSBs in negotiations with regulated TV platforms, which they identify as significantly asymmetrical. Through engagement, one PSB highlighted that there is no urgency or pressure on TV platforms to agree a commercial deal that includes availability and prominence, and that each deal with a platform is agreed separately with no clear concepts on market norms for what is expected of both parties in the negotiation which could be addressed by new guidance. It is therefore possible that this intervention could lead to cost to regulated TV platforms, but as a result of uncertainty we have not quantified this cost.

Costs of ensuring 'availability':

Costs to TV Platforms:

131. Generally speaking, TV platforms already make the larger and more high profile PSBs' services available on their platforms, as set out in the counterfactual. Therefore, there are no apparent costs of enforcing this, when compared to the do nothing option where carriage would happen anyway. However, as set out earlier, often the smaller PSBs services are not available on some TV platforms (in particular those provided by regional PSBs). Legislating to ensure that designated regional PSBs' services have to be carried will bring costs to platforms. One TV platform indicated that legislation requiring the carriage of a regional PSB's services would lead to set up costs of approximately £600,000 and an ongoing annual maintenance cost of approximately £150,000 across its services, in the context of over tens of billions in annual revenue. For those services that are not currently available on TV platforms, there may be costs to PSBs of developing their service to meet the technical specifications and quality levels required by the platforms on which it will be carried. Exact data on the number of in-scope TV platforms that do not already provide prominence to regional PSBs' services is not available. Figure 3 indicated that approximately 70% of platforms do not already make S4C Clic available. Applying that 70% to the 30-40 TV Platforms are estimated to be in scope of the new regime⁴², then 21-28 organisations will have to spend approximately £600,000 each to provide regional prominence, and therefore additional one-off costs to business of could total £12.6-£16.8m⁴³. Using an annual cost of £150,000, the total annual ongoing costs to business would be £3.2-£4.2m. This cost does not include the cost of making STV available where it currently is not, with Figure 3 suggesting that around 70% of TV platforms currently make it available. Additionally, this estimate doesn't include the broader costs of configuring regional prominence, which is considered below.

⁴¹ These impacts will be appraised alongside secondary legislation.

⁴² The exact organisations in scope are yet to be designated, so this assumption is highly uncertain.

⁴³ This estimate is highly uncertain as it is based on cost data provided by a single platform only.

132. We do not expect the addition of livestream to the new prominence regime to capture any new platforms, and platforms will only be required to give prominence to a “listed” livestream PSB channel (i.e. PSB channels which already receive prominence in the linear space) where it has been offered as part of their designated PSB service. If it is not offered as part of a designated PSB service, the regulated TV platform would not be required to carry or give appropriate prominence to that listed PSB channel. Therefore, we do not expect platforms to incur any additional costs arising from the inclusion of livestream in the new prominence regime. The decision to capture livestream under the new regime is to address a regulatory gap.

Cost of ensuring ‘discoverability’:

Costs to regulated TV platforms:

133. There may be a minor engineering cost to regulated TV platforms when having to provide prominence to designated PSB services as a result of this legislation, in instances in which the level of prominence provided is not in keeping with the guidance Ofcom will provide. However, services provided by regional PSBs are not uniformly carried by platforms, and are generally not made easily discoverable when they are carried. There will therefore be costs to regulated TV platforms from having to provide discoverability to these regional services. The scale of these costs are unclear as the details of Ofcom’s guidance are unknown.

134. TV platforms with which we engaged highlighted the high costs of securing regional prominence, referencing changes to product design, user interfaces, data collection, and knock-on impacts on their service. Stakeholders referenced the cost of customising platforms for individual regions within the UK and the material burdens and resources needed to implement these unique engineering and customer experience solutions. A key knock-on impact was the fragmentation of the market; large organisations usually offer a country-by-country approach, in which the UK is treated as a single country, offering a single market experience for all users. Consequently, the cost of providing nuanced services for Scotland and Wales is likely to be significant - including but not limited to engineering, onboarding, commercial and resource costs and could potentially also have an impact on privacy with a narrower tracking of locations. One platform stated that having to provide regional prominence would mean that the hardware sold in Scotland or Wales would need to be different from the hardware sold in England or Northern Ireland, therefore fragmenting the UK market.

135. Many TV platforms argue that having to make designated regional PSBs’ services easily discoverable would be disproportionate. One platform described how visitors to STV Player and S4C Clic represent less than 1% of their monthly active users, and argued that the investment they would need to make would be greatly disproportionate to the uptake of regional TV services. In doing so, they highlighted the opportunity costs of such investments, which could divert resources from innovation and developments in their product to better meet consumer needs.

136. As set out in the non-monetised benefits section of the preferred option, however, there are strong social and economic benefits to the prominence of minority language and regional content. For example, as the only Welsh language television service, S4C plays a crucial role

in providing the only avenue to Welsh language content for viewers (including sport)⁴⁴, whilst STV enables access to content including news and current affairs which is relevant to viewers in Scotland. As a result the preferred option includes regional prominence.

137. Finally, there is the potential opportunity cost to regulated TV platforms that could arise as a result of providing PSBs with prominence for free in slots that would have had a high commercial value. A TV platform stated that, if you were to estimate the current opportunity cost of carrying PSB services which they have taken on as a business decision, it would be in the tens of millions of pounds a year stemming from the high-value marketing placements that could otherwise be monetised through advertising sales. In addition, one TV manufacturer provided evidence that, if Ofcom's guidance requires them to give up more of their prominent slots on their homepage to PSB services than is already granted, they risk losing or renegotiating to less favourable terms than their current contracts with global partners. As a result, they could then lose revenue through these less favourable terms, and lose out on other streams such as joint promotions. The specific value of these losses has not been provided for commercial sensitivity reasons, and they are not possible to estimate at this time since they are dependent on the guidance set by Ofcom, and the decisions by TV platforms that result from this.

138. However, we judge that, because prominence is already provided to most of the high profile PSBs as a result of independent negotiations - with TV platforms recognising the importance and demand for PSB content, reflected in their position - the regulation would not increase the opportunity costs of TV platforms substantially, if at all. The fact that platforms already give prominence to the majority of PSB on-demand/livestream programme services indicates that the value of these services to platforms is greater than the opportunity cost i.e the value they would get from monetising the prominent slots through other means. Indeed, some TV platforms stated that they do not monetise such slots, instead ensuring they reflect/prioritise customer preferences.

139. That said, having to give up further slots to accommodate the regional PSBs' services as a result of this new regime could bring direct costs for platforms that did not previously provide prominence to these services. The value of this direct cost has not been provided and until Ofcom's guidance has been produced, it is not possible to estimate the value of these prominent slots, and the resulting opportunity cost for platforms. This is because at this stage it is not determined as to how Ofcom will require firms to provide prominence, and the impacts to business as a result. In a hypothetical scenario in which Ofcom's guidance is very prescriptive, it would be possible that the opportunity cost could be in the tens of millions a year for firms that have to provide prominence to services they previously did not, therefore being unable to monetise slots in ways that they otherwise would. However, Ofcom will undertake research and consultation before setting this guidance, which will aid in understanding the scale of any losses to platforms better.

140. Lastly, it is worth noting that TV platforms are adapting to new legislation elsewhere to protect the prominence of national services which may reduce the relative impact on these platforms of UK legislation. In Germany, new regulations under the Medienstaatsvertrag (Inter-State Media Treaty) now look to provide prominence for 'content of public interest', and stipulates that all broadcasting content must be prominently placed and easily accessible

⁴⁴ [Cymraeg 2050: a million welsh speakers, annual report 2017-18](#)

within an UI⁴⁵. Therefore we know anecdotally from TV platforms/devices that they are already having to account for similar online prominence regulation in other markets, and will likely have to increasingly do so in the future. For instance, this issue has recently been raised in Australia (where the Australian government is now proceeding with a manifesto commitment to ensure prominence for Australian TV services on TV platforms), and there was the previous Canadian C-10 Bill.⁴⁶

141. The addition of PSB livestream channels into the prominence framework is not expected to bring significant additional costs to those listed above. In-scope TV platforms would only be required to give appropriate prominence to PSB livestream main channels (which already receive prominence in the linear broadcast space) where it is offered as part of their designated service. This is not anticipated to create significant additional cost, given in most cases these platforms already carry livestream content, and via an EPG (which already gives prominence to these channels).
142. In the cases where there is not an EPG to deliver livestream prominence on the UI, it would either be a case of carrying a prominently-placed on-demand app (which includes the livestream channel) or surfacing the livestream channel on relevant parts of the UI (i.e. a rail, tab or section). This could incur costs for platforms, however we do not expect these to be significant, as the framework will give platforms the flexibility to deliver this. Ofcom will ultimately determine the appropriate level of prominence in a Code of Practice, which will take into consideration technical functionality and proportionately on the UI (i.e. it would be disproportionate for one platform to give prominence to the on-demand service, an EPG and then surface livestream channels elsewhere on the UI). The exact value of any costs this may bring is not possible to estimate until Ofcom's guidance has been produced. Furthermore, implementation costs for platforms are likely to differ depending on how platforms choose to present on-demand and livestream content. The uncertainty associated with the final form of Ofcom's guidance and dispute resolution function means that platforms found it difficult to provide insights for this impact assessment, including several large technology companies that provide both user interfaces and operating systems involved in TV platforms.

Costs to non-PSB services

143. It is possible that non-PSB services that are competing for slots on TV platforms' user interface could experience a cost if their 'discoverability' is removed as a result of TV-platforms having to provide that 'discoverability' to designated PSB services. This would represent a transfer of the value of 'discoverability' from one service to a designated PSB service. If that PSB is a commercial PSB, then the cost to business overall would remain unchanged as these transfers would cancel each other out. However, if that PSB is a public body, then there would be a cost to business overall arising from this movement in the value of 'discoverability'. Again, it is not possible to estimate the size of these transfers given the dependency on Ofcom guidance and business decisions which stem from it.
144. Similarly, it is possible that as a result of including livestream channels, non-PSB services would be competing for slots on TV platforms' UI. However, we do not expect the additional impact to be significant, specifically for those platforms which already carry a regulated EPG

⁴⁵ (Medienstaatsvertrag - MStV) - Came into force in November 2020.

⁴⁶ [Australia's free-to-air channels demand guaranteed prime position on smart TVs / Industry group to lead access of Free to Air on connected TVs | TV Tonight](#)

which already gives prominence to PSB livestream main channels. . Again, this would represent a transfer of the value of 'discoverability' from one service to a designated PSB service. However, it is not possible to estimate the size of these transfers given the dependency on Ofcom guidance and subsequent business decisions.

Costs to Ofcom:

145. Ofcom have assumed that ongoing enforcement and other running costs will stem from:
 - Carrying out Ofcom's dispute resolution function
 - Ofcom taking formal and informal enforcement action
 - Various other costs of running the regime
146. Details of these costs have not been included in this impact assessment. All cost estimates have been reviewed by the RPC in their independent scrutiny.
147. Ofcom would expect to recover its costs primarily through fees charged to in-scope providers. Ofcom's fees principle is based on a full recovery of their costs. The fees charged by Ofcom would be equal to the costs incurred in the administration of the new regime. Ofcom's costs are recovered through incremental fees levied on in-scope businesses. In respect of certain disputes where it would be appropriate to do so, Ofcom would expect to exercise the ability to require a party or parties to pay part or all of Ofcom's costs in determining the relevant disputes. However, Ofcom anticipates that this power will only be used in very limited circumstances so they have not included this in their estimates. This cost to business will be additional to the costs considered above.
148. Ofcom has indicated that it is not possible to estimate the fees they would levy on businesses at this stage, given the early nature of the development of the details of the new prominence regime. This will be determined once the in-scope firms have been identified, and once Ofcom has consulted on the basis for allocating their fees. However, there will be an increased cost to the businesses in scope stemming from these fees. It should be noted that Ofcom's fees are progressive, usually based on business turnover. Also, any change in fees is excluded from the EANDCB in impact assessments (statutory exclusion 24(4)(a)).

Non-monetised Costs

149. There may be other knock-on costs to regulated TV platforms from this legislation. From engagement with stakeholders, these could include a reduced capacity to innovate within their operating system (OS)/user interface (UI) systems. Changes may also result in regulated TV platform UIs providing a poorer viewer experience if the most prominent slots are provided to organisations that are not necessarily the most sought out services/the services they want to access. This could result in customer dissatisfaction in the worst case scenario, if it becomes harder for viewers to discover content they want to watch. As previously mentioned, we judge that the preferred option will be sufficiently proportionate and flexible to mitigate these risks, whilst removing the potential harm of PSB exclusion from, and marginalisation within, regulated TV platforms. One TV platform indicated that if they need to increase their prices as a result of higher costs arising from this legislation, they would anticipate at least a 10% reduction in the sales volume. This could impact their own ability to innovate and introduce new features and also impact independent high street retailers which stock their products.

Costs to viewers:

150. It is possible that the legislation could result in higher prices passed onto consumers by regulated TV platforms - but only one TV platform indicated that they are likely to pass any higher costs onto consumers. Also, price rises are considered as pass-through impacts for IA purposes, and are therefore indirect. As mentioned above, it is possible that regulation could result in a suboptimal UI set up for some consumers. This creates a potential disbenefit to viewers who may want to access and watch non-PSB content which may not be as easily discoverable following regulation. However, we do not expect any additional impact on viewers, as the intention of regulation is not to impact consumer choice or personalisation. Furthermore, we are only proposing to give prominence to those PSB channels which already receive prominence in the linear space.

Benefits

151. The vast majority of the benefits associated with the intervention options stem from the *guaranteed* prominence of designated PSBs' services on regulated TV platforms.

Monetised Benefits

Benefits of ensuring 'availability' and 'fair value':

Benefits to PSBs & regulated TV Platforms:

152. We assume that both groups will benefit from this option, although it is likely that PSBs, particularly smaller PSBs, will benefit relatively more than regulated TV platforms given the global focus of these organisations and the significant importance of the UK market for PSBs. The guidance and dispute resolution will most likely introduce savings to all parties as a result of shorter and simpler negotiations. The majority of stakeholders reported that they expected savings, but did not provide quantitative estimates. One stakeholder said that guidance and a back stop may have the capacity to reduce the time of the negotiations from months, and sometimes even years, to weeks. A PSB highlighted that deals generally take a team of 2-4 FTEs 4 months to negotiate. Assuming these negotiations are run annually, using the basic assumption of 2-4 FTEs working 8 hours a day for 120 days, an indicative total annual negotiation cost for the PSBs in total can be calculated. An uplift of 22% is also applied to this to cover non-wage labour costs, as per RPC guidance⁴⁷. In practice this is likely to be an underestimate, since these negotiations will also need legal resource.

- Low estimate: $6^{48} \times (2 \times 8 \times 120 \times \text{£}20.81^{49}) \times 1.22 = \text{£}292,472$
- High estimate: $6 \times (4 \times 8 \times 120 \times \text{£}20.81) \times 1.22 = \text{£}584,944$

153. The total negotiation cost to PSBs is estimated at between £290,000 and £580,000.

⁴⁷ [Implementation costs](#), August 2019, RPC.

⁴⁸ 6 PSBs in total.

⁴⁹ Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

154. To illustrate the scale of these potential costs savings, for the PSBs in total, if this negotiation time was reduced to one 1 month, the annual negotiation cost for PSBs would now be:

- Low estimate: $6 \times (2 \times 8 \times 30 \times \text{£}20.81) \times 1.22 = \text{£}73,118$
- High estimate: $6 \times (4 \times 8 \times 30 \times \text{£}20.81) \times 1.22 = \text{£}146,236$

155. Total annual negotiations savings could therefore be between $\text{£}220,000$ ⁵⁰ and $\text{£}430,000$ ⁵¹ for the PSBs alone. This is likely to be an underestimate considering that these negotiations are becoming more difficult and lengthy as a result of shifting market dynamics, and would likely continue to do so in the absence of intervention. As outlined above, regulated TV platforms will also experience this cost saving, however, we did not receive quantitative evidence on the resources that TV platforms dedicate to negotiation, nor how this resource might be reduced following this new regime. It would not be appropriate to apply these cost estimates to TV platforms as these organisations are vastly different in size and are likely to have different structures within their negotiations teams. Also, we do not know exactly how many platforms will be captured at this stage, as previously explained and so estimating the cost savings to regulated TV platforms in totality is not possible. Therefore the quantitative analysis above has been limited to show the extent of cost savings to PSBs alone, as more detail is available on this.

156. However, one stakeholder stated that a regulatory backstop may actually disincentivise agreement on particular terms, in doing so perversely increasing the time and cost associated with the negotiations. It is therefore important to restate the uncertainty of impact at this stage, although we assume that this will induce benefits rather than costs for all parties.

157. The introduction of a dispute resolution mechanism created by Ofcom will provide a backstop which will again help speed up lengthy negotiations by incentivising parties to come to a commercial solution, rather than risk referral to Ofcom. There will also be a time limit to resolve disputes and interim arrangements should apply to avoid the prospect of 'blank screens'. This removes the risk of designated PSB services not appearing on a certain platform if commercial negotiations were to break down. This also eliminates the risk of lost revenues through incremental churn for regulated TV platforms and viewing impairment for PSBs.

158. As Ofcom states, due to the large number of negotiations taking place each year between TV platforms and PSBs, it is reasonable to assume that there are up to 6 disputes a year in the early stages of the regime (with an additional 2-3 which they do not take forward). We assume that only a small portion of these disputes would have completely failed - leading to exclusion of PSB services from TV platforms - based on the limited and specific nature of previous incidents. We are aware of only one such incident in the previous years (PSB exclusion from a limited number of LG 2020 TVs). It is important to note that, without intervention, market dynamics will increase the complexity and challenge of negotiations, increasing the chances of breakdown over the following ten years. Of the estimated 60 disputes over 10 years, we assume that 5-10 could end in failure. Using insight from a commercial PSB who stated that exclusion from one TV platform, providing 12% of their viewing, could result in a monetary loss which is equivalent to approximately 2% of their total

⁵⁰ $\text{£}290,000 - \text{£}70,000$

⁵¹ $\text{£}580,000 - \text{£}150,000$

annual advertising revenue, we assume that the removal of this risk could lead to benefits to PSBs of hundreds of millions of pounds, with additional benefits for TV platforms who are able to benefit from carrying PSB content.

159. Stakeholders have noted that the extent to which the new regime will reduce the resource needed for commercial negotiations will depend on the accuracy and granularity of Ofcom's guidance and how it will approach the dispute resolution. The time saving itself has knock on-benefits on top of the direct resource cost saving. These include the fact that negotiating teams will be able to switch their attention to areas of partnerships, other than just prominence, to support the end user as well as the wider creative economy, and that there will be fewer delays to product launches.
160. We do not expect the inclusion of livestream to have an impact on the resource required for negotiations. PSBs and platforms will routinely negotiate on a single offer of a designated service (which will cover both livestream and on-demand services), so we anticipate the approach of combining livestream with a designated online service makes little difference. This approach could help to deliver clarity for PSBs and platforms during negotiations as to what has to be offered and carried, and under what terms and conditions, as well as during a dispute brought to Ofcom under the dispute resolution function. However, as policy continues to be settled, any benefits from this change in approach would need to be assessed in more detail following Ofcom consultation.

Benefits of ensuring 'discoverability':

Benefits to PSBs:

161. A key benefit of the prominence which large PSBs currently enjoy is the boost in viewership and engagement that this provides. This results in increased viewer exposure to high-quality UK PSB content, which provides social benefits to individual viewers and UK society as a whole. These benefits include building an individual's knowledge of specific issues (e.g. via documentaries or factual programming), as well as bringing wider social value through bringing the nation together for shared experiences such as sporting events, or supporting informed democratic debate with news and current affairs.
162. In the case of commercial PSBs, greater visibility drives larger audiences, which drives greater consumption of monetisable content. This supports PSB financial performance, and their ability to deliver PSB obligations - and directly funds key content in the case of PSB obligations with an opportunity cost. Mediatique's work for Ofcom suggests that '30% of value in connected TVs might be on the front page', based on the value of EPG prominence.⁵² There is significant benefit from the high levels of investment in original UK content by commercial PSBs like ITV and Channel 4 made across the UK, by independent producers, and in key genres such as regional news, all underpinned by formal PSB obligations. In the case of publicly funded PSBs, such as the BBC, prominence is integral to delivery of their mission and public purpose - and in driving high reach it supports continued investment in UK originated content.
163. This in turn provides social benefits to individual viewers and UK society as a whole. These benefits include building an individual's knowledge of specific issues (e.g. via documentaries

⁵² [Connected TV gateways: a review of market dynamics, Mediatique 2020](#)

or factual programming), as well as bringing wider social value through bringing the nation together for shared experiences such as sporting events, or supporting informed democratic debate with news and current affairs. This intervention option ensures the prominence of designated PSBs' services, and therefore guarantees the benefits associated with this, compared to the current situation where prominence is relatively common but not guaranteed, and the risk of a lack of availability and discoverability is rising with changing viewing habits.

164. Stakeholders have made the point that prominence is only beneficial with the right terms and conditions on which availability and discoverability is provided by the regulated TV platform. Without fair terms set out by Ofcom's guidance, the benefit that regulated prominence brings is limited, and poor guidance could even compromise PSBs' ability to negotiate with platforms and reduce the ability for commercial PSBs to monetise.
165. The addition of livestream to the new prominence regime can provide additional benefits to PSBs, as it will provide more opportunity for audiences to find their main channels online. Ofcom has argued that if livestream content is not brought into the new prominence regime, there is a risk that linear PSB content will be missed, making it harder to find when viewers shift online. PSBs have also argued that, as well as extending prominence benefits to on-demand, maintaining the prominence of their linear content is vital to ensuring their future sustainability. Furthermore, PSB online services routinely carry their livestream main channel (for example, livestream versions of BBC 1 and BBC 2 can be accessed via iPlayer) so we do not expect the inclusion of livestream to place an additional burden on PSBs.

Non Monetised Benefits

Cross-cutting benefits of ensuring prominence (both discoverability and availability)

166. This intervention guarantees these benefits as it will eliminate the risks that designated PSBs' services are not made available and discoverable on regulated TV platforms. In addition, Ofcom could set out guidance that improves the existing discoverability of PSB services, thus maximising economic and social benefits to them.
167. The UK's public service broadcasting (PSB) ecology plays a vital role in British public life, supporting British democratic values and culture. The range of public purposes, remits and obligations placed on the PSBs are designed to deliver public benefits to viewers in the UK by providing them with access to a broad range of content that appeals to their interests, informs them and reflects their lives and experiences. PSB content also brings further social value through bringing the nation together for shared national experiences (demonstrated clearly by the Covid-19 pandemic). Prominence is one of the key regulatory interventions which supports PSBs' ability to sustain their investment in UK made public service content - increasing the impact and effectiveness of socially important content while also maximising its commercial viability for commercially funded PSBs – thereby incentivising continued investment.
168. There are substantial benefits to the regional, minority language PSB services such as S4C and STV. As part of a recent House of Lords inquiry into the future of PSB, they were described as playing a “vital role in sustaining linguistic vitality and cultural diversity” which is threatened by lack of discoverability on Smart TVs.⁵³ For instance, S4C makes a critical

⁵³ [Submission to the Digital, Culture, Media and Sport Committee inquiry into 'The future of public service broadcasting'](#)

contribution to the future of the Welsh language as a modern language and an everyday language in Wales for people of all ages, in line with Welsh Government targets to increase rates of Welsh language uptake. In the Government's response to the Independent Review of S4C in 2018, it affirmed that S4C plays a vital role in reflecting Welsh culture and society and promoting the Welsh language.

169. This new framework ensures the continuation of the widespread prominence of PSBs and the benefits that these provide to audiences. The framework will protect PSBs and audiences from the risk that the availability of PSB on-demand/livestream programme services falls away in the future.

170. The regime also ensures that designated regional PSB services are given prominence on in-scope TV platforms, which provides a multitude of direct benefits as audiences in these regions will now be able to find the content that the PSB services that they value, including in terms of minority language content.

171. The inclusion of livestream in the new prominence regime could deliver further social benefits, ensuring important linear PSB content - which would otherwise be missed is easy to find. It will help to ensure that UK viewers can continue to find PSB content they value, both on-demand and over livestream. Also, surfacing livestream minority-language content on relevant parts of the UI (i.e. a rail, tab or section) can deliver additional benefits through increased engagement with the Welsh language, in line with Welsh Government objectives.

Summary

Business Impact Target Calculations

172. As set out in Section 1, it has not been possible to provide these calculations.

Sensitivity Analysis

173. Due to the lack of monetised costs for the PSBs and TV platforms set out in this assessment, there has been limited scope or need to employ sensitivity analysis at this stage. The costs provided by Ofcom include detailed sensitivity analysis through ranges. Any impact assessments that follow will include detailed sensitivity analysis on the costs to business.

Risks and assumptions

174. Due to the lack of monetised costs and benefits, for the reasons referenced throughout this document, there are minimal risks associated with the analysis provided. Where possible, the qualitative analysis is balanced and has been informed by information from a wide range of stakeholders. The below table highlights the main assumptions used when informing the, largely qualitative, analysis contained within this impact assessment.

Figure 4: Summary of the main assumptions used in this analysis, with a description of the underpinning evidence and potential risks.

Assumption	Evidence	Risk
Providing regional prominence is highly costly for regulated TV platforms.	This has been confirmed by all TV platforms that have engaged with DCMS on the impacts of the policy.	It is possible that this cost may be less substantial than indicated by TV platforms if Ofcom's guidance is appropriately flexible and proportionate. Some TV platforms did not engage with DCMS on impacts and their contributions may have provided additional insight.
Providing guidance and a dispute resolution function will bring cost savings to all parties.	This has been confirmed through extensive stakeholder engagement.	One stakeholder indicated that a regulatory backstop may actually disincentivise agreement on particular terms. If this is the case, or if Ofcom guidance is too prescriptive, then the benefits of this new regime could be much lower than expected.
There are significant benefits associated with guaranteeing regional prominence for increasing engagement with, and benefits of, the minority language broadcasters.	Data and research provided by regional broadcasters strongly suggests that prominence would drive increased engagement and increased social benefits.	There is the potential risk that regional prominence does not lead to these benefits, if, for instance, the current lack of engagement with these broadcasters is for other reasons (e.g. personal preference of the viewer).

175. An overarching risk is that this policy is challenging to enforce due to the vast number of new technologies that might arise, and so designing the regime to be future proof is a challenge. However, Ofcom have experience in this area, both in enforcing the existing linear prominence regime and also in establishing a dispute resolution mechanism in the Telecommunications space, which is not dissimilar to the one they are likely to design for online prominence. As set out in the options section of this assessment, alternative legislative and regulatory approaches that are more prescriptive would have been considerably worse at accounting for new and evolving technologies, and therefore the chosen policy option will minimise the issues associated with this risk.

Steps to address evidence gaps:

176. As explained in section 1, the new framework itself will sit in primary legislation, setting out the principles of the new online prominence regime. Ofcom, which will be provided with guidance making powers in primary legislation, will need to set out much of the detail of the regime in accompanying guidance (including both duties on those in scope and relevant processes/procedures to follow), to be published after Royal Assent.

177. For this assessment, extensive engagement was undertaken with stakeholders in order to ascertain monetary estimates of impact. However, a lack of quantitative information was provided, in part due to uncertainty on the details of Ofcom's regime and the commercially sensitive nature of negotiations. Also, as reflected above, whilst all PSBs engaged with the evidence-gathering process, fewer TV platforms participated to the extent they could have. Ofcom will be in the position to gather more specific, detailed, quantitative evidence from stakeholders as they will be able to directly consult on the details of the regime. They will therefore be in a better position to assess the impact of the regime. Ofcom's consultation will likely cover the below topics to inform their recommendation to SoS:

- What an appropriate level of prominence should look like;
- How Ofcom will enforce the regime and monitor compliance (via a notification system and information gathering powers);
- Guidance on how Ofcom's dispute resolution function will work and what reasonable terms should look like.

178. Affirmative secondary legislation will give the Secretary of State powers to designate in-scope TV platforms/devices, subject to recommendations/consultation with Ofcom. Future impact assessments will accompany this secondary legislation, using evidence gathered by Ofcom. Also, as part of Ofcom's advice to DCMS Secretary of State on the designation of regulated TV platforms, Ofcom will consult with providers in their assessment of whether it is appropriate to advise the designation of a particular platform. At this stage, it is likely that a more detailed quantitative assessment of the impacts of the regime will be able to be carried out, building on this largely qualitative assessment. It is likely that DCMS will undertake further rounds of stakeholder engagement at this point in order to gather the necessary information. This will increase understanding and is likely to enable quantitative appraisal of the following key direct impacts:

- Cost savings to regulated TV platforms and PSBs resulting from reduced negotiation time
- Technical costs to regulated TV platforms to provide prominence to those PSB services that are not currently prominent (both on-demand and livestream).
- Opportunity costs to regulated TV platforms to monetise prominent slots that, as a result of the framework, are required to be reserved for PSBs.
- Increase in revenue to commercial PSBs where their prominence is altered by the framework introduced.
- Increase in viewership to PSBs where their prominence is altered by the framework introduced
- The impact of the framework on the outcome of commercial negotiations and the value transfer between regulated TV platforms and PSBs as a result.

3.0 Wider impacts

Small and Micro Business Assessment

179. The aim is not to capture all platforms capable of carrying on-demand/livestream content; the approach will be proportionate and only capture significant platforms/devices who control the gateway to content for UK viewers, and where TV is a core feature of the service. This means only capturing those platforms used by a 'significant' number of UK viewers to access content (i.e. the Smart TV), and not multi-use devices (i.e. smartphones, laptops) where their

main function is not the delivery of TV content. It would be disproportionate to capture those platforms which might be used by a significant number of viewers, but only for a few minutes a day (i.e. a mobile phone).

180. Policy development had considered that one way to clearly set out who would be in scope of the new regime would be via a threshold which would exempt smaller platforms. However, the risk of setting a threshold to determine the 'significant number of users' is that if a platform falls just below or just above the threshold then they may manipulate this to avoid being captured. Ofcom has also explained that it is unlikely that any thresholds designed could remain appropriate for more than a short period of time, given the rate at which technology and audience behaviour changes. Prescribed thresholds risk becoming obsolete before too long and, if set in primary legislation, cannot be easily adjusted. As such, some platforms that could quickly become 'significant' players in the UK market could fall outside of the regulation. It might also be difficult to capture different demographics, e.g. if it becomes apparent over time that younger people have different viewing habits to the point where we feel action is needed.

181. The Government is therefore proposing not to set a threshold on the face of the Bill but to maintain a level of flexibility by identifying platforms which are in scope as those used by a 'significant' number of UK viewers to access TV content. Ofcom believes that one way to provide additional certainty to platforms while also retaining flexibility would be to build a designation process into the regime. This would give the Secretary of State the power to designate platforms (as formally recommended by Ofcom⁵⁴) as being within scope of the regime where they are used by a 'significant number' of people to navigate around and access a range of online services from third-party providers. This includes both the designation of a specific platform and a "category" of platforms. By having this in regulations it will be much easier to update than if it was on the face of the Bill.

182. Pursuing a designation process via regulations would provide certainty to platforms by making it clear who is caught by the regime: i.e. only those platforms that have been designated in regulations would be in scope. In other words, platforms would not have to try and work out if they have a 'significant number of viewers' and are therefore caught by the regime. The designation could be in respect of a specific platform or it could be in respect of a 'category of platforms', e.g. streaming sticks.

183. The addition of livestream will not affect how many small and micro businesses come into scope of the new online prominence framework, as the designation criteria for 'in scope' TV platforms remains unchanged. In line with Ofcom recommendations, the Government envisions that the TV platforms in scope will be organisations that have relevant control of a user interface which is used by a "significant" number of UK viewers to access TV online in the UK. Therefore, only those platforms used by a significant number of viewers as a main way of watching TV are expected to be captured. We assume that the addition of livestream will not

⁵⁴ Given that there is no single source of data for online TV viewing, it is likely Ofcom would have to use various sources of evidence to provide a view to DCMS regarding which platforms should be designated. This would involve a level of regulatory judgement as it may not always be possible to directly compare data about different platforms. Examples of sources include:

- Information gathered from individual TV platforms using Ofcom's information gathering powers under the new prominence/availability regime
- For some platforms - BARB data
- Wider contextual information, e.g. Ofcom survey data on platform use

capture any additional platforms for this reason. We do not intend for the regulation to capture smaller platforms or devices, in the interests of proportionality, so they would not be expected to carry or give prominence to designated PSB services. Furthermore, the burden is on the PSBs to offer their livestream main channel as part of a designated online service. If a “listed” livestream channel is not contained within a designated service, the regulated TV platform would not be required to carry or give appropriate prominence to that listed PSB channel, and so will not incur additional costs of carriage.

184. Therefore, it is expected that no small or micro businesses will fall in scope of this regime, and no exemption is thus needed.

A summary of the potential equality impacts

185. The Government has a legal obligation to consider the effects of policies on those with protected characteristics⁵⁵ under the Public Sector Equality Duty 2011 and the Equality Act 2010.

186. There is no evidence to suggest that any negative impacts will fall disproportionately on individuals with protected characteristics, given that this measure secures the ongoing relevance and value of PSB services. The main impacts fall on businesses, and the only impacts on individuals will be indirect, knock on consequences arising from any action businesses take.

187. This said, the measures will benefit groups across the UK. PSBs have special requirements to produce content that provides public benefits which stand up for diversity across the UK and which reflect, represent and serve the diverse communities of all of the United Kingdom’s nations and regions⁵⁶. Ensuring that designated PSBs’ services have guaranteed prominence will allow PSBs to continue to provide this type of content and allow it to be accessible to UK audiences. The loss of prominence, which is possible in the current do nothing scenario, could also have implications beyond PSBs’ online offering - if PSBs are not able to secure adequate benefits in the online space, then it risks unbalancing the PSB compact and therefore the provision of existing linear services provided universally to everyone with a TV. This could exacerbate any resulting loss of access to regionally representative content and content which is intended to provide for the UK’s diverse communities. As Ofcom have concluded:

‘well-resourced and high quality PSB channels lie at the “core” of free-to-view television used by millions, 57 including 1.5 million homes, 5.3% of the UK total, that do not have access to pay-TV, subscription streaming services, home broadband or smartphones. [There is a] risk that vulnerable groups, including elderly and disabled audiences, might lose access to a range of informative and entertaining content without public service broadcasting’⁵⁷

188. Also, television content should be accessible for all UK audiences regardless of which platform is used to view that content. Therefore, under the new online prominence framework, TV platforms in scope of the regime will need to ensure their user interfaces can be accessed/used by those with hearing and visual impairments. There is already a legal

⁵⁵ Age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation

⁵⁶ Set out in [Channel 4’s remit](#) and [BBC’s public purposes](#)

⁵⁷ [Ofcom’s Small Screen Big Debate, the Future of Public Service Media](#)

requirement under the existing prominence regime to ensure ‘regulated EPGs’ are accessible to those with disabilities. This is something most major TV platforms are already doing, so is likely to present minimal costs to the platforms, given the importance of ensuring their platform is accessible to all their viewers.

A summary of the potential trade implications of measure

189. Ofcom’s regime will set requirements on all regulated TV platforms that wish to operate in/sell products in the UK, and therefore there is a potential impact on trade.

Does this measure include different requirements for domestic and foreign businesses?

190. No, all in-scope TV platforms will have to comply with the new regime, regardless of whether they are foreign or domestic organisations.

Does this measure have potential impacts on [the value of] imports or exports of a specific good or service or groups of goods or services?

191. This measure *could* have the potential to impact on the imports or exports of a specific good or service. Specifically, overseas TV manufacturers will have to follow new rules for online prominence set out by Ofcom, which in theory could in turn increase the cost of supplying TVs to the UK. However, as set out above, the impact of these rules on regulated TV platforms is likely to be minimal. Throughout our direct engagement with stakeholders, DCMS asked what the potential wider impacts of the new regime could be for regulated TV platforms. No TV platform that responded suggested that this regime would impact their ability or willingness to trade in the UK. Platforms already have UI/Software variance to reflect differences across regions (i.e. one can’t access French services on UK devices because of IP restrictions).

192. In theory, if Ofcom’s guidance is overly prescriptive or burdensome, then costs could be significant, which might result in higher product prices, or other implications that could lead to reduced trade. As above, we do not expect this to be the case.

Does this measure have potential impacts on [the flow or value of] investment into and out of the UK?

193. We do not consider that the measure will impact regulated TV platforms’ investment in the UK. The relatively small technical costs incurred, in the context of annual revenues, are extremely unlikely to affect regulated TV platform’s investment decisions, especially as other countries begin to consider their own prominence measures and given the importance of the UK market. The impact on TV providers (non-PSB) competing with PSBs will be minimal (and is not possible to estimate at this stage due to uncertainty around Ofcom’s guidance), and therefore is unlikely to have a significant impact on their investment in, for instance, TV production spend in the UK. By extending the benefits of prominence for PSBs, the measure increases the value of the PSB compact and will likely have a positive impact on PSBs’ investment in the UK, for instance in terms of TV production spend across the UK.

Innovation Test

194. The new regime for prominence has the potential to impact product innovation within regulated TV platforms, with impacts depending on what is contained within Ofcom's guidance. One TV platform highlighted concerns that their ability to innovate could be affected by excessive prominence rules (e.g. UI design, navigation, enhanced search and recommendation features). This in turn could lead to a reduction in differentiation of their product against our competitors and ultimately impacts the consumer, who will have less choice with all devices offering essentially the same set of features.
195. Another platform provided evidence that the work needed to review and understand changes in regulation could strain their ability to work on other key initiatives and innovations and result in delays. However, the time and resource savings that are likely to arise from the introduction of Ofcom guidance and dispute resolution system is likely to increase companies' resource to focus on these activities including product and process innovation. Additionally, ensuring the prominence of designated PSB services will help ensure the financial sustainability of the commercial PSBs, which in turn will help facilitate their ability to innovate. Also, the vast majority of the TV platforms that are likely to be in scope of this new regime are global organisations, and so the burden of UK regulation is minimal when taken in context with the overall reach and focus of the organisation.
196. Ofcom's approach will be proportionate and only capture significant platforms/devices which control the gateway to content for UK viewers. So small and micro businesses, and their innovations, will not be affected.
197. A detrimental impact on innovation was not raised regularly through DCMS' engagement with stakeholders, and when invoked it referred to the risks associated with an overly prescriptive approach. Additionally, Ofcom's proposals to Government included the recommendation that one of the statutory objectives underpinning new 'availability' provisions should ensure that PSB content is:
- Made available on terms that are consistent with the sustainable delivery of PSB obligations, and do not place disproportionate restrictions on regulated TV platforms' innovation and consumer choice.
198. New legislation will include this objective and for this reason, and the other reasons outlined above, it is anticipated that this measure is unlikely to have a significant impact on innovation. However, at this stage it is hard to thoroughly assess innovation impacts until Ofcom's guidance has been finalised.

Justice Impact Test

199. In general, this policy is not expected to have any impact on the justice system. In practice, we anticipate disputes will be handled by Ofcom's dispute resolution mechanism, but there could be some impacts around enforcement of unpaid financial penalties and appeals of the dispute resolution procedure by way of judicial review.
200. Full compliance with a policy is assumed for impact assessment appraisal purposes, hence why the potential costs to business or the justice system from the enforcement of unpaid penalties is not appraised in the cost and benefit section of this assessment.

Competition

201. Using the competition checklist set out in the Competition and Market Authority's (CMA) "competition assessment checklist" guidance⁵⁸:

- *Will the measure directly or indirectly limit the number or range of suppliers?* This measure will not directly limit the number or range of suppliers. Ofcom's approach will be proportionate and only capture significant TV platforms/devices who control the gateway to content for UK viewers. Small and micro businesses will not be affected. The impacts of the regime are unlikely to be large enough to indirectly lead to suppliers dropping out of the market, or block entrants to the market. During DCMS' engagement with stakeholders, no firms provided evidence that these rules could result in them leaving the market.
- *Will the measure limit the ability of suppliers to compete?* The new regime will be the same for all in-scope TV platforms in competing markets within the UK, and therefore will not provide particular firms with strategic advantages, or limit one side's ability to compete.
- *Will the measure limit the suppliers' incentives to compete vigorously?* The regime is likely to strengthen the PSBs' ability to negotiate platforms for the carriage of their on demand services. As a result, the playing field will be levelled. Guaranteeing prominence will improve PSBs', especially regional PSBs who are not universally provided prominence, ability to compete with other large on-demand services, or any service that would appear on a UI. Conversely, this intervention may limit the ability of non-PSB TV providers to compete. This impact is likely to be small given that prominence is already provided to most PSB services ahead of commercial TV providers, but the extent of the impact is entirely dependent on future Ofcom guidance and how platforms fill the prominent slots on their UI based on this guidance. Finally, PSBs take on costly obligations in return for benefits, the future balance of which is secured by extending prominence to the online space. This measure thereby ensures that PSBs receive an adequate level of benefits in return for the value provided through their obligations, encouraging a competitive TV sector comprising PSB and non-PSB services.
- *Will the measure limit the choices and information available to consumers?* The new regime could result in more of the UI space on regulated TV platforms being taken up by PSB on-demand/livestream programme services. However, each of these services are distinct and still represent a choice for consumers. Also, consumers are likely to have the ability to further adapt their UI, for example on Smart TVs, how they see fit. Therefore, the measure will not limit the choices and information available to consumers.

202. Therefore, as per the CMA's guidance, an in-depth competition assessment would be disproportionate for this measure. Especially whilst the details of Ofcom's guidance and dispute resolution function remain unclear.

⁵⁸ [Competition impact assessment, CMA 2015](#)

4.0 Post Implementation Review/Monitoring and Evaluation Plan

203. The monitoring and evaluation plans for this policy have been developed further, based on the RPC's comments set out in their fit-for-purpose opinion on this Online Prominence Impact Assessment. These developed plans are set out below.

Evaluation: Ofcom

204. Ofcom will play a key role in monitoring and evaluating the PSB reform measures. Ofcom has existing reporting requirements in relation to the PSB system. Under sections 264 and 264A of the 2003 Act, Ofcom must report regularly (at least every 5 years) as to the achievement of the PSB remit in the UK and make such recommendations as it considers appropriate. It also has powers to consider the contribution of individual PSBs, under s.270 (for licensed PSBs) and the BBC Charter and Framework Agreement (for the BBC).

205. Ofcom's most recent review of the PSB system was in 2020/21, so their next review is well-placed to consider impacts of Media Bill measures. This is reflected by the [2020 review](#) and the [Terms of Reference](#) for the previous review. Ofcom's reviews focus on areas which have direct relevance to PSB reform measures, including:

- a) The balance of the costs of provision and the sources of income available to the PSB broadcasters to meet those costs
- b) Viewership of PSB, and trends in media consumption and technology uptake relevant to PSB delivery
- c) The social and economic benefits of PSB content, PSB providers and the PSB system for UK individuals, society and the economy.
- d) Considering how the quality of PSB may be maintained and strengthened in the context of all changes relevant to the PSB system.

206. Ofcom's reviews are cross-cutting and therefore best placed to assess the intersecting and aggregate impacts of the prominence and PSB reform measures. Indeed, Ofcom's most recent PSB review resulted in many of the proposals which are being implemented through this legislation and therefore subsequent reviews will need to assess the impact of these.

207. As the regulator, Ofcom has the statutory powers including information gathering powers to undertake this work. This gives them access to vital but commercially-sensitive information from individual stakeholders that those stakeholders may not wish to share with the Government. In addition, Ofcom reviews incorporate market research and paid-for data sources alongside extensive public consultation, many aspects of which are not possible in the context of resource and budget constraints within DCMS.

208. For these reasons, and as a result of the particular sensitivities around the role of government in the media sector, DCMS has not historically played a strong role in the evaluation of measures delivered through Ofcom.

209. Ofcom and/or DCMS may decide that Ofcom should collect additional data to assess whether the measures have been successful. This will be considered alongside Ofcom's work following the primary legislation to develop the details of implementation. DCMS will work with Ofcom to shape their M&E approach, considering whether an activity additional to the periodic

(every five years or less) review is necessary, or where the 5-year review can be shaped in a way to meet DCMS's M&E aims. For instance, this could include data on the average length of negotiations between PSBs and TV platforms. There is also an opportunity to examine impacts of PSB reforms through Ofcom's compliance reports for individual broadcasters which take place separate to their periodic review of the PSB system.

210. Figure 5 sets out the potential evaluation questions that DCMS will encourage Ofcom's M&E approach to address, following a proposed set of outcomes. The table also provides potential metrics/approaches to measure these evaluation questions.

Figure 5: Monitoring and evaluation areas of interest

Outcome	Evaluation Questions	Potential Metrics/Approaches
<p>Public service content is easy for UK consumers to find and watch, enabling them to benefit to a greater degree from the high-quality original programmes that PSBs provide.</p>	<p>Are designated PSB services, especially regional PSB services, more available and more prominent on regulated TV platforms?</p> <p>Are audiences across the UK finding it easier to find designated PSB services on their TV platforms?</p>	<ul style="list-style-type: none"> • Hours watched of PSB on-demand/livestream services by device • Potential survey data on ease of access • Availability and prominence of designated PSB services across regulated TV platforms • Number of failed negotiations leading to temporary exclusion of PSB content from regulated TV platforms until outcome of Ofcom dispute resolution function
<p>The increased usage of PSBs' services improves the sustainability of commercial public service broadcasters by providing a vital economic financial benefit in the context of an increasingly competitive market. This in turn supports the 'PSB compact' (the balances of obligations and benefits for those holding PSB licences).</p>	<p>What is the benefit of prominence to commercial PSBs?</p> <p>Are UK PSBs financially sustainable and competitive?</p> <p>Are UK PSBs still holding and valuing their PSB licence?</p>	<ul style="list-style-type: none"> • Financial metrics reported by PSBs: revenue, costs, profit, profitability (for the commercial PSBs) e.g. EBIT, EBITDA • Engagement with commercial PSBs to monitor financial impact of prominence • Comparison of these metrics with other industry players • Whether PSBs are still holding their licences or not? External assessments of the value of the PSB compact and how that has changed since extension of the prominence regime.

Outcome	Evaluation Questions	Potential Metrics/Approaches
Ofcom guidance and dispute resolution service makes negotiations more efficient and improves quality of negotiated agreements (e.g. mandating data sharing)	How have negotiations between PSBs and regulated TV Platforms changed in scope and time period?	<ul style="list-style-type: none"> • Average length of negotiations between PSBs and regulated TV Platforms. • Number of failed negotiations, and number of disputes that Ofcom have to resolve annually • The key features of negotiations agreed pre- and post- intervention

Evaluation: DCMS

211. DCMS is not committing to undertake a formal Post Implementation Review (PIR). Ofcom’s periodic PSB review aligns closely with the outcome measures we have identified, and its position as the sector regulator leaves it most appropriately placed to lead a review. The decision not to undertake a formal PIR will protect Ofcom’s regulatory independence.

212. DCMS will, however, monitor the implementation and impact of these changes on an ongoing basis through engagement with stakeholders and reference to relevant data sources. The department meets with a wide range of stakeholders, including the public service broadcasters, commercial broadcasters, platforms and representatives of viewers regularly and will continue to do so throughout the implementation and post-implementation phases.

213. As a result of no or limited access to data, we are dependent on Ofcom for insight into areas including viewership trends, subscription trends, sector revenues and PSB compliance with quotas. Ofcom reports annually on these trends through their Media Nations report, and through a separate publication on PSBs’ compliance with the quotas. DCMS will consider this data as part of our monitoring of the sector and of the specific measures within the Media Bill, although any work will be small-scale compared to Ofcom evaluation through their periodic review.

214. If necessary, DCMS could work with Ofcom to undertake an early review of the measures should it consider these are having adverse impacts, if detected through the above stakeholder engagement and data monitoring arrangements.