

## Video-on-Demand Regulation

<b>Lead department</b>	Department for Digital, Culture, Media & Sport
<b>Summary of proposal</b>	At present, video-on-demand (VoD) is not regulated to the same standard as traditional linear TV. The Department are introducing legislation to introduce regulation for VoD.
<b>Submission type</b>	Impact assessment (IA) – 3 February 2022
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	TBC
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DCMS-5152(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	18 March 2022

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The Department has assessed the impacts of the policy in line with Scenario 2 as outlined in the RPC guidance on IAs for primary legislation <sup>2</sup> . Therefore, the IA does not include an EANDCB for validation at this stage. The IA includes a sufficient qualitative assessment of the expected areas of impact, as well as discussion of the wider impacts of the policy. It does not include a formal monitoring and evaluation (M&E) plan, although points to current work by Ofcom in this area.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision (IN)	Qualifying regulatory provision (IN)
<b>Equivalent annual net direct cost to business (EANDCB)</b>	N/Q	N/Q
<b>Business impact target (BIT) score</b>	N/Q	N/Q
<b>Business net present value</b>	N/Q	

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). The RPC rating is fit for purpose or not fit for purpose.

<sup>2</sup> RPC guidance on primary legislation IAs - <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

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<b>Overall net present value</b>	N/Q
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## RPC summary

<b>Category</b>	<b>Quality<sup>3</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The Department has not provided an EANDCB figure for validation at this stage. The IA clearly states that secondary legislation will follow and that the full impact of the measure will be quantified later. It includes a good discussion of the expected areas of impact and some initial indicative analysis. The IA would be improved by considering the changing scale of the VoD sector and the content it provides, to better support the baseline position.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA sets out how the small and micro businesses (SMBs) will not be captured by the policy and therefore exempt. However, the IA would benefit from clarifying whether SMBs may no longer be exempt as time progresses or if this may lead to the creation of boundary problems.
Rationale and options	<b>Weak</b>	The IA does not provide a strong case for why intervention is necessary. It highlights how measures, such as parental controls etc. are already used by a number of VoD providers, as well as the stakeholder view that unlike linear TV, they have more choice in what to watch. The Department has included a range of options as well as discussion of those not taken forward.
Cost-benefit analysis	<b>Satisfactory</b>	The Department has included a good degree of indicative analysis and stakeholder engagement to support the discussion of impacts. The IA sets out the key uncertainties and assumptions that have been made in relation to the impacts. The Department also clearly identify current evidence gaps, that they will seek to fill to support quantification of impacts at a later stage.
Wider impacts	<b>Satisfactory</b>	The IA includes a range of discussion on the wider impacts of the policy, including on innovation, competition, trade and distributional impacts. It would be strengthened through the inclusion of statistics on the provider sector (to support the competition assessment) and by considering the trade and investment impacts further.
Monitoring and evaluation plan	<b>Weak</b>	The Department has not committed to undertaking a post-implementation review (PIR) for this policy. The IA discusses how current Ofcom will take the lead on the monitoring of this policy, however, does not set out how they will evaluate the effectiveness of this policy.

<sup>3</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

## Summary of proposal

VoD content is not currently regulated or held to the same standards as traditional linear TV broadcasting. With an increasing amount of content being consumed through VoD and other non-linear formats the Department is introducing legislation to bring the legislation that on-demand services are bound by to a similar level as that adhered to by linear TV broadcasters. Specifically, the Department wish to introduce a code for what can be shown, as well as strengthening protection measures.

In the IA, the Department present three options for consideration:

- Option 0 - Do-nothing;
- Option 1 (preferred option) – Level the regulatory playing field between TV-like VoD services and linear broadcasters including bringing TV-like VoD services under a new VoD Code to strengthen content rules, but not mandating specific audience protection measures; and
- Option 2 - Level the regulatory playing field between TV-like VoD services and linear broadcasters including by bringing VoD services under a new VoD Code to strengthen content rules and mandate the use of specific audience protection measures.

The IA outlines the key areas of impact to be the costs to Ofcom, such as the familiarisation costs, the transitional set-up costs of the new regulatory regime and the on-going administering of it once in place. There will be costs to VoD services of familiarising themselves with the legislation, understanding what is now required of them, as well as the costs to ensure compliance (such as ensuring content is up to standard and appropriate protection provisions are in place). The main benefits identified by the Department are the protection from harmful content (such as unsuitable health advice) and benefits to UK based broadcasters from having a level playing field compared to international VoD services.

The Department has not provided an EANDCB figure for validation at primary stage.

## EANDCB

### Direct and indirect impact(s)

The Department has undertaken an assessment of the impacts in line with the RPCs guidance on primary legislation IAs (specifically that for Scenario 2). The IA includes a sufficient discussion of the array of impacts that are likely to occur as a result of the policy and the RPC welcomes the Department's attempt at providing indicative analysis to illustrate the potential scale of the impacts.

### Counterfactual/baseline

The IA presents the number of hours of content that various VoD providers have in their library. This represents a point in time estimate and the IA would be improved by considering stock and flow of new content onto these platforms. For instance, the IA would benefit from considering if these libraries simply accrue more content over time, or is there also a natural rate of removal which may remove some currently

non-compliant material from their services. The Department should seek evidence on this ahead of further assessment.

## **SaMBA**

The IA states that the policy will be designed in such a way to ensure that only the largest platforms/providers are in-scope. The Department, in their design of the policy, have sought to ensure that the measures are proportionate and do not negatively impact smaller businesses. Therefore, SMBs are exempt from this policy, however, the IA would benefit from clarifying whether SMBs may no longer be exempt as time progresses. In addition, it should consider whether boundary conditions could create perverse incentives, that restrict operators from growing if doing so would trigger further regulatory costs.

## **Rationale and options**

### **Rationale**

The IA does not provide a strong rationale for intervening. It highlights how current regulatory requirements (such as protections for under-18s) are already in place in, coupled with industry led initiatives like parental pin-controls. This evidence suggests that the sector is able to deliver the protection from harmful content themselves and will do so if customers value control of what they see over the content. Furthermore, it points to consumer feedback that states, as they have more control over what they watch when using on-demand services, this may lessen the need for such controls. The Department needs to provide a clear argument for why this intervention is necessary given the current market response and to further.

### **Options**

The IA includes two regulatory options in addition to the do-nothing baseline position. It does discuss why alternative options have not been included, but this would benefit from providing more discussion as to why such an approach would not be appropriate. The Option 2 that is included, only differs from the preferred option as a result of mandating specific audience protection measures and the IA should have provided a stronger justification for its inclusion.

## **Cost-benefit analysis**

### **Evidence and data**

The IA makes use of evidence gathered through prior consultation with industry and Ofcom to inform the discussion of impacts and the indicative analysis that has been included to support it. The Department identify clear evidence gaps and make a commitment to strengthen this evidence base ahead of secondary legislation. Many of the expected impacts at secondary legislation stage appear to be led by Ofcom. The RPC would expect to see IAs in relation to their role going forward.

## **Analysis**

The Department has included indicative analysis at this stage, which is clearly presented and supported by evidence where available. The RPC welcomes the inclusion of these calculations at this stage to support the qualitative description of the expected impacts. The IA makes repeated reference to the reliance on the scope of the guidance to be produced by Ofcom.

## **Assumptions and risks**

The Department clearly present the key underlying assumptions and risks associated with the policy intervention. As with the evidence base, the Department will seek to test the key assumptions ahead of the appropriate secondary legislation.

## **Wider impacts**

### **Competition**

The IA addresses the Competition and Markets Authority's (CMA's) competition checklist. This section of the IA would be improved by linking back to the earlier discussion of the market structure (e.g., services used by household and hours of content etc.) and whether there are any expected impacts in market shares and other similar metrics.

### **International trade and investment**

The Department has included a brief assessment of the potential trade and investment impacts, stating that there are not expected to be any. The IA would be strengthened by considering whether such impacts may occur if those providing content to UK consumers but not based in the country, had to decide whether to operate in the UK over another country due to differing regulatory requirements.

### **Distributional**

The IA includes the high-level findings of a separate equalities impact assessment, citing that they expect no disproportionate negative impacts on any protected group. As the IA identifies, some of the services that will be captured are subscription and therefore those in lower income groups are less likely to be able to access these. The IA would benefit from considering what impact a potential cost pass through (as noted earlier in the IA) would have on these consumers and their ability to access these services.

## **Monitoring and evaluation plan**

### **PIR plan**

The Department does not commit to undertaking a PIR for this policy. The RPC welcomes the Department's commitment to consider the effect of the policy on an on-going basis, including whether there is a need to undertake a PIR.

### **Evidence and data collection**

The IA states that current Ofcom M&E practices will assume responsibility for assessing the impact of this measure. It should set out what Ofcom will specifically measure or review, and how this will be evaluated to determine if there has been a positive impact of this policy.

### **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).