

A principles-based framework for a new prominence regime for PSB on-demand services

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| Lead department | Department for Digital, Culture, Media & Sport |
| Summary of proposal | The Department are introducing a framework, which will seek to ensure that public service broadcasters (PSBs) are afforded similar prominence and availability on in-scope on-demand services, as they currently receive on linear TV services. |
| Submission type | Impact assessment (IA) – 3 February 2022 |
| Legislation type | Primary legislation |
| Implementation date | TBC |
| Policy stage | Final |
| RPC reference | RPC-DCMS-5151(1) |
| Opinion type | Formal |
| Date of issue | 28 March 2022 |

RPC opinion

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| Rating¹ | RPC opinion |
| Fit for purpose | 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 ² . Therefore, the IA does not include an EANDCB for validation at this stage. The IA includes a sufficient assessment of the likely areas of impact, as well as the wider impacts of the policy. It does not include a formal monitoring and evaluation (M&E) plan. |

Business impact target assessment

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

¹ 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.

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

RPC summary

| Category | Quality ³ | RPC comments |
|---|----------------------|--|
| EANDCB | Green | 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 benefit from ensuring that the assessment of the impacts is consistent with the baseline/counterfactual position, to ensure that there is no double-counting of impacts when quantifying the impact of related secondary legislation. |
| Small and micro business assessment (SaMBA) | Green | The Department clarify that no small and micro businesses (SMBs) are expected to be in scope of the policy, given the intention to capture only those providers above a certain threshold (which is to be set at a later date). Therefore, SMBs are naturally exempt from the policy through its design. |
| Rationale and options | Satisfactory | The IA presents a clear rationale for intervention. The Department includes discussion of the option development process and includes justification for why some options have not been included. The IA could be improved through discussing in more detail how this policy will support smaller PSBs. |
| Cost-benefit analysis | Satisfactory | The Department has included a good degree of indicative analysis 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 identifies current evidence gaps, that they will seek to fill to support quantification of impacts at a later stage. |
| Wider impacts | Satisfactory | 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 discussing in more detail the regional impacts (e.g. the impact in the devolved administrations). |
| Monitoring and evaluation plan | Weak | The Department has not committed to undertaking a post-implementation review (PIR) for this policy at this time. The IA discusses how existing Ofcom M&E practices will be used to assess this intervention. It also states that the Department will |

³ 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](#).

consider the effects of the measures on an on-going basis.

Summary of proposal

Public service broadcasters (PSBs) benefit from being assured prominence and availability on linear TV services. At present, this benefit does not extend to platforms where consumers are able to access on-demand services (such as through smart TVs). The Department are seeking to ensure that the benefits that PSBs receive due to their status is maintained, as well as reflecting the changing nature of how the public consume the content produced by broadcasters.

In the IA, the Department presents two options for consideration:

- Option 0 - Do-nothing.
- Option 1 (preferred option) – introduce a principle-based framework enforced by Ofcom which requires a legislative intervention.

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 framework and then the on-going enforcement of the framework once in place. There will be costs to PSBs of familiarising themselves with the legislation. TV platforms, who will be the focus of the legislative requirements, will also need to familiarise themselves with the changes and will face costs to ensure that PSBs are both available and discoverable within their on-demand services. These TV platforms would also face the opportunity costs from this provision of prominence for PSBs. The benefits that are discussed are those to PSBs from retained viewership and the resulting benefits to society.

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

The IA discusses the possibility of TV platforms passing on the costs of this policy through to PSBs, however it does not consider whether these costs may also be passed on to consumers. TV platforms may opt to pass-on costs through the initial sale of their products instead of to the PSBs. The Department should seek to gather evidence of the likelihood of this ahead of any secondary legislation.

Counterfactual/baseline

The Department has included an in-depth discussion of the baseline/counterfactual position as part of its do-nothing option. The IA appears to present, in qualitative terms, that the do-nothing scenario presents a cost to business PSBs from loss of prominence, meanwhile in the preferred option the retention of prominence is treated as a benefit (again discussed qualitatively). At present, this would represent a double counting of the impacts. For assessment of the impacts of related secondary

legislation, the Department should ensure that the counterfactual/baseline position is presented in accordance with RPC guidance⁴.

SaMBA

The IA clearly 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 its design of the policy, has sought to ensure that the measures are proportionate and do not have a negative impact on smaller businesses. Therefore, SMBs are exempt from this policy.

Rationale and options

Rationale

The Department provides a clear argument for why intervention is necessary in this policy area and include current examples of where prominence and availability of PSBs on in-scope platforms has not been achieved.

The IA could be strengthened by discussing the impacts on smaller PSBs (such as S4C and STV) in more detail, while also focusing on the role that they play in their respective local geographies, as well as nationally as appropriate. In addition, clarifying how these broadcasters are more likely to suffer than the larger, more established ones would strengthen the rationale. Furthermore, the IA briefly references international comparisons, but the IA would be improved by discussing these in greater detail.

Options

While the IA only formally includes a do-nothing option in addition to the preferred regulatory option, it does discuss why alternative options have not been included. For example, it discusses options which appear to go further than the preferred option but explains, due to being too prescriptive and therefore restricting industry, that the Department has not taken these forward. The Department also clearly highlight the role that Ofcom (the regulator of the policy) has had in developing the options and what role the regulator is expected to undertake going forward.

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 that and make a commitment to strengthen this evidence base ahead of secondary legislation.

⁴ RPC case history guidance on counterfactuals - <https://www.gov.uk/government/publications/rpc-case-histories-counterfactuals-september-2020--2>

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 and the RPC will expect to see IAs on the impacts from Ofcom's role at the appropriate stage

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

Innovation

The Department has included a section on the innovation test where it has discussed the impact on innovation with respect to the TV platforms. The IA would be improved through discussion of whether the introduction of this framework will reduce the incentive for PSBs to be innovative in producing and/or promoting high-quality programming to drive consumer demand for their services.

Competition

The IA addresses the Competition and Markets Authority's (CMA's) competition checklist. This section of the IA would be improved through the inclusion of any available evidence on the composition or size of the relevant in-scope markets.

Distributional

The IA includes the high-level findings of a separate equalities impact assessment, citing that they expect no negative impact to disproportionately any protected characteristic group. Although it is noted that the benefits of the policy, with respect to those that are associated with the provision of PSB content, would impact some groups (such as those in low-income households).

As the policy makes clear reference to smaller PSBs, such as S4C and STV, the IA would be strengthened through discussion of the impacts on a regional basis and within the DAs.

Monitoring and evaluation plan

PIR plan

The Department does not commit to undertaking a PIR for this policy. The IA needs to consider, given the range of measures that will be covered in the media bill more widely relating to PSBs, whether a PIR for this policy by itself (or in collaboration with

these other measures) should be undertaken to assess the impact made in supporting PSBs. The RPC welcomes the Department's commitment to consider the effect of the policy on an on-going basis.

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. The RPC welcomes the Department's commitment to consider the effect of the policy on an ongoing basis.

Other comments

While the IA provides a statement on why it has not been considered in detail, ahead of secondary stage the Department should seek to understand the impact of changing media consumption trends amongst the public and how this affects both the policy and the scale of the quantifiable impacts.

Regulatory Policy Committee

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