

<b>Title:</b> Modernising the UK's system of public service broadcasting <b>IA No:</b> <b>RPC Reference No:</b> RPC-DCMS-5153(1) <b>Lead department or agency:</b> Department for Culture, Media & Sport <b>Other departments or agencies:</b> N/A	<b>Date:</b> November 2023
	<b>Stage:</b> Final
	<b>Source of Intervention:</b> Domestic
	<b>Type of Measure:</b> Primary legislation
	<b>Contact for enquiries:</b> enquiries@dcms.gov.uk
	<b>RPC Opinion:</b> 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	

**What is the problem under consideration? Why is government action or intervention necessary?**

The UK's system of public service broadcasting (PSB) provides a raft of both private and social benefits (as well as associated externalities), including ensuring the availability of a wide range of high quality, original programmes that reflect the UK back to itself; keeping audiences informed about the world around them; and driving investment in the UK's creative economy. In this sense public service broadcasting is a clear merit good with positive externalities. PSB is also widely considered to be a public good, which serves an important purpose in the UK's broadcasting ecology, as it is non-rivalrous, and non-excludable in the way it is currently formulated. In November 2020 the Government announced that it was undertaking a strategic review of public service broadcasting, and had appointed a PSB Advisory Panel to assist it. The consensus from the work of the Panel, as well as the DCMS Select Committee<sup>1</sup> and Ofcom's *Small Screen: Big Debate* review<sup>2</sup>, was that the PSB system was in need of modernisation to reflect changes in technology, consumer behaviour/viewing trends and increased competition from video-on-demand services. Current legislation, including the Communications Act 2003 which underpins much of the present PSB system, is focused on broadcast television and consequently does not reflect the fundamental changes taking place in the industry and the multiplicity of ways people now consume TV programmes and content.

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

At a high level, the Government's intended approach to PSB reform (which also encompasses separate but related measures on prominence and video-on-demand regulation, appraised in separate impact assessments) is to:

- 1) Look again at the public service obligations associated with being a public service broadcaster (PSB), to make sure that they target the areas where intervention is still required, and do not unnecessarily constrain PSBs' ability to attract audiences and compete effectively;

<sup>1</sup> [The Future of Public Service Broadcasting](#), DCMS Select Committee

<sup>2</sup> [Small Screen: Big Debate](#), Ofcom

- 2) Update the benefits that accrue to PSBs in exchange for taking on public service obligations (in particular the prominence which they are afforded, as covered in separate impact assessment) in order to maintain the value of these benefits;
- 3) Ensure that new providers are appropriately regulated, i.e. that there is a level playing field between traditional broadcasters and the new entrants they are now competing against (again, covered in a separate impact assessment).

The specific objectives of each of the PSB remit and quota interventions are set out in detail later in the assessment.

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

A number of changes have been considered following DCMS' strategic review of public service broadcasting and in light of the recommendations made by Ofcom and others. The long list of proposed options is set out in detail later in the document, and included options for strengthening the PSB 'Out of England' quotas, and introducing a power for the DCMS Secretary of State or Ofcom to designate new PSB providers, as well as discrete changes to PSB accountability and enforcement. For most of these changes considered in the long list there are a number of potential implementation options that have also been considered. The short list of options below have been taken forward for appraisal.

**Option 0: Do-nothing:** Do not make the necessary updates and reform stemming from DCMS' strategic review of public service broadcasting and the recommendations made by ofcom on the future of public service media.

**Option 1:** Make the short list of changes to modernise the UK's system of public service broadcasting, set out below.

1. An updated, singular remit for PSB
2. Updating the present quotas system
  - a. Allowing the delivery of certain quotas via a wider range of services
  - b. An explicit focus on distinctively British content
  - c. Updating the Terms of Trade framework to reflect changes in technology and the way viewers are watching content from our PSBs
  - d. Introducing a power to set additional quotas for underserved content areas
3. Updating the listed events regime to make qualification for the regime a PSB-specific benefit.
4. Addressing outdated references to the public teletext provider

**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?	<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> 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: 24/10/2023

**Summary: Analysis & Evidence**

**Policy Option 1 (Preferred)**

**Description:** Make the short list of changes to modernise the UK's system of public service broadcasting

#### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	N/A		N/A		N/A
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
Ofcom will have to familiarise themselves with the legislation, and will have to incur the transitional, set up costs associated with the proposed changes estimated to be £1.9-2.5m, with annual ongoing costs being £0.25-0.35m. PSBs will have to incur the costs of familiarising themselves with the changes to PSB remit and quotas, which is estimated to be a cost of approximately £0.08m for the PSBs combined.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
PSBs have indicated that the changes to the PSB remit are unlikely to have an impact on their organisation. However, PSBs are likely to incur some transitional and ongoing costs associated with the update to the present quota regime, although they did not provide specific quantitative estimates. Transitional costs could involve updates to technical systems and changes to reporting mechanisms. The change to allow quotas to be met via a wider range of services could result in the unintended consequence of a rise in low quality, cheap programming appearing on PSB on-demand services. This risk can be mitigated via careful implementation of the change and relevant Ofcom monitoring.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	N/A		N/A		N/A
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
PSBs have indicated that the changes to the PSB remit are unlikely to have an impact on their organisation, but the Government believes that a shared understanding of the PSB remit, aided by a concise and unequivocal definition set out in legislation, would improve accountability between PSBs and Ofcom as it would be far clearer what was expected of broadcasters and their output. The changes to PSB quotas will bring a number of benefits, including providing PSBs with greater flexibility, leading to a more efficient allocation of resources enabling PSBs to direct spend where it is most valuable to meet UK audience needs. The reference to British content will ensure that this continues long into the future and that viewers continue to have access to world class content that is distinctively British. Updating the					

listed events regime to make qualification dependent on being a PSB service will help ensure that audiences can continue to access these events for free.

<b>Key assumptions/sensitivities/risks (%)</b>	<b>Discount rate</b>	N/A
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For a number of the proposed changes, there are multiple potential implementation options which would result in higher costs to PSBs, and potentially other unintended consequences. Direct engagement with PSBs and other industry stakeholders has enabled the most appropriate implementation options to be chosen in order to best meet the policy objectives, whilst keeping burdens on PSBs to a minimum. However, some interventions require careful implementation by Ofcom to ensure that costs are kept low, and to ensure that unintended consequences are not realised.

**BUSINESS ASSESSMENT (Option 1)**

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

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# **1.0 Policy Rationale**

## **Policy background**

### Introduction to public service broadcasting

1. The concept of public service broadcasting (“PSB”) in the UK dates back to the foundation of the modern BBC in 1927 – and in particular the Reithian conception of television to “inform, educate and entertain”. Initially, it was judged that constraints on the use of electromagnetic spectrum would permit the broadcasting of only a small number of (analogue) TV channels. There was therefore a role for the Government in prioritising use of these channels to ensure the available channels served the country as a whole, rather than particular demographics.
2. The emergence of cable and satellite television in the UK in the 1980s and 1990s as mainstream competitors to analogue forced a change in thinking about the role of PSB. The consensus that emerged was that the additional choice (and hence competition) provided by cable and satellite would be good for viewers. But it also necessitated the drawing of a distinction between public service broadcasters (PSBs) on the one hand and commercial (or ‘multichannel’) broadcasters on the other. All broadcasters would be subject to a baseline set of requirements, for example in relation to content standards, but only the PSBs would be subject to public service obligations. To ensure that PSBs were not unduly disadvantaged as a result, PSB status would also grant certain benefits. This exchange is known as the ‘PSB compact’ and is predominantly set out in the Communications Act 2003<sup>3</sup>, as amended by the Digital Economy Acts 2010<sup>4</sup> and 2017<sup>5</sup> in particular.
3. The 2003 Act describes the “purposes of public service television broadcasting” as:<sup>6</sup>
  - a. the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
  - b. the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
  - c. the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
  - d. the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to—
    - i. the contents of the programmes;
    - ii. the quality of the programme making; and
    - iii. the professional skill and editorial integrity applied in the making of the programmes.

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<sup>3</sup> [Communications Act 2003](#)

<sup>4</sup> [Digital Economy Act 2010](#)

<sup>5</sup> [Digital Economy Act 2017](#)

<sup>6</sup> Section 264(4)

4. The Act goes on to list a number of “objectives”, for example that PSB “services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs” and that they “include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area”.<sup>7</sup> In addition, it is widely understood that to qualify as public service broadcasting, a service must be universal (at least within a certain geographic area) and offered without charge.
5. These purposes and objectives (together known as the “PSB remit”) are to be delivered by the “public service broadcasters”, namely:<sup>8</sup>
  - a. the BBC;
  - b. the Welsh Authority (S4C);
  - c. the providers of the licensed public service channels (currently ITV, STV, the Channel Four Television Corporation (C4C) and Channel 5) and
  - d. the public teletext provider.
6. For the purpose of the remit, the only relevant activities of the PSBs are the provision of “relevant television services”:<sup>9</sup>
  - a. the television broadcasting services provided by the BBC;
  - b. the television programme services that are public services of the Welsh Authority (S4C);
  - c. every Channel 3 service (currently, ITV1 and STV);
  - d. Channel 4;
  - e. Channel 5;
  - f. the public teletext service.
7. The BBC, S4C and C4C are publicly owned, while ITV, STV and Channel 5 are privately owned. Other (non-public-service) broadcasters may choose to produce public service content, but they are not obliged to in the same way as the PSBs.

#### ‘Channel’ remits

8. In addition to the overall “public service remit”, individual PSB services have their own statutory remits (referred to in this document as “channel remits”) which shape that service’s particular contribution to the overall remit. For channels 3 and 5, this ‘channel’ remit is the “provision of a range of high quality and diverse programming”. Channel 4 currently has an extended channel remit that includes, for example, “demonstrating innovation, experiment and creativity in the form and content of programmes”. The PSBs are accountable to the communications regulator Ofcom both for delivery of their specific channel remits, and their contribution to the overall public service remit.<sup>10</sup>

#### Quotas

9. A ‘quota’ is a quantitative obligation placed on a channel, generally to make and/or broadcast (at least) a certain amount of a certain type of content. For example, a channel might be

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<sup>7</sup> Section 264(6) of the 2003 Act

<sup>8</sup> Section 264(12) of the 2003 Act

<sup>9</sup> Section 264(11) of the 2003 Act

<sup>10</sup> Sections 265 and 270 of the 2003 Act

required to broadcast 200 hours of news programmes per year. Most broadcast TV quotas apply to PSBs but there are also a small number of quotas that apply to non-PSB TV channels. For example 25% of qualifying hours of output on a given PSB channel must be commissioned from independent producers, whereas for other digital TV channels the level is 10%.

10. Some quotas are set on an 'hours' basis (i.e. based on the *duration* of broadcast) and others on an 'expenditure' basis; and some are proportional while others are absolute. A single programme can count towards multiple quotas. In each case, these quotas intentionally operate as 'floors' rather than 'ceilings', and, in practice, there are numerous examples of a PSB exceeding one or more of its quotas.
11. Not all quotas are applied to all public service broadcasters; and the same quota may apply to multiple broadcasters but be set at a different level for each. Generally, in this case, power to set the level of the quota is delegated to Ofcom. The main quotas currently in force are as follows:
  - a. requirements for the broadcast of independent productions;
  - b. requirements for the broadcast of original productions (programmes commissioned directly by the PSB, rather than acquired from another broadcaster or intermediary);
  - c. requirements to provide high quality news and current affairs programming throughout the day; and
  - d. requirements for a proportion of programmes to be made outside London, and for a proportion of expenditure to be on making programmes outside London.

### The 'Terms of Trade' regime

12. In order to support the UK's creative industries, and in addition to the quotas on the use of independent production referenced above, PSBs must maintain Codes of Practice setting out their approach to commissioning from independent producers. These must be consistent with Ofcom guidance. In practice, the main public service broadcasters have each generally agreed a set of standard terms with PACT, the largest trade association for the production sector, before submitting revised Codes to Ofcom incorporating the individual agreements reached.<sup>11</sup> This system is known as the UK's 'Terms of Trade' regime and is intended to protect independent producers in their commercial negotiations with the PSBs. PSB commissions still account for more than 40% of independent producers' revenues.<sup>12</sup> In particular, this arrangement ensures that, in most instances, independent producers retain the Intellectual Property (IP) rights for their programmes for exploitation in the secondary market.
13. Reflecting the scope of current legislation, Ofcom's guidance states that the Codes only apply to the commissioning of content which is "intended for use on licensed public service channels" and do not include programmes "commissioned specifically for use on other services" such as on-demand services.<sup>13</sup>

### PSB benefits

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<sup>11</sup> [Annex 2: Producing public service media content](#)

<sup>12</sup> O&O/PACT. PACT Census 2022.

<sup>13</sup> [Annex 2: Producing public service media content](#)



14. As discussed above, PSBs receive certain benefits and benefits-in-kind in return for delivering on their respective obligations. These include:
- a. **Public funding** for the BBC and S4C through the licence fee;
  - b. **'Must carry' obligations on platforms.** Ofcom have powers to set general conditions to secure the broadcast or transmission of the PSB channels on a given electronic communications network which is used by a significant number of end-users as their principal means of watching television programmes.<sup>14</sup>
  - c. **Guaranteed prominence.** There is a duty on Ofcom to create a code of practice requiring PSB services to be afforded prominence on electronic programme guides (EPGs).<sup>15</sup> Ofcom uses this flexibility to require EPGs to always have the first five places on the linear EPG. In England, this means BBC 1 and 2, ITV, Channel 4 and Channel 5. In Wales, S4C appears in the fourth position on the EPG; and in the 'Central Scotland' and 'North of Scotland' regions STV appears in the third position.
  - d. **Access to spectrum.** PSBs are guaranteed access to spectrum, with reserved capacity on digital terrestrial television (DTT) multiplexes, available on commercial terms. This facilitates reach of the PSB channels to 98% of the population via Freeview.
  - e. **Ability to cross-subsidise.** It is an implicit but long standing feature of the UK's PSB system that (in general) PSBs are able to cross-subsidise their public service obligations – that is, that as long as they have met those public service obligations, they are free to operate as a commercial broadcaster would, i.e. attracting new viewers, offering additional services, etc. This ensures that they can remain financially sustainable over an extended period of time.

### Accountability

15. Ofcom are required to report periodically (at least every 5 years) on how the PSBs have, when taken together, fulfilled the public service remit. In carrying out their review, Ofcom must also consider the costs of provision and the sources of income available to the PSBs to meet those costs—as well as how the quality of PSB may be maintained and strengthened. Outside of this, Ofcom also undertakes an annual PSB compliance report which measures the performance of each PSB against the quotas included in their respective licences.
16. PSBs are also required to do their own reporting. The providers of channels 3, 4 and 5 must prepare annual statements of programme policy in accordance with guidance issued by Ofcom.<sup>16</sup> The BBC and S4C are also subject to their own reporting requirements.

### Listed events

17. The listed events regime is designed to help ensure that events of national importance are available to be shown on free-to-air television so that they can be enjoyed by as wide an audience as possible. This includes sporting events of national interest, like the FIFA World Cup and the Wimbledon Tennis Finals.
18. The listed events regime works by prohibiting the exclusive broadcast of an event on the list without prior consent from Ofcom. Legislation ensures the availability of broadcast rights for

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<sup>14</sup> Section 64 of the 2003 Act

<sup>15</sup> Section 310 of the 2003 Act

<sup>16</sup> Sections 266 and 267 of the 2003 Act

coverage of listed events to free-to-air broadcasters who meet certain criteria. Under the Broadcasting Act 1996, broadcast services which are received by 95% of the UK population and which are free-to-air are categorised as 'qualifying services' (currently only services provided by PSBs are deemed to meet this criteria). All other broadcasters are categorised as 'non-qualifying services'. Non-qualifying services are not permitted to show exclusive live coverage of a listed event unless the rights have also been made available to qualifying services on fair and reasonable terms and Ofcom's consent has been obtained (and vice versa).

19. The current list of events is divided into two categories - Group A and Group B. Where rights holders make an event available and where it is listed in Group A, full live coverage must be offered for purchase to free-to-air 'qualifying' channels. Group B events may have live coverage on subscription TV provided that secondary coverage or highlights are offered for purchase to free-to-air 'qualifying' channels. However, no rights holder can be compelled to sell its rights, and no broadcaster can be compelled to acquire rights.
20. Although not formally a PSB benefit, the listed events regime has helped to contribute to the sustainability of public service broadcasting. In recognition of the key role that our public service broadcasters play in distributing content which is both distinctively British and of interest to British audiences – and recognising that all current services that qualify for the listed events regime are operated by the PSBs – we intend to make qualification for the listed events regime a PSB-specific benefit. This will also provide more long term certainty to the regime, as the current qualifying criteria does not account for changing viewing habits and distribution methods.

#### The public teletext service

21. Ofcom is required to make its best endeavours to issue a licence to a 'public teletext provider' for the provision of a public teletext service. However, it is no longer commercially viable to provide this service. By 2009 the public teletext service was making significant losses and the licence holder withdrew the service, causing Ofcom to revoke their licence in 2010.
22. A subsequent report by Ofcom (December 2010) found that the benefits of providing a public teletext service were "limited and diminishing, and outweighed by the disadvantages of reserving" DTT capacity for the service, which was "unlikely to be commercially sustainable" in the future.<sup>17</sup> All subsequent attempts by Ofcom to find an alternative provider have been unsuccessful and we are not aware of any desire from business to operate the public teletext service in over a decade.

#### **Problem under consideration and rationale for intervention**

23. The UK's system of public service broadcasting provides a raft of both private and social benefits (as well as associated externalities), including ensuring the availability of a wide range of high-quality, original programmes that reflect the UK back to itself; keeping audiences informed about the world around them; and driving investment in the UK's creative economy. In this sense public service broadcasting is a clear merit good with positive externalities. PSB is also widely considered to be a public good, which serves an important purpose in the UK's broadcasting ecology, as it is non-rivalrous, and non-excludable in the way it is currently

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<sup>17</sup> Report to the Secretary of State on the public teletext service, Ofcom

formulated. PSB can be widely accessed and provides the important public benefits set out above. Research has found that the UK public regard the PSBs as uniquely positioned to bring UK audiences together for national ‘shared moments’. The COVID-19 pandemic and the war in Ukraine have served to demonstrate the important role of public service broadcasting as an important source of news and in countering misinformation, remaining the go-to destination for news content, even among younger demographics.<sup>18</sup> In addition, sporting events included in the listed events regime which are broadcast by the PSBs attract large and diverse audiences. Over 40 million people watched Euro 2020 and 36 million people watched the Tokyo Olympics on the BBC.

24. The last half a decade has been transformative in terms of the range of services available to UK viewers, characterised by a profound shift in viewing from linear to on-demand, and the entrance of new global players into the UK market. As part of their most recent periodic review into PSB, Ofcom concluded that “the growth of well-funded on-demand services and the rapid take-up of connected devices have increased our choice in what we watch, as well as how and when we watch it”. Indeed, their data shows that viewers and listeners of all ages have rapidly adopted these newer media, with the average viewer now spending over an hour a day watching services like Netflix and YouTube.<sup>19</sup> This change is not concentrated in one particular demographic: 74% of UK households now use a broadcaster video-on-demand service such as BBC iPlayer or All 4, and 75% of UK households use a subscription video-on-demand service, like Netflix or Amazon Prime Video.<sup>20</sup>
25. In November 2020 the Government announced that it was undertaking a strategic review of public service broadcasting, and had appointed a PSB Advisory Panel to assist it. The Panel consisted of 10 (later 9) experts drawn from the television, production and technology sectors. This followed the earlier report of the Lord Communications Committee, *Public Service Broadcasting: As Vital As Ever* (November 2019). The Advisory Panel met six times over the course of a year, considering ‘what’, ‘how’ and ‘why’ of public service broadcasting, as set out in its Terms of Reference.<sup>21</sup> During the lifetime of the Panel, the Government received reports from both the DCMS Select Committee (March 2021)<sup>22</sup> and Ofcom (July 2021)<sup>23</sup> about the future of PSB.
26. The consensus, across these reports and the work of the Panel, was that the PSB system was in need of a refresh to reflect changes in both technology and consumer behaviour. These include:
- **Changing technology:** Just as the advent of cable and satellite services revolutionised PSB in the 1980s and 1990s, so the delivery of internet-delivered services is revolutionising PSB now, creating new delivery methods with their own gatekeepers and business models, including mobile apps, smart TV platforms and online ‘players’.
  - **Changing consumer habits:** Today’s viewers now have a huge amount of choice in terms of what they watch and how they watch it – and they are taking advantage of it. In particular, they have continued to move away from linear (“live”) viewing to on-demand

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<sup>18</sup> [Why public service broadcasting still matters](#)

<sup>19</sup> [Small Screen: Big Debate – a five-year review of Public Service Broadcasting \(2014-18\)](#)

<sup>20</sup> [Ofcom: Media Nations 2021](#)

<sup>21</sup> [Public Service Broadcasting Advisory Panel – Terms of Reference](#)

<sup>22</sup> [The Future of Public Service Broadcasting](#)

<sup>23</sup> [Recommendations to Government on the future of public service media](#)

viewing. But they are also shifting to different platforms (e.g. YouTube/social media), types of content (e.g. video games) and viewing modalities (e.g. on the go). Linear TV remains the most popular means of viewing TV content, but 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 services. As viewing shifts towards online services, it is critical that the regulation underpinning PSBs is kept up to date, to ensure their sustainability so that they can continue to offer great public service content to UK audiences. Only the Government is placed to update regulation.

- **Increased competition:** Changes in technology and consumer habits have set the stage for new global players to emerge (particularly, but not exclusively, subscription video-on-demand services). These new players have proven effective at competing with PSBs (and commercial broadcasters) both for viewers and for content. Broadcast TV audiences have declined, particularly amongst younger viewers, and PSBs are increasingly challenged by global competitors who 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.<sup>24</sup> These large global companies that are now competing with PSBs have much greater financial resources, allowing them to invest heavily in their platforms and new content, in contrast to PSBs' largely unchanged investment in content over the past five years.<sup>25</sup>

27. Based on their *Small Screen, Big Debate* work, Ofcom concluded that “the regulatory system... needs to be updated for the digital age”. As demonstrated by the above, the 2003 Act, which underpins much of the current system, is focused on broadcast television and consequently does not reflect the fundamental changes taking place in the industry and the multiplicity of ways people now consume TV programmes and content. This assertion has been supported strongly by the PSBs themselves. For example, in their response to Ofcom's latest PSB consultation, ITV said that “legislation... needs a radical update for the global online era if the system is to continue to deliver for the people of the UK in the ways Ofcom's research suggests that they want it to.”<sup>26</sup>

## Description of options considered

28. A number of changes have been considered following DCMS' strategic review of public service broadcasting and in light of the recommendations made by Ofcom. Below includes details of the long list of changes that have been considered throughout policy development. The chosen short list of options is presented following this.

### 1. *An updated, singular remit for PSB:*

29. As set out above, the Communications Act 2003 sets out a relatively complex system of remits, comprising the PSB purposes and PSB objectives (together ‘the public service remit’), and individual channel remits. DCMS intends to simplify these (to improve accountability) and update them to reflect HMG's present priorities. Specifically, DCMS considers the current list of purposes and objectives to be unnecessarily comprehensive in a way that reduces

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<sup>24</sup> [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.

<sup>25</sup> [Small Screen Big Debate: Recommendations to Government on the Future of Public Service Media](#)

<sup>26</sup> ITV response to SSBD consultation

accountability and distracts from the core purpose of PSB. DCMS intends to set out a statement of a single PSB remit: ensuring the continued provision of a wide range of public service content on a free-to-air and universal basis.

30. In this context, 'public service content' would comprise:

- culturally relevant content that reflects the United Kingdom of today and the values that define it. Audiences in Ofcom research said programmes resonated more with them if they portrayed characters whose lives they could recognise. Many also “expressed pride in seeing their own areas represented on screen”; and several “commented on the role public service media played in connecting people from different backgrounds, as well as building a sense of national identity and belonging”.<sup>27</sup> In this way, PSBs have “a pivotal role to play in representing the diverse lifestyles and communities that make up modern society”.<sup>28</sup> This includes relevant content specifically aimed at children and young people, and programmes broadcast in regional and minority languages, reflecting their important role to play in the UK’s broadcasting ecology, providing not only an opportunity for speakers to access content in a language familiar to them, but a means of cultural expression for communities across the UK;
- economically important content produced by independent production companies and across the UK. The production sector in the UK is thriving – it is diverse, competitive and internationally successful – the result, at least in part, of the support provided by PSBs. PSB support for the production and related sectors is both direct – in the form of financial payments – and, as Chivers and Allen (2022) note, indirect – through infrastructure, skills and technological innovation. Ofcom proposed, and we agree, that supporting the creative economy should be recognised as one of the key objectives of the PSB system. Ofcom stakeholders “generally agreed with this view and considered there should be a particular focus on driving economic benefits for businesses across the UK nations and regions”; and
- democratically impactful content such as news and current affairs. Ofcom research consistently shows that high-quality trustworthy and accurate news is one of the most important aspects of public service broadcasting on both a personal and societal level.<sup>29</sup> This kind of content has “distinct civic value”.<sup>30</sup>

*This is being taken forward to the short list of options for appraisal.*

## 2. *Updating the present quota system:*

### a. *Allowing the delivery of certain quotas via a wider range of services*

31. The current range of PSB quotas are focused on broadcast television and consequently do not reflect the fundamental changes taking place in the industry and the multiplicity of ways people now consume TV programmes and content. DCMS therefore intends to allow PSBs to meet their quotas by delivering content via their (free, Ofcom-regulated and prominent) video-on-demand services in addition to their PSB linear channels. In introducing this flexibility, DCMS’ expectation is that PSBs will continue to make the overwhelming majority of their ‘quota’ content available on their PSB channel in the short term. However, making this change will allow PSBs to explore alternative delivery models as consumption patterns change over time. They will remain accountable to Ofcom in terms of how they do so.

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<sup>27</sup> [Small Screen Big Debate: Recommendations to Government on the Future of Public Service Media](#)

<sup>28</sup> [Chivers and Allen \(2022\)](#)

<sup>29</sup> [Small Screen Big Debate: Recommendations to Government on the Future of Public Service Media](#)

<sup>30</sup> [Chivers and Allen \(2022\)](#)

32. This change will form part of a broader initiative to allow PSBs to contribute towards the remit through content made available on any of their free and universally available services, rather than just their PSB channel(s) as is currently the case.
33. In recognition of its unique social and democratic importance, DCMS will not extend this flexibility to the delivery of news and current affairs content, which will continue to only count towards the relevant quota when delivered in the same format it is today, i.e. on a PSB's linear PSB channel. The quotas therefore in scope of this proposal are the independent, original, and regional production quotas.
34. As set out above, some quotas are set on an 'hours' basis (i.e. based on the duration of broadcast) and others on an 'expenditure' basis; and some are proportional while others are absolute. DCMS has therefore considered the following options to achieve the aim of allow these quotas to be met on-demand and where appropriate through a PSB's other linear channels:
1. Maintain proportional hours and expenditure quotas, but apply them only to PSBs' linear PSB channel(s) (do nothing)
  2. Maintain proportional hours and expenditure quotas and apply them across PSBs' entire outputs (linear channels and on-demand)
  3. Replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them. (*preferred*)
35. DCMS considers that option 1 (do nothing) is inappropriate. To be impactful, a quota must ensure the commissioning of content that not only meets the specific requirements of the quota itself, but is also of high quality and available to audiences on services they want to use. As use of services other than a PSB's linear PSB channel has grown, so has the importance of PSBs being able to distribute content on these services, either before – or to the exclusion of – distribution on their linear PSB channel. Inaction risks inadvertently incentivising an approach where quotas are met exclusively via linear services with low audience figures.
36. DCMS further considers that option 3 is preferable to option 2. This is because option 2 undermines the PSB benefit of being able to cross-subsidise. The principle of cross-subsidisation means that as long as a broadcaster has met their public service obligations, they are free to operate as a commercial broadcaster would, i.e. attracting new viewers, offering additional services, etc. A proportional approach, applied across all of a PSB's services, interferes with this (since under option 2 a PSB's quotas would apply to all new content and services). DCMS believes that this would be unnecessarily restrictive on commercial PSBs' activities to the extent that it would incentivise the creation of 'narrow' PSB services isolated from other commercial undertakings. This would impose significant burdens on business for minimal benefit.
37. By contrast, DCMS considers that option 3 is consistent with the principle of cross-subsidisation. In addition to providing flexibility to PSBs to innovate in their delivery methods, it offers maximum transparency and certainty over the regulatory requirements being imposed on a PSB. DCMS will consider further how best to effect these changes in a way that does not make the quota more or less demanding than it is now.

*This change is being taken forward to the short list for appraisal, with option 3 as the chosen implementation method.*

*b. Distinctively British content:*

38. As well as making sure quotas reflect twenty-first century viewing habits, DCMS wants to ensure that they are responsive to the significant changes taking place within the broadcasting industry. It is important that viewers continue to have access to world class content that is distinctively and unmistakably British.
39. DCMS have considered a number of options for how to take this forward, including amending the Broadcasting (Original Productions) Order 2004 to add a 'distinctively British' limb to the existing definition of 'original production', or creating an entirely new quota in statute.
40. PSBs already produce a huge amount of content that meets this definition; this change is about protecting against future risks stemming from wider industry and economic pressures. As Enders Analysis notes, "growth in the UK production sector is being driven by increased investment by American streaming services, while local broadcasters rely on co-productions to fund increasingly-expensive, high-end content. However, while this investment is welcome, the output is predominantly less 'British' than that commissioned directly by local broadcasters".<sup>31</sup>In this context, DCMS has considered a number of approaches to implementation:
1. Introduce quota obligations based on self-certification by PSBs against genre-specific guidance issued by Ofcom;
  2. Introduce quota obligations based on certification by Ofcom against their own genre-specific guidance;
  3. Introduce quota obligations based on a clear definition of 'distinctively British' in legislation which public service content will need to adhere to. This could be modelled on the existing 'cultural test' component of several of the UK creative industry tax reliefs, including the high end TV tax relief<sup>32</sup>; or
  4. Introduce a general requirement to produce distinctively British programmes, potentially modelled on the existing requirement for "programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom". (*preferred*)
41. For this impact assessment, option 4 is taken as the preferred option.
42. DCMS is still considering whether to go further and has announced that it will consult on embedding requirements to produce British content directly into the existing quota system in due course. This is because DCMS believes that it could have a significant positive impact on commissioning patterns in the medium-to-long term. However, DCMS also recognises the potential administrative costs that may come with implementation. These costs may be disproportionate if the policy is implemented in a particularly burdensome way, or too soon to have a meaningful benefit. For the purposes of illustration, option 1 has been appraised qualitatively in this impact assessment. If option 1 is chosen in future, this would require secondary legislation, and a further impact assessment would accompany this.

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<sup>31</sup> Enders Analysis 2021

<sup>32</sup> [Creative Industry tax reliefs for Corporation Tax](#)

*This change is being taken forward to the short list for appraisal, with option 4 as the chosen implementation method at this time.*

*c. Strengthened 'Out of England' quotas:*

43. As well as ensuring that PSBs continue to make high quality, distinctively British content, DCMS wants to make sure that content comes from across the UK. Presently, only the BBC and Channel 4 are subject to requirements to produce content outside of England, and these requirements do not have an explicit statutory footing. DCMS believe that these 'Out of England' quotas are proving effective in contributing towards the levelling up of the creative economy in the UK. For example, the proportion of Channel 4's UK commissioning spend going to productions based outside England has risen from 4.5% in 2010 to 9.4% in 2021.<sup>33</sup> Over the same period there has been a more general increase in production spend in Scotland, Wales, and Northern Ireland. Oliver and Ohlbaum estimate that the proportion of commissioning value spent in these nations has increased from 12% in 2016 to 18% in 2021.<sup>34</sup> As such DCMS has considered whether strengthening these requirements would yield further benefits.
44. DCMS have considered the following options to implement this:
1. Put Channel 4's existing 'out of England' quotas on an explicit statutory footing;
  2. Introduce explicit statutory 'out of England' quotas for Channels 3 and 5;
  3. Take forward non-legislative options for encouraging the increased production of content across the UK.
45. DCMS considers that, in the context of this impact assessment, option 1 (putting Channel 4's existing 'out of England' quotas on an explicit statutory footing) is unnecessary. As noted above, the current 'out of England' quotas have worked well. Channel 4's was introduced by Ofcom in 2009, making use of the existing statutory provision for regional production "at different production centres outside the M25 area". It was initially set at 3% for both hours and expenditure, before being increased to 9% with effect from 1 January 2020. In this context, it is not clear what benefit further legislative provision would have. Indeed, any such provision would need to be careful not to restrict the flexibility that gave rise to the present quota.
46. DCMS is not minded to pursue option 2 for the same reason. There is existing statutory provision which would allow Ofcom to introduce 'out of England' quotas for Channel 3 and 5 if it considered these to be appropriate. DCMS is also mindful that there is no expectation in the quota system that all quotas will apply equally to all PSBs; indeed, audiences are often best served by a range of provision.
47. As above, DCMS strongly supports the development of our creative industries across the UK as part of the Government's work to level up the UK. DCMS will therefore embed this in the new public service remit (see "An updated, singular remit for PSB", above) and will keep the question of further non-legislative proposals under review.

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<sup>33</sup> [PSB Annual Compliance Report](#), Ofcom

<sup>34</sup> O&O/PACT. PACT Census 2022.



*For these reasons this change is not being taken forward to the short list for appraisal (but see “An updated, singular remit for PSB”).*

*d. Introducing a revenue cap for qualifying independent productions*

48. The UK creative economy is a British and international success story. The TV production industry not only functioned well during the COVID-19 pandemic but is positioned for a further period of significant growth. This is driven both by traditional PSB investment and by the UK’s success in attracting more inward investment. In shaping the future landscape of UK broadcasting, we want to ensure the UK remains a thriving production hub for both domestic and international content producers.
49. Some respondents to Ofcom’s *Small Screen, Big Debate* consultation raised concerns that very large producers (so-called ‘super indies’) still qualified as ‘independent’ under the current statutory definition, and were therefore able to benefit from the regulatory advantages associated with being captured by the independent production quota. In particular, when the protections for independent producers were introduced in 2003, they were designed to prevent the PSBs (as the largest broadcasters in the UK) from over-leveraging their dominant market positions in negotiations with the production sector. It was therefore appropriate that the definition of a production company who should “qualify” for these protections was one that was not owned by a broadcaster. However, not all of the more recent consolidation within the sector has been vertical, leading to the emergence of ‘super indies’ who still qualify as independent as they have no links to UK broadcasters, despite sometimes being larger than the broadcasters themselves. One of the suggestions put forward was to introduce a revenue cap on the definition of a qualifying independent producer.
50. DCMS has considered the following options for implementation:
1. Retain the existing definition of a qualifying ‘independent production’;
  2. Amend the existing definition of a qualifying ‘independent production’ to exclude independent production companies with a qualifying revenue of greater than £25 million.
  3. Establish an additional quota, focussed specifically on commissioning from independent production companies with a qualifying revenue of less than £25 million.
51. DCMS considers that option 2 could meet the policy objective of supporting smaller independent producers. This is because changing the existing definition will amend the scope of both the independent production quota and Terms of Trade regime. An indicative threshold of £25 million has been chosen based on analysis suggesting that fewer than 30% of independent producers have revenue in excess of this threshold. The same analysis suggests that these companies account for 71% of sector revenues.<sup>35</sup> Further analysis would be needed to find the exact revenue cap that is most appropriate, and confirm the cost-benefit analysis at that level of the cap. For these reasons DCMS has announced that it will undertake a review on introducing a revenue cap for ‘qualifying independent’ producer status, before moving forward with any legislation. The indicative £25 million threshold is used for the purposes of this IA, but it is possible that the policy is taken forward but the eventual threshold set will differ from this, and the impacts of this will be assessed in a further IA when the secondary legislation is laid.

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<sup>35</sup> O&O/PACT. PACT Census 2022.

52. DCMS considers that option 3 would not achieve the policy objective of focussing the benefits of the regulatory regime on smaller production companies as effectively as option 2. This is because it would not by itself affect which production companies benefit from the Terms of Trade regime (see next section).

53. If, following the review, DCMS decides to take forward option 2 by way of secondary legislation, we will consider carefully both the level of the threshold and the way in which qualifying revenues are calculated. This could include, for example, smoothing revenues over multiple years to mitigate year-to-year fluctuations in qualifying status.

*This change is not being taken forward to the short list for appraisal, because at this stage, DCMS is only committing to a review on introducing a revenue cap. However, this document does provide an early, short assessment of the potential impacts of introducing this cap, in line with option 2 above. Further appraisal would be undertaken at secondary legislation stage if the decision is taken to implement this change following the review.*

*e. Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs*

54. Ofcom also looked at the operation of the Terms of Trade regime. Almost all respondents to their Call for Evidence agreed a regulatory approach based on guidance from Ofcom continued to be helpful to both commissioners and producers.<sup>36</sup>

55. However, reflecting the scope of current legislation, Ofcom's guidance states that PSB Codes only apply to the commissioning of content which is "intended for use on licensed public service channels" and do not include programmes "commissioned specifically for use on other services" such as on-demand services (though a PSB may choose to incorporate such elements into its Terms). As set out above, DCMS intends to give PSBs greater flexibility in commissioning content for use on these other services. This risks diluting the impact of the existing regime.

56. DCMS has considered the following options to prevent this:

1. Retain the current scope of the Terms of Trade regime (do nothing);
2. Make the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it is "intended for use on licensed public service channels" (*preferred*); and
3. Extend the Terms of Trade regime to cover all commissioning of independent productions for use on its main on-demand service and/or its portfolio channels, whether or not they are "intended for use on licensed public service channels".

57. DCMS considers option 1 to be inappropriate because, if PSBs are permitted to deliver their independent productions quota via a wider range of services, but their Codes of Practice do not necessarily apply to such commissioning, this could create an incentive for PSBs to exclusively meet their independent productions quota on-demand and not on linear. DCMS judges that the impact of such an incentive would be limited, at least in the short term, but is nevertheless keen to avoid influencing PSBs' commissioning decisions in this way.

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<sup>36</sup> [Annex 2: Producing public service media content](#)

58. DCMS considers option 3 to be inappropriate because it would extend the Terms of Trade regime considerably beyond its current scope. Unlike on linear, where a licensed PSB is able to operate multiple channels – and have only the PSB channel fall within the Terms of Trade regime – the nature of VoD means that a PSB will typically operate only a single VoD service. Having all content that appears on this service fall within the scope of the Terms of Trade would be a significant departure from the present arrangements, and in DCMS' view disproportionate. Depending on how it is implemented, it could also create an incentive for PSBs to operate multiple VoD services, which would be detrimental for consumers.
59. In DCMS' view, option 2 (making the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions) strikes the right balance between these competing concerns. It preserves the spirit of the current regime (i.e. that PSBs must commission a certain amount of content from independent productions on equitable terms) while adapting the letter to fit the new context of quotas being deliverable via a wider range of services. Following this change, DCMS expects Ofcom to issue updated guidance to cover the commissioning of independent productions where these are to be delivered partially or exclusively via on-demand services. As now, they will retain considerable flexibility as to the content of that guidance, allowing them to update it periodically to reflect changes in technology and market context.

*For these reasons, DCMS intends to implement Option 2. This is appraised as part of "Delivery of quotas via a wider range of services" since it relates to the qualifying criteria for the independent productions quota.*

*f. Power to set additional quotas for underserved content areas:*

60. The current PSB remit is highly focused on the provision of genres, some of which, such as 'comedy' and 'drama', are now commercially viable in their own right. Others, such as 'science' and 'religion', are increasingly catered for on dedicated channels and online. DCMS have considered removing many of the genre-specific references in the current PSB remit in order to provide a shorter and more targeted remit.
61. However, in the event that Ofcom considers that important content areas are being poorly served in the future, it is important that we are able to act quickly. To do this we intend to create a new backstop power that would enable the Secretary of State to establish new quotas for underserved content areas in this scenario. These quotas would be administered and enforced by Ofcom. This would represent the natural evolution of the existing power to amend the public service remit itself by way of regulations.<sup>37</sup> Given the measures outlined above, there would be no expectation that the Secretary of State would need to use such a power in the short term. If this power were to be invoked in the medium to long term, secondary legislation would be needed and so a further impact assessment will be carried out at this stage.

*For the reasons set out above, only a short assessment of the potential impacts of the power have been considered here, as a further appraisal would be undertaken at secondary legislation stage if this power was to be invoked.*

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<sup>37</sup> See section 271 of the 2003 Act

### 3. *New providers:*

62. Ofcom considers that enabling providers of public service content to apply for PSB status could have benefits for UK audiences. These include bringing into the system new providers who can more effectively target viewers who do not connect with the current PSBs on traditional platforms, and strengthening the system for the future as audiences continue to seek a broader variety of content. As such DCMS has explored options that could give the Secretary of State or Ofcom a power to designate a new provider as a PSB. We have also considered what incentives, regulatory or otherwise, might be appropriate in order to encourage applications along these lines.
63. At this moment in time, it is DCMS' view that, given current technology and business models, it is unclear that there are sufficient incentives, of the scale afforded to the current set of PSBs, that could be offered to a new provider to encourage them to take on public service obligations. In addition, moving to a free designation model would necessitate considerable revision to the existing system of incentives and obligations faced by incumbent PSBs, which are predicated on the assumption of a fixed number of public service broadcasters. As such, the Government does not intend to take forward this recommendation at the present time, but will keep the matter under review.

### 4. *Updating the listed events regime to make qualification for the regime a PSB-specific benefit.*

64. Furthermore, the decision has been made to consider updating the listed events regime. The listed events legislation divides broadcast services into two categories:
- a. Those that meet the "qualifying conditions"; and
  - b. Those that do not.
65. Ofcom are required to ensure that those services that meet the "qualifying conditions" are provided with the opportunity to acquire rights to broadcast major sporting events which are included on the list on fair and reasonable terms. Currently the "qualifying conditions" (broadcast services received by 95% of the UK population and which are free-to-air) are met by only PSB services.
66. DCMS have considered the following options regarding the listed events legislation:
1. Make no changes to the existing legislation
  2. Update the legislation to make qualification for the listed events regime only possible for PSB services (*preferred*)
67. The events which are listed have a cultural and social impact. They serve to unite the nation, create national pride, and as such the listed events regime helps to foster national identity; social cohesion, and interest in participation and physical activity. In recognition of the role that the listed events regime plays in delivering important public policy outcomes and the key role that our public service broadcasters play in distributing content which is both distinctively British and of interest to British audiences, the Government wants to make qualification for the listed events regime a PSB-specific benefit.

*For these reasons, DCMS intends to implement Option 2, which will be taken forward to short list appraisal. The impacts of this addition are considered in this IA, and have also been set out in the Media Bill overarching impact assessment, on which the RPC has given a fit for purpose opinion.*

#### *5. Addressing outdated references to the public teletext provider*

68. Section 27 of the Digital Economy Act 2010 added section 218A to the Communications Act 2003 and required Ofcom to report on the viability of the public teletext service. That report was published on 2 December 2010. That report cast serious doubt upon the long-term viability of commercial public teletext services. Ofcom concluded that the advantages of continuing with a public teletext service were limited and outweighed by the disadvantages of reserving DTT capacity.<sup>38</sup> It also suggested that it was appropriate to re-consider whether the obligation to secure a public teletext provider should be continued and whether the public service obligations associated with the public teletext service should be revised.

69. Further to the Government's 2013 Regulatory Triage Assessment<sup>39</sup>, three options have been considered:

1. Do nothing. In this option section 218 of the Communications Act 2003 and other relevant sections are left substantively unamended (and only updated to reflect the other proposals set out in this IA).
2. Amend the provisions relating to the public teletext service so as to encourage a new provider to come forward.
3. Remove outdated references to the public teletext provider (*preferred*).

70. DCMS notes that there has not been a public teletext service for considerably more than a decade, and considers that, irrespective of which option is taken forwards, a new provider for the service teletext service is extremely unlikely to emerge. It is important in this context that the Government looks to release the DTT capacity reserved for the public teletext service, which only option 3 delivers.

71. In addition, option 3 would allow outdated references to the public teletext provider and public teletext service to be removed from the statute book. This should improve the legibility of the statute book, and give industry participants greater clarity on their obligations.

*For these reasons, DCMS intends to implement Option 3, which will be taken forward to short list appraisal. The impacts of this addition are considered in this IA, and have also been set out in the Media Bill overarching impact assessment, on which the RPC has given a fit for purpose opinion.*

#### *Accountability and enforcement:*

72. Several of Ofcom's recommendations to the Government relate to accountability and enforcement, including ensuring that Ofcom "can hold public service media providers to account and have the flexibility to change rules in line with sector trends". DCMS are working with Ofcom to ensure they have requisite tools to continue to regulate PSB in the UK effectively, particularly in light of the potential reforms discussed above and the new flexibilities that PSBs will benefit from. The overall costs to Ofcom that result from the measures are

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<sup>38</sup> Report to the Secretary of State on the public teletext service, Ofcom

<sup>39</sup> Revocation of Sections 218 and 265 of the Communications Act 2003, Regulatory Triage Assessment, 2013

provided in the following impact assessment. For each measure in turn, if relevant, we provide a qualitative analysis of the impacts on accountability and enforcement.

Figure 1: Summary table of the long list of proposed interventions.

Topic	Measure	Long list Implementation Options & preferred option <sup>40</sup>	
PSB Remit	An updated, singular remit for PSB		<b>Taken forward</b>
PSB Quotas	Allowing the delivery of certain quotas via a wider range of services	1	Maintain proportional hours and expenditure quotas, but apply them only to PSBs' linear PSB channel(s) (do nothing)
		2	Maintain proportional hours and expenditure quotas and apply them across PSBs' entire outputs (linear channels and on-demand)
		3	<b>Replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them (preferred)</b>
	Distinctively British Content	1	Introduce quota obligations based on self-certification by PSBs against genre-specific guidance issued by Ofcom
		2	Introduce quota obligations based on certification by Ofcom against their own genre-specific guidance
		3	Introduce quota obligations based on a clear definition of 'distinctively British' set out in legislation
		4	<b>Introduce a general requirement to produce distinctively British programmes, potentially modelled on the existing requirement for "programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom" (preferred)</b>
	Power to set additional quotas		A backstop power that would enable the Secretary of State to establish new quotas for underserved content areas, to be administered by Ofcom
	Strengthened 'out of England' quotas	1	Put Channel 4's existing 'out of England' quotas on an explicit statutory footing

<sup>40</sup> Where applicable. Some of the interventions have a number of sub-options that will be appraised later in the document. A preferred option is indicated.

		2	Introduce explicit statutory 'out of England' quotas for Channels 3 and 5
		3	Take forward non-legislative options for encouraging the increased production of content across the UK ( <i>embedded into the new public service remit</i> )
	Revenue cap for qualifying independent productions	1	Retain the existing definition of a qualifying 'independent production'
		2	Amend the existing definition of a qualifying 'independent production' to exclude independent production companies with a qualifying revenue of greater than £25 million
		3	Establish an additional quota, focussed specifically on commissioning from independent production companies with a qualifying revenue of greater than £25 million
	Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs	1	Retain the current scope of the Terms of Trade regime (do nothing)
		2	<b>Make the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it is "intended for use on licensed public service channels" (preferred)</b>
		3	Extend the Terms of Trade regime to cover all commissioning of independent productions for use on its main on-demand service and/or its portfolio channels, whether or not they are "intended for use on licensed public service channels"
New providers			<i>Not taken forward</i>
Listed events	Updating the listed events regime to make qualification for it a PSB-specific benefit	1	Keep the existing qualifying criteria for the listed events regime (do nothing)
		2	<b>Update the listed events legislation to make qualification only possible for PSB services (preferred)</b>
Teletext	Addressing outdated references to the public teletext provider	1	Keep the references to the public teletext provider in the Communications Act 2003 (do nothing)
		2	Amend the provisions relating to the public teletext provider so as to encourage one to come forward

		<b>3</b>	<b>Removing outdated references to the public teletext provider and service (preferred)</b>
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Chosen options:

73. **Option 0: Do-nothing:** Do not make the necessary updates and reform stemming from DCMS' strategic review of public service broadcasting and the recommendations made by Ofcom on the future of public service media.

74. **Option 1:** Make the short list of changes to PSB remit and quotas summarised below. The details of these changes are found in the long list above.

*Figure 2: Summary table of the short list of interventions chosen and taken forward for appraisal.*

<b>Topic</b>	<b>Measure</b>	<b>Implementation Method</b>
PSB Remit	An updated, singular remit for PSB	Replace the existing PSB purposes and objectives set out in legislation with an updated, singular remit for PSB.
PSB Quotas	Allowing the delivery of certain quotas via a wider range of services	Replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them.
	Distinctively British Content	<p>Introduce a general requirement to produce distinctively British programmes, potentially modelled on the existing requirement for "programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom".</p> <p>It is possible that, following consultation, the Government decides to put a specific quota on distinctively British content. This has been appraised qualitatively in this IA. If this option is taken forward, then this would be implemented through secondary legislation, and a further impact assessment will follow at this time.</p>
	Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs	Make the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it is "intended for use on licensed public service channels".
	Power to set additional quotas for underserved content areas	A backstop power that would enable the Secretary of State to establish new quotas for underserved content areas, to be administered by Ofcom. Not expected to be



		invoked in the short term. If it were to be invoked, secondary legislation would be needed and so a further impact assessment will be carried out at this stage.
Listed events	Updating the listed events regime to make qualification for the regime a PSB-specific benefit.	Update the listed events legislation to make qualification for the regime only possible for PSB services.
Public teletext	Addressing outdated references to the public teletext provider	Remove outdated references to the public teletext provider and service in the Communications Act 2003.

75. As set out above, the present regulatory framework is regarded as predominantly self-regulatory, favouring general duties over specific obligations. In assessing the available options in each case, the relative merits of a self-regulatory approach have been considered (for example in relation to the delivery of distinctively British content).

### Policy objective

76. At a high level, the Government's intended approach to PSB reform (which also encompasses separate but related measures on prominence and video-on-demand regulation) is to:

- 1) Look again at the public service obligations associated with being a PSB, to make sure that they target the areas where intervention is still required, and do not unnecessarily constrain PSBs' ability to attract audiences and compete effectively;
- 2) Update the benefits that accrue to PSBs in exchange for taking on public service obligations (in particular the prominence which they are afforded, as covered in separate impact assessment) in order to maintain the value of these benefits;
- 3) Ensure that new providers are appropriately regulated, i.e. that there is a level playing field between traditional broadcasters and the new entrants they are now competing against.

77. The specific policy objectives for the particular measures shortlisted for assessment are as follows:

*Figure 3: Specific policy objectives for the particular measures shortlisted.*

Measure	Option(s) taken forward	Policy objective(s)
An updated, singular remit for PSB	Replace the existing PSB purposes and objectives set out in legislation with an updated, singular remit for PSB.	Ensure that audiences can continue to access a wide range of high quality public service content.  Continue to support the independent production sector across the UK.  Make the PSB remit more impactful, improve accountability

		and update the priorities for the PSB system in light of market developments.
Allowing the delivery of certain quotas via a wider range of services	Replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them.	Make delivery of the PSB remit more service neutral, so that PSBs can meet their obligations more flexibly and better serve audiences.
Distinctively British Content	Introduce a general requirement to produce distinctively British programmes, potentially modelled on the existing requirement for "programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom".	Ensure that audiences can continue to access a wide range of high quality public service content.  In particular, ensure that the PSB system continues to produce content that is distinctively British, in the face of increasing commercial pressure to tailor shows to international audiences.
Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs	Make the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it is "intended for use on licensed public service channels".	Continue to support the independent production sector across the UK.  Ensure that the Terms of Trade regime remains relevant and continues to support independent producers as viewing, and broadcaster's commissioning, increasingly moves from linear to on-demand services.
Power to set additional quotas	A backstop power that would enable the Secretary of State to establish new quotas for underserved content areas, to be administered by Ofcom. Not expected to be invoked in the short term. If it were to be invoked, secondary legislation would be needed and so a further impact assessment will be carried out at this stage.	Ensure that audiences can continue to access a wide range of high quality public service content.  Ensure the PSB system is set up to respond quickly if particular genres of public service content are found to be underserved in the future.
Updating the listed events regime to make qualification for the regime a PSB-specific benefit.	Update the listed events legislation to make qualification for the regime only possible for PSB services.	Provide more clarity and certainty over the long term about the qualifying criteria in response to changing viewing habits and distribution methods.  Ensure listed events regime continues to support the

		sustainability of public service broadcasting.
Addressing outdated references to the public teletext provider	Removing outdated references to the public teletext provider and service	<p>Ensure the efficient use of spectrum.</p> <p>Improve legibility of the statute book.</p> <p>Ensure that market participants can easily understand their obligations.</p>

## Summary and preferred option with description of implementation plan

Figure 4: Preferred options and description of implementation plans.

Measure & Option(s) taken forward	Implementation plan
<p><b>An updated singular remit for PSB</b></p> <p>Replace the existing PSB purposes and objectives set out in legislation with an updated, singular remit for PSB.</p>	<p>DCMS' preference is to use <b>primary legislation</b> sections of the 2003 Act directly.</p>
<p><b>Allowing the delivery of certain quotas via a wider range of services</b></p> <p>Replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them.</p>	<p>Subject to parliamentary time, this change will primarily through <b>primary legislation</b>. Some f required to the Original and Independent Prod would follow any primary legislation. Changes incorporated by Ofcom into PSB's channel/ops appropriate, whether during the renewal process variation. To allow PSBs' sufficient time to adapt DCMS does not envisage licence changes coming 1 January 2025. A full appraisal is included in</p>
<p><b>Distinctively British Content</b></p> <p>Introduce a general requirement to produce distinctively British programmes, potentially modelled on the existing requirement for "programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom".</p>	<p>DCMS' preference is to use <b>primary legislation</b> 264 of the 2003 Act directly. A full appraisal is</p> <p>It is possible that the Government also decides quota in relation to distinctively British content consultation. This has been appraised qualitatively assessment. If this option is taken, then this will through secondary legislation, and a further implementation follow at this time.</p>
<p><b>Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs</b></p> <p>Make the law more explicit that for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it</p>	<p>This change will be implemented as part of the existing independent productions quota described "Allowing the delivery of certain quotas via a wider range of services" and is accordingly appraised as part of that proposal.</p>

is “intended for use on licensed public service channels”.	
<p><b>Power to set additional quotas for underserved content areas</b></p> <p>A backstop power that would enable the Secretary of State to establish new quotas for underserved content areas, to be administered by Ofcom.</p>	<p>This change (the introduction of a new power) through <b>primary legislation</b>.</p> <p>This is not expected to be used in the short term; if used, <b>secondary legislation</b> would be needed. An impact assessment will be carried out at this stage.</p> <p>Any necessary changes would then be incorporated into PSB’s channel/operating licences as appropriate during the renewal process or by way of licence variation. Sufficient time to adapt to these changes, DCM licence changes coming into effect before 1 January 2025 at the earliest.</p>
<p><b>Updating the listed events regime to make qualification for the regime a PSB-specific benefit.</b></p>	<p>Subject to parliamentary time, this change will be implemented through <b>primary legislation</b>.</p>
<p>Addressing <b>outdated references to the public teletext provider</b></p>	<p>Subject to parliamentary time, this change will be implemented through <b>primary legislation</b>.</p>

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

78. This analysis is based on substantial engagement with stakeholders, first through Ofcom’s *Small Screen Big Debate* review,<sup>41</sup> from which the majority of these intervention options arose. Ofcom received over 100 responses to their consultation as part of this work. There was a wide range of views, but agreement on some fundamental issues: the importance of public service broadcasting for UK viewers and the UK economy; and the urgent need to update the PSB system to ensure that it is financially sustainable for the future. Ofcom and their research providers conducted online workshops, video diaries with young adults and quantitative surveys examining the role of public service broadcasting in people’s lives and their media habits. They further engaged with industry and academic experts, conducted market analysis of viewing and market trends, and probed international and other sector perspectives to inform their recommendations. This has provided a strong evidence base and rationale for intervention for a number of measures taken forward in the preferred option.

79. The Government also established its own PSB Advisory Panel, made up of experts from broadcasting and other related sectors (such as journalism and technology) to provide independent advice and expertise and to assist the Government in analysing the findings of Ofcom’s review. The Panel met six times over the course of a year to discuss the issues set out in the publicly available Terms of Reference.<sup>42</sup> The Panel drew on a wide range of sources and information, including the recommendations resulting from Ofcom’s PSB review, Panel members’ personal experience and expertise, and additional external expertise where this was appropriate. The Panel’s conclusions helped inform the policy changes that are being recommended and featured prominently in advice to ministers on issues relating to the future of PSB.

<sup>41</sup> [The debate on the future of public service broadcasting and media in the UK, Ofcom](#)

<sup>42</sup> [PSB Panel – Terms of Reference](#)

80. DCMS also undertook direct engagement with PSBs on the impacts of the proposed long list of changes set out in this assessment, in late 2021. From this engagement, the majority of PSBs were unable to provide specific, quantitative estimates of costs and benefits that arise from the implementation of this legislation. This Impact Assessment therefore aligns with scenario 2 in the RPC's guidance on primary legislation.<sup>43</sup> DCMS has provided a qualitative assessment of the likely scale of impacts, but has been unable to provide a robust quantitative assessment for validation due to the lack of data on potential impacts provided by PSBs. A summary of our appraisal and evidence is given at the end of section 2. For some of the proposed changes, further secondary legislation will be required, and detailed Impact Assessments or De Minimis Assessments will accompany secondary legislation.

81. While timelines are dependent on external factors, for appraisal purposes, this IA uses a ten-year appraisal period running from 2023.

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<sup>43</sup> [RPC case histories](#) – primary legislation IAs, August 2019

## **2.0 Costs and Benefits**

82. **Option 0:** Do-nothing: Do not make the necessary updates and reform of PSB quotas and remits.

83. **Option 1:** Make the changes to PSB remit and quotas summarised in figure 5 below:

*Figure 5: summary table of the short list of interventions chosen and taken forward for appraisal.*

<b>Topic</b>	<b>Measure</b>	<b>Implementation Method</b>
PSB Remit	An updated, singular remit for PSB	DCMS' preference is to use primary legislation to amend relevant sections of the 2003 Act directly to replace the existing PSB purposes and objectives set out in legislation with an updated, singular remit for PSB.
PSB Quotas	Allowing the delivery of certain quotas via a wider range of services	DCMS's preference is to use primary legislation to replace certain proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them.
	Distinctively British Content	DCMS' preference is to use primary legislation to amend section 264 of the 2003 Act directly to introduce a general requirement to produce distinctively British programmes. It is possible that the Government also decides to introduce a specific quota in relation to distinctively British content. This would require secondary legislation.
	Updating the Terms of Trade to reflect changes in technology and the way viewers are watching content from our PSBs	This change will be implemented as part of the changes to the existing independent productions quota described above under "Allowing the delivery of certain quotas via a wider range of services" and is accordingly appraised as part of that policy.
Listed events	Updating the listed events regime to make qualification for the regime a PSB-specific benefit	DCMS's preference is to implement this change through primary legislation and to amend s.98(2) of the Broadcasting Act 1996 so that the qualifying criteria is changed and the PSBs and their PSB services are specific beneficiaries.
Public teletext	Addressing outdated references to the public teletext provider	DCMS's preference is to use primary legislation to repeal relevant references to the public teletext provider and service, including sections 218 to 223 ("The public teletext service") and section 265(4) (remit of the public teletext service).

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

### *Structure of the analysis*

84. In the following analysis, Option 0 represents a counterfactual scenario against which the intervention option will be assessed. In the do-nothing option, there would be no changes to PSB remit and quotas, which would lead to a number of issues that the interventions are designed to address. As discussed above, it has not been possible to provide an accurate EANDCB for these interventions due to gaps in and uncertainty associated with the available data and responses elicited from PSBs and other stakeholders. However, where possible, this assessment attempts to provide an indication of the scale of likely impacts.

### *Main impacted groups*

There are a small number of stakeholder groups that are likely to be directly impacted by these changes. A list of these groups are provided below, with an explanation of the members of these groups to provide context to the following appraisal.

#### 1. PSBs:

85. PSBs comprise the BBC, ITV, STV, Channel 4, Channel 5, and S4C. DCMS have engaged with all of these organisations to attempt to ascertain detailed qualitative and quantitative insight into the impacts of the options considered in this impact assessment.

#### 2. Independent production sector

86. The UK production sector is highly varied. Producers are categorised as 'qualifying independents' or 'non-qualifying', indicating whether they qualify for inclusion in PSB's independent production quotas, as well as beneficial trading relationships with those broadcasters. The Broadcasting (Independent Productions Order) 1991 defines a qualifying independent producer as, broadly speaking, one: (i) not employed by a broadcaster; (ii) not having a shareholding greater than 25% in a UK broadcaster; and (iii) in which no single UK broadcaster has a shareholding greater than 25% or any two or more UK broadcasters have an aggregate shareholding greater than 50%.

87. The majority of qualifying independents are 'small producers' with annual revenues of less than £10 million. The sector continues to support a large number of smaller companies with barriers to entry remaining low. In 2019 there were an estimated 250 'small producers' with revenues of less than £1 million. Nevertheless, the number of large producers has grown considerably since interventions introduced in 2003 allowed production companies to control and exploit their own intellectual property. The global success of UK television formats and fast growing secondary rights revenue led to increased consolidation (including the formation of so-called 'super indies'), vertical integration and international expansion of existing UK producers.

88. The Producers Alliance for Cinema and Television (PACT) is the trade body which represents independent producers in the UK. In addition, TAC (Teledwyr Annibynol Cymru) is the industry body for the independent television production sector in Wales. Both groups

responded to Ofcom's call for evidence on the production sector (which accompanied their PSB review) and they continue to be consulted as these proposals are taken forward.

### 3. Consumers/viewers

89. Viewers, as consumers of PSB, will be impacted by the changes considered below, principally in terms of both the private and social benefits of securing continued access to high-quality PSB content, but also in terms of the risks that these benefits may not materialise without the appropriate changes to legislation taken forward in the preferred option.

90. The Voice of the Listener and the Viewer (VLV) is the main consumer group representing UK viewers and we continue to engage them as these policies are taken forward. VLV also responded to Ofcom's consultation as part of their PSB review. A number of other campaigning organisations also responded to Ofcom's consultation and their concerns were reflected in Ofcom's recommendations.

### 4. Ofcom

91. As the communications regulator, Ofcom has provided an estimate of the impact these measures would have on their organisation.

92. Ofcom will incur both one-off and continued costs as a result of these changes. Ofcom has provided cost estimates, detailed later in the document, within a range, for activities they would need to undertake in order to implement these changes to the regulation in this area. Ofcom have also provided the ongoing costs, also within a range.

- Ofcom note that the figures provided are a working draft and should be considered no more than rough estimates. They have not undertaken a comprehensive assessment of the required resources as the policy development is still evolving and thus the shape of Ofcom's regulatory duties remain uncertain.
- As such these estimates may differ substantially from real costs when these materialise and the actual scope of regulation could (and most likely would) provide a different set of results.
- In particular, the detailed implementation of these measures, and therefore Ofcom's monitoring and enforcement role, has not yet been fully defined. As such their ongoing monitoring costs are based on a low projection and no enforcement costs are included.
- The estimates do not include any contingency (i.e. nil provision made for optimism bias).
- For proposal 3: Ofcom have not included costs for the process of designation, because it is not yet clear if this would be a role for SoS or Ofcom.
- Resource/FTE figures Ofcom has used in their calculations reflect an average based on the likely mix of Ofcom salary grades involved in each of the activities listed. Further consideration needs to be given on whether recruitment costs would need to be added to these costs.

## **Option 0 – Counterfactual/Do Nothing**

### **Costs**

#### **Monetised Costs**



## Transition Costs

93. There are no transitional, one-off costs associated with the do-nothing option.

## On-going Costs

94. There are no monetisable costs of the do nothing option. The non monetised cost section will set out the issues associated with not making the proposed changes to PSB regulation, against which the intervention options will be compared.

## **Non-monetised Costs**

### Current PSB arrangement

95. Some commercial PSBs argue that, absent an enhancement of the benefits of the PSB licences, the licences held by PSBs will be seriously loss-making in the next licence period (2024-34), to the extent that it would be hard to make the case for continuing to hold them. This is the case because both the value of spectrum and the value of current linear EPG prominence (two of the key benefits afforded to PSBs) are in decline as viewing habits change. Mediatique have also identified that the value of regulatory benefits the PSBs receive are declining, as a result of changing audience habits.<sup>44</sup> PSBs identify that the Government's proposed extension of the prominence and fair value regime to smart TV platforms – which is considered in a parallel impact assessment and is being implemented through the same Bill as these measures – would make a significant contribution to the sustainability of their business and to the continuing value of their licences. However, even with the extension of the prominence regime, PSBs are likely to continue to face challenges, and (in their view) the future value of their licences is unlikely to allow for additional costs, constraints or obligations over and above those which already apply.

96. In addition, under the counterfactual, PSBs will not be able to benefit from the potential cost savings that result from the ability to meet quotas through a greater range of services.

97. Where proposed changes engender costs for PSBs, we consider that these costs are proportionate to achieve the benefits associated with them, covered below, and that PSBs are able to absorb these costs without major impact on sustainability.

### Costs of not implementing these changes:

98. Without these interventions to the existing legislative framework for PSBs, DCMS will not have implemented the recommendations set out by Ofcom in their *Small Screen Big Debate* review aimed at improving and modernising the PSB system. This means that key issues with the current system will not be addressed, leading to negative impacts on broadcasters and consumers. These issues are set out below.

1. *An updated, singular remit for PSB:*

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<sup>44</sup> [Future models for the delivery of public service broadcasting](#), Mediatique 2020

99. It is vital that there is shared understanding of what the remit for PSB is, aided by a concise and unequivocal definition set out in legislation. The current PSB remit, found in section 264 of the Communications Act 2003, is outdated and should be replaced with a statement that better captures the essence of PSB. Without the change there would be no improvement in accountability between broadcasters and Ofcom. In addition, some regulatory costs may be incurred as a result of the uncertainty over the nature of the PSB remit and the relative importance of the different elements within it.

2. *Updating the present quota system:*

a. *Allowing the delivery of certain quotas via a wider range of services*

100. A large amount of the current PSB current quota system is out of date. Quotas are currently focused on broadcast television and consequently do not reflect the fundamental changes taking place in the industry and the multiplicity of ways people now consume TV programmes and content.

101. In particular, we and others have identified that the current quota system can lead to inefficiencies in PSB commissioning, increasing costs without any corresponding increase in value to the viewer.<sup>45</sup> As set out in section 1 of this assessment, the changes in media consumption patterns mean that this approach is no longer commercially viable or best placed to attract and retain audiences. Without the proposed change, current linear quotas will become an increasing cost for PSBs, preventing them from fully meeting audience needs and delivering maximum value to consumers and society.

102. In addition, failure to extend the independent productions quota, and the Terms of Trade regime, to programmes distributed via video-on-demand, is likely resulting in the diminishing relevance of these existing (successful) policy interventions as a greater proportion of programmes are distributed in this way. This contradicts the Government's policy objective of supporting the independent production sector.

b. *Distinctively British content:*

103. The current system does not ensure that quotas are responsive to the significant changes taking place within the broadcasting industry. In particular, viewers are, in future, at risk of decreasing access to world class content that is distinctively and unmistakably British. As Enders Analysis notes, "growth in the UK production sector is being driven by increased investment by American streaming services, while local broadcasters rely on co-productions to fund increasingly-expensive, high-end content. However, while this investment is welcome, the output is predominantly less 'British' than that commissioned directly by local broadcasters".<sup>46</sup>

104. In this context, whilst PSBs already produce a huge amount of content that is distinctively and unmistakably British, and recognise that doing so is one of their key purposes, there is a need to introduce a general requirement for PSBs to provide distinctively British content to protect against the future risks of decreased provision that might otherwise result as the natural consequence of commercial pressures.

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<sup>45</sup> DCMS received more evidence from PSBs on this point, which we provided to the RPC, but has been redacted from this published version as it is potentially identifiable.

<sup>46</sup> [Enders Analysis 2021](#)

*c. Power to set additional quotas for underserved content areas*

105. If no change is made, the Government may lack the levers required to respond quickly to a change in market context that results in one or more underserved content areas emerging, for example if they become less profitable. This could result in a suboptimal range of programming being available to consumers.

*3. Updating the listed events regime to make qualification for the regime a PSB-specific benefit*

Due to changing consumption habits and fragmented viewing there is a risk, in the short to medium term, that if the listed events qualification criteria becomes unclear - i.e. which services reach 95% of audiences. This uncertainty could have a damaging impact on the market and on audiences who would no longer be able to access these events. Reflecting the need to provide certainty, and the important ongoing role PSBs play in providing content to audiences, this measure (which will largely maintain the status quo in negotiations and provision of services) is seen as optimal.

*4. Addressing outdated references to the public teletext provider*

106. It is no longer commercially viable to provide a public teletext service. By 2009 the teletext service was making significant losses and the licence holder withdrew the service, causing Ofcom to revoke their licence in 2010. All subsequent attempts by Ofcom to find an alternative provider have been unsuccessful; there has been no desire from business to operate the public teletext service in over a decade. The costs of doing nothing therefore comprise (i) the unrealised benefit of releasing the spectrum currently reserved for the service (ii) ongoing uncertainty for Ofcom and industry participants as to the extent of their obligations (e.g. to cooperate with the public teletext provider) (iii) costs to the Government of periodically updating the relevant legislative provisions.

*Revenue cap for qualifying independent productions review*

107. DCMS is committing to undertake a review on whether to introduce a revenue cap for qualifying independent productions. If no change is made, then large producers (so-called 'super indies') will still qualify as 'independent' under the current statutory definition, in doing so benefiting from the regulatory advantages associated with being captured by the independent production quota. Analysis shows that the majority of revenues flow to a relatively small group of large companies in the independent production sector – PACT figures suggest that 71% of sector revenues were captured by companies with £25m+ revenues in 2021.<sup>47</sup> Without an intervention, there is the risk that this could negatively impact smaller independent producers in the future. However, it is important to note that Ofcom's review found "no evidence to suggest that it is leading to significant harmful distortions in the production sector", although they do recognise the weakness of the quota in not offering specific support to SMEs. Ofcom also highlighted the benefits of the current quota system, which has supported the long-term development of the independent production sector and has retained the support of a number of stakeholders, including the BBC, ITV, Channel 4, and PACT. This will be considered further through the review, and in an impact assessment accompanying secondary legislation if the decision to introduce a cap is made.

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<sup>47</sup> [O&O/PACT Census 2022](#)

## Benefits

108. There are no additional benefits of the do-nothing option to outline here. This option would mean business as usual for the PSBs.

### **Option 1** – Make the changes to PSB remit and quotas summarised in figure 5

#### Impact summary

109. These changes have been informed by substantial policy engagement with stakeholders, including through Ofcom's *Small Screen Big Debate* review and the Government's PSB Advisory Panel. This has been supplemented with direct engagement with PSBs from policy and analytical perspectives. As a package, the changes are intended to support the UK's PSB system, allowing the continued provision of social benefits, including ensuring the delivery of a wide range of high-quality, original programmes that reflect the UK back to itself, keeping audiences informed about the world around them, and driving investment in the UK's creative economy.

110. The impact of the changes is largely focused on PSBs, creating both costs and benefits to these organisations. The change to the PSB remit and the preferred option to protect distinctively British content are likely to have minimal impacts on PSBs. Allowing the delivery of the PSB remit and certain quotas via a wider range of services, whilst creating indirect costs for PSBs to take advantage of this change, will lead to substantial benefits stemming from enhanced flexibility and efficiency. The decision to update the listed events regime to make qualification dependent on being a PSB will help ensure the sustainability of public service broadcasting into the future. Lastly, a future power to set quotas may create costs for PSBs, but this is similarly dependent on the way in which it is established and enforced. Across these measures, PSBs will have relatively small transitional familiarisation and set up costs.

111. In addition, the changes are expected to have a positive impact on UK audiences. The supply of distinctively British content will be future proofed, and the extension of quotas to online will allow PSBs to meet the needs of their audiences more effectively. A revised PSB remit will increase their accountability to Ofcom and help them focus on their core objectives which in turn deliver value for audiences. Lastly, ensuring that the rights to broadcast events of national importance are offered to PSBs will not only benefit PSBs, but will also ensure that audiences can continue to access these events on free-to-air, as opposed to being behind a paywall.

#### Main risks

112. Allowing the delivery of the PSB remit and some quotas via a wider range of services could result in the potential risk that PSBs prioritise their on-demand service, to the detriment of linear services. This could have negative impacts on those audiences that do not have access to the on-demand services of PSBs. However, this risk is being addressed by not applying this change to the PSBs' news and current affairs quotas, and by ensuring that PSBs remain accountable for their delivery of public service content on a free-to-air and universal basis. In addition, PSBs stated that they generally did not anticipate that this change would have a substantial impact on the content and availability of their linear offers, and that linear will remain at the centre of their delivery.

113. The impacts of introducing a power for the DCMS Secretary of State to set quotas in the future will depend on the way in which these quotas are implemented and the genres on which they focus, and as such could lead to potentially large costs or benefits for particular stakeholders. Detailed analysis will accompany any future secondary legislation related to this power.

Figure 6: A summary of the evidence and appraisal approach taken for each of the measures included in this IA, with an outline of the main costs and benefits that have been identified arising from with the chosen implementation options .

Measure	Evidence & Appraisal Summary
An updated singular remit for PSB	<p>Evidence from PSBs indicates that this will have no direct impact on business, therefore no quantification of costs or benefits is provided, but a strong qualitative analysis has been undertaken.</p> <p><b>Main costs:</b> No direct costs are expected from this change.</p> <p><b>Main benefits:</b> The UK PSB system will benefit from having a simpler, more clearly articulated set of objectives. The change will improve accountability between PSBs and Ofcom, and will help PSBs focus on their core objectives and deliver public service content that delivers against the requirements of the remit.</p>
Allowing the delivery of certain quotas via a wider range of services	<p>Due to the lack of quantitative evidence provided by PSBs, and diversity in PSB organisations, it is not appropriate to apply the single PSB cost estimate provided to the wider set of PSBs. As a result no EANDCB has been reached for this change, but strong qualitative analysis has been undertaken. This policy does not direct PSBs to make any changes and therefore any impacts of this policy can be considered to be indirect.</p> <p><b>Main costs:</b> PSBs will incur the one off indirect cost of adjusting their systems to take advantage of this policy change if they choose to, which are estimated to be in the low hundreds of thousands of pounds.</p> <p><b>Main benefits:</b> There will be indirect benefits to the PSBs and audience arising from the commissioning and scheduling efficiency that this change would bring. It would improve the efficiency of PSB spend, helping to ensure their financial sustainability, and for the BBC and S4C, the efficient use of public money.</p>
Distinctively British content	<p>Evidence from PSBs indicates that the preferred option will have no direct impact on business, therefore no quantification of costs or benefits is provided, but a strong qualitative analysis has been undertaken. If the option to introduce a distinct quota is chosen in the future, secondary legislation would be needed, and this would be accompanied by a further IA or de minimis assessment.</p> <p><b>Main costs:</b> No direct or indirect costs are expected from this change.</p> <p><b>Main benefits:</b> This change will indirectly benefit audiences across the UK, who see it a key purpose of the PSB system to</p>

	<p>ensure they are able to see themselves – and their own way of life – reflected on screens.</p>
<p>Power to set additional quotas for underserved content areas</p>	<p>Due to lack of quantitative evidence provided by PSBs, and uncertainty around how this power would be exercised, it has not been possible to estimate an EANDCB for this measure. A detailed qualitative assessment is included, and implementing this measure would need secondary legislation, which would be accompanied by a further IA or de minimis assessment.</p> <p><b>Main costs:</b> Any new quota would bring significant direct set up and ongoing costs for PSBs and Ofcom. However, it is not possible to assess costs at this time, as they will be dependent on the nature of the quota. Detailed analysis will accompany any future secondary legislation which invokes this power.</p> <p><b>Main benefits:</b> The backstop power, which is not intended for immediate use, would bring future benefits, if employed, in ensuring audiences continue to experience a wide range of public service content and guaranteeing the supply of any underserved content.</p>
<p>Updating the listed events regime to make qualification for the regime a PSB-specific benefit</p>	<p>DCMS have engaged with Ofcom to gather evidence on the pros and cons of the current regime.</p> <p><b>Main costs:</b> It is expected that updating the legislation to make qualification for the listed events regime only possible for PSB services will in practice have zero cost to non-PSBs, when compared to the counterfactual. This is because no non-PSB has met the qualifying criteria, and so this measure represents no change on the counterfactual.</p> <p><b>Main benefit:</b> This measure ensures that the benefit of the listed events regime continues to fall to PSBs, future-proofing the benefits to PSBs and audiences, against a scenario where the qualifying criteria becomes unclear due to changing viewing habits and distribution methods.</p>
<p>Addressing outdated references to the public teletext provider</p>	<p>DCMS have engaged with Ofcom to understand the implications of the removal of these outdated references. The evidence provided by Ofcom is comprehensive and clearly indicates that this measure will have no direct impact on business.</p> <p><b>Main costs:</b> No direct or indirect costs are expected from this change.</p> <p><b>Main benefit:</b> Removing references to the public teletext provider will help to simplify the existing legislation, and could provide some small scale benefits to business as the 3% of Multiplex 2 spectrum reserved for it could be released for use by other DTT services. Ofcom will also receive the minor benefit from not having to commit resources to searching for a service provider.</p>

114. On top of these main costs and benefits identified above, there will also be crosscutting familiarisation costs for the PSBs. This familiarisation cost totals approximately £79,000 across

the 6 PSBs.

115. There will also be costs to Ofcom. Transitional, set-up, costs are estimated to be between £1,900,000 and £2,500,000 and the ongoing annual costs are estimated to be between £810,000 and £1,150,000. 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 will charge fees on in-scope businesses to recover this cost. It is not possible to estimate the size of these fees on individual organisations at this stage, as explained later in the assessment.

## Costs

### Monetised Costs

#### Transition Costs

##### *Familiarisation costs*

116. Through direct engagement a number of PSBs have indicated that direct 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. These calculations represent the best estimate of familiarisation costs based on the information currently available. Familiarisation costs can be split into the one-off familiarisation costs associated with the new remit, and the one-off familiarisation costs associated with the changes to PSB quotas.

117. Remit change: The majority of PSBs indicated, through our direct engagement with them, that any such one-off familiarisation costs for the remit change will be limited. A subset of staff in policy and regulatory, broadcast, legal, distribution and reporting teams will likely need to be familiar with the regime and its consequences to some extent. The highest estimates provided by the PSBs was c.15-30 FTEs will need some knowledge but the depth of this will vary by role. This will likely involve only some simple dissemination of the new remit, perhaps via email and in the course of meetings – perhaps as little as one hour per FTE. To err on the side of caution and to avoid optimism bias, the high estimate of 1 hour of work for 30 FTEs will be carried forward in this analysis. PSBs did not indicate how many of these FTEs would be legal professionals, and so it is assumed for this assessment that 20% (6 FTEs), will be from legal teams.

- In total, for each of the 6 PSBs, there will be 24 FTEs working for one hour, at an hourly wage of £20.81<sup>48</sup>, and 6 legal professionals at a median hourly wage of £25.92<sup>49</sup>.
- $(24 \times 1 \times £20.81) + (6 \times 1 \times £25.92) = £655$

118. It is also likely that PSBs will need to advise senior management of the implications of the new regime for their strategy and commercial relationships. This would involve discussion (and supporting papers) at pre-planned management and board meetings. The highest estimate provided by PSBs estimated that this would likely involve one day's work for approximately 20

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<sup>48</sup> Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

<sup>49</sup> Annual Survey of Hours and Earnings, ONS.

people, on top of c.1 day of prep for 2-3 FTEs in advance. Again, to avoid optimism bias, the high estimate of 20 FTEs for one day (8 hours), plus 3 FTEs for one day in advance, will be carried forward for this analysis.

- In total, for each of the 6 PSBs there will be 23 FTEs working for one day (8 hours), at an hourly wage of £20.81<sup>50</sup>.
- $(23 \times 8 \times £20.81) = £3829$
- Therefore the total familiarisation cost per PSB is:  $£655 + £3829 = £4484$

119. Across 6 PSBs, total familiarisation cost for the remit change = £26,904

120. Quotas proposal: The proposed changes to the quotas would require the same familiarisation time as above, plus a new quota change is likely to change PSBs' reporting requirements to Ofcom, which in turn requires changes needed to internal technology systems and reporting processes. The highest estimate provided for this was work from 10 FTEs for 3 hours a week for 3 weeks. This is a total of 9 hours per FTE.

- In total, for each of the 6 PSBs, there will be 10 FTEs working for 9 hours, at an hourly wage of £20.81<sup>51</sup>.
- $(10 \times 9 \times £20.81) = £1873$
- Therefore the total familiarisation cost per PSB is:  $£1873 + £4484^{52} = £6357$ .

121. Across 6 PSBs, total familiarisation cost for the quota changes = £38,142

- An uplift of 22% is also applied to cover non-wage labour costs, as per RPC guidance<sup>53</sup>. Therefore the total familiarisation cost for the combined changes is:  $(£26,904 + £38,142) \times 1.22 = \mathbf{£79,356}$

122. A number of the PSBs are public bodies, and therefore the cost for these would be removed from the EANDCB if this was being estimated.

#### *Other transition costs*

123. In addition to the one-off familiarisation costs, engagement with PSBs suggested that the only measure that may lead to additional transition costs is the update to the current quota system to allow the delivery of certain quotas via a wider range of services. This measure allows PSBs to deliver quotas via on demand, but does not require them to. It follows that any costs associated with this change are therefore indirect, as it depends on a behaviour change from the PSBs. However, it is highly likely that PSBs will, at some point, use this flexibility due to the changing habits of audiences.

124. One PSB went into detail on the nature of these costs of implementation, which, for them, are likely to include:

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<sup>50</sup> Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

<sup>51</sup> Annual Survey of Hours and Earnings, ONS. Average hourly wage of an individual in the Information and Communication SIC.

<sup>52</sup> The same familiarisation resource is also needed for the quota change, as well as the remit change.

<sup>53</sup> [Implementation costs](#), August 2019, RPC.



- Technical system adjustments and testing. This PSB's main reporting system is currently linear led and may need adaptation for robust reporting of metrics that cover both linear and on-demand.
- Additional one-off Business Analysis to look at the information and flow requirements.
- The need to develop and agree the format of the data to be submitted with Ofcom.

125. This PSB stated that costs would vary depending on the complexity of the system change required and the monitoring involved. They estimate that one off set up costs (system and process development) could be in the low hundreds of thousands. However, other PSBs envisage that any costs of transition would be minimal – and did not provide quantified estimates – with one noting that their broader business strategy is already moving in this direction. As a result of this lack of consistency between the PSBs, it is not appropriate to apply the individual PSB's cost estimate to the wider set of PSBs.

#### *Ofcom costs*

126. Ofcom has provided cost estimates, within a range, for activities they would need to undertake in order to implement these changes to the regulation in this area. Ofcom have also provided the ongoing costs, also within a range, which are detailed later in this assessment.

##### *1. An updated, singular remit for PSB*

127. Ofcom believes that the one off costs would be captured by their current resource costs (staff costs, research and IT/supporting infrastructure) for Ofcom's work on the PSB system. However, they do anticipate there could be a need for further research costs once the policy is finalised. Ofcom's total estimated costs for start-up activities would therefore be between £200,000 and £300,000.

##### *2. Updating the present quota system*

128. Ofcom states that any update to the present quota system would require a full consultation and research exercise and across a number of areas. Start-up activities would cover Ofcom staff costs, research and IT/supporting infrastructure costs. Ofcom's total estimated costs for start-up activities would be between £1,700,000 and £2,200,000.

129. Total set up costs are therefore estimated to be £1,900,000 – £2,500,000.

#### On-going Costs

130. DCMS have been unable to estimate the monetised costs to business that will arise as a result of these changes, despite our extensive direct engagement with the PSBs. PSBs could not provide detailed cost estimates, and therefore, as set out earlier in the assessment, no EANDCB has been produced for validation. However, the remainder of this section contains an extensive qualitative assessment of the costs and benefits for PSBs, with some figures which estimate the likely scale of impacts where these have been provided by the PSBs.

#### *Ofcom costs*

##### *1. An updated, singular remit for PSB*

131. Ofcom states that this would involve annually reviewing each PSB's content and media statement and completing their own reporting on their performance. Ofcom's total estimated costs for these annual activities would be between £150,000 and £250,000.
132. Ofcom would be required to continue to carry out a full review of the PSB system every 5 years which would include staff costs, research and IT/supporting infrastructure costs. Ofcom's total estimated costs for this activity would be between £1,300,000 and £1,500,000. A representative annual cost for this would therefore be between £260,000 and £300,000.
133. Ofcom may also be required to carry out ad-hoc reviews on specific aspects of the PSB system. Ofcom's total estimated costs for these activities (if required) would be between £400,000 and £600,000.
134. The total ongoing cost to Ofcom would therefore be between £810,000 to £1,150,000.

## *2. Updating the present quota system*

135. Ofcom states that any review within this area would be captured within the wider review of the PSB system that is found within our annual costs to Proposal 1. If a licensee applied for an amendment to any of their obligations as a PSB provider, Ofcom would have to complete a full consultation process and review of the obligations in question. Ofcom's total estimated costs for each time this were to happen would be between £250,000 and £350,000. When totalling the costs to Ofcom, these costs are not included because it is not possible to estimate the likelihood of this occurring.
136. Ofcom's costs are recovered through incremental fees levied on business. Ofcom have 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 policy. This will be determined at a later date, 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. Any change in fees is excluded from the EANDCB in impact assessments (statutory exclusion 24(4)(a)).

## **Non-monetised Costs**

### *1. An updated, singular remit for PSB:*

137. Through direct engagement with PSBs, there was the general consensus that the change to the PSB remit would not lead to large scale changes in how they operate. PSBs stated that there would be no direct costs to their organisation, or negative impacts more broadly, nor would there be any cost savings that arise from this change. PSBs indicated that this change in remit would not lead to any immediate changes to commissioning strategies and therefore have no impact on their supply chains or GVA footprints. The costs incurred as a result of PSB status are instead driven by the scale and form of individual obligations, rather than the form of the overarching remit. PSBs therefore do not envisage any cost savings arising as a result of the change.
138. Some PSBs believe the Government's proposed new remit captures the essence of what they already deliver as a PSB, meaning that it would not compel them to change their approach. One PSB made it clear that they are already entirely focused on delivering content

that is culturally, economically, and democratically vital to the UK's citizens and consumers – and thus in line with the definition proposed. However, there are potential costs if the revised remit is inappropriate.

139. One PSB did note that the proposed remit is too narrow and risks a diminution of the purposes and uniqueness of public service broadcasting. They also warned that a definition set in too general terms would open up the potential of PSB designation to a wide variety of companies. This would particularly be the case should the Government also pursue the 'new providers' option discussed above.

## *2. Updating the present quota system:*

140. Opportunity costs may arise from increased obligations. PSBs argue that these need to be matched by the value of the regulatory benefits they receive as a PSB. Adding more obligations could harm sustainability of PSBs, especially commercial PSBs, meaning they are less able to compete with other broadcasters and/or global streaming platforms.

### *a. Allowing the delivery of certain quotas via a wider range of services*

141. We engaged with PSBs to understand the ongoing costs arising from this change which are in addition to the possible transition costs noted above. This measure allows the delivery of certain quotas via a wider range of services, but does not require them to. It follows that any costs associated with this change are therefore indirect, as it requires a behaviour change from the PSBs. PSBs generally expected no adverse impact on their activities, commissioning strategy or GVA footprint. PSBs highlighted numerous benefits that are considered in a forthcoming section.

142. One PSB noted that a system which would permit quotas to be met through online distribution would have challenges that Ofcom would need to consider. Qualifying content on PSB BVOD (Broadcast Video on Demand) services would need to be distinct from other commissioned content on the service. Regulation would need to ensure PSBs did not simply put low-quality hours on their VoD services (that would never make it on to the main channel) in order to meet the quota without delivering value to audiences. We think these are valid considerations and have worked with Ofcom to address them, for example in relation to the criteria for designation that form part of the new online prominence regime (see separate impact assessment). On the quality point specifically we note in particular PSBs' legislative channel remits would still specify that they should provide "*high quality* and diverse programming"; and that a number of the commercial pressures identified here are already present in the current system, when they are managed through an appropriate set of checks and balances which will remain largely unchanged.

143. Whilst engaging with PSBs on this, DCMS asked how costs and benefits would differ over each of the implementation strategies set out in the long list of options. The PSBs that responded to this question were strongly in support of option 3 (replacing proportional hours and expenditure quotas with a requirement to make a minimum number of hours of content available across a PSB's linear channels and on-demand services and/or to spend a certain amount on them), since option 2 (maintaining proportional hours and expenditure quotas and applying them across PSBs' linear channel and on-demand outputs) would represent a considerable expansion of the scale of obligations placed on PSBs. It would introduce a huge range of requirements to linear channels and VoD services that currently have no such

constraints, thus providing a disproportionate and challenging burden in the context of the forecast reduction in net benefits of PSB licences. PSBs recommended that quotas are based on volume (i.e. a minimum number of hours of content made available across broadcast and online) and not as a percentage of either a single PSB channel or entire PSB output, which is achieved through option 3.

144. A central tenet of the PSB system is serving the needs of all audiences. There is the potential risk that PSBs prioritise their on-demand service(s), to the detriment of linear services, as a result of this change. This could have negative impacts on audiences that do not have access to the on-demand services provided by PSBs. Ofcom's review considered this a 'valid concern', highlighting the possibility that this could lead to a decline in some services, resulting in certain audiences losing out. This is particularly important as all audiences do not have ready access to the internet – Ofcom data shows that 5% of households do not have access to the internet at home, but this is higher among over-55s (7%) and in households in lower socio-economic groups (10%).<sup>54</sup> In reverse, 16% of UK adults who use on-demand services do not watch broadcast television.<sup>55</sup>
145. However, through engagement, PSBs stated that they generally did not anticipate that this change would have a substantial impact on the content and availability of their linear offers. One PSB stated that the change would help facilitate the provision to viewers who like VoD by not unnecessarily tying PSBs to traditional broadcast, but would not directly negatively impact broadcast-only viewers. They expect that the switch to delivery over the internet will keep pace with the adoption of new technology and improvements in digital access. As such they do not anticipate any negative impacts on their audiences as this transition takes place. At some point, there may be pressure on these audience groups where traditional broadcast becomes unsustainable, but they do not see this being an issue over the medium term. Another PSB noted that they will not neglect their main channel in that, despite this change in the way its quotas could be delivered, linear would remain at the centre of their delivery of a mass audience across the UK.
146. In recognition of its unique social and democratic importance, we do not intend to extend this flexibility to the delivery of news and current affairs content, which would continue to only count towards the relevant quota when delivered on a PSB's main channel. However, one PSB noted the importance that the regime should incentivise broadcasters also to provide news to younger audiences on digital and social platforms, particularly given the Government's broader policy objectives to tackle fake news and misinformation on online platforms. This suggests the risk of excluding news and current affairs content from this change could be that PSBs are not sufficiently incentivised to provide this content to younger audiences or those adults who do not watch broadcast television. We do not agree this is the case as PSBs would still be recognised for producing 'democratically impactful content' as part of their contribution to the overall public service remit for television. It would just be the case that new content and current affairs content not available on linear would not count towards their specific news and current affairs quota.

*b. Distinctively British content:*

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<sup>54</sup> Ofcom Technology Tracker 2021

<sup>55</sup> [Small Screen: Big Debate – Recommendations to government on the future of public service media](#), Ofcom 2021

147. As PSBs already provide a high amount of distinctively British content, and because the preferred implementation option at this time does not establish a new quota, analysis suggests the direct costs on PSBs and the broader ecosystem are limited.
148. Analytical engagement with PSBs suggested that alternative implementation options which rely on a more detailed definition of Britishness or a further layer of quota considerations are likely to result in significant implementation and ongoing costs and negative impacts for PSBs. The challenges of defining ‘distinctively British’ content were raised by several PSBs, with one noting the risks of an unintentionally narrow definition, and another highlighting the risk that such a definition could be capable of complicating and obfuscating the very quality – and diversity – it is intended to preserve. In relation to the potential establishment of a quota system for British content, PSBs felt that these would lead to significant additional costs and complexity in terms of commissioning, monitoring, reporting and compliance. The precise scale of impact would depend on the nature of the requirements and the level of the quota. Importantly, PSBs felt that the quota implementation options would not deliver social benefits to audiences commensurate with additional costs because the current market provides high levels of distinctive British content and because the production of British content is already central to PSBs’ purpose.
149. A concern was noted that changing the existing law to have a greater focus on distinctively British content could be objected to by the UK’s international partners, with implications for the UK creative economy, inward investment and exports. However, we note that the policy challenge of protecting culturally-relevant content is not unique to the UK and similar interventions exist in a variety of international jurisdictions.
150. These potential costs are minimised by the chosen option which is to rely on a general requirement to produce distinctively British programmes only, rather than setting a specific quota. Therefore the direct costs to PSBs arising from this change are zero, with PSBs overwhelmingly in favour of this implementation option as a sensible and proportionate way to offer the protection of British content without unduly burdening the PSBs or Ofcom.
151. In light of the importance of securing this policy objective, it is possible that the Government decides to put a specific quota on distinctively British content at a future date. The costs of this have been qualitatively assessed above. If this option is taken forward following consultation, then this would be implemented through secondary legislation, and a further, more detailed, impact assessment will follow at this time.

*c. Power to set additional quotas for underserved content areas:*

152. We received minimal evidence from PSBs on the power to set additional quotas given that it is uncertain as to how this power may be exercised in future. However, PSBs argued that this power was unnecessary, given that Ofcom is already able to conduct reviews of PSB output and make interventions to secure support for genres that are perceived as at risk. Furthermore, the Secretary of State is already able to (for example) write to Ofcom expressing concern about certain genres of content supported and invested in by PSBs. One PSB highlighted the risk that giving this power to the Secretary of State removes the appropriate checks and balances to ensure that media regulation is independent of government, and another stated that it could risk undermining the independence of Ofcom as the sector regulator.

153. We agree that it is important that, as a ‘backstop’ power, the power to set additional quotas for underserved content areas should be subject to appropriate checks and balances as is the case with the Secretary of State’s other, existing powers within the PSB system. This includes stipulating that the Secretary of State can only make a recommendation following a report by Ofcom, and ensuring that the precise details of implementing any new quotas would be a matter for Ofcom.

*3. Updating the listed events regime to make qualification for the regime a PSB-specific benefit*

154. It is expected that updating the legislation to make qualification for the listed events regime only possible for PSB services will in practice have zero cost to business (both PSBs and non-PSBs), when compared to the counterfactual. Services qualify if they are available free-to-air and are received by at least 95% of the UK’s population. Ofcom are required to publish a list of services which appear to them as qualifying services. Ofcom’s most recent analysis<sup>56</sup> (which involved consultation with PSBs and non-PSBs) concluded that only channels offered by the PSBs met the criteria. It is therefore reasonable to assume that this would remain the case absent of any change to legislation.

155. This intervention seeks to provide more clarity and certainty over the qualifying criteria in the long term given changing viewing habits and methods of distribution.

156. Non qualifying services will also still be able to form partnerships with PSBs to jointly cover events<sup>57</sup>. The fact that rightsholders can sell listed events rights to a qualifying or non qualifying broadcaster as long as Ofcom deems that these were offered to qualifying broadcasters on fair and reasonable terms maintains the commercial freedom inherent in the current regime.

*4. Addressing outdated references to the public teletext provider*

157. As set out in the counterfactual (option 0), there has been no desire from business to own the licence and operate a public teletext service in over a decade. Therefore, removing Ofcom’s obligation to endeavour to find a licence holder (and related provisions) will represent no change to the counterfactual, and have no costs to UK businesses. Also, the removal of these provisions would not stop a private teletext service from being established.

158. Since 2009 the appeal of the public teletext service has reduced alongside the growth of digital/internet services which viewers can use to access similar information. Repeal of the relevant provisions in law will have no direct impact on viewers because there has not been a public teletext service since 2009.

*Revenue cap for qualifying independent productions review*

159. DCMS is committing to undertake a review on whether to introduce a revenue cap for qualifying independent productions. In addition to the ongoing costs of compliance and monitoring associated with a new or amended independent production quota – which PSBs were generally unable to quantify at this stage – there are other potential direct costs to PSBs,

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<sup>56</sup> Ofcom Statement: Listed Events, 2019

<sup>57</sup> For example, Discovery and the BBC’s joint rights agreement to cover the 2021 Summer Olympics.

the independent production sector, and to audiences that the proposed quota system could create. A further impact assessment will be carried out if this measure is implemented through secondary legislation.

160. PSBs reflected on the difficulty of complying with a cap given their current activities, creating significant costs as a result of disruption and a potential reduction in value for audiences. One PSB estimates that around a third of their qualifying indie commissions come from larger producers, demonstrating that even excluding only the very largest indies from the quota could make compliance with the existing quota unrealistic. Another PSB highlighted that most producers with smaller revenues specialise in niche or factual production, whereas entertainment and drama production companies tend to have higher revenues. As a result, PSBs may be forced to consider commissioning more factual content to fill the quota, potentially reducing genre variety and PSBs' flexibility to meet audience tastes, therefore reducing overall audience value.
161. PSBs noted that a 'hard cap' focussed on revenue may stifle investment and growth for those independent production companies at the threshold. This could create a polarisation in the market where indies are required to be either small to benefit from the cap or large with sufficient scale economies to operate profitably. This could hollow out the middle of the market and make it increasingly difficult for small indies to grow beyond the cap. Similarly, production companies could be disincentivised from growing beyond the revenue threshold, or take steps such as splitting up their company to stay below the cap.
162. This could also lead to perverse disincentives for PSBs to continue economically and socially valuable relations with growing independent producers. Small companies receiving PSB commissions will mean that their revenues grow directly, and that they will likely be better placed to win commissions from other broadcasters and grow further. Under a small indie quota, such growth beyond a certain point would not be in the PSB's interests as it is likely the programme would soon cease to qualify due to the growth of the company. PSBs would therefore be incentivised not to work further with them. Were a smaller indie to become too big, PSBs might need to replace their show with one from a smaller indie, hitting their revenues and limiting their growth to no obvious audience benefit or benefit to the UK creative economy in which scale is increasingly important.
163. These impacts will be considered further through the review, and in an impact assessment accompanying secondary legislation if the decision to introduce a cap is made.

## Benefits

### Non Monetised Benefits

*1. An updated, singular remit for PSB:*

164. We believe that updating the PSB remit in the ways described above will have a number of direct benefits. The UK's system of public service broadcasting has evolved piecemeal over the better part of a century. Capturing the essence of PSB in legislation has not proven straightforward and there is no single definition of what PSB is or does. Perhaps as a consequence, the overall regime has become increasingly complex over time. The sheer

complexity of the UK's system of public service broadcasting makes it hard to judge the relative contribution of individual regulatory interventions (a number of which we are addressing through this process) to the success of the system as a whole.

165. As such we believe the UK's PSB system would benefit from having a simpler and more clearly articulated set of objectives. In particular, a shared understanding of the PSB remit, aided by a concise and unequivocal definition set out in legislation will improve accountability between PBSs and Ofcom as it would be clearer what was expected of broadcasters and their output. Indeed, as Ofcom have suggested in their own review, this would in turn help PSBs focus on their core objectives and deliver public service content that delivers against the requirements of the remit. In theory there may also be some cost savings associated with this simplification, as the legislation will be easier for PSBs and their staff to follow and comprehend. However, this was not raised as a benefit by the PSBs themselves during direct analytical engagement with them and has not been quantified.
166. Finally, it is worth noting that the proposed remit (focussed on content with significant cultural, democratic and economic value) is intended to maintain the positive externalities associated with public service broadcasting. In particular, it will ensure that audiences continue to have access to a wide range of high-quality, original programmes that reflect the UK back to itself; that audiences are informed about the world around them; and that PSBs continue to invest in the UK's creative economy.

*2. Updating the present quota system:*

*a. Allowing the delivery of certain quotas via a wider range of services*

167. Engagement with PSBs suggest that allowing PSBs to deliver certain quotas (and their remits more broadly) via a wider range of services will deliver economic benefits to PSBs and social benefits to audiences. One PSB noted that flexible quotas would work 'with the grain' of their revised commissioning strategy and help them meet their strategic vision, whilst also reducing the negative impacts of the current system that was set out in the counterfactual. Another PSB noted that the benefit to the PSBs and audience arises from the commissioning and scheduling efficiency that the change would bring. The flexibility to deploy content across linear and on-demand will allow for a more efficient allocation of resources. This would improve the efficiency of PSB spend, helping to ensure their financial sustainability, and for the BBC and S4C, the efficient use of public funds. PSBs would be able to direct spend where it is most valuable to meet UK audience needs rather than towards fulfilling strict linear quotas which is suboptimal in the face of changing consumer tastes. This means some low value content, that was commissioned to 'fill' the quota, may be stopped in favour of more impactful content.
168. In addition, extending the independent productions quota, and therefore the Terms of Trade regime, to programmes distributed via video-on-demand, would help to maintain the relevance of these existing policy interventions as a greater proportion of programmes are distributed in this way. This proportionate extension will benefit both PSBs and independent producers. In particular, PACT have called the current production sector rules, including the arrangements that frame the Terms of Trade between independent producers and the PSBs, an 'unparalleled success' and credited them with the huge growth witnessed in the sector since they were introduced in 2003.



169. Finally, there is the potential of spillover benefits. For example, we agree with Ofcom's assessment that more flexible quotas have the potential to encourage innovation by public service broadcasters, to ensure they meet the expectations of different audiences, however they choose to access content. This is particularly true of younger audiences who we know to be spending increasingly less time consuming linear television. Indeed, as the Scottish Government noted in their response to Ofcom's PSB consultation, "encouraging and giving the broadcasters more freedom to develop and implement delivery strategies which reflect how young people find and consume public service broadcast/media content could be an effective way to improve reach to those audiences." Notably one PSB stated that the efficiency arising from this change would bring increased spill-over effects through the adaptation of commissioning strategies in the form of content innovation through new online formats and a refreshed linear offer. This could also benefit independent producers in the UK as new commissioning opportunities are created, targeted at different audiences and in a wider variety of formats.

170. However, the extent of these benefits – at least in the short term – may be more limited than this analysis suggests. Another PSB did state that, so long as broadcast TV remains a primary delivery mechanism for public service content, and particularly so for news output, there would not be significant benefits arising from the flexibility to meet quotas through on-demand services. This is because the investment in the content itself far outweighs the cost of either broadcast or online distribution. This could be particularly true for the smaller PSBs.

*b. Distinctively British content:*

171. As set out above, we recognise that all our PSBs already produce a huge amount of content that could be considered 'distinctively British'. We want to make sure that this continues long into the future and that viewers continue to have access to world class content that is unmistakably British. We believe that this is potentially at risk from wider industry and economic pressures, particularly in terms of rising levels and incidences of international co-financing of PSB programming driven by global streaming services. For example, it is notable that UK PSBs now get more money for drama from foreign investors than they spend themselves.<sup>58</sup>

172. This move will indirectly benefit audiences across the UK, who see it a key purpose of the PSB system to ensure they are able to see themselves – and their own way of life – reflected on screens.<sup>59</sup> Indeed, this is central to delivering the 'cultural benefits' described above and ensuring that the content PSBs produce remains culturally relevant. Broadcasters have also told us that producing content that is 'distinctively British' is a core part of their commercial strategies, and is one of the key ways in which they differentiate themselves from multinational streaming giants, for example. Distinctively British content remains in high demand from buyers around the world, and this policy would ensure they will be required to continue to produce, despite any pressures they may receive from third parties.

173. One PSB stated that this change is unlikely to have impacts due to the high proportion of British content already being produced. They stated that they are already dedicated to commissioning the best British content to entertain UK audiences and therefore do not envisage that they would need to change their commissioning strategy or output as a result of

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<sup>58</sup> COBA

<sup>59</sup> Ofcom

a 'distinctively British' requirement and therefore the potential additional benefits for the UK production sector could be limited.

*c. Power to set additional quotas for underserved content areas:*

174. In general PSBs have responded positively to, and benefitted from, the largely 'self-regulatory' approach to PSB oversight that has prevailed since the introduction of the Communications Act 2003. By introducing a backstop power which is not intended for immediate use, rather than any new genre quotas at this stage, PSBs can continue to benefit from the self-regulatory arrangement that they are familiar with. There would inevitably be a lead time between the decision to implement a quota and before any quotas could be introduced. This will also give public service broadcasters time to flex their budgets and commissioning strategies accordingly.
175. Audiences will also benefit as they will continue to benefit from a wide range of public service content and there will be provision to ensure the supply of particular underserved content areas in the future if it is felt that would be advantageous to viewers.
176. In the event new quotas were introduced we would expect independent producers to benefit, particularly smaller ones, as they would be most likely to benefit from commissions for less commercially viable – and therefore underserved – genres, which broadcasters would be less likely to produce in-house.

*3. Updating the listed events regime to make qualification for the regime a PSB-specific benefit*

177. This measure will likely have no impact in practice, because, as set out above, only PSB services have qualified for the listed events regime so far. The intervention provides more certainty and clarity over the qualifying criteria in the future given changing viewing habits and distribution methods. PSBs will experience the ongoing benefit of having the opportunity to apply for rights to listed events on fair and reasonable terms. The broadcast of listed events regime is an important benefit delivered by the PSBs and a significant benefit of being a PSB. Broadcasting events on the list helps PSBs support the delivery of important cultural and social benefits. For example, the BBC told DCMS that they have leveraged the reach of major sporting events such as the Olympics Games to promote uptake of the Couch to 5k App and that there have been 5.5 million downloads in the UK since the BBC and Public Health England teamed up to encourage people to get active, with engagement strongest amongst young adults, women and lower socio-economic groups.
178. Additionally, the listed events regime helps support the sustainability of the PSB system by ensuring PSBs are able to compete for rights on fair and reasonable terms with global media platforms. In recognition of its importance, Ofcom's PSB review recommended that the Government should consider updating the listed events criteria in a way that would strengthen PSB benefits<sup>60</sup>.

*4. Addressing outdated references to the public teletext provider*

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<sup>60</sup> [Small Screen Big Debate: Recommendations to Government on the Future of Public Service Media](#)

179. Removing outdated references to the public teletext service could provide some small scale benefits to business as the valuable 3% of Multiplex 2 UHF (ultra high frequency) spectrum currently reserved for it could be released for use by other DTT (digital terrestrial television) services. In addition, Ofcom will receive the ongoing benefit of not having to commit resources to searching for a service provider. Departmental engagement with Ofcom has indicated that this benefit is minor. Finally, repeal of these provisions will help simplify the existing legislative framework.

#### *Revenue cap for qualifying independent productions review*

180. DCMS is committing to undertake a review on whether to introduce a revenue cap for qualifying independent productions

181. Introducing a revenue cap on qualifying independent producers would prevent particularly large producers from benefiting from the support currently targeted at the independent production sector. Allowing so-called 'super indies' to benefit from these interventions arguably undermines the policy objectives of supporting SME producers and ensuring a more level playing field between them and the PSBs, something which the cap would address. This would therefore be of benefit to smaller independent producers, in greater need of assistance from the PSB system, who would stand to benefit from commissions that previously would have gone to larger companies. In addition, the smallest production companies are more likely to be based outside of London, and so a cap would assist the Government's policy of driving more investment in production across the UK.

182. One PSB was supportive of a revenue-cap mechanism, managed by Ofcom, to prevent very large producers qualifying as 'independent' and better target support to smaller businesses. They appreciate that such an intervention would affect a relatively small number of companies. However, this small number of production companies are responsible for a significant share of commissions – in terms of market power it would be a very narrow but impactful intervention. Fewer than 20% of independent producers have revenue in excess of the indicative threshold chosen for this IA, and these companies account for 71% of sector revenues.<sup>61</sup> This will be considered further through the review, and in an impact assessment accompanying secondary legislation if the decision to introduce a cap is made.

## **Summary**

### **Business Impact Target Calculations**

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

### **Sensitivity Analysis**

184. Due to the lack of monetised costs for the PSBs 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.

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<sup>61</sup> O&O/PACT. PACT Census 2022.

## Risks and assumptions

185. 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. Also, it is clear from engagement with PSBs that the overall impact of these changes (with the chosen implementation options) is not significant, and therefore the risks of any assumptions made are low.

186. Where possible, the qualitative analysis is balanced and has been informed by information from the full range of PSB stakeholders. The below table highlights the main assumptions used when informing the largely qualitative analysis contained within this impact assessment.

*Figure 7: Summary of the main assumptions used in this analysis, with a description of the underpinning evidence and potential risks.*

Assumption	Evidence	Risk
The change to the PSB remit will not, in isolation, lead to large scale costs to PSBs or changes in their operation.	PSBs highlighted that the proposed change to the remit would not lead to costs in isolation – instead arguing that costs would be incurred by other interventions in this package. Moreover, PSBs highlighted that any change to the remit is likely to continue to broadly reflect their organisations’ work, not leading to substantial changes in how they operate.	PSBs flagged that an inappropriate or burdensome remit change could lead to costs and negative impacts. We consider this low risk as the proposed remit is designed to support, rather than constrain, existing PSB activity. It is also intended to complement the other interventions DCMS is taking forward.
It is assumed that allowing the delivery of certain quotas via a wider range of services will have minimal impact on the content and availability of their existing linear offers, and will therefore not negatively impact their linear-only audiences.	A number of PSBs provided assurances that this would be the case. They stated that allowing quota delivery on-demand will keep pace with the change in viewing behaviour, but they will not neglect their main channels.	If PSB linear channels are neglected as a result of this change, then there could be a negative impact on those audiences that do not have access to on-demand services.  This flexibility will not be extended to news and current affairs content, due to its social and democratic importance, and so the presence of this content on PSBs’ main channels will be protected.

Steps to address evidence gaps:

187. As explained in section 1, the majority of these changes will be enacted via primary legislation. For this assessment at the primary legislation stage, extensive engagement was undertaken with stakeholders in order to ascertain monetary estimates of impact. However, a lack of quantitative information was provided on certain measures.
188. Secondary legislation will be needed to make a small number of these changes. These include:
- a. A revenue cap for qualifying independent productions, if the Government decides to progress this following its review;
  - b. A specific quota on distinctively British content, if the Government decides to progress this following consultation;
  - c. Implementing the power to set additional quotas for underserved content areas.
189. Further impact assessments will accompany any secondary legislation in the future. 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. DCMS will also work with Ofcom at this stage to gather evidence for any impact assessment. This will increase understanding and enable quantitative appraisal of the following key impacts of the measures above:
- Ongoing compliance and monitoring costs.
  - Further analysis of the independent production market and PSB's commissioning from this market to ascertain the most appropriate level of the cap.
  - Any difficulties with implementing the cap, and the knock on costs that might arise from any actions production companies or PSBs take as a result of the implementation of the cap.
  - Any knock on impacts on content and value for audiences.
  - If the Government decides to progress a quota on distinctively British content, an analysis of the current production of content that could fall into this quota and any costs to PSBs as a result of meeting this quota.
  - Ongoing analysis of PSBs' quota performance and relationship between their linear and online delivery.

## **3.0 Wider impacts**

### **Small and Micro Business Assessment**

190. None of the PSBs are small or micro businesses, therefore no exemptions to this regulatory change are possible.
191. However, it is possible that these changes may have a positive impact on small or micro businesses. As set out in the assessment, some respondents to Ofcom's *Small Screen, Big Debate* consultation raised concerns that very large producers (so-called 'super indies') still qualified as 'independent' under the current statutory definition, and were therefore able to benefit from the regulatory advantages associated with being captured by the independent production quota. The proposed review into the introduction of a revenue cap on the definition of a qualifying independent producer will help ensure that the policy objectives of supporting SME producers and ensuring a more level field between them and the PSBs.
192. Also, this legislation will make the law more explicit that, for a programme to count towards a PSB's independent production quota, it must be commissioned in compliance with that PSB's code of practice for commissioning independent productions, whether or not it is "intended for use on licensed public service channels". This will help to protect the Terms of Trade regime that exists between PSBs and independent producers. It is not expected that any of the other proposed changes would have a direct impact on PSBs' commissioning strategy or GVA footprint.
193. Therefore, the package of changes will help support small and micro independent procedures.

### **A summary of the potential equality impacts**

194. The Government has a legal obligation to consider the effects of policies on those with protected characteristics<sup>62</sup> under the Public Sector Equality Duty 2011 and the Equality Act 2010.
195. There are no direct impacts on individuals with protected characteristics that will arise from this regulation. The main impacts here fall on businesses, and the only impacts on individuals will be indirect, knock on consequences arising from any action businesses take. There is no evidence to suggest that impacts will fall disproportionately on individuals with protected characteristics.
196. A central tenet of the PSB system is serving the needs of all audiences. There is the potential risk that PSBs are incentivised to prioritise their on-demand service, to the detriment of linear services, as a result of this change – though broader commercial/sectoral pressures are likely to incentivise this behaviour anyway (PSBs have frequently started to adopt 'online first' strategies). In time this could have negative impacts on audiences that do not have access to the on-demand services of PSBs. Ofcom data shows that 7% of households do not

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<sup>62</sup> Age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation

have access to the internet at home, but this is higher among over-55s (13%) and those in the lowest incomes (23%).<sup>63</sup>

197. Whilst there is the potential that the delivery of quotas through on-demand content could risk negative impacts for those who are not online, PSBs stated that this change would not lead to negative impacts on their linear service. Moreover, as explained above, in recognition of its unique social and democratic importance, we do not intend to extend this flexibility to the delivery of news and current affairs content, which will continue to only count towards the relevant quota when delivered on a PSB's main channel. This will also help to guarantee that those audiences who cannot access content online can continue to access important, high quality, news and current affairs content on linear.
198. Some stakeholders and commentators have voiced concerns that embedding the importance of 'distinctively British' content into the PSB system could lead to the prioritisation of 'White English' content over content that features ethnic minorities or is produced in other nations of the UK. However, as set out above, we propose to adopt a broad definition of 'Britishness' modelled on the existing language in the Communications Act 2003 ("programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom"). This will ensure that people from all backgrounds and regions of the UK will continue to be able to see themselves and their way of life depicted on screen. Any move to introduce new quotas for 'distinctively British' content will be considered as part of the planned consultation. This will give stakeholders an opportunity to feed into the policy design so that we can be confident any new quota requirement will not disproportionately favour one form of British content over another.
199. Ensuring that the listed events regime continues to be a PSB-specific benefit, will help to secure free coverage of events of national importance. This will benefit less well off households that are more likely to not have access to major events if they sit behind a paywall.
200. There is not expected to be any significant impact of these proposals on different geographies in the UK. The overall impact of these changes are minor, as explained earlier in this assessment, and therefore any geographical impact is expected to be minor. The potential geographic impact of the introduction of the revenue cap will need to be assessed further at secondary legislation stage, when the details of the cap are to be assessed.

### **A summary of the potential trade implications of measure**

201. These changes are not expected to have any significant impact on trade or inward investment. As above, a concern was noted that changing the existing law to focus only on distinctively British content could be objected to by the UK's international partners. However, evidence from PSBs indicates that the preferred option will have no direct impact on business, and therefore trade. If the option to introduce a distinct quota is chosen in the future, secondary legislation would assess this impact. We note more generally that the policy challenge of protecting culturally-relevant content is not unique to the UK and similar interventions exist in a variety of international jurisdictions.
202. Changes to the listed events regime are unlikely to have any substantial short to mid-term impacts on trade or investment compared to the counterfactual of making no regulatory

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<sup>63</sup> Ofcom Technology Tracker, 2022

changes. The changes to the qualifying criteria will have minimal impact as PSB services have thus far been the only qualifying services, therefore it maintains the status quo. The listed events regime has not appeared to have negatively impacted trade or investment in a significant way therefore it is deemed that this update will have similarly minimal impacts.

### **Innovation Test**

203. A detrimental impact on innovation was not raised regularly through DCMS' engagement with stakeholders.
204. As considered in the body of the IA, changes to the quota system to include online delivery may have positive innovation impacts as PSBs are able to adapt their commissioning strategies across their linear and online outputs, exploring new ways to deliver PSB obligations. We consider that the other measures included do not have a significant impact on innovation.
205. It is therefore anticipated that this measure is unlikely to have a significant impact on innovation.

### **Justice Impact Test**

206. This policy is not expected to have any impact on the justice system.

### **Competition**

207. Using the competition checklist set out in the Competition and Market Authority's (CMA) "competition assessment checklist" guidance<sup>64</sup>:

1. *Will the measure directly or indirectly limit the number or range of suppliers?*

208. This measure will not directly limit the number or range of suppliers. The impacts of the proposed changes will not have a significant impact on commercial PSBs' decision to remain in the PSB system, and the existing limit on the number of PSB suppliers will be unaffected by these measures.

2. *Will the measure limit the ability of suppliers to compete?*

209. The changes to PSB legislation will not provide particular firms with strategic advantages, or limit one side's ability to compete. It is possible that adding more obligations to PSBs could harm the sustainability of PSBs, especially commercial PSBs. This in turn might make them less able to compete with new entrants to the market commanding an increasing market share. However, the new regime for online prominence will aid in mitigating this risk, as will the measures included here which (taken together) reduce the costs and burdens of PSB status. The change in the cap for qualifying independent productions is likely to allow smaller producers to compete better in the independent production market, although this would be an indirect result, dependent on changes to PSBs' commissioning strategies.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/460784/competition\\_impact\\_assessment\\_Part\\_1\\_-\\_overview.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/460784/competition_impact_assessment_Part_1_-_overview.pdf)



3. *Will the measure limit the suppliers' incentives to compete vigorously?*

210. The regime is likely to help future proof the PSB system. This, along with the new prominence regime for PSBs' on-demand services will help ensure PSBs can compete with other large streaming services. To this end, the measures may allow more vigorous competition within the broadcasting sector without providing disincentives for any party.

4. *Will the measure limit the choices and information available to consumers?*

211. The new regime will not limit the choices and information available to consumers.

212. Therefore, as per the CMA's guidance, an in-depth competition assessment would be disproportionate for this measure.

## **4.0 Post Implementation Review/Monitoring and Evaluation Plan**

213. 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 modernising the UK's system of public service broadcasting Impact Assessment. These developed plans are set out below.

### **Evaluation: Ofcom**

214. 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's UK Public Services).

215. Ofcom's most recent review of the PSB system was in 2019-21, so future reviews will be well-placed to consider impacts of Media Bill measures. This is reflected by the [most recent 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 PSBs 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.

216. 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.

217. 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.

218. 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.

219. 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 monitoring of how PSBs make use of their new freedom to deliver quotas through on-demand 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.

220. Figure 8 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 8: Monitoring and evaluation areas of interest

Outcome	Evaluation Questions	Potential Metrics/Approaches
The flexibility of the PSB system is improved, enabling PSBs to innovate across linear and on-demand services to better serve audiences and their changing viewing habits.	<p>Are UK PSBs able to better serve audiences through this increased flexibility in how to meet their quotas?</p> <p>Are UK PSBs neglecting their linear channels as a consequence?</p>	<ul style="list-style-type: none"> <li>● Using quota data to track how PSBs use the greater flexibility to meet quotas through alternative services to their linear channel</li> <li>● Number of hours (used to meet quotas) on their linear channel vs their on-demand channel</li> <li>● Assessment of quality of content provision across linear and on-demand</li> </ul>
Audiences continue to be well served with valuable and distinctive public service content as a result of greater protection for potential future underserved areas, and an explicit recognition of the need for distinctively British content.	To what extent have PSB reform measures improved the provision of public service broadcasting?	<ul style="list-style-type: none"> <li>● Ofcom’s PSB tracker asks questions to rate specific TV channels on different aspects of broadcasting relating to the PSB purposes and characteristics</li> <li>● Hours of distinctively British content</li> </ul>
The value of the benefits to PSBs are maintained, meaning that these are well-balanced against the obligations of the ‘PSB compact’, in turn improving the sustainability of the PSB system.	<p>What contribution has PSB reform made to PSBs’ balance of obligations and benefits?</p> <p>Are UK PSBs still holding and valuing their PSB licence? I.e. Are the burdens placed on PSBs outweighing the benefits they receive or vice versa?</p>	<ul style="list-style-type: none"> <li>● Financial metrics reported by PSBs: revenue, costs, profit, profitability (for the commercial PSBs) e.g. EBIT, EBITDA</li> <li>● Engagement with PSBs to understand impacts of discrete measures (e.g. cost savings, or costs created)</li> <li>● External assessments of the value of the PSB compact and how that has changed since extension of the prominence regime</li> </ul>

## Evaluation: DCMS

221. 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.
222. 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 PSBs, commercial broadcasters, and representatives of viewers regularly and will continue to do so throughout the implementation and post-implementation phases.
223. As a result of limited or no 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.
224. 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.