
Annex 1: Ensuring PSM content remains widely available and prominent

Small Screen: Big Debate statement

ANNEX:

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A1. Ensuring PSM content remains widely available and prominent

Section 6 of our *Small Screen: Big Debate* statement presents an overview of our recommendations for new rules for ensuring PSM services and content are widely available and prominent. There is an urgent need for new, modernised regulation to ensure that audiences can continue to enjoy the benefits of PSM in the digital age. This annex provides further detail about responses we have received to our [consultation](#), and our recommendations.

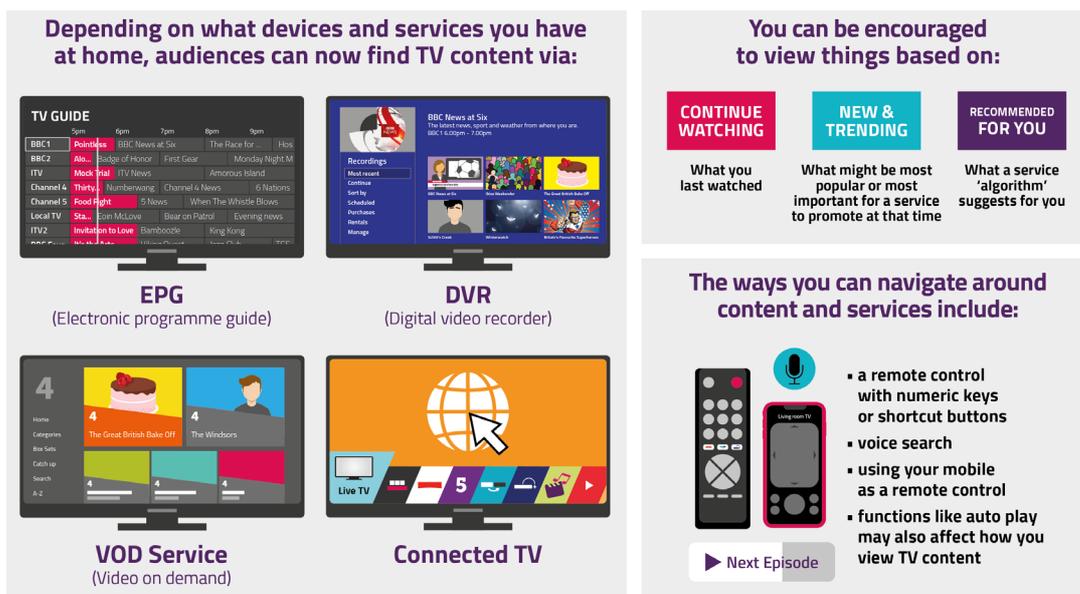
Key terms in this annex

- **Availability** means that audiences are able to access PSM content free at the point of delivery via a commonly used TV platform, such as those offered by Freeview, Sky or Amazon Fire.
- **Prominence** means giving PSM content a privileged position within a TV guide and/or user interface within a connected TV platform so it is particularly easy for audiences to find and watch.

The need for new prominence and availability regulations

A1.1 As we outline in the main statement, viewing habits have fundamentally changed since the Communications Act 2003 was introduced. Audiences are watching more TV on-demand, and the way people discover and navigate around programmes is no longer limited to a channel scroll on an electronic programme guide (EPG). 75% of online households in the UK now have a TV set that is connected to the internet via devices such as smart TVs, games consoles, streaming sticks and set-top boxes.¹

Figure 1: Audiences now have many ways of accessing TV content



¹ Ofcom, 2021. [Technology Tracker 2021](#). Figure calculated from QH62 and QH96.

- A1.2 At present, regulation guarantees that public service channels are widely available and given appropriate prominence. However, there are no rules to secure the availability and prominence of on-demand PSM content on connected TV platforms.

Summary: the existing availability and prominence rules for public service broadcasting

The **‘must offer / must carry’ provisions** in the Communications Act 2003² ensure that public service broadcasters offer a version of their public service channels for carriage on the major UK television platforms (including cable and satellite platforms), and that those platforms must carry them. The legislation lists the channels that must be carried and sets out the types of networks and satellite services to which these channels must be offered. It also sets out the statutory objectives supporting the ‘must-offer’ provisions, which essentially ensure audiences all across the UK can watch public service channels for free.³ There are also statutory provisions on how changes can be made, and on Ofcom’s role in enforcement and disputes.

The **arrangements for the BBC**⁴ go beyond their broadcast channels as they are subject to a specific ‘must-offer’ regime under the Royal Charter and Agreement. The BBC Board must set a policy on the distribution of the UK Public Services, which includes online services such as BBC iPlayer. This policy must set out how the BBC will fulfil its obligation under the Agreement to make the UK Public Services widely available in a range of convenient and cost-effective ways. Ofcom has a role to consider the impact of the BBC’s activities on fair and effective competition. In carrying out this role, we have set requirements and guidance on the BBC’s distribution arrangements. This includes the requirement that the BBC must offer its services on a fair, reasonable and non-discriminatory basis.

The Communications Act 2003 also includes **provisions around the prominence of public service TV channels**.⁵ These rules protect the position of specified channels within electronic programme guides (‘EPGs’), so audiences can easily find them and may be encouraged to view them. Ofcom is responsible for providing guidance on appropriate prominence in the EPG Code. The EPG Code also sets out the features and information needed to enable EPGs to be used by people with disabilities, as well as rules to ensure EPG providers support fair and effective competition.⁶

² S.64 and 272-275 of the Act.

³ These statutory objectives are set out in s.272 and 273 of the Act.

⁴ Article 46 of the BBC Charter and Clauses 15(4) and 61 of the BBC Framework Agreement; Ofcom, 2017. [Distribution of BBC public services. Ofcom’s requirements and guidance.](#)

⁵ S.310-311A of the Act.

⁶ See Ofcom’s [Code on Electronic Programme Guides](#) for more information.

Public service broadcasters currently negotiate commercial terms with TV platforms to make their on-demand services widely available, with no regulatory protections on the outcomes

- A1.3 The public service broadcasters negotiate with TV platforms to distribute their on-demand content. These platforms include pay TV operators like Sky and free-to-access platforms like YouView, TV manufacturers like Samsung and Panasonic, as well as global TV platform providers like Amazon and Google which are now widely used in the UK.
- A1.4 The negotiations between public service broadcasters and TV platforms involve complex trade-offs regarding a range of factors. Stakeholders have told us that the prominence of PSM services and content is often the most contested issue in negotiations: where and how these services and content are displayed in a platform user interface, or the presence of a shortcut button on a remote control, determines how easy it is for audiences to find and engage with PSM. But a range of other important terms are also negotiated alongside prominence. These terms include:
- The level of **editorial control** that public service broadcasters have over the selection of content shown outside of their apps in different areas of a TV platform user interface, such as recommendations;
 - The extent to which content and/or services are **clearly marked and associated with the public service broadcasters' brands**;
 - Access to **audience data**, which public service broadcasters need so they can understand who is viewing content and how to serve audiences more effectively. Platforms also use audience data to develop their services and drive technological innovation;
 - For the commercially-funded public service broadcasters, the terms governing **advertising on their services**. For example, a TV platform might seek to control a share of the advertising on a public service broadcaster's on-demand service, limiting that broadcaster's ability to earn revenue from the service. Platforms also sometimes negotiate terms with public service broadcasters to enable viewers to 'skip' adverts while viewing PSM;
 - Whether a public service broadcaster allows a platform to enable certain **functionality**, such as displaying its content in search results;
 - The **viewing quality** in which PSM content is supplied – this could be standard, high or ultra-high-definition.
- A1.5 In their consultation responses, the public service broadcasters argued that they are finding it increasingly difficult to agree key terms. They said that this was partly due to intensifying competition from streaming services, like Disney +, that have negotiated global deals to secure prominence on platforms.⁷
- A1.6 Independent analysis we commissioned from Mediatique found that there are strong commercial incentives for platform providers to prioritise agreements with large

⁷ [BBC response to consultation](#), p.19; [Channel 4 response to consultation](#), p.25; [ITV response to consultation](#), p.42-43.

multinational content partners. According to Mediatique, these partners can often pay fees or share revenue with platforms in return for favourable terms in ways that are uneconomic for content providers that operate only or primarily in the UK.⁸

When PSM providers are unsuccessful in negotiating key terms, this can lead to poor outcomes for audiences

- A1.7 When commercial negotiations fail, there is the risk that the public service broadcasters' on-demand services are not available on the affected platforms until a commercial resolution is reached. This has occurred on several occasions in recent years, leaving some audiences unable to access PSM on-demand content on certain platforms. To date these gaps in the availability of PSM have mostly been for limited periods of time.⁹
- A1.8 From the position of a PSM provider, unsuccessful negotiations on key terms can also lead to other risks to the effective delivery of their service. For example, a PSM provider might have to settle for a deal where its on-demand service is barely visible on the home page of a connected TV screen, which may make audiences less likely to view PSM content. As another example, PSM providers may not be given sufficient access to the data they need to understand audience tastes and to tailor their content offer to engage with viewers effectively.
- A1.9 There is also a risk that terms could undermine the ways in which commercial public service broadcasters generate revenue from their online services. Commercial public service broadcasters have so far negotiated an exemption from the requirement to share advertising inventory that certain platforms include in their standard terms.¹⁰ Failing to do so in future, however, could have implications for their ability to fund new PSM content, and the sustainability of advertising-funded business models that allow audiences to access PSM free at the point of use.
- A1.10 At present, the larger public service broadcasters retain some strength in negotiations due to their general popularity with audiences. Mediatique found that platforms considered BBC content to be 'must have' – though this was not true of the other public service broadcasters' on-demand services.¹¹ TV platforms told us that audiences expected to be able to access PSM content on-demand and that this gives the public service broadcasters a strong negotiating position. Some respondents also raised concerns that the public service broadcasters insist on terms that are technically complex and onerous for platforms to fulfil.¹² This risks reducing the scope for platforms to develop new technical innovations that could benefit audiences, and potentially also increases costs that may lead to consumers paying higher prices in order to access TV platforms.¹³

⁸ Mediatique, 2020. [Connected TV Gateways: review of market dynamics – a report for Ofcom](#), p.5 and p.42-43.

⁹ For example, LG's 2020 TV models launched in the UK in April 2020 without any of the public service broadcasters' VoD apps (BBC iPlayer, ITV Hub, All 4 and My5). All these apps are available on LG's 2021 TV sets.

¹⁰ Spark Ninety, 2020. [Connected TV advertising market dynamics – report for Ofcom](#), p.23.

¹¹ Mediatique, 2020. [Connected TV Gateways: review of market dynamics – report for Ofcom](#), p.42.

¹² [LG response to consultation](#), p.5; [BT response to consultation](#), p.8; [Google & YouTube response to consultation](#), p.7.

¹³ [LG response to consultation](#), p. 2.

New proportionate regulation is needed to protect audience interests

- A1.11 A number of responses to our consultation agreed that some form of regulatory intervention is necessary to guarantee the availability of on-demand PSM on a wide range of TV platforms.¹⁴ However, respondents expressed a range of views about the aims and design of any such regulation.
- A1.12 The public service broadcasters argued that there is an urgent need for new prominence and availability rules.¹⁵ Most responses from TV platforms acknowledged that there could be benefits in requiring public service broadcasters to offer their on-demand services to platforms.¹⁶ However, several argued that rules specifically requiring platforms to make PSM prominent are not necessary because the public service broadcasters' on-demand services are already generally prominent.¹⁷
- A1.13 Respondents generally agreed that any new rules should be designed to minimise potential detrimental effects on the commercial freedom of platforms or the ability of PSM providers and platforms to innovate and respond to consumer choice.¹⁸ We recognise that overly prescriptive intervention could harm investment and innovation.

Our recommendations for new availability and prominence rules

- A1.14 There is a clear need for legislation to establish new availability and prominence rules for on-demand PSM content. In developing our recommendations for these new rules, our primary objective is to ensure that UK audiences can access PSM content in prominent positions on commonly used TV platforms.

New legislation should set out which services are in scope

- A1.15 We consider that the following services should initially be within the scope of the new rules.

PSM services in scope: The new rules should apply to the on-demand service that each PSM provider relies upon to fulfil its PSM obligations. This service could take the form of an app, or in some cases it could take the form of a collection of PSM content hosted directly on a TV platform or on the app of another PSM provider (such as the S4C content hosted on the BBC iPlayer).

¹⁴ Stakeholders include: [Sky response to consultation](#), p.12-13; [LG response to consultation](#), p.2-3; [STV response to consultation](#), p.21; [BBC response to consultation](#), p.19-20; [Johnson, Prof C response to consultation](#), p.7.

¹⁵ Stakeholders include: [Channel 4 response to consultation](#), p.25; [BBC response to consultation](#), p.5; [ITV response to consultation](#), p.10.

¹⁶ Stakeholders include: [Sky response to consultation](#) p.13; [techUK response to consultation](#) p.7-8; [BT response to consultation](#) p.6.

¹⁷ Stakeholders include: [techUK response to consultation](#) p.2; [LG response to consultation](#), p.10.

¹⁸ Stakeholders include: [Roku response to consultation](#), p.2-3; [Google response to consultation](#), p.5-8; [BBC response to consultation](#), p.20.

This would mean that the on-demand services of the six public service broadcasters (the BBC, ITV, Channel 4, Channel 5, S4C and STV) would be included.

TV platforms in scope: TV platforms that are used by a significant number of people as their main way of navigating around and accessing a range of on-demand services from third-party providers. This would initially include pay-TV services, as well as smart TVs, streaming sticks and some games consoles.

- A1.16 Given the pace of change in audience habits and technological developments, it is possible that a broader range of platforms or a different set of PSM providers should fall within scope in the future. It therefore is essential that the regime can be adapted without the need for further primary legislation. One way to achieve this adaptability would be to include order-making powers for the Secretary of State to update key definitions regarding which PSM and platform services would fall in scope of the new rules.
- A1.17 Consistent with our recommendations for updated prominence rules that we published in July 2019 (the '[2019 Recommendations](#)'), we recommend that any TV platform provider that meets the conditions to be in scope should be required to notify Ofcom. This would be a more proportionate approach than issuing licences for the many different providers of TV platforms who may fall within scope. This notification approach is similar to the current regime for regulating editorial content on UK video-on-demand services.¹⁹
- A1.18 We do not consider that video sharing platforms (VSPs) like YouTube, or SVoD services like Netflix, would fall within the initial scope of the new rules. VSPs are predominantly used for short-form user generated content, and content providers' access to the platform is not restricted. SVoD services commission or acquire all of the content they show; these services do not host third party players, like ITV Hub or My5. None of the public service broadcasters or platforms who responded to our consultation argued that a new prominence and availability regime should apply to VSPs or SVoDs.
- A1.19 We have also not considered access to audio content as the focus of our review is on TV content. However, we recognise that growth in online audio services and devices, such as smart speakers, may present some similar regulatory challenges. In its consultation response the BBC stated that Ofcom should urgently consider additional prominence or 'findability' rules for PSM audio content to ensure audiences can continue to find it as technology and consumption behaviours change.²⁰
- A1.20 Audio platforms function in different ways to TV platforms – for example, audiences may not interact with a visible user interface at all if they access BBC radio via a smart speaker. Moreover, although it forms part of the BBC's public services, radio and audio content currently lies outside the broader legislative framework for PSM. Any new prominence regime applying to radio and audio content beyond the BBC would need to consider which providers would be in scope, and their relationship to the PSM framework.

¹⁹ Part 4A of the Communications Act 2003.

²⁰ [BBC response to consultation](#), p.15.

A1.21 Further work is needed to establish if prominence rules would be effective and proportionate in this context. The Government’s Digital Radio and Audio Review is currently considering how to support the UK radio and audio sector in light of changes in technology and audience behaviour. We will reflect on the implications for audio regulation when the DCMS review is published.

There should be new ‘must offer’ obligations for PSM providers and availability requirements for regulated TV platforms, underpinned by statutory objectives

A1.22 We propose that legislation should establish new requirements for PSM providers and regulated TV platforms:

PSM providers should have new ‘must offer’ obligations: each regulated PSM provider should be required to offer to the regulated TV platforms all of the content it relies upon to fulfil its PSM obligations. Similarly to the current ‘must offer’ regime for the public service channels, this content ‘offer’ should be made in line with statutory objectives (see below).²¹

Our statement sets out our proposals for new, modernised PSM obligations. These obligations may vary by provider, and may include requirements on how content is presented to ensure that audiences can easily find and discover a range of PSM content. The availability and prominence of any additional content or services would remain a matter for commercial negotiation with platforms and would not fall within the new regulatory regime.

TV platforms should have availability requirements: each regulated TV platform would have to make the PSM content ‘offer’ available in line with the statutory objectives (see below).

Statutory objectives: underpinning the ‘must offer’ and availability requirements would be a set of statutory objectives. These would aim to ensure that PSM content is:

- available to view by as many members of its intended audience as practicable
- given appropriate prominence on regulated TV platforms
- made available on terms that are consistent with the sustainable delivery of PSM obligations, and do not place disproportionate restrictions on TV platform innovation and consumer choice.

A1.23 To be effective, we recommend that the new ‘must offer’ and availability requirements are supported by enforcement powers for Ofcom. These would enable us to gather evidence for monitoring compliance, assess breaches and impose remedial action (including fines) where necessary.

²¹ The statutory objectives applying to the current ‘must offer’ regime are set out in s.272 and 273 of the Act.

A1.24 We also propose that Ofcom should have a role to provide guidance, and we describe this further under our recommendations for a dispute resolution mechanism below.

New guidance will incentivise PSM providers and platforms to reach agreements, and form the basis for enforcement action or dispute resolution if required

A1.25 Several stakeholders agreed that there could be a role for Ofcom to resolve matters when PSM providers and platforms cannot agree terms.²²

A1.26 Guidance drawn up by Ofcom could play a valuable role in incentivising parties to reach agreements in a timely way that are in the interests of audiences, and consistent with the statutory objectives. It could be revised when needed, making it an appropriate tool for addressing risks to audiences from the complex and dynamic range of factors that are negotiated between PSM providers and platforms. As well as using our guidance as the basis for resolving disputes, we could also take relevant aspects of it into account when considering any potential enforcement action.

Our guidance on terms would support fair commercial deals that enable PSM providers to engage with audiences effectively

A1.27 The guidance would seek to promote the statutory objectives in a proportionate manner. Before issuing any guidance, we would seek stakeholders' views through a consultation process.

A1.28 The guidance would set clear expectations around the types of terms that would normally be considered acceptable and outline the circumstances where we might have concerns. For example, if platforms required a share of a PSM provider's online advertising as a condition for carrying the PSM content offer, this could potentially undermine a PSM provider's ability to fund PSM content and therefore deliver poor outcomes for audiences. On the other hand, guidance could also help ensure that the terms of PSM availability do not have a disproportionate adverse impact on platforms' ability to innovate and meet consumer expectations.

A1.29 Respondents to our consultation had different views on how to ensure that commercial deals deliver fair outcomes for PSM providers and platforms.²³ Guidance would need to consider a number of factors that are important for ensuring audiences continue to enjoy the benefits of PSM. For example, guidance would need to ensure that PSM providers have sufficient control over the presentation of their content to fulfil their public service obligations. At the same time, guidance should support the ability of audiences to access PSM via a platform of their choice, and in line with their expectations. The guidance would also need to take of account factors such as the technical capability of the platform to

²² Stakeholders include: [techUK response to consultation](#), p.4; [Channel 4 response to consultation](#), p.27; [ITV response to consultation, Annex 1](#), p.6-7.

²³ For example, see [ITV response to consultation](#), p. 57-58; [Virgin Media response to consultation](#), p. 14-16.

make the PSM service available in an appropriate form – whether as an app, or presented as a collection of separate programmes.

Where platforms and PSM providers cannot agree commercial terms, guidance would form the basis for dispute resolution

- A1.30 We recommend a dispute resolution function for Ofcom. Dispute resolution should be a last resort when commercial negotiations have broken down.
- A1.31 The complexity of negotiations around terms on which PSM content should be made available poses a risk that resolving disputes could become a lengthy and inefficient process. This could leave audiences unable to access PSM via a particular platform while the dispute is ongoing. To mitigate this risk, we recommend that:
- a) Legislation should set a strict time limit within which disputes must be resolved; and
 - b) Ofcom should be able to require any relevant PSM services to be made available according to a set of temporary terms until the dispute is resolved.
- A1.32 The dispute resolution function should be designed to leave discretion for Ofcom in accepting disputes for resolution. This assessment should be made on the particular facts of each individual case. For example, depending on the nature of the disagreement, Ofcom might decide that it is not appropriate to handle a dispute on the basis that alternative means, such as referral to an independent arbitrator with specific commercial expertise, are available to resolve the dispute promptly and satisfactorily.

Prominence should be part of the new on-demand availability regime

- A1.33 As prominence is negotiated at the same time as other carriage terms, we think prominence should be part of the new on-demand availability regime.
- A1.34 While prominence is crucial for helping audiences to easily find and benefit from watching PSM, we also recognise that audiences also want to be able to find other content readily, in addition to PSM. We think that regulation can weigh up these interests to determine what ‘appropriate prominence’ is on a variety of platforms, including any specific national considerations such as the prominence of STV Player in Scotland.
- A1.35 In response to our consultation, several platforms argued that there should not be prescriptive requirements on prominence. Platforms also said that, in determining whether PSM is prominent, Ofcom should consider the full range of ways in which PSM may be accessed across a platform user interface.²⁴ We recognise that platforms may need to deliver prominence in different ways depending on how their platform is designed. As part of providing this flexibility, we may require platforms to report specifically on how they have made PSM prominent, with reference to our guidance.

²⁴ [techUK response to consultation](#), p.4-5; [LG response to consultation](#), p.11-13; [Sky response to consultation](#), p.22.

A1.36 Our guidance would provide clarity for platforms on what we would normally consider to be ‘appropriate prominence’ for PSM content. We expect that our guidance would include a set of core prominence principles that platforms should follow, as well as more specific information about how appropriate prominence might be delivered in different contexts. This would allow the guidance to be applied flexibly to accommodate different platform designs. In the event that Ofcom had to resolve a dispute in which prominence was one of the contested terms, we would determine what is ‘appropriate prominence’ with reference to our guidance. We would also take into account the specific circumstances of the case as well as the wider context of audience needs and viewing habits.

Our proposals would be more effective and practicable than a fallback set of standard terms

A1.37 Several responses to our consultation, including those of the public service broadcasters, Sky and LG, were supportive of a regulatory intervention to establish a standard set of contractual terms, which would act as a backstop in commercial negotiations.²⁵ This set of terms – referred to in responses as a ‘regulated’ or ‘core’ offer – would automatically apply in the event that commercial negotiations break down, guaranteeing that audiences would always be able to access PSM services even when agreement on a broader set of terms could not be reached.

A1.38 There was considerable disagreement in responses about what should be included within the ‘core’ offer. For example, ITV proposed that regulation should only require the core offer to contain content “recently first broadcast on public service channels”.²⁶ However Sky argued that the core offer should also include “any other on-demand content through which the public service broadcasters satisfy their public service obligations”, while LG said that the ‘core’ should include “all available catch up content”.²⁷ Virgin Media opposed the notion of a ‘core offer’ altogether, arguing that PSM providers might deliberately exclude key terms from their ‘core offer’ in order to pressurise platforms into paying for these terms as part of a negotiated deal.²⁸

A1.39 Having assessed the arguments submitted by stakeholders, we consider that an approach centred on establishing a standard set of contractual terms upfront would not be as effective as our recommended approach. We consider that a fixed, pre-determined set of contractual terms would struggle to factor in the different negotiation dynamics at play for different platforms and may stifle the ability of both PSM providers and platforms to innovate. Moreover, the process of defining a separate ‘offer’ for each PSM, including the necessary regulatory oversight, may be complex and unnecessarily resource-intensive compared to our preferred approach.

²⁵ Stakeholders include: [Sky response to consultation](#), p.12; [ITV response to consultation, Annex 1](#), p.5-6; [Channel 4 response to consultation](#), p.25-27; [LG response to consultation](#), p.3; [S4C response to consultation](#), p.6.

²⁶ [ITV response to consultation, Annex 1](#), p.6.

²⁷ [Sky response to consultation](#), p.19; [LG response to consultation](#), p.8.

²⁸ [Virgin Media response to consultation](#), p.16-19.

Ensuring the continuing prominence and availability of broadcast PSM content is also essential

- A1.40 As per our 2019 Recommendations, we would expect TV platforms to safeguard the availability and prominence of both broadcast and on-demand PSM content. As we previously described, the rules around licensed EPG services that protect the availability and prominence of broadcast TV do not extend to the broader user interface on connected TV platforms. In addition, regulation of EPG providers covers a range of other areas alongside prominence, such as accessibility for people with disabilities, and fair competition.
- A1.41 New rules to secure the prominence and availability of on-demand PSM could be established in parallel with the existing EPG regime and ‘must carry/must offer’ provisions, which have secured the prominence and availability of public service channels for nearly two decades. It may however be preferable to establish a single new regime that supports the prominence and availability of both broadcast and on-demand PSM content. A single regime could reduce duplication of regulation and take better account of the way broadcast content is delivered online.
- A1.42 Respondents to our consultation provided mixed views on the question of whether live and on-demand PSM should be included within the same regime.²⁹ We will engage further with stakeholders and DCMS to understand the implications of either option.

Our proposals for a new availability and prominence regime for PSM will have implications for how the BBC is regulated

- A1.43 As we set out above, the BBC is already subject to a ‘must offer’ requirement for all of its public services, and Ofcom has a formal role to set requirements and guidance that we think are necessary on the distribution of the BBC’s public services to protect fair and effective competition in the UK. Under the BBC Charter and Agreement, the BBC must also publish a policy for the distribution of its public services including BBC iPlayer. Ofcom published [recommendations and guidance regarding BBC distribution](#) in March 2017, and the BBC published its current [distribution policy](#) in June 2018.
- A1.44 Several responses to our consultation, including LG and techUK, argued that any new prominence and availability regime should apply equally to the BBC as it would to other PSM providers and that platforms should not have to comply with any separate requirements or conditions in order to receive PSM services. LG’s response to our consultation also raised specific concerns about the BBC’s distribution policy, arguing that by imposing burdensome requirements on platforms it can have a negative impact on the wider market and, ultimately, on consumers.³⁰

²⁹ Stakeholders include: [Sky response to consultation](#), p.17; [ITV response to consultation, Annex 1](#), p. 2.

³⁰ [techUK response to consultation](#), p.9; [LG response to consultation](#), p.5-6.

A1.45 The proposals we set out for a new PSM availability and prominence regime may have implications for any future changes to Ofcom’s Operating Framework for regulating the BBC’s activities. We are mindful of the need for clarity and the risks of inconsistencies in regulation as well as duplication. We will work closely with government to advise on any changes we think are necessary to the way that the BBC is regulated as part of our preparation for the Government’s mid-term Charter review process.³¹

Summary: our proposals for a new on-demand PSM prominence and availability regime

‘Must offer’ requirement for PSM Providers

PSM services in scope: The new rules should apply to the on-demand service that each PSM provider relies upon to fulfil its PSM obligations.

PSM requirements: Each regulated PSM provider must make a content offer to platforms in line with new statutory objectives.

Availability requirements for TV platforms

Platforms in scope: TV platforms that are used by a significant number of people as their main way of navigating around and accessing a range of on-demand services from third-party providers.

Platform requirements: Each regulated platform provider must make the PSM content offer available in line with new statutory objectives, which would include an objective to ensure PSM content is made appropriately prominent.

New statutory requirements and objectives would be supported by:

- New **enforcement powers** for Ofcom. These would enable us to gather evidence for monitoring compliance, assess breaches and impose remedial action (including fines) where necessary.
- A role for Ofcom to issue **guidance**. The guidance would be based on the statutory objectives, and would set clear expectations around what we would consider to be appropriate terms for PSM providers and platforms. Our guidance would underpin our consideration of any enforcement action and form the basis for resolving disputes.
- A **dispute resolution function** for Ofcom to resolve matters when PSM providers and platforms cannot agree terms would be an essential part of a new regime.

³¹ The Government will carry out a mid-term review of the BBC Royal Charter in 2022, focussing on governance and regulatory arrangements. The current Charter runs until the end of 31st December 2027.