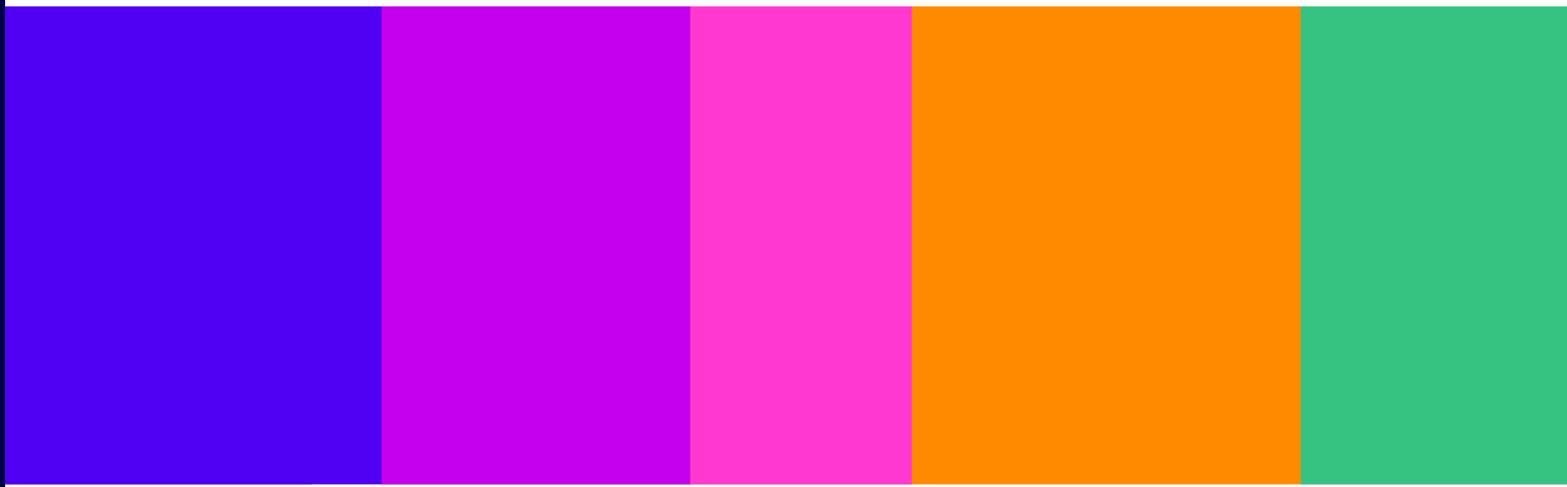


Quantity and scheduling of television advertising on public service channels

Update on Ofcom review of regulation

Statement

Published 19 September 2023



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1. Overview

- 1.1 Commercially-funded public service broadcasting (PSB) channels in the UK are subject to stricter rules on the quantity and scheduling of television advertising than other commercial channels. These differential rules were introduced in 1991 by Ofcom’s predecessor, the Independent Television Commission.
- 1.2 There have been significant changes in how television is distributed and watched since then, including the expansion of multichannel television and the introduction of on-demand television and online streaming services. Audiences now have access to a wider range of viewing options, and as they spend more time watching on-demand content, broadcast television viewing has been decreasing.¹ It was against this backdrop that we decided to initiate a review of the stricter rules that form part of [Ofcom's Code on the Scheduling of Television Advertising](#) (COSTA).
- 1.3 The primary question we sought to address was whether the stricter rules were justified or proportionate for achieving their original stated purpose of securing the quality of the viewing environment on PSB channels. We also took account of our legal duty not to retain unnecessary regulation. As part of our consideration of the stricter rules, we sought to understand what the impact may be on audiences and on the market of removing the rules.
- 1.4 Following a [call for evidence](#) in July 2022 to seek initial stakeholder views on the arguments for and against reform of the rules, we published a [consultation](#) in April this year on our provisional view that the stricter rules were no longer justified or proportionate. We proposed two options for removing some or all of the stricter rules, but remained open to keeping the rules as they are, depending on the responses we received.

What we have decided – in brief

- We have decided not to remove the stricter advertising rules in COSTA that apply only to PSB channels at this time.
- Removal of the stricter rules that apply only to PSB channels would mean viewers would be faced with increased advertising, and in particular it is highly likely to lead to an increase in advertising minutes on those channels in the “peak” hours (18:00 to 23:00) which contain news, which may lead to a reduction in news minutes. As we said in our [recommendations to Government](#) (July 2021), which called for renewal of the PSB system, news is a particularly important genre of PSB content, providing high social value.
- We remain of the view there are potential benefits to removing the stricter COSTA rules. The availability of additional advertising on PSB channels may result in a deflationary effect across all linear television advertising which might help slow its decreasing competitiveness compared to other types of advertising, and it could benefit audiences if PSB channels gain additional revenues from selling more advertising minutage and

¹ Between 2017 and 2021, broadcast television viewing declined by 31 minutes per person each day; at the same time viewing of subscription video on-demand services grew by 40 minutes per person each day. Broadcaster video-on-demand services also grew by six minutes per person each day over this period. Source: Ofcom estimates of total video viewing. Modelled from BARB, Comscore and IPA TouchPoints data.

reinvest this in content. However, we recognise that these benefits are uncertain and that they would likely differ between PSBs.

- We continue to believe that the stricter COSTA rules for PSB channels deliver only limited benefits to citizens and consumers. This is because they do not have a significant impact on the quality of the viewing environment on PSB channels except in peak news hours. However, given the uncertainty of potential benefits to audiences, public service broadcasters and the wider market, and a likely reduction in peak news minutes on PSB channels, we are not convinced that harmonisation of the rules now would be a positive step to take for citizens and consumers in isolation from consideration of other regulatory changes.
- We will, however, review this position as part of our consideration of other changes to the PSB system over the coming few years, including those flowing from the implementation of the Media Bill. This will enable us to consider the impact of changes to the COSTA rules on viewers more holistically, in the context of other rights and obligations that apply to PSB channels.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

2. Background

- 2.1 This section describes the background to our review of the regulation of the quantity and scheduling of television advertising on PSB channels in the UK.² It then summarises the call for evidence that we published in July 2022, the consultation that we published in April this year, and the key points raised by respondents to our consultation, and our consultation on determining the financial terms of the Channel 3 and Channel 5 licences.

Background to current regulation

- 2.2 PSB and non-PSB channels have been subject to different advertising rules since 1991 when the Independent Television Commission (ITC) published the ITC Rules on Advertising Breaks. This difference was due to an obligation to protect the quality of the viewing environment on PSB channels.³ Ofcom's rules on the quantity and scheduling of television advertising initially took the form of a code called the Rules on the Amount and Distribution of Advertising (RADA). In 2008, Ofcom carried out a review to both give effect to the EU's Audiovisual Media Services Directive (AVMSD), and to update RADA. Following the review, Ofcom replaced RADA with its [Code on the Scheduling of Television Advertising \(COSTA\)](#).
- 2.3 We last reviewed the COSTA rules on the quantity and scheduling of television advertising over ten years ago. In December 2011, we published a statement in which we concluded that the various interests that the regulation was designed to serve were being met effectively through COSTA, as set out at the time. We decided not to consult on any changes to the rules.⁴ However, we said that our decision did not preclude us from reconsidering the rules in the future.

Current rules on the quantity and scheduling of television advertising

- 2.4 The rules that set out how much advertising a television broadcaster can transmit and where it can be scheduled continue to be set out in COSTA. As set out in Figure 1, in some areas the rules are more restrictive for PSB channels than they are for non-PSB channels.

² We use the following definitions in this consultation: “PSBs” means public service broadcasters of PSB channels as defined below – it does not include the BBC or local digital television programme services (L-DTPS); in line with the definition of “public service channels” in COSTA, “PSB channels” refers to Channel 3 services (e.g. ITV, STV and UTV), Channel 4, Channel 5 and S4C – it does not include the non-PSB channels belonging to the PSBs (e.g. ITV2 and E4); “non-PSB channels” refers to all licensed commercial television channels except for the PSB channels – it includes L-DTPS services.

³ [ITC Rules on Advertising Breaks, January 1991](#), page 3, paragraph (e).

⁴ Ofcom conducted another review of COSTA in 2015, which focused on Ofcom's approach to its enforcement of advertising placement rules, rather than proposing any changes to the COSTA rules. Further changes were effected on 31 December 2020, but these were limited to reflecting amendments to the legal framework arising out of Brexit: Ofcom, [Ofcom broadcasting codes: Proposed amendments to the Broadcasting Code and Code on the Scheduling of Television Advertising](#), 31 December 2020.

Figure 1: COSTA rules that apply differently to PSB and non-PSB channels

	PSB channels	Non-PSB channels
Average amount of advertising per hour	On PSB channels, time devoted to television advertising and teleshopping spots must not exceed: i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and ii) an average of 8 minutes per hour between 18:00 and 23:00. (Rule 4)	Non-PSB channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising. (Rule 3)
Advertising break duration	Advertising breaks during programmes on PSB channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes and 30 seconds. (Rule 5)	No specific restrictions on the duration of advertising breaks during programmes on non-PSB channels.
Number of permitted advertising breaks per programme based on scheduled duration	If the scheduled duration is 21 – 44 minutes, one break. 45 – 54 mins = two breaks 55 – 65 mins = three breaks 66 – 85 mins = four breaks 86 – 105 mins = five breaks 106 – 125 mins = six breaks (Rule 16, Table 1)	If the scheduled duration is less than 26 minutes, one break. 26 – 45 mins = two breaks 46 – 65 mins = three breaks 66 – 85 mins = four breaks 86 – 105 mins = five breaks (Rule 16, Table 2)

2.5 Ofcom may change the rules set out in COSTA pursuant to its statutory duty to set, and from time to time, review and revise standards for the content of television and radio programmes.⁵ We provide further detail on the relevant legal framework in Annex 1.

Implications of the current rules

2.6 Rule 4 of COSTA places limits on the amount of advertising that PSB channels can transmit in a 24-hour broadcasting day. It provides that:

- PSB channels may transmit an average of 7 minutes of advertising per hour across their broadcasting day (06:00-06:00); and
- between 18:00-23:00, PSB channels can transmit an average of 8 minutes of advertising per hour.

2.7 This essentially means that PSB channels can transmit 168 minutes of advertising in one day but with no more than 40 minutes broadcast between 18:00 and 23:00. PSB channels

⁵ Section 319 of the [Communications Act 2003 \(the Act\)](#).

routinely broadcast the maximum 40 minutes of advertising between 18:00 and 23:00. Like all broadcasters, PSBs schedule advertising at times when audiences are the largest to maximise revenue. This varies depending on the channel, but PSB channels tend to broadcast the maximum 12 minutes of advertising in and around popular programmes in the 20:00 and 21:00 clock hours (for example during *Britain's Got Talent* and *Gogglebox*). They usually balance this with fewer or no advertisements in the 18:00, 19:00 and 22:00 hour slots, which typically contain news programmes, although scheduling and minutage allocation varies by channel.

- 2.8 Outside of this five-hour window, PSB channels have more scope to distribute their advertising allowance. PSB channels transmit little or no advertising between the hours of 01:00 and 05:00, owing to low audiences, which means that they broadcast approximately 128 minutes' worth between 06:00 and 18:00, and 23:00 and 01:00. The specific placement of advertising depends on the programmes and viewing habits associated with each channel.
- 2.9 In the absence of the restrictions placed on PSB channels under Rule 4 of COSTA, PSB channels would be subject to the same minutage rules as non-PSB channels (a maximum of 9 minutes of advertising per hour as an average across the broadcasting day).⁶ In this scenario, PSB channels would be permitted to broadcast an additional 48 minutes of advertising each day. This could include an additional 20 minutes of advertising between 18:00 and 23:00 (which includes news programmes).
- 2.10 Rule 16 sets stricter limits for PSB channels on the frequency of their internal breaks. For example, on PSB channels a 30-minute programme can currently have only one internal break, compared to two on non-PSB channels.

Our consideration of whether stricter advertising rules for PSB channels are still warranted

- 2.11 We explained in our [recommendations to Government \(PSB recommendations\)](#), published in July 2021, why urgent reform of the PSB regulatory framework was necessary to secure its future for a digital age. As part of this, we identified the COSTA rules as one of several important areas of regulation that may affect the sustainability of commercial PSBs. We agreed with stakeholders that this area warranted further consideration to ensure the rules remained effective and proportionate.
- 2.12 Since we last reviewed COSTA, the broadcasting landscape has continued to shift. Audiences are moving away from primarily watching television on linear broadcast channels, and now enjoy a wide range of advertising-supported and subscription services over broadcast and online. This has fundamentally changed how people watch PSB content too. We also recognise the commercial challenges facing the PSB sector, such as rising production costs, and the increased competition from well-funded global streaming services.
- 2.13 It is in this context that our review has sought to establish whether the stricter advertising rules that apply to PSB channels are still a justifiable and proportionate means of achieving their original policy objective. We have also taken account of our legal duty not to retain unnecessary regulation.

⁶ It is, however, worth noting that some non-PSB channels do not currently use the full allowance.

Call for evidence

- 2.14 In July 2022, we published a [call for evidence](#) (CFE) to seek initial stakeholder views on the arguments for and against reform of the stricter rules that only apply to PSB channels. We carefully considered all responses to our CFE, alongside new audience research, and other relevant information and evidence available to us. We used this to develop the options we consulted on in our [consultation](#).

Audience research

- 2.15 To understand what audiences might think about changes to advertising on PSB channels, we considered a range of existing and newly commissioned quantitative and qualitative research. [Ofcom's Cross Platform Media Tracker](#) consistently shows that most audiences do not want more advertising minutes on the PSB channels, a finding that is supported by our [deliberative research](#). However, for audiences under 65, over time there appears to have been a gradual shift towards tolerance of a small increase in advertising minutes, with more viewers stating that a small increase in the number of advertising minutes would not bother them.
- 2.16 Most people we spoke to in our deliberative research had limited awareness of the current differences in the amount and frequency of advertising shown on PSB versus non-PSB channels. Our [omnibus survey](#) found that a majority of viewers did not necessarily notice an increase in advertising minutes on PSB channels when those channels were allowed to show the same number of minutes as non-PSB channels, following [the period of National Mourning](#) to recoup lost minutage.⁷
- 2.17 The prospect of increased advertising became more acceptable as viewers explored potential scenarios of how additional advertising could be introduced. They were more open to an increase in advertising if it is not too noticeable nor disruptive to their television watching. Increasing the frequency of breaks was seen as more disruptive than small increases to the duration of existing advertising breaks. Any increase in advertising was seen to only be acceptable, and tolerated by viewers, if additional revenue is used to maintain the quality of programme content.

Consultation

- 2.18 Taking account of our initial research and analysis, we published a consultation in April 2023 (**consultation**) on our provisional view that the stricter rules in COSTA were no longer justified or a proportionate means to secure the quality of the viewing environment on PSB channels.⁸ We took into account all of our relevant duties, which we set out in Annex 1.
- 2.19 Audiences will continue to move to online media and the advertising market continues to evolve. We want to incentivise PSBs to fulfil their remit as effectively and sustainably as possible, in the light of these market-wide trends. We said that allowing the PSB channels slightly greater flexibility in the scheduling of advertising may strengthen their commercial

⁷ It is important to note that the way broadcasters recouped advertising minutes during the recoupment period is not necessarily the approach they would follow if the tighter advertising restrictions on PSBs were lifted on a permanent basis.

⁸ We defined the quality of the viewing environment as the choice and quality of the programmes available and the length and number of programme interruptions.

position as they continue to manage their transition to digital-led organisations and would afford them greater opportunity to monetise their content.

- 2.20 Our provisional view was that removing the stricter COSTA rules would not materially affect audience perceptions of quality and that we have other relevant and effective tools to continue to protect the quality of PSBs. We said the highly competitive and increasingly global environment that UK PSB operates in is also a relevant factor in protecting quality, as a wide range of services now compete for audiences' time and attention via both broadcast and online.⁹
- 2.21 We said that while we cannot predict the impact on the market with any certainty, there is a reasonable probability that, if we removed the stricter rules, at least some of the PSB channels may benefit, and it is unlikely that there would be a significant effect on the range of services available to viewers.
- 2.22 We consulted on two options for change:
- Option 1: full harmonisation of the rules between PSB and non-PSB channels.
 - Option 2: partial harmonisation while retaining the limit on the number of internal breaks permitted in programmes on PSB channels. We said Option 2 was our preferred option, given that our audience research had highlighted viewer concerns about potentially increasing frequency of advertising breaks.
- 2.23 We also remained open to not making any changes, depending on the consultation responses we received.¹⁰

Summary of consultation responses

- 2.24 We received 25 [responses to our consultation](#) – 13 from organisations, three from academics and nine from members of the public.

Stakeholders that agreed Ofcom should change the specific COSTA rules for PSB channels

- 2.25 ITV, STV, Channel 4, the Ofcom Advisory Committee for Scotland (**ACS**), the Ofcom Advisory Committee for Wales (**ACW**) and Institute of Practitioners in Advertising (**IPA**) were broadly in favour of our consultation proposals, however IPA, ITV and STV favoured Option 1: full harmonisation. These respondents agreed that the stricter COSTA rules for PSB channels are no longer needed to ensure quality of the viewing environment.
- 2.26 ACS noted our [section 229 report](#), which found that STV could have a small net-cost of being a PSB over the next licence period from 1 January 2025 to 31 December 2034. ACS said if there are revenue benefits for STV this could help its sustainability and benefit the broadcasting sector and audiences in Scotland if increased revenues are reinvested in content.¹¹
- 2.27 Voice of the Listener and Viewer (**VLV**) supported reviewing the COSTA rules to ensure the sustainability of the commercial PSBs and because it perceived the current regulation provided an unfair advantage to non-PSB channels.¹² But it thought the rules should be

⁹ [Our consultation](#), paragraph 4.6.

¹⁰ Our consultation, paragraph 4.40.

¹¹ [ACS](#) pages 2-3.

¹² [VLV](#) pages 2 and 3.

adjusted for all broadcasters and take a middle road between the existing limits for non-PSBs and PSBs, to ensure the number of commercial impacts and volume of news output is kept constant.¹³

Stakeholders that opposed removal of the stricter rules for PSB channels

- 2.28 Paramount UK (the parent company of Channel 5), The Association for Commercial Broadcasters and On-Demand Services (**COBA**), Sky, PBS America, Incorporated Society of British Advertisers (**ISBA**) and News Broadcasting (**NB**) were against harmonising the rules between PSB and non-PSB channels. Though COBA and ISBA were against the change, they explained that if they had to choose an option, it would be Option 2. COBA said it should apply on weekends only to minimise the impact on the revenues of smaller and niche channels and on the number of minutes of news on PSB channels in “peak” (clock hours 18:00 to 23:00).
- 2.29 Sky argued that changing the stricter rules in COSTA which apply to PSB channels needed to be carried out in the context of the ‘PSB Compact’, which it says “balances the costs of holding a commercial PSB licence, including accepting additional restrictions on advertising, with significant commercial benefits”.¹⁴ ISBA thought because the outcome of changing the rules is uncertain that it should be looked at as part of a wider review of the TV trading market.
- 2.30 There were five broad areas of concern raised by respondents opposed to our proposed changes to COSTA.
- a) Sky, ISBA and NB said that our analysis should have focused on the impacts of removing the stricter COSTA rules on audiences and on the market through further market analysis. Sky said it was inappropriate to look at whether the rules still serve their original purpose.¹⁵
 - b) Sky, COBA, VLV and NB said that in using the findings of our audience research to develop our proposals, we should have had more regard to audiences’ aversion to more advertising on PSB channels and our research finding that audiences would only tolerate more advertising if additional advertising revenue will be generated as a result, and that this will be invested in content, which they and ISBA point out, cannot be guaranteed.¹⁶ COBA and Sky critiqued our audience research methodology.
 - c) VLV and ISBA as well as some individuals raised concerns that more advertising on PSB channels would annoy audiences and lead to decreased viewing of PSB channels.¹⁷
 - d) VLV, Sky, COBA, Paramount UK and NB said that the number of news minutes in peak on PSB channels would be likely to decrease, and that because audiences highly value PSB news this would be a bad outcome for them and society.¹⁸
 - e) COBA, NB, PBS America, VLV and Paramount UK said that Ofcom should have more regard to the deflationary effect of removing the rules on the price of linear advertising on small and niche channels because it could negatively affect media plurality and

¹³ VLV, page 4.

¹⁴ Sky pages 26 and 31.

¹⁵ ISBA page 2, NB page 3, Sky pages 6-11.

¹⁶ COBA pages 12-16, ISBA page 5, NB page 4, Sky pages 24-25, VLV page 3.

¹⁷ ISBA page 2, VLV page 2.

¹⁸ COBA pages 4-8 and 15-16, NB pages 5-6, Paramount UK, Sky pages 12-14 and pages 17-22, VLV page 3.

serving specific audiences if it resulted in these channels investing less in content or closing.¹⁹

Ofcom consultation on determining the financial terms of the Channel 3 and Channel 5 licences

- 2.31 In June this year, we consulted on the [proposed methodology](#) for determining the financial terms of the Channel 3 and Channel 5 licences. This forms part of the process for renewing the licences for Channel 3 and Channel 5 for the period 1 January 2025 to 31 December 2034.
- 2.32 In response to the consultation, Sky and NB said that because removing the stricter COSTA rules on PSB channels has potential revenue implications for Channel 3 and Channel 5, the outcomes of our two consultations were fundamentally linked.²⁰
- 2.33 Alongside this statement, we are publishing our [statement](#) on the methodology for determining the financial terms for the next licence period for the Channel 3 and Channel 5 licences.

¹⁹ COBA pages 16-18, NB pages 4-6, Paramount UK, [PBS America](#), VLV page 3.

²⁰ Consultation responses are published on our website: [Renewal of the Channel 3 and Channel 5 licences](#).

3. Our conclusions

- 3.1 This section sets out our deliberations and decision not to proceed with removing the stricter rules of COSTA at this time, as well as our planned next steps.

We have decided not to change COSTA at the current time

- 3.2 Following our consultation, we continue to believe that the stricter COSTA rules for PSB channels deliver limited benefits (outside of peak hours containing news) to citizens and consumers in terms of securing the quality of the viewing environment on those channels.
- 3.3 However, we have reflected on our provisional conclusions and agree with stakeholders that said we would be better placed to consider whether the stricter COSTA rules remain justified or proportionate when we can better take account of the impact of doing so on the wider future development of the PSB system. We think the right time to do this is alongside our consideration of other changes to the PSB system over the coming few years, including those flowing from the implementation of the [Media Bill](#).
- 3.4 We have reflected on the consultation responses that commented on the analysis and research we used to develop our provisional conclusions and consultation proposals. We consider that the nature and content of the evidence presented was appropriate for the issues being addressed.

Reasoning for our decision

- 3.5 We recognise that removing the stricter rules in COSTA on PSB channels would likely mean increased advertising and fewer minutes of news in peak for audiences. Some consultation respondents²¹ highlighted the findings in our audience research that audiences would only tolerate more advertising if it can be assured that additional advertising revenue will be generated as a result, and that this will be invested in content.²² Respondents also highlighted our recognition in the consultation that we cannot be certain of additional revenues being generated, or how they may be used if they are.²³
- 3.6 We said in our consultation that there is potential for broadcasters to increase advertising in those peak hours that contain news if the stricter COSTA rules are removed.²⁴ A number of consultation respondents²⁵ expressed their concern that removal of the stricter rules that apply to PSB channels would be highly likely to lead to an increase in advertising minutes on those channels in those peak hours which contain news. Removal of the stricter rules would increase the available minutes of advertising in peak, and it is likely that news minutes in those hours would decrease to accommodate this.
- 3.7 The current rules have clearly influenced scheduling decisions by the PSBs (even if this was not the original intention of the rules). PSB channels currently tend to broadcast the

²¹ COBA pages 13-14, NB page 4, Sky page 8 and VLV page 3.

²² Our consultation, paragraph 4.17.

²³ COBA page 14, ISBA page 5, NB page 4, Sky page 25 and VLV page 3.

²⁴ Our consultation, paragraph 3.8.

²⁵ COBA pages 4-8, NB pages 5-6, Sky pages 12-14 and 17-22 and VLV page 3.

maximum 12 minutes of advertising in and around mass appeal programmes in the 20:00 and 21:00 clock hours during peak. They usually balance this with fewer or no advertisements in the 18:00, 19:00 and 22:00 hour slots, which typically contain news programmes, although scheduling and minutage allocation varies by channel.²⁶

- 3.8 News, as we have said in our PSB recommendations, is a particularly important genre of PSB content, providing high social value.²⁷ Audiences in the research that supported our PSB recommendations emphasised the importance of PSB news in providing trusted and impartial news and current affairs, particularly to counter the prevalence of false and misleading information available online.²⁸ Our research also found that, although other local news sources exist, regional news on PSB channels is highly valued by audiences.²⁹ Our periodic [News Consumption in the UK survey](#) that captures audience attitudes towards news sources shows audiences continue to place a great deal of importance on the accuracy, impartiality, trustworthiness and societal value of PSB news.
- 3.9 Although the PSB channels would still be required to meet their licence obligations for the provision of news, we agree that if PSB channels reduced news programming minutes to maximise advertising in peak, this would negatively impact the quality of the viewing environment and its societal value. We consider it would be better to consider the changes in a context that allows us to also consider the future PSB delivery of news content.
- 3.10 While we recognise removing the stricter rules in COSTA on PSB channels would likely mean increased advertising and fewer minutes of news in peak, as we said in our consultation there are potential benefits of removing the stricter COSTA rules. The availability of additional advertising on PSB channels may result in a deflationary effect across all television advertising which might help slow its decreasing competitiveness of linear advertising;³⁰ and it could benefit audiences if PSB channels gain additional revenues from selling more advertising minutage and reinvest this in content.³¹ However, we are mindful that these benefits are uncertain and would likely differ between PSBs. Some consultation respondents have reiterated this to us.³²
- 3.11 With uncertainty of benefits to audiences, PSBs and the market, at the same time as a likely reduction in news minutes, we think it would be better to not change the rules at this time. This will give us the opportunity to look at the COSTA rules that apply to PSB channels as part of the wider development of the PSB system. We think we will be better placed to consider whether to remove them and the potential impacts (including on news provision) in the context of the wider set of obligations and benefits accrued by PSB channels.

Next steps

- 3.12 We will revisit the appropriateness of the stricter rules in COSTA that apply to the PSB channels at a time when we can take a more holistic approach to the potential impacts of

²⁶ Our consultation, paragraph 2.12.

²⁷ Our PSB recommendations, paragraphs 4.4-4.10.

²⁸ Ibid

²⁹ Ibid

³⁰ Our consultation, paragraph 4.39.

³¹ Our consultation, paragraph 4.27.

³² COBA pages 8 and 12, ISBA pages 2-3, NB page 5, Sky page 16 and VLV page 2.

changing the rules.³³ We expect other changes to the PSB landscape in the coming years, including those flowing from the implementation of the Media Bill, which will have a bearing on this. To ensure we are best placed to revisit the rules in the future, we will continue to monitor developments in the sector through the data we compile and stakeholder engagement we undertake.

³³ Potentially, the scope of that future work may be expanded to include other rules in COSTA.

A1 Legal Framework

The Communications Act 2003 (the Act)

A1.1 Ofcom has several broad statutory duties which are relevant to television advertising and are set within the Act. The Act also reflects the EU's AVMSD framework in relation to more specific television advertising rules.

Ofcom's relevant statutory duties under the Act

A1.2 Section 3(1) of the Act provides that Ofcom's principal duty in carrying out its functions shall be to further the interests of:

- a) citizens in relation to communications matters, and
- b) consumers in relevant markets, where appropriate by promoting competition.

A1.3 Section 3(2) specifies matters which Ofcom must secure in carrying out its functions, including:

- a) the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and designed to appeal to a variety of tastes and interests; and
- b) the maintenance of a sufficient plurality of providers of different television and radio services.

A1.4 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)).

A1.5 In performing the duties under section 3(1)(b) to further the interests of consumers, Ofcom must also have regard to the interests of those consumers in respect of choice, price, quality of service and value for money. Section 3(3) and section 3(4) provide that in performing the duties set out in section 3(1), Ofcom must have regard in all cases to:

- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed; and
- b) any other principles appearing to Ofcom to represent best practice.

A1.6 Ofcom must also have regard, where Ofcom considers it relevant, to a variety of other factors including:

- a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
- b) the desirability of promoting competition in relevant markets;
- c) the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets, and of members of the public generally; and

- d) the different interests of persons living in the different parts of the United Kingdom of the different ethnic communities within the UK and of persons living in rural and urban areas.

A1.7 Under section 6 of the Act, Ofcom must keep the carrying out of its functions under review with a view to securing that regulation does not involve:

- a) the imposition of burdens which are unnecessary; or
- b) the maintenance of burdens which have become unnecessary.

Ofcom's specific television advertising statutory duties under the Act

A1.8 Under section 319(1) of the Act, it is Ofcom's duty to set, and from time to time, review and revise, standards for the content of programmes to be included in television and radio services as appears to it best calculated to secure the standards objectives set out under section 319(2) of the Act.

A1.9 The standard objectives related to advertising and relevant for the purposes of this consultation are section 319(2)(i) of the Act, which requires "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with"³⁴ and section 319(2)(ha),³⁵ which requires that the requirements of any EU directives, as they had effect immediately before 31 December 2020 (**IP completion day**), with respect to advertising included in television and radio services are complied with. The latter would include the rules under the AVMSD as they were in place at the time of IP completion day.

A1.10 The standards set by Ofcom under section 319 of the Act must be included within one or more codes, with COSTA being such a code. In setting or revising such a code, Ofcom must have regard, in particular and to such extent as appears to it to be relevant to securing of the standards objectives, to each of the following matters:

- a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
- b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
- c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
- d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;

³⁴ Section 319(2)(i) of the Act.

³⁵ Inserted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224.

- e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - f) the desirability of maintaining the independence of editorial control over programme content.
- A1.11 Section 321 of the Act sets out further standards objectives for advertisements, sponsorships and product placement. Section 321(4) specifically requires Ofcom to have a general responsibility with respect to advertisements and methods of advertising and sponsorship, in relation to programme services. In discharging this responsibility, Ofcom may include a condition in any licence it grants for any service that enable it to impose requirements with respect to any of those matters that go beyond the provisions of Ofcom’s standards code.
- A1.12 As such, Broadcasting Act licences granted by Ofcom include a condition requiring the licensee to comply with Ofcom’s standards code under section 319 of the Act, with “Standards Code” being defined as: “the code or codes governing standards for the content of programmes, including standards and practice in advertising and in the sponsoring of programmes included in television and radio services as drawn up and from time to time revised by Ofcom in accordance with section 319, 322 and any international obligation specified in a direction given by the Secretary of State under section 335 of the Communications Act.”
- A1.13 Section 322 provides supplementary powers to Ofcom specifically in relation to advertising with subsection 322(1) providing that the regulatory regime for every television programme service includes a condition requiring the person providing the service to comply with every direction given to him by Ofcom with respect to the matters mentioned in subsection (2).
- A1.14 Under section 322(2) such matters are:
- a) the maximum amount of time to be given to advertisements in any hour or other period;
 - b) the minimum interval which must elapse between any two periods given over to advertisements;
 - c) the number of such periods to be allowed in any programme or in any hour or day; and
 - d) the exclusion of advertisements from a specified part of a licensed service.
- A1.15 COSTA sets out the rules with which television broadcasters licensed by Ofcom must comply on the amount, scheduling and presentation of advertising.