

Designation of Television Selection Services

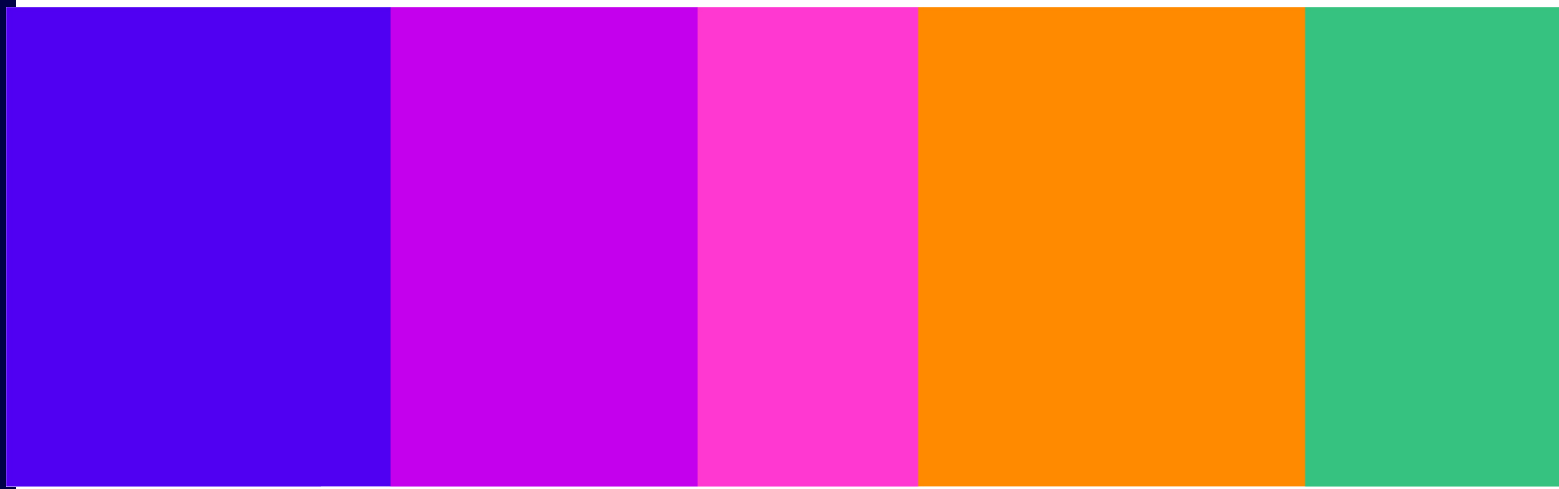
Statement of Principles and Methods

Statement

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1. Overview

- 1.1 The Media Act 2024 introduced a new online availability and prominence regime focused on connected TV platforms that enable people to select and access TV players or programmes provided via those players. This new regime will require connected TV platforms designated by the Secretary of State to ensure that BBC iPlayer,¹ and any other public service broadcaster TV players designated by Ofcom, as well as their public service content, are available, prominent, and easily accessible.
- 1.2 Connected TV platforms that could fall in scope of these new rules are referred to in the legislation as ‘television selection services’ (TSS). Before designating any of them, the Secretary of State must have first received a report from Ofcom setting out our recommendations on designation of these services. Before providing any such report, we must publish a statement about the principles and methods we will apply when making those recommendations.²
- 1.3 In December 2024 we published a consultation explaining our proposed approach alongside a draft Statement of Principles and Methods (Statement).³ We received thirteen responses to that consultation which we carefully considered before finalising the Statement.⁴ In this document, we explain the rationale for our decisions. The final Statement is at **Annex 1** of this document.
- 1.4 In the consultation, we also sought views on a range of supplemental questions. These related to our emerging thinking on how to approach our first report to the Secretary of State. We are grateful to stakeholders for their engagement on these points, and will take their comments into account when producing that report, which we propose to consult on in summer 2025.⁵

What we have decided – in brief

Having considered stakeholder responses, which were largely supportive of the draft Statement, we have decided not to make any changes and to proceed with the Statement as set out in the consultation, which sets out the following principles and methods:

- **The number of people using a TSS in the UK and whether that number is significant.** In measuring the number of users in the UK, we will use the best available evidence. This may mean using a proxy if we consider individual user numbers cannot be measured reliably. When determining if a number of users is significant, we will consider whether our decision contributes to the policy objective to make public service content widely available. We will set the threshold in a proportionate way that takes account of the potential benefits and regulatory obligations on the providers of regulated TSS and on the PSBs whose TV players are designated. While we will seek regulatory stability for designated services, determining what level of use is significant is context-dependant

¹ BBC iPlayer will be automatically designated (section 362AA(1)(a) of the Communications Act 2003).

² Section 362AG(9) of the Act. We may revise or replace that statement but must publish the revised or replaced statement (section 362AG(10) of the Act)

³ Ofcom, 2024, [Consultation: Designation of Television Selection Services The principles and methods Ofcom will apply when preparing reports for the Secretary of State](#) (the ‘consultation’).

⁴ We have published all non-confidential responses on our [website](#).

⁵ For a detailed timeline of our implementation process see: Ofcom, 2024, [Media Act Implementation](#).

and we will therefore consider market conditions and other relevant factors each time we prepare a report.

- **The manner in which a TSS is used.** In assessing the ways in which TSS are used, we recognise that people may own different devices to access TV players but not use them equally and may not use some devices at all. We will generally take account of the extent of active use of the TSS. We will consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.
- **The technical functionality of a TSS.** We will generally consider a TSS to be capable of functioning as a regulated TSS if it can carry the designated PSB players, it can present TV players and programmes with different levels of prominence, and it can include features to ensure players and programmes are accessible to people with disabilities. We recognise that there could be technical limitations with certain older versions of TSS and associated older devices still available in the market, and we will consider industry practice and other relevant matters to inform our report.

Some respondents asked for clarification on certain aspects of our proposed principles and methods and how they may be applied in our report to the Secretary of State. We have responded where appropriate in this document and will return to other points raised as we prepare our first report.

2. Background

The objectives of the new Media Act availability and prominence regime

- 2.1 The habits of UK viewers have changed significantly over the last decade. People are watching more TV online, driven by the mass take-up of broadband, a range of different video-enabled connected devices, and new platforms and services providing vast on-demand catalogues, including big-budget original programmes.⁶ Although live broadcast TV and radio services continue to be widely used and valued, the increase in choice enabled by technological change has gone hand in hand with declines in linear viewing and listening.⁷
- 2.2 After several decades during which their services were structured around linear distribution, broadcasters have been adapting to these changes and the expectations of audiences today. The UK's PSBs have each developed a player offering original content, as well as some exclusive and licensed programming, which can be accessed on a wide range of connected devices. The legislation refers to these types of players as 'internet programme services' (IPS).⁸
- 2.3 While the regulatory framework specified in the Communications Act 2003 has ensured that the PSBs' linear television channels⁹ have been widely available and easy to find in electronic programme guides for decades, until the passing of the Media Act, there were no rules to secure the prominence of public service content in online media environments.
- 2.4 The new regime introduced by Part 2 of the Media Act – which inserted Part 3A into the Communications Act 2003 (the Act) – addresses this by building on the existing prominence framework for linear television and bringing into scope connected TV platforms,¹⁰ defined by the Act as TSS.
- 2.5 The core objective of this new regime is to maximise audience benefits by ensuring public service content is “available to the overwhelming majority of the population.”¹¹ As such, in setting out the Statement (**Annex 1**) and when we apply the principles and methods in any report to the Secretary of State, we will seek to ensure that public service content is widely available to a broad range of audiences in the UK. We will also have regard to our relevant statutory duties, which are summarised in the legal framework (**Annex 3**).

⁶ More detailed analysis of these broad trends is provided in Ofcom's [Future of TV Distribution](#) and [Media Nations 2024 reports](#).

⁷ Ofcom, 2024, [Review of public service media. Terms of reference](#); and Ofcom, 2024, [Media Nations UK 2024](#).

⁸ 'Internet programme service' is defined in section 362AA(10) and (11) of the Act. For more information on the designation of IPS, please see: Ofcom, 2025, [Consultation: designation of public service broadcasters' internet programme services](#).

⁹ PSBs' linear television channels include all of the BBC's public broadcast television services, each Channel 3 service, Channel 4, Channel 5 and S4C.

¹⁰ Ofcom, 2024, [The connected TV platforms market. An update on our work](#).

¹¹ Media Act 2024, 2024 [Explanatory Note: Policy Background](#). The Explanatory Notes were prepared by the Department of Culture, Media and Sport to assist readers in understanding this new Act of Parliament. They provide background information on the development of policy, but do not form part of the Act and are not endorsed by Parliament.

What are TSS under the Act

- 2.6 Under the Act, TSS are defined on the basis of four cumulative criteria, according to which a TSS must be:
- a) “provided via the internet”;
 - b) “provided in connection with Internet Television Equipment (ITE)”;
 - c) “consist of the presentation of IPS”;
 - d) “enable a user to select between and access IPS or programmes provided by those IPS, or both.”¹²
- 2.7 It is for the Secretary of State to set the definition of ITE in regulations.¹³ The initial regulations, made in October 2024,¹⁴ specify ‘smart TVs’¹⁵ and ‘streaming devices,’ such as set-top boxes and streaming sticks,¹⁶ as ITE.
- 2.8 Evidence shows that while people can use various types of devices connected to the internet to watch TV, the use of smart TV and streaming devices has become commonplace in a high proportion of UK households. In 2024, more than 64 million are in active use in UK homes, up from 52 million in 2019.¹⁷
- 2.9 Although ITE are the physical devices which viewers use to access content on their TVs, it is the software platforms integrated into those devices that enable viewers to navigate, select and watch programmes.
- 2.10 Each software platform has two core components¹⁸ relevant to the presentation of content:
- a) **A user interface**, which viewers use to find and select content, usually with the assistance of a remote control. User interfaces typically organise streaming apps, on demand services and content into tabs and rows, which may include recommended content areas based on algorithms (e.g. a ‘watch next’ row) as well as content areas that content providers can curate themselves (e.g. a row of programming ‘now available on ITVX’).
 - b) **An operating system (OS)**, which manages the device resources and operations and controls the user interface. Among other functions, it determines what content is shown to viewers by managing search, display functions and recommender systems. Content providers need to develop apps, like the IPS offered by the PSBs, which are compatible with the operating system.
- 2.11 As set out in the consultation, we consider that the software platforms used on smart TVs and streaming devices meet the criteria of TSS set out in the Media Act.¹⁹ These platforms

¹² Section 362AE(1) of the Act.

¹³ Section 362AE(2) of the Act.

¹⁴ [The Internet Television Equipment Regulations 2024 \(2024/1056\)](#).

¹⁵ Article 2(2) of the regulations say that “smart television” means “a television which is (a) capable of connection to the internet; and (b) designed primarily for (i) enabling the user to select and access programmes; and (ii) displaying programmes”.

¹⁶ Article 2(2) of the regulations say that “streaming device” means “apparatus which is (a) capable of connection to the internet; (b) designed primarily for (i) enabling the user to select and access programmes; and (ii) displaying programmes; and (c) not able to display programmes by itself”

¹⁷ Omdia, 2024. For a more in-depth analysis of this trend please see pages 9-13 of the [consultation](#).

¹⁸ For a more in-depth analysis of software platforms and the related connected TV market please see: Ofcom, 2024, [The connected TV platforms market. An update on our work](#), pages 9-10, and pages 9-13 of the [consultation](#).

¹⁹ See paragraph 3.15 of the [consultation](#).

are essential in enabling viewers to access TV apps and their content and are the means by which this material is presented. They are also provided via the internet and through the use of devices (smart TVs, and streaming devices such as set-top boxes and streaming sticks) which the Secretary of State has specified as ITE.²⁰

- 2.12 We acknowledge that there are a number of different platforms available in the UK with different characteristics. Most of the major software platforms are designed to be used on that platform provider's own brand of device, but some companies also license their software platform to third-party hardware companies.²¹

Recommending which TSS may be designated

- 2.13 It is for the Secretary of State to make regulations to designate TSS, which will then be known as 'regulated TSS' or 'RTSS'. The provider of each RTSS must comply with the statutory duties in relation to that service.²²

Designation powers

- 2.14 Under the Act, the Secretary of State may designate TSS by regulations using two powers: by specifying individual TSS, or by describing TSS.²³ Individual designation regulations will name individual TSS to be regulated. Designation by description regulations will set out a description of TSS to be regulated,²⁴ and any TSS that meets that description will be designated.²⁵
- 2.15 The Secretary of State may only make designation regulations after having received a report from Ofcom setting out our recommendations on the exercise of the relevant designation power.²⁶ We may recommend that the Secretary of State designate TSS using one or both powers.²⁷ To ensure transparency, we will explain in our report why we have recommended the exercise of a particular power.

Matters for assessment

- 2.16 When we prepare a report making recommendations on individual designation, we must take account of a range of factors which are specified in the Act:
- a) the number of UK users of a particular TSS and whether that number is significant;
 - b) the manner in which the service is used;

²⁰ See paragraphs 3.2 to 3.13 of the [consultation](#).

²¹ See paragraphs 3.12 to 3.13 of the [consultation](#).

²² Section 362AE(5) of the Act states that the person, and the only person, to be treated as providing a TSS is the person who has general control over the manner in which the service presents to its users the IPS included in the service.

²³ Section 362AF(1) of the Act.

²⁴ Section 362AF(3) states that the regulations may frame a description of TSS, in particular, by reference to the TSS being used, or being used in a specified manner, by no fewer than a specified number of users; the date on which it was first made available in the UK; and the functions it is capable or may be made capable of carrying out.

²⁵ Providers of TSS that meet the description must notify Ofcom under section 362AH of the Act. However, designation is not dependent on notification – a TSS becomes designated as soon as it meets the description.

²⁶ We may publish a report on our own initiative, or the Secretary of State may ask us to prepare one, in which case we must do so. Where the Secretary of State seeks Ofcom's advice, they may provide us with a particular description of TSS to be designated (section 362AG(6) of the Act).

²⁷ Section 362AG(1) of the Act.

- c) whether the service is capable of functioning as an RTSS, including any necessary modifications; and
 - d) any other matters we consider likely to affect these issues.²⁸
- 2.17 The Secretary of State may only designate an individual TSS if they consider it to be used by a significant number of people in the UK.²⁹
- 2.18 When we prepare a report making recommendations about designation by description, we must include which TSS are likely to meet the description and any other matters that we consider relevant to this assessment.³⁰
- 2.19 In formulating the Statement (**Annex 1**), we have outlined how we intend to assess these factors in our report.

²⁸ Section 362AG(4) of the Act.

²⁹ Section 362AF(2) of the Act.

³⁰ Section 362AG(5) of the Act. As set out in paragraph A1.25 of **Annex 1**, the Secretary of State may prepare a description of TSS that they consider should be designated, or we may do so on our own initiative (section 362AG(1) of the Act).

3. Consultation responses and Ofcom's decisions

- 3.1 When preparing a report for the Secretary of State with recommendations about the designation of TSS, we must take account of a range of factors set out in the Act, a set out below. In the consultation, we proposed the principles and methods that we will apply when assessing those factors, assessed the impact of those proposals and asked if stakeholders agreed with our proposals for each factor.
- 3.2 We received thirteen responses to our consultation. We have carefully considered this feedback in finalising the Statement and in this section we set out our response to the issues raised by stakeholders before setting out our decisions.³¹ In reaching these decisions, we have considered their impact and our relevant statutory duties.³² We explain in Annex 2 how our decisions are consistent with those duties and set out our final impact assessments, including on equality and the Welsh language.

Number of users of TSS

What we said

- 3.3 In the consultation, we proposed to apply the following principles and methods when assessing the number of users of TSS in the UK:
- a) We will use the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a TSS.
 - b) We may use a proxy for user numbers if we consider individual user numbers cannot be measured reliably.
 - c) We will apply a consistent methodology to our assessment of each TSS to ensure fair treatment.³³
- 3.4 This proposal related to both recommendations on individual designation and a situation where a designation description refers to user numbers.³⁴

Consultation Question 1

Do you agree with our proposed principles and methods for assessing the number of UK users of a TSS?

³¹ We also asked respondents three supplemental questions about our emerging thinking on how we may approach our first report to the Secretary of State if the principles and methods proposed in the consultation were implemented. As set out at paragraphs 1.9, A4.2 and A4.3 of the [consultation](#), since responses to those questions are relevant to the preparation of our first report, we will consider them at that stage and address them in our consultation on that report, alongside any additional input that we consider to be relevant for our recommendations.

³² These duties are set out in the legal framework in Annex 3.

³³ Paragraphs 4.14, A1.16 and A1.28 of the [consultation](#).

³⁴ Paragraph 4.15 of the [consultation](#).

What respondents said

- 3.5 There was broad agreement from respondents to our proposed principles and methods for assessing the number of users of TSS in the UK.³⁵
- 3.6 Several stakeholders, including S4C and Channel 4, [REDACTED] expressed support for our proposal of using proxy measures where needed, for example, because reliable individual user numbers are not currently available.
- 3.7 The BBC recommended that evidence be “comprehensive, objective and impartial”³⁶ and another respondent [REDACTED] highlighted the importance of transparency regarding the use of such a proxy and asked that industry be given the opportunity to provide feedback on it.
- 3.8 One respondent [REDACTED] flagged that some ITE may make more than one TSS available.³⁷ It gave the example that, on certain devices, the manufacturer's OS may be available together with a third-party OS, and asked for clarity about how such cases may be treated under the framework and which TSS would count towards the assessment of number of users.
- 3.9 Sky emphasised that for designation by description, the number of users should not be the only matter that Ofcom and the Secretary of State consider, as decisions should also be informed by other relevant aspects of the designation framework, especially the technical functionality of the TSS.³⁸

Our response

- 3.10 We agree with the BBC that the data on which we rely should be comprehensive, objective and impartial. That is why we have said in the Statement that we will base our recommendations on the best available data and use a consistent methodology.
- 3.11 Regarding concerns about transparency, stakeholders will have the opportunity to feed back on our assessment of user numbers, including any use of a proxy, each time we consult on our proposed recommendations to the Secretary of State.
- 3.12 In response to the point raised by a stakeholder about ITE offering more than one TSS, subject to the limitations of the best available evidence, where there are multiple TSS on one ITE we will aim to count them as separate TSS.
- 3.13 Lastly, we agree with Sky that it may be appropriate to consider other matters for designation by description in addition to user numbers. That was set out in the draft Statement at paragraphs A1.28-A1.31, and we do not consider it necessary to make any further changes to address this point.

³⁵ Everyone TV response, p.1; BBC response, p.1; Samsung response, p.1; S4C response, p.1; YouView response, p.1; Channel 4 response, p.1 [REDACTED]

³⁶ BBC response, p.1.

³⁷ [REDACTED]

³⁸ Sky response, p.9.

Our decision

- 3.14 Having carefully considered the responses provided by stakeholders, we have decided to proceed with our proposed principles and methods for assessing the number of users of TSS in the UK, as set out below.

Principles and Methods for number of users

In order to assess this matter, Ofcom will need to assess the number of members of the public in the UK using the service.

To achieve this, we:

- a) Will use the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a service.
- b) May use a proxy for user numbers if we consider individual user numbers cannot be measured reliably.
- c) Will apply a consistent methodology to our assessment of each TSS to ensure fair treatment.

Significant number of users

What we said

- 3.15 In the consultation, we proposed to apply the following principles and methods when considering what is a significant number of UK users of a TSS:
- a) When setting this threshold, our policy objective will be to ensure that public service content is widely available.
 - b) We will consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have given previous recommendations, we will consider if the threshold used in that report is still appropriate.
 - c) We will determine the threshold in a proportionate way. We will seek to ensure that our recommended designations benefit a wide range of audiences, recognising that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of designated IPS (DIPS), but may also bring benefits to both in terms of ensuring the availability and prominence of DIPS and their programmes.³⁹
- 3.16 In addition, we proposed that, while in general we would recommend the designation of TSS at or above the threshold, we might in some circumstances consider it appropriate not to do so. In either case, we would explain why we have taken a particular approach.⁴⁰

Consultation Question 2

³⁹ Paragraphs 4.23 and A1.17 of the [consultation](#).

⁴⁰ Paragraphs 4.24 and A1.18 of the [consultation](#).

Do you agree with our proposed principles and methods for assessing whether the number of UK users of a TSS is significant?

What respondents said

- 3.17 Respondents mainly agreed with our proposed principles and methods for assessing whether the number of users of a TSS is significant.⁴¹ However, there were several requests for greater clarity.
- 3.18 Some respondents, including Sky,⁴² [REDACTED] asked us to explain further what we mean by ‘significant’ and ‘widely available’, and to provide examples of TSS that we would normally consider to have a significant number of users in the UK.
- 3.19 ‘Borderline’ cases were another area where respondents requested clarification. Channel 4 asked for more detail about how we would approach a scenario where the number of users of a TSS is just slightly below the threshold but there is clear potential for growth.⁴⁴ Similarly, S4C asked us to clarify why we might deem it appropriate not to recommend the designation of a TSS if it is above the threshold, but with a declining number of users.⁴⁵ Respondents had different suggestions for how we might deal with such cases, including considering growth potential,⁴⁶ data demonstrating historic trends in the usage of TSS⁴⁷ and demographic data.⁴⁸
- 3.20 In a few responses, stakeholders highlighted the commercial implications of designation of TSS and potential negative effects this could have on competition and innovation in the TSS market. Name withheld 1 raised the possibility of a “chicken and egg” situation as the regime only places an obligation for DIPS to be offered to RTSS (as opposed to all TSS). It considered that, without access to DIPS, new TSS would not be able to achieve sufficient scale to meet the threshold for designation. It proposed that DIPS should be made available to any TSS meeting a set of agreed technical standards.⁴⁹ Other stakeholders were more concerned about minimising the regulatory burden on new providers, while also acknowledging the need for Ofcom to consider designation of new TSS that are projected to grow quickly.⁵⁰
- 3.21 Stakeholders also made suggestions about how we might deal with fluctuations in TSS user bases:
- a) ITV suggested that once a TSS is designated, such designation should remain in place for a set period unless there is a substantial change in circumstances such as a precipitous decline in the TSS user base or there are technical reasons or proportionality of cost reasons for de-designation.⁵¹

⁴¹ BBC response, p.2; Channel 4 response, p.1; Everyone TV response, p.1; YouView, p.1; Samsung, p.1; and [REDACTED]

⁴² Sky response, p.2.

⁴³ [REDACTED]

⁴⁴ Channel 4 response, p.1.

⁴⁵ S4C response, p.2.

⁴⁶ Name withheld 1 response, p.2.

⁴⁷ Sky response, p.4.

⁴⁸ BBC response, p.2 and Channel 4 response, p.1.

⁴⁹ Name withheld 1 response, p.1.

⁵⁰ BBC response, p.2.

⁵¹ ITV response, p.1.

- b) The BBC suggested that "there should be a minimum period of time (at least two years) whereby an RTSS's reach should consistently fall below the threshold before it is removed from regulation".⁵²
 - c) Channel 4 suggested that we consider setting a margin or range around the threshold.⁵³
- 3.22 Acknowledging that the threshold may be subject to change over time, name withheld 2 raised a concern about balancing flexibility with excessive variability, resulting in uncertainty for TSS and RTSS providers.⁵⁴
- 3.23 Finally, Sky asked us to explicitly state in our principles and methods that we will request and consider usage data and other relevant information from TSS providers when assessing whether usage is significant.⁵⁵

Our response

- 3.24 As regards queries about what we mean by 'significant', we explained in our consultation that, when considering what constitutes a significant number of users, we would bear in mind the aim of the new availability and prominence regime to maximise audience benefits by ensuring public service content is available to "the overwhelming majority of the population".⁵⁶ We said we would do this by making recommendations that seek to ensure that public service content is widely available to audiences in the UK.
- 3.25 We understand the desire for further clarity about what we consider to be a significant number of users, and to see examples of scenarios in which we would normally consider a TSS to have a significant number of users. However, we will set such a threshold when preparing draft recommendations for the Secretary of State and our principles and methods recognise that what is 'significant' will depend on relevant factors including market conditions at the time of preparing a report. As such, we consider it will be most appropriate to explain what we consider to be significant and why in any report we make, in accordance with our proposed principles and methods. We will consult on any draft report, giving stakeholders the opportunity to comment on our proposed approach.
- 3.26 In response to questions about why we might deem it appropriate not to recommend designation of a TSS that meets the threshold, we set out in the consultation⁵⁷ and in the Statement⁵⁸ that we will consider this on a case-by-case basis in our report where we will explain our reasoning. When considering this issue, we may take into account matters including those suggested by stakeholders, such as level of use by different audience groups and growth projections (positive or negative).⁵⁹ For example, we may not recommend the designation of a TSS with a declining user base that is unlikely to remain over the threshold for a reasonable period of time because designation would have limited audience benefits and would not be in the interests of regulatory stability. As these principles are already set

⁵² BBC response, p.2.

⁵³ Channel 4 response, p.1.

⁵⁴ Name withheld 2 response, p.2.

⁵⁵ Sky response, p.4.

⁵⁶ Media Act 2024, 2024, [Explanatory Note: Policy Background](#) and paragraphs 2.4 and 4.17 of the [consultation](#).

⁵⁷ Paragraph 4.22 of the [consultation](#).

⁵⁸ Paragraphs A1.18.

⁵⁹ Paragraph A1.24. We note, however, that the Secretary of State may only exercise their individual designation power when they consider a TSS to be used by a significant number of people (section 362AF(2)).

out in the Statement, we do not consider it necessary to make any changes to the Statement in this respect.

- 3.27 We recognise the concerns raised about the commercial implications of TSS designation and the effects on TSS and DIPS providers. As set out in the Statement, we will determine the threshold in a proportionate way, recognising that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of DIPS, but may also bring benefits to both in terms of ensuring availability and prominence of DIPS and their programmes.⁶⁰
- 3.28 In response to comments about agreed technical standards for TSS, while technical standards will be relevant to our decision whether to recommend the designation of a TSS, it is very unlikely that we would recommend designation based on a description that referred solely to meeting certain technical standards. We must ensure our recommendations are proportionate,⁶¹ and are required by the Act to consider other factors, including for example the number of people in the UK using the service and whether that number is significant when providing a report to the Secretary of State relating to the exercise of their power to make individual designations.⁶² We recognise concerns about the ability of new entrants to secure the carriage of DIPS, but note that, while the must-offer obligation only applies to RTSS,⁶³ providers of all TSS remain free to negotiate with PSBs for carriage of DIPS on their service on a commercial basis (as is currently the case).
- 3.29 We welcome suggestions on how we may treat fluctuations in TSS usage. We note that, as set out in the Act, if a TSS is individually designated, then it will continue to be designated until its designation is revoked by the Secretary of State, regardless of fluctuations in its user base. If the Secretary of State makes a designation by description, then a TSS will automatically be de-designated if it falls below any threshold set out in that description. If we recommend a description that includes a threshold,⁶⁴ we will ensure, in line with our general duties,⁶⁵ that it can be measured in a way that provides sufficient stability so as to enable a consistent regulatory approach. As required by the Act, we will also monitor market developments on a regular basis to inform whether it is appropriate to provide a new report to the Secretary of State and, if so, the advice such a report should contain.⁶⁶
- 3.30 Finally, we agree with Sky that it may be appropriate to request and consider data from TSS providers when assessing whether usage is significant and we may use our information gathering powers to request data from TSS providers to inform our report.⁶⁷ This is set out

⁶⁰ Paragraph A1.17c).

⁶¹ In accordance with our legal duty in section 3(3)(a) of the Act to conduct our regulatory activities in a proportionate manner. Paragraphs A1.23 and A1.32 of the Statement say that we will take into account our relevant statutory duties when considering, respectively, any matters likely to affect the factors we must consider for individual designation, and any factors likely to affect which TSS fall within a description.

⁶² Section 362AG(4) of the Act.

⁶³ Under section 362AJ of the Act, providers of DIPS will be subject to a “must-offer” obligation, meaning that they must offer their DIPS to every RTSS provider and must do their best to secure that, in relation to every RTSS, agreements are entered into and kept in force that ensure DIPS are included in the RTSS.

⁶⁴ In accordance with paragraph A1.27a).

⁶⁵ Section 3(3)(a) of the Act and paragraphs A1.23 and A1.32 of the Statement.

⁶⁶ Section 362AZ9(2) states that we have the function of obtaining, compiling and keeping under review information which may be relevant to designating or revoking the designation of a TSS, or ceasing to specify a description of TSS.

⁶⁷ Section 362AS of the Act.

in the Statement as a general principle⁶⁸ so we do not consider it necessary to make any changes in this respect.

Our decision

- 3.31 Having carefully considered the responses provided by stakeholders, we have decided to proceed with our proposed principles and methods for considering what is a significant number of UK users of a TSS, as set out below.

Principles and Methods for setting a number of users threshold

Using the measure developed according to the principles and methods in paragraph A1.16, we will set a threshold that we consider to be significant:

- a) When setting this threshold, we will seek to ensure that public service content is widely available.
- b) We will generally consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have previously given recommendations, we will consider if the threshold used in that report is still appropriate.
- c) We will determine the threshold in a proportionate way. We will seek to ensure that our recommended designations benefit a wide range of audiences. We will take into account that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of DIPS but may also bring benefits to both in terms of ensuring availability and prominence of DIPS and their programmes.

Manner of use of TSS

What we said

- 3.32 In the consultation, we proposed to apply the following principles and methods for assessing the manner of use of TSS:
- a) We will generally take account of the extent of active use of the TSS. We will consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.
 - b) If different approaches for assessing use of TSS on different types of ITE are more suitable, we will seek to take the most appropriate approach.⁶⁹

Consultation Question 3

Do you agree with our proposed principles and methods for assessing the manner of use of a TSS?

⁶⁸ Paragraph A1.35.

⁶⁹ Paragraphs 4.29, A1.19, A.1.20 and A1.28 of the [consultation](#).

What respondents said

- 3.33 Generally respondents agreed with our proposed principles and methods for assessing the manner of use of TSS, including taking account of the extent of active use of the TSS.⁷⁰
- 3.34 Two respondents sought greater clarity,⁷¹ including one request [REDACTED] that metrics for assessing active use be clearly quantified and laid out to industry ahead of use to ensure transparency.⁷²
- 3.35 Some respondents made suggestions about the metrics we should use for assessing active use and offered differing views about the period over which we should measure this: Name withheld 2 suggested using monthly active users over a one month time period,⁷³ whereas the BBC's view was that active use should not require device use more frequently than monthly.⁷⁴ Channel 4 considered a requirement for weekly or monthly use to be too high a bar and instead recommended that use at least every two months would be more reasonable.⁷⁵
- 3.36 There were also comments from respondents about data gathering. Sky asked us to make clear that we will request and consider active usage data and other relevant information from TSS providers.⁷⁶ On the other hand, BT raised a concern about the potential burden of data gathering on TSS providers.⁷⁷

Our response

- 3.37 The purpose of the Statement is to set out the principles and methods we will apply when determining which metric to use when we make recommendations to the Secretary of State. As regards comments and suggestions on the type of metrics we will use, these will not always remain the same, but in our reports to the Secretary of State we will always explain why we have chosen a particular approach. As part of our consultation on the Statement, we also set out our emerging thinking on our approach for the first report, including potential metrics to assess manner of use, and we will consider the stakeholder comments we have received on the supplementary questions we asked in this area when developing our draft recommendations.⁷⁸ We will also consult on those, ensuring transparency around the metric we will use and giving stakeholders a chance to comment before making our final recommendations.
- 3.38 Concerning data gathering, we proposed at consultation to consider available data and/or estimates on usage.⁷⁹ We also proposed that we may use our information gathering powers to gather evidence to inform our report.⁸⁰ As such, we consider that the proposed principles and methods provide sufficient flexibility to gather data from TSS providers

⁷⁰ S4C response, pp.2-3; Everyone TV response, p.1; Samsung response, p.1; Channel 4 response, p.2 and Sky response, pp.4-5 [REDACTED]

⁷¹ Sky response, p.4 [REDACTED]

⁷² [REDACTED]

⁷³ Name withheld 2 response, p.3.

⁷⁴ BBC response, p.3.

⁷⁵ Channel 4 response, p.2.

⁷⁶ Sky response, p.5.

⁷⁷ BT response, p.2.

⁷⁸ 'Potential approach for our first report', p.22 of the [consultation](#).

⁷⁹ Paragraph 4.29 of the [consultation](#).

⁸⁰ Paragraph 4.47(c) of the [consultation](#).

related to usage data. We therefore do not consider it necessary to modify the Statement to state this expressly.

- 3.39 In response to BT's concerns about the potential burden of data gathering, we recognise that responding to a formal request for information requires time and resource on the part of stakeholders. As with all information requests issued by Ofcom, we will ensure that the reasons for the request are clear, and that we are acting proportionately by only asking for information that we need in order to carry out our functions.⁸¹

Our decision

- 3.40 Having carefully considered the responses provided by stakeholders, we have decided to proceed with our proposed principles and methods for assessing the manner of use of TSS in the UK, as set out below.

Principles and Methods for manner of use

We will generally take account of the extent of active use of the TSS. We may consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.

If different approaches for assessing use of TSS on different types of ITE are more suitable, we will seek to take the most appropriate approach.

Technical functionality of TSS

What we said

- 3.41 In the consultation we proposed the following principles and methods for assessing the functionality of a TSS:
- a) We will generally consider a TSS to be capable of functioning as an RTSS if:
 - i) It is capable of carrying DIPS, as defined in section 362AA(1) of the Act;
 - ii) It is capable of presenting IPS and programmes with different levels of prominence; and
 - iii) It is capable of including features to ensure it is accessible to people with disabilities.
 - b) In considering if a TSS is capable of functioning as an RTSS, we will take into account its current capabilities and any modifications that may be needed for the TSS to carry out the functions above.⁸²
- 3.42 We also noted that we would apply these principles and methods when advising the Secretary of State on a description that refers to the functions that a TSS is capable of carrying out or may be made capable of carrying out.⁸³

Consultation Question 4

⁸¹ For more information see [Information request from Ofcom: why you have one and what you need to do](#).

⁸² Paragraphs 4.42, A1.21 and A1.22 of the [consultation](#).

⁸³ Paragraphs 4.43 and A1.30 of the [consultation](#).

Do you agree with our proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be made capable of carrying out?

What respondents said

- 3.43 Overall, respondents agreed with the proposed principles and methods for assessing the technical functionality of TSS.⁸⁴
- 3.44 Some respondents, however, requested further clarity in this area. Samsung asked about the “resources” we will use to determine functionality;⁸⁵ Sky requested that we add examples of scenarios in which TSS would not normally be considered capable of operating as an RTSS to our principles and methods;⁸⁶ and a third stakeholder [REDACTED] asked us to explain what constitutes being capable of the relevant function, particularly if a TSS is not currently performing that function.⁸⁷
- 3.45 Some stakeholders were also concerned that the question of capability could give rise to a potential regulatory loophole. For example, S4C raised the possibility that a TSS might be designed in such a way that it is incapable of including accessibility features with the deliberate intention of avoiding being designated,⁸⁸ while another stakeholder [REDACTED] gave the additional example of a platform provider “hard coding app positions”, i.e. fixing IPS positions by embedding them into the code of the TSS, to avoid being designated.⁸⁹
- 3.46 S4C suggested that we amend paragraph A1.22 of the Statement to address this risk by noting that, when considering if a TSS is capable of functioning as an RTSS, we will take into account current industry practice; the features reasonably expected of new TSS devices on the market; and the importance of ensuring accessibility for all audiences.⁹⁰
- 3.47 Another concern respondents raised was the treatment of older TSS. For instance, Sky noted that requiring providers to update older devices, such as some of their older set-top boxes, to comply with new prominence and accessibility requirements may not be technically possible; if it were, then it would give rise to significant costs for the provider but for a “dwindling” customer base.⁹¹
- 3.48 Sky also raised the difficulty of assessing whether a particular TSS is capable of supporting the “technical requirements” of the Code of Practice,⁹² without first seeing what the Code of Practice contains. It suggested that we should consider including exemptions to the Code of Practice for older TSS.⁹³

⁸⁴ Samsung response, p.1; Everyone TV response, p.2; YouView response, p.1; BBC response, p.3; Channel 4 response, p.2; S4C response, p.3 [REDACTED].

⁸⁵ Samsung response, p.1.

⁸⁶ Sky response pp.2 and 6.

⁸⁷ [REDACTED]

⁸⁸ S4C response, p. 3.

⁸⁹ [REDACTED]

⁹⁰ S4C response, p.3.

⁹¹ Sky response, pp. 5-6.

⁹² Under section 362AP(1) of the Act, Ofcom is required to issue a code of practice (the ‘Code of Practice’) recommending actions that RTSS providers should take when seeking to comply with their obligations under section 362AO of the Act to ensure that its service is accessible to those with disabilities and that DIPS are given appropriate prominence.

⁹³ Sky response, p.6.

- 3.49 Another respondent [REDACTED] cautioned against assuming that older versions of TSS should be exempt from regulation.⁹⁴ In doing so, it recommended that we assess all TSS and all TSS versions on their individual merits and that older versions of TSS that still have a significant number of users and where it remains possible to customise the UI should not escape regulation.
- 3.50 Channel 4 considered that the designation of a very old TSS which presents high technical support costs but small audiences and/or minimal potential for earning advertising revenues would be inconsistent with the Agreement Objective not to adversely affect the ability of the PSBs to fulfil their public service remits.⁹⁵
- 3.51 Several stakeholders also mentioned the role of DIPS in relation to older TSS and technical functionality in general. For instance, BT said that support for a TSS function depends mainly on the content provider and in many cases content providers do not consider it viable to invest time and money in making a compatible app, for example in the case of older or smaller TSS.⁹⁶ In a similar vein, Channel 4 noted that a PSB's DIPS may not operate in the same way on all TSS, for instance, a PSB may remove or reduce certain features on older TSS.⁹⁷ ITV noted that PSBs are unlikely to be able to offer their DIPS to TSS which do not have effective digital rights management protection.⁹⁸

Our response

- 3.52 With respect to requests for more clarity on our approach to assessing technical functionality, given that the assessment will be context-dependent, we consider that our principles and methods provide an appropriate level of detail that allows us to consider the best available evidence each time we produce a report and to take account of market developments including technological changes. We do not think it would be helpful in the Statement to provide examples or specify the evidence we will rely on because that may change depending on the specific circumstances in each report and may become obsolete over time. We will explain our approach in each report and stakeholders will have an opportunity to comment on our proposed recommendations, including the evidence used when we consult on each such report.
- 3.53 In response to comments regarding what we mean by 'capable' and potential loopholes, we do not believe that the proposed principles and methods could give rise to the potential regulatory loopholes flagged by S4C and another respondent. This is because we will not automatically consider a TSS to be incapable of functioning as an RTSS if it does not currently provide a certain functionality, such as accessibility features. Instead, when considering whether a TSS is 'capable' of a function – noting that one stakeholder asked us to explain what we mean by this – our proposed Statement sets out that we will take into account both the current capabilities of the TSS and any modifications that may be needed to make it capable of functioning as an RTSS.⁹⁹
- 3.54 We agree with S4C that industry practice and the features reasonably expected of new TSS may be relevant to our assessment of technical functionality. These are the kinds of

⁹⁴ [REDACTED]

⁹⁵ Channel 4 response, p.2.

⁹⁶ BT response, p.1.

⁹⁷ Channel 4 response, p.2.

⁹⁸ ITV response, p.2.

⁹⁹ Paragraph A1.22.

additional matters that we may consider in accordance with paragraphs A1.23 and A1.31 of the Statement.¹⁰⁰ Therefore, we do not consider it necessary to amend the principles and methods regarding technical functionality to refer expressly to industry practice or the features expected of new TSS. As regards S4C's comment about the importance of ensuring accessibility for all audiences, we consider that this is sufficiently addressed in paragraph A1.21c) of the Statement, which sets out that capability of accessibility features is one of the factors we will assess when considering whether a TSS is capable of functioning as an RTSS.

- 3.55 In relation to concerns raised by Sky and other stakeholders about older services, we will consider whether older TSS are capable of functioning as RTSS as part of our assessment of technical functionality. If an older TSS is not capable of carrying DIPS, presenting IPS and programmes with different levels of prominence and including features to ensure it is accessible to people with disabilities, then we may not recommend its designation. Conversely, if an older TSS is capable of these functions (or if it would be reasonable and proportionate for the TSS to be modified to be so capable), then we may recommend its designation if we consider it appropriate to do so.
- 3.56 We noted in the consultation that when considering whether an older TSS is capable of functioning as an RTSS, we are likely to consider:
- (a) data on use of older TSS and older versions of TSS available in the market;
 - (b) industry practices in relation to supporting older TSS and older versions of TSS; and
 - (c) industry practices in relation to ensuring that IPS are compatible with older TSS and older versions of TSS.¹⁰¹
- 3.57 We consider that these factors would include the points raised by stakeholders regarding the role of DIPS in relation to older TSS, including those with significant numbers of users.
- 3.58 When considering whether older TSS are capable of functioning as RTSS, we would also take into account our general legal duty to carry out our regulatory activities proportionately, considering the regulatory obligations on DIPS and RTSS providers that will result from designation, as well as the potential benefits to both resulting from the availability and prominence of DIPS and their programmes.
- 3.59 We consider that the proposed principles and methods at paragraphs A1.21, A1.22, A1.23 and A1.31 provide sufficient flexibility to enable us to consider the above matters relating to older TSS, such that it is not necessary to make any changes to the Statement. In preparing our proposed recommendations to the Secretary of State, we will also consider the views provided through our consultation in response to our supplemental question concerning technical functionality. We will then consult on these proposed recommendations, at which point stakeholders will have an opportunity to comment on our approach to older TSS.
- 3.60 Subject to what we recommend to the Secretary of State following our assessment of technical functionality and capability, we agree with the views from Sky and others that how providers of older TSS or older versions of TSS could comply with their prominence and accessibility requirements will be an important consideration as we progress with our work

¹⁰⁰ In these paragraphs we state that we will consider whether it would be appropriate to assess any other factors that are likely to affect the matters referred to above, taking into account our relevant statutory duties.

¹⁰¹ Paragraph 4.41 of the [consultation](#).

to implement the new regime. This is an area we will consider as we prepare the Code of Practice and our Guidance on the Agreement Objectives.¹⁰²

Our decision

- 3.61 Having carefully considered the responses provided by stakeholders, we have decided to proceed with our proposed principles and methods for assessing the manner of use of TSS in the UK, as set out below.

Principles and Methods for technical functionality

We will generally consider a TSS to be capable of functioning as an RTSS if:

- a) It is capable of carrying DIPS, as defined in section 362AA(1) of the Act;
- b) It is capable of presenting IPS and programmes with different levels of prominence; and
- c) It is capable of including features to ensure it is accessible to people with disabilities.

In considering if a TSS is capable of functioning as an RTSS, we will take into account its current capabilities and any modifications that may be needed for the TSS to carry out the functions above.

Additional relevant matters

What we said

- 3.62 We proposed to consider, on a case-by-case basis, whether there are any additional matters that it would be appropriate for us to consider, taking into account our relevant statutory duties. These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which public service content is accessed. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report.¹⁰³
- 3.63 We also proposed the following general principles:¹⁰⁴
- a) We will explain why we have taken a particular approach in our report and how this approach is consistent with the principles and methods in the statement.
 - b) We may, however, consider it appropriate to depart from the principles and methods in the statement. If we do this, we will explain why we have followed different principles and methods.
 - c) We may use our information gathering powers to inform our report.¹⁰⁵
 - d) We will publish the reports that we give to the Secretary of State.¹⁰⁶

¹⁰² Ofcom is required by section 362AL of the Act to prepare and publish guidance about DIPS and RTSS providers may act consistently with the Agreement Objectives, which are set out in section 362AM.

¹⁰³ Paragraphs 4.45, A1.23, A1.24 and A1.31 of the [consultation](#).

¹⁰⁴ Paragraphs 4.47 and A1.32-A1.35 of the [consultation](#).

¹⁰⁵ Section 362AS of the Act.

¹⁰⁶ Section 362AG(8) of the Act.

Consultation Question 5

Do you agree with our proposed principles and methods for assessing any other additional matters?

What respondents said

- 3.64 There was overall agreement from respondents on our proposed principles and methods for considering additional matters and our general principles.¹⁰⁷
- 3.65 One stakeholder [REDACTED] requested more information about how Ofcom would decide if it were appropriate to use these methods and, if we do use these methods, whether they would be transparent.¹⁰⁸

Our response

- 3.66 As set out in the consultation and in the Statement, we will decide if it is appropriate to consider any additional matters or to depart from the principles and methods in the Statement on a case-by-case basis depending on the circumstances at the time we are preparing a report and taking into account our relevant statutory duties.¹⁰⁹ If we decide to do so, we will explain why and consult on it in line with our general principles,¹¹⁰ which will ensure that our decision making is transparent. Since any such decision will be context-dependent, we do not think it is necessary to add any further detail to the Statement in this regard.

Our decision

- 3.67 Having carefully considered the responses provided by stakeholders, we have decided to proceed with our proposed principles and methods for assessing the manner of use of TSS in the UK, as set out below.

Principles and Methods for additional relevant matters

We will consider whether it would be appropriate to assess any other factors that are likely to affect the matters referred to above, taking into account our relevant statutory duties.

These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which public service content is accessed. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report.

¹⁰⁷ Sky response, p.8; Everyone TV response, p.1; YouView response, p.1; S4C response, p.3; Samsung response, p.1 [REDACTED]

¹⁰⁹ Paragraphs A1.23, A1.24 and A1.31 of the Statement and paragraph 4.45 of the [consultation](#).

¹¹⁰ Paragraphs A1.32 - A1.35.

Other comments

- 3.68 Some stakeholders provided comments that did not directly relate to the consultation questions, including comments regarding:
- a) the definitions of ITE and TSS,
 - b) future updates to the Statement and our designation recommendations, and
 - c) the potential commercial impacts of the new availability and prominence regime on RTSS and DIPS.
- 3.69 We consider and respond to those comments in this section.

What we said

- 3.70 As set out in paragraph 2.4, the new availability and prominence regime applies to TSS. One of the requirements of a TSS is that it must be provided in connection with ITE.¹¹¹
- 3.71 In the consultation we said that we consider that the software platforms used on smart TVs and streaming devices meet the definition of TSS.¹¹² We also noted that the same TSS is usually carried across a range of different devices and models, meaning that, for example, smart TVs from the same hardware company may operate with different versions of a certain TSS. We proposed to consider these different versions of a service as a single TSS under the Act.¹¹³

What respondents said

Definition of ITE

- 3.72 Samsung asked for confirmation that mobile phones and tablets are not included in the definition of ITE¹¹⁴ and Channel 4, while recognising that it is beyond Ofcom's remit to change the definition of ITE, urged us to monitor the use of games consoles for watching TV with a view to recommending that the UK Government include them in the definition of ITE. To support this view, it highlighted the use of these devices by younger audiences to access PSB services.¹¹⁵

Definition of TSS

- 3.73 The BBC welcomed our approach to different versions of a TSS outlined above, but, along with other respondents, asked for further clarity about the treatment of new TSS or a new version of an existing TSS.¹¹⁶ Channel 4 raised what they see as the risk that "RTSS could be incentivised to claim that adopting a new operating system (OS) constitutes the launch of an entirely new TSS – which could mean that the service escapes regulation until it reaches the 'significant number of users' threshold".¹¹⁷
- 3.74 Name withheld 2 also asked us for our thoughts on "nested applications" (i.e. applications or services within a TSS) that function similarly to a TSS and serve as a "dual home

¹¹¹ Paragraph 2.6 and Section 362AE(1) of the Act.

¹¹² Paragraph 3.15 of the [consultation](#).

¹¹³ Paragraphs 3.19-3.20 of the [consultation](#).

¹¹⁴ Samsung response, p.2.

¹¹⁵ Channel 4 response, p.5.

¹¹⁶ BBC response, p.1.

¹¹⁷ Channel 4 response, p.1.

screen”.¹¹⁸ Along similar lines, another stakeholder [REDACTED] asked for clarification about the potential designation of Freely¹¹⁹ given that it presents technical functionalities that are similar to a TSS, while acting as a “hub” for PSB apps.¹²⁰

Updating our Statement and recommendations

- 3.75 Some stakeholders highlighted the importance of maintaining flexibility in the designation process to ensure that it is sufficiently future-proof and takes into account the rapid technological developments in the sector. To address this, Channel 4 suggested that we should commit to periodically reviewing and, if necessary, revising our recommendations on a regular basis to strike the right balance between regulatory certainty and innovation.¹²¹

Commercial implications of the regime

- 3.76 In some responses, stakeholders drew our attention to the potential impacts of designation and the availability and prominence regime more generally on different TSS providers and PSBs. For instance, Name withheld 2 highlighted the importance of bearing in mind the context of the different business models employed by different operating systems when making our designation recommendations.¹²²
- 3.77 The BBC, ITV and Channel 4 raised concerns about the time and resources needed for PSBs to make their DIPS available on TSS, particularly new versions and new TSS¹²³ and Channel 4 and ITV raised the question of whether RTSS providers or PSBs should bear the costs of any necessary modifications to comply with the availability and prominence regime.¹²⁴

Our response

Definition of ITE

- 3.78 As set out above in paragraph 2.7, the Secretary of State made regulations in October 2024 specifying smart TVs and streaming devices, such as set-top boxes and streaming sticks, as ITE.¹²⁵ Mobile phones, tablets and games consoles are therefore not currently included in the definition of ITE.
- 3.79 In response to Channel 4’s comments, in its explanatory memorandum to the Regulations, the Department for Culture, Media and Sport set out its intention to monitor the regulations and review the list of ITE one year after full implementation of the new prominence regime.¹²⁶

Definition of TSS

- 3.80 Regarding stakeholders concerns about new TSS and new versions of existing TSS, we recognise that it is important to be clear in any report to the Secretary of State about how

¹¹⁸ Name withheld 2 response, p.2.

¹¹⁹ Freely is a TV service offering live and on-demand content delivered via the internet and is provided by Everyone TV, a joint venture between the BBC, ITV, Channel 4 and Channel 5.

¹²⁰ [REDACTED]

¹²¹ Channel 4 response, p.5.

¹²² Name withheld 2 response, p.3.

¹²³ BBC response, p.1 and ITV response, p.3.

¹²⁴ ITV response, p.3 and Channel 4 response, p.3.

¹²⁵ [The Internet Television Equipment Regulations 2024](#) (2024/1056) (the ‘Regulations’).

¹²⁶ Paragraph 10.1 of the [Explanatory Memorandum to the Regulations](#).

we have assessed new TSS and new versions of existing TSS. Whether a service is a new TSS will be fact-dependent and will be assessed on a case-by-case basis and stakeholders will have an opportunity to comment on any such assessment when we consult on any draft report.

- 3.81 In response to comments about nested applications and Freely, the criteria a service must meet to be a TSS are set out in the Act and are cumulative. Services that do not meet all the criteria in the Act are not TSS and cannot be designated, even if they meet some of the criteria and therefore function similarly to a TSS.

Updating our Statement and recommendations

- 3.82 In response to comments about maintaining flexibility in the designation process and reviewing our recommendations, we do not have a statutory duty to conduct periodic reviews of our recommendations.¹²⁷ However, the Act gives us a monitoring role and the function of obtaining, compiling and keeping under review information which may be relevant for the first designation as well as future designation and de-designation processes.¹²⁸ In addition, each time we prepare a report, we would consider market conditions and other relevant factors, including but not limited to technological developments.
- 3.83 As such, we will monitor market developments on a regular basis to inform whether it is appropriate to provide a new report to the Secretary of State and, if so, the advice such a report should contain. Our view is that this will be more efficient and effective than carrying out a review of designation at specified intervals irrespective of market developments, as it will enable us to respond to changes in the market as they arise.

Commercial implications of the regime

- 3.84 In response to comments regarding the importance of considering different TSS business models and the time and resources incurred by PSBs to make their DIPS available on TSS, in line with our general duties, we considered the potential impacts of the proposed Statement¹²⁹ and will continue to take account of the potential impacts on stakeholders in later stages of our implementation programme for this new availability and prominence regime. We will always carry out an impact assessment for any proposals that we make.

¹²⁷ As set out in the Act and in our [consultation](#) at paragraph A3.12, the Secretary of State may request a report from Ofcom, in which case we must provide one or we may decide on our own initiative to provide the Secretary of State with a report, and may make recommendations in relation to the exercise of either or both powers.

¹²⁸ Section 362AZ9 of the Act.

¹²⁹ See [Annex 2](#).

A1. Statement of Principles and Methods

About this document

- A1.1 This document is the Statement of Principles and Methods to be applied by Ofcom when preparing a report which makes recommendations to the Secretary of State regarding the designation of television selection services (TSS) under section 362AF(1)(a) or (b) in Part 3A of the Communications Act 2003 (the Act).¹³⁰ Section 362AG(9) of the Act requires Ofcom to produce this statement.

Legal framework

- A1.2 The aim of the prominence regime in Part 3A of the Act is to ensure that public service content is available, prominent, and easily accessible on widely used TSS. To achieve this, the providers of designated TSS (referred to as regulated TSS or RTSS) must ensure that the designated internet programme services (designated IPS or DIPS)¹³¹ of the public service broadcasters (PSBs),¹³² and their public service content, are made available and prominent on the service.
- A1.3 The Secretary of State may make regulations which designate TSS either by: (a) naming individual TSS to be designated under section 362AF(1)(a) (individual designation); or (b) specifying a description of TSS to be designated under section 362AF(1)(b), in which case TSS that meet the description will be designated (designation by description).¹³³
- A1.4 The Secretary of State must have received a report from Ofcom before making or amending designation regulations.¹³⁴ Our report must set out recommendations on how the Secretary of State should exercise their regulation making powers.¹³⁵ We may decide to prepare such a report on our own initiative.¹³⁶ Alternatively the Secretary of State may ask us to prepare a report, in which case we must do so as soon as practicable.¹³⁷
- A1.5 The Act provides Ofcom with information gathering powers that can be used to obtain information that we consider necessary to inform our report to the Secretary of State.¹³⁸

¹³⁰ Part 3A of the Act was inserted by Part 2 of the Media Act 2024.

¹³¹ “IPS” is defined in section 362AA(10) and (11) of the Act and “DIPS” is defined in section 362AA(1) of the Act.

¹³² The BBC’s IPS is automatically designated. Ofcom has the power to designate the IPS of the other PSBs: the providers of the Channel 3 services (currently ITV and STV), Channel 4, S4C, and Channel 5 (section 362AA(2) of the Act). Designated on-demand players will be referred to as designated internet programme services or DIPS.

¹³³ Providers of TSS whose TSS is or becomes a service of the description specified will have to notify Ofcom (section 362AH of the Act).

¹³⁴ Section 362AG(2) of the Act

¹³⁵ Section 362AF(4) of the Act.

¹³⁶ Section 362AG(1) of the Act.

¹³⁷ Section 362AG(2) and (3) of the Act.

¹³⁸ Section 362AS of the Act.

These powers allow Ofcom to require information to be obtained or generated by the person receiving the request.¹³⁹

A1.6 Ofcom must publish a statement about the principles and methods it will apply when preparing a report for the Secretary of State. This document is that statement. We may revise or replace this statement.¹⁴⁰

A1.7 A more detailed legal framework is set out in **Annex 3**.

Principles and methods for preparing our report on designation of regulated TSS (RTSS)

What is a TSS?

A1.8 A TSS is a service, or a dissociable section of a service, which:

- a) is provided via the internet;
- b) is provided in connection with internet television equipment (ITE);
- c) consists of the presentation of IPS; and
- d) enables the user to select between and access those IPS or programmes provided by those IPS, or both.¹⁴¹

A1.9 A TSS is not the device on which IPS, or programmes are accessed – the device is ITE. A TSS is the service which enables the user to access the available IPS and to discover programmes provided by those IPS.

A1.10 When making recommendations Ofcom will refer to the definition of ITE as set out in the most recent regulations made by the Secretary of State under section 362AE(2) of the Act.¹⁴²

A1.11 As at the date of this statement, the most recent regulations are the Internet Television Equipment Regulations 2024.¹⁴³ These define ITE as:

- a) Smart televisions; and
- b) Streaming devices, which includes streaming sticks and set-top boxes.

Secretary of State's designation powers

A1.12 As set out above, there are two powers under which the Secretary of State may designate TSS as RTSS: regulations under section 362AF(1)(a) (individual designation) or regulations under section 362AF(1)(b) (designation by description).

¹³⁹ Section 362AS(3) and (4) of the Act.

¹⁴⁰ Section 362AG(9) and (10) of the Act.

¹⁴¹ Section 362AE(1) and (2) of the Act. The Secretary of State may modify the definition of “television selection service” under section 362AE(7) of the Act. Ofcom will apply the definition in force at the time of preparing a report.

¹⁴² The Secretary of State may modify the definition of “internet television equipment” under section 362AE(7) of the Act. Ofcom will apply the definition in force at the time of preparing a report.

¹⁴³ [The Internet Television Equipment Regulations 2024](#) (2024/1056).

- A1.13 As the Act does not prescribe the circumstances in which the powers should be used, we may make recommendations in relation to either or both powers. To ensure transparency, we will explain why we have recommended a particular designation power.

Principles and methods when preparing a report on exercising the power in section 362AF(1)(a) (individual designation)

- A1.14 Section 362AG(4)(a) to (d) set out the matters Ofcom must consider when preparing a report under section 362AF(1)(a) (individual designation):
- a) The number of members of the public in the UK using a TSS and whether that number is significant;¹⁴⁴
 - b) The manner in which the TSS is used;
 - c) Whether the TSS is capable of functioning as an RTSS, and whether it can be made so capable; and
 - d) Such matters as Ofcom considers likely to affect the above matters.

- A1.15 We set out below the principles and methods we will apply when assessing these matters.

(a) The number of members of the public in the United Kingdom using the service and whether that is significant

- A1.16 In order to assess this matter, Ofcom will need to assess the number of members of the public in the UK using the service. To achieve this, we:
- a) Will use the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a service;
 - b) May use a proxy for user numbers if we consider individual user numbers cannot be measured reliably; and
 - c) Will apply a consistent methodology to our assessment of each TSS to ensure fair treatment.
- A1.17 Using the measure developed according to the principles and methods in paragraph A1.16, we will set a threshold that we consider to be significant:
- a) When setting this threshold, we will seek to ensure that public service content is widely available.
 - b) We will generally consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have previously given recommendations, we will consider if the threshold used in that report is still appropriate.
 - c) We will determine the threshold in a proportionate way. We will seek to ensure that our recommended designations benefit a wide range of audiences. We will take into account that designation of an RTSS will impose regulatory obligations on the RTSS provider and on providers of designated IPS (DIPS) but may also bring benefits to both in terms of ensuring availability and prominence of DIPS and their programmes.

¹⁴⁴ The Secretary of State must consider that a TSS is used by a significant number of people in the UK in order to specifically designate it (section 362AF(2) of the Act).

- A1.18 Generally, we will recommend the designation of TSS at or above what we consider to be a significant number of users. However, taking into account the other principles and methods in this statement, we may consider it appropriate not to recommend the designation of such a TSS. For example, we may not recommend the designation of such a TSS if evidence suggests that its user numbers are declining and are unlikely to be over the threshold for a reasonable period of time after designation. We will explain why we have or have not recommended the designation of TSS that are at or above the threshold.

(b) The manner in which that service is used by such persons

- A1.19 We will generally take account of the extent of active use of the TSS. We may consider available data or estimates of how regularly particular TSS are accessed by users in addition to the overall number of users.
- A1.20 If different approaches for assessing use of TSS on different types of ITE are more suitable, we will seek to take the most appropriate approach.

(c) Whether that service is capable of functioning as a regulated television selection service and the modifications, if any, that are needed to make it so capable

- A1.21 We will generally consider a TSS to be capable of functioning as an RTSS if it is capable of:
- a) Carrying DIPS, as defined in section 362AA(1) of the Act;¹⁴⁵
 - b) Presenting IPS and programmes with different levels of prominence; and
 - c) Including features to ensure it is accessible to people with disabilities.
- A1.22 In considering if a TSS is capable of functioning as an RTSS, we will take into account its current capabilities and any modifications that may be needed for the TSS to carry out the functions above.

(d) Such matters as Ofcom considers likely to affect the matters referred to in (a) to (d)

- A1.23 We will consider whether it would be appropriate to assess any other factors that are likely to affect the matters referred to above, taking into account our relevant statutory duties.¹⁴⁶
- A1.24 These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which public service content is accessed. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report.

¹⁴⁵ If we are preparing a report before any IPS have been designated then we will consider an appropriate alternative, which may include assessing whether the TSS is capable of carrying the public service broadcasters' IPS.

¹⁴⁶ Our relevant statutory duties are set out in Annex 3.

Principles and methods when preparing a report on the exercise of the power in section 362AF(1)(b) (designation by description)

- A1.25 The Secretary of State may prepare a description of TSS that they consider should be an RTSS or ask Ofcom to do so. In either case, Ofcom must produce a report containing recommendations about the exercise of the power in section 362AF(1)(b).
- A1.26 Section 362AG(5) sets out the matters Ofcom must consider when preparing a report under section 362AF(1)(b):
- a) Which TSS are likely to fall within the description in question; and
 - b) Such matters as Ofcom considers relevant to that assessment.
- A1.27 Section 362AF(3) states that regulations made under section 362AF(1)(b) may refer to:
- a) A TSS being used, or being used in a manner specified in the regulations, by no fewer than such number of members of the public in the UK as may be specified in the regulations;
 - b) The date on which a TSS is first made available to members of the public in the UK; and
 - c) The functions that a TSS is capable of carrying out or may be made capable of carrying out.
- A1.28 We set out below the principles and methods we will apply when assessing these matters.

(a) Which TSS are likely to fall within the description of TSS in question

- A1.29 Where the description refers to the matter in paragraph A1.27a), Ofcom will need to assess the number of members of the public in the UK using the service, or the number of people using the service in the manner specified in the regulations. In order to do this, we will assess usage with the same principles and methods as set out at paragraph A1.16; and assess manner of use with the same principles and methods as set out at paragraphs A1.19 and A1.20.
- A1.30 If a description also or alternatively refers to the matter in paragraph A1.27b), we will use the best available evidence to determine the TSS that meet that description.
- A1.31 Where a description also or alternatively refers to the matter in A1.27c), we will consider whether it is capable of functioning as an RTSS, applying the principles and methods in paragraph A1.21 and A1.22 and assessing any other functions that may be specified in the description.

(b) Such matters as Ofcom considers relevant to the assessment described in paragraph (a)

- A1.32 We will consider whether it would be appropriate to assess any other factors that are likely to affect which TSS are likely to fall within the description, taking into account our relevant statutory duties.

General principles

- A1.33 We will explain why we have taken a particular approach in our report and how that approach is consistent with the principles and methods set out in this statement.

- A1.34 However, we may consider it appropriate or necessary to follow different principles and methods to those set out in this statement. If we follow different principles and methods, then we will explain why we have done this.
- A1.35 We may use our information gathering powers in section 362AS of the Act to gather evidence to inform our report.
- A1.36 We will publish the reports that we give to the Secretary of State.¹⁴⁷

¹⁴⁷ Section 362AG(8) of the Act.

A2. Impact assessments and general duties

Impact assessment

- A2.1 Section 7 of the Communications Act 2003 (the Act) requires Ofcom to carry out and publish an assessment of the envisioned impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. Impact assessments help us to understand the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties in the least intrusive way.¹⁴⁸
- A2.2 The analysis presented throughout the consultation (in particular section 4) provided our assessment of the impact of our proposals and constituted an impact assessment, as defined by section 7 of the Act. Section 3 of this statement sets out our responses to stakeholder comments and our decisions, including our final assessment of the impact of the principles and methods we will apply when preparing a report for the Secretary of State. That report will be prepared for an advisory function, where the decision on the implementation of the recommendations it contains will be taken by the Secretary of State.
- A2.3 We will carry out a further impact assessment when producing the report.

General duties

- A2.4 As set out in Annex 3, the Act imposes on Ofcom general duties when carrying out its functions. We consider that the decisions we have reached in this statement are consistent with those duties. As noted above, the Statement of Principles and Methods is prepared for the purposes of preparing advice, with the Secretary of State deciding on the implementation of the recommendations in our report. Having clear and appropriate principles on which we will base our report will ensure that the Secretary of State will have full and appropriate information on which to base their designation decisions, helping to achieve the objective of public service broadcasting being widely available. We consider that the principles and methods in Annex 1 will therefore further the interests of citizens in relation to communications matters and consumers in relevant markets.¹⁴⁹
- A2.5 In finalising the Statement of Principles and Methods, we have had regard to our relevant statutory duties including the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK, the desirability of encouraging investment and innovation in relevant markets and the needs of persons with disabilities.¹⁵⁰ We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.¹⁵¹ We consulted on our proposed principles and methods, and have considered

¹⁴⁸ Ofcom, [Impact assessment guidance](#), 2023.

¹⁴⁹ Section 3(1) of the Act.

¹⁵⁰ Section 3(4)(a), (d) and (i) of the Act.

¹⁵¹ Section 3(3) of the Act.

and responded to stakeholder responses in this document. The reasons for our decisions are set out in this statement.

- A2.6 We have had regard to the desirability of promoting economic growth in reaching a decision on the Statement of Principles and Methods. We will continue to have regard to the economic growth duty when preparing our report for the Secretary of State. We consider the principles and methods we have established will ensure that we are exercising our regulatory functions in a way that ensures that regulatory action is taken only when it is needed and that any action taken is proportionate, while recognising that innovation and competition are drivers of economic growth.¹⁵²

Equality impact assessment

- A2.7 Section 149 of the Equality Act 2010 (the 2010 Act) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to protected characteristics under the 2010 Act.¹⁵³ The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- A2.8 Ofcom has separate but complementary duties under Northern Ireland's equality legislation.¹⁵⁴ This requires Ofcom to screen policies for their impact on equality of opportunity and/or good relations in each of the nine equality categories identified for Northern Ireland.
- A2.9 As set out above, the Statement of Principles and Methods is being prepared in relation to an advisory function. We explained in Annex 2 to our consultation that we did not expect the proposed principles and methods to have any adverse equality impacts. We noted that one purpose of the new regime is to require accessibility features on TSS that are designated, and this will benefit users of these TSS who have disabilities.
- A2.10 We did not receive any comments on our assessment. As set out in this statement, we have decided to proceed with our principles and methods as proposed and therefore confirm that we do not expect them to have any adverse equality impacts.
- A2.11 We will also carry out an equality impact assessment when preparing a report for the Secretary of State.

Welsh language impact assessment

- A2.12 The Welsh language has official status in Wales.¹⁵⁵ To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards in relation to the use of Welsh, including the general principle that Welsh should not be treated less favourably than English in Wales.¹⁵⁶ Accordingly, we have considered the potential impact

¹⁵² Section 108(2)(b) of the Deregulation Act 2015.

¹⁵³ These protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

¹⁵⁴ Section 75 of the Northern Ireland Act 1998.

¹⁵⁵ Section 1(1), Welsh Language (Wales) Measure 2011.

¹⁵⁶ The [Welsh language standards](#) with which Ofcom is required to comply are available on our website.

of our review on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language.

- A2.13 We explained in Annex 2 to our consultation that we considered the proposed principles and methods would not treat the Welsh language differently to the English language or have any impact on opportunities for persons to use the Welsh language. We said we expected that for Welsh language speakers, the new regime will benefit them by ensuring they have access to PSB content catering to Welsh speaking audiences.
- A2.14 We did not receive any comments on our assessment. As set out in this statement, we have decided to proceed with our principles and methods as proposed and therefore confirm that we do not expect them to treat the Welsh language differently to the English language or have any impact on opportunities for persons to use the Welsh language.
- A2.15 We will also carry out a Welsh language impact assessment when producing our report for the Secretary of State.

A3. Legal Framework

Legal framework

- A3.1 This Annex sets out the statutory framework regarding the designation of television selection services (TSS) under Part 3A of the Communications Act 2003 (the Act), which was inserted into the Act by Part 2 of the Media Act 2024. This Annex is only a summary of the relevant provisions, it is not a substitute for reference to the statute.
- A3.2 Also relevant are Ofcom’s general duties in carrying out its functions, to further the interests of citizens in relation to communications matters and consumers in relevant markets, where appropriate, by promoting competition.¹⁵⁷ In doing so, Ofcom must have regard to a number of matters including the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK, the desirability of encouraging investment and innovation in relevant markets and the needs of persons with disabilities.¹⁵⁸
- A3.3 In performing its general duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, and any other principles appearing to Ofcom to represent the best regulatory practice.¹⁵⁹
- A3.4 As explained further below, TSS that are designated by the Secretary of State (regulated TSS or RTSS) will have to comply with various statutory obligations related to making available and prominent the internet programme services (IPS)¹⁶⁰ of the UK public service broadcasters (PSB) which are designated by Ofcom (designated IPS or DIPS).¹⁶¹
- A3.5 Each PSB has an individual remit which they are required to fulfil.¹⁶² The BBC is required to fulfil its mission to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and

¹⁵⁷ Section 3(1) of the Act.

¹⁵⁸ Section 3(4)(a), (d) and (i) of the Act.

¹⁵⁹ Section 3(3) of the Act.

¹⁶⁰ An IPS is a reference to (a) an on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet; (b) a non-UK on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet; or (c) a service which satisfies the following requirements: (i) that the principal purpose of the service is the provision of programmes; (ii) that the programmes viewed by a user of the service are accessed by the user by means of the internet; and (iii) that the programmes it provides to a user of the service are contained in (1) such on-demand programme service as is described in part (a) of this footnote or such non-UK on-demand programme service as is described in part (b) of this footnote; and (2) another service which is, or two or more other services each of which is, such an on-demand programme service, such a non-UK on-demand programme service, or a service (other than those kinds of service) that consists of, or has as its principal purpose the provision of, programmes (section 362AA(10) and (11) of the Act).

¹⁶¹ A DIPS is (a) an IPS provided by the BBC; (b) an IPS provided by a public service broadcaster other than the BBC and designated by Ofcom; or (c) an IPS provided by a person associated with a PSB and designated by Ofcom (section 362AA(1) of the Act).

¹⁶² For each PSB, the programmes with which they fulfil their individual remits should be capable of being taken into account for the purposes of assessing the extent to which the UK TV remit is fulfilled and should constitute an adequate contribution to the fulfilment of the UK TV remit (section 264(4) of the Act).

entertain.¹⁶³ The individual remit for Channel 3 services, C4C and Channel 5 is to make available a range of high quality and diverse programmes.¹⁶⁴ The individual remit for S4C is to make available a broad range of high quality and diverse programmes, with a substantial proportion in Welsh.¹⁶⁵

Television selection services

A3.6 The services that may be designated are referred to as TSS. The Act defines a TSS as “a service or dissociable section of a service, provided by means of the internet and in connection with Internet Television Equipment (ITE), which consists of:

- a) the presentation of the IPS included in the service or the dissociable section of the service; and
- b) a facility that enables the user: (i) to make a selection between those IPS or programmes provided by those IPS or both; and (ii) to access the IPS or programme selected or both.¹⁶⁶

A3.7 As set out in Regulation 2 of the Internet Television Equipment Regulations 2024, ITE means smart TVs, set top boxes and streaming devices.¹⁶⁷

Regulated television selection services

A3.8 The Secretary of State has the power to designate TSS to be regulated and therefore subject to the statutory obligations set out in the Act. The Secretary of State may make regulations which:

- a) designate individual TSS (which we refer to as ‘individual designation’); or
- b) set out a description of TSS to be designated (which we refer to as ‘designation by description’).¹⁶⁸

A3.9 The Secretary of State may not designate a TSS by individual designation unless they consider that it is used by a significant number of members of the public in the UK.¹⁶⁹

A3.10 In regulations that designate by description, the Secretary of State may frame a description of TSS by reference to:

- a) a TSS being used by no fewer than such number of members of the public in the UK as may be specified in the regulations;
- b) the date on which a TSS is first made available to members of the public in the UK; and

¹⁶³ Paragraph 5 of the Royal Charter for the continuance of the British Broadcasting Corporation, December 2016.

¹⁶⁴ Sections 265(2) and 265(3) of the Act. For C4C these programmes in particular must demonstrate innovation, experimentation, and creativity; appeal to the tastes and interests of a culturally diverse society include a significant amount of educational content; and have a distinctive character.

¹⁶⁵ Paragraph 3(2) of Part 2 of Schedule 12 to the Communications Act 2003.

¹⁶⁶ Section 362AE(1) of the Act. The Secretary of State may lay regulations to amend the definition of “television selection service” or “internet television equipment” (section 362AE(7)).

¹⁶⁷ [The Internet Television Equipment Regulations 2024](#) (2024/1056).

¹⁶⁸ Section 362AF(1) of the Act.

¹⁶⁹ Section 362AF(2) of the Act.

- c) the functions that a TSS is capable of carrying out or may be made capable of carrying out.¹⁷⁰

Ofcom's report to the Secretary of State

- A3.11 Before the Secretary of State can make designation regulations, the Secretary of State must have received a report from Ofcom, containing Ofcom's recommendations on the exercise by the Secretary of State of their powers to make regulations to individually designate or to designate by description.
- A3.12 Ofcom may decide on its own initiative to provide the Secretary of State with a report, and may make recommendations in relation to the exercise of either or both powers.¹⁷¹ Alternatively, the Secretary of State may request a report from Ofcom, in which case we must provide one.¹⁷² When making such a request, the Secretary of State may provide Ofcom with a description of TSS they propose to designate and seek advice on that description.
- A3.13 If recommending individual designation, Ofcom's report must include our assessment of:
 - a) the number of members of the public in the UK using the TSS in question and whether that number is significant;
 - b) the manner in which that TSS is used by such persons;
 - c) whether that TSS is capable of functioning as an RTSS and the modifications, if any, that are needed to make it so capable; and
 - d) such matters as Ofcom considers likely to affect the matters referred to above.¹⁷³
- A3.14 If recommending designation by description, Ofcom's report must include our assessment of:
 - a) which TSS are likely to fall within the description of TSS set out in the report; and
 - b) such matters as Ofcom consider relevant to that assessment.¹⁷⁴
- A3.15 Ofcom's role in preparing reports for the Secretary of State is limited to recommendations on the Secretary of State's power to designate TSS. There is no statutory power for Ofcom itself to designate a TSS.¹⁷⁵
- A3.16 Any TSS that is designated by individual designation regulations will become an RTSS. Any TSS that meets a description set out in designation by description regulations will become an RTSS, and a provider of a TSS¹⁷⁶ must give notice to Ofcom if the TSS is, or becomes, a

¹⁷⁰ Section 362AF(3) of the Act.

¹⁷¹ Section 362AG(1) of the Act.

¹⁷² Section 362AG(2) and (3) of the Act.

¹⁷³ Section 362AG(4) of the Act.

¹⁷⁴ Section 362AG(5) of the Act.

¹⁷⁵ The position is different as regards the designation of IPS, where Ofcom has the power to designate IPS itself (section 362AA(2) of the Act).

¹⁷⁶ The only person who is to be treated as providing a TSS is the person who has general control over the way the service presents to its users the IPS that are included in the service. This is the case regardless of whether the TSS uses an algorithm to determine the prominence given to an ISP or any programmes provided by an ISP included in the service (section 362AE(5) and (6) of the Act).

TSS that falls within the description.¹⁷⁷ Likewise, any RTSS must give notice where it considers that it ceases to be covered by the description specified in the regulations.¹⁷⁸

Ofcom's Statement of Principles and Methods

- A3.17 Ofcom must prepare and publish a statement about the principles and methods we will apply in preparing a report to the Secretary of State making recommendations about the exercise of their powers to make designation regulations.¹⁷⁹
- A3.18 We may revise or replace that statement and must publish the revised or replaced statement.¹⁸⁰

Effect of designation

- A3.19 Where IPS and TSS are designated, the providers of those DIPS and RTSS must comply with the new regime. The provider of a DIPS will be the relevant PSB, or person associated with that PSB.¹⁸¹ The provider of an RTSS will be the person who has general control over the manner in which the TSS presents to its users the IPS that are included in the service.¹⁸²
- A3.20 In order for an IPS offered by a PSB other than the BBC to be designated, Ofcom must be satisfied that it is appropriate to designate the service. Ofcom must also believe that the service makes, or would if designated be capable of making, a significant contribution to the fulfilment of the public service remit for the PSB channel; and that the public service remit content included is readily discoverable and is promoted by the IPS.¹⁸³
- A3.21 Providers of DIPS will be subject to a “must-offer” obligation, and providers of RTSS will be subject to a “must-carry” obligation:
- A3.22 The “must-offer” obligation means that a DIPS provider must offer its DIPS to every RTSS provider.¹⁸⁴ The DIPS provider must do its best to secure that, in relation to every RTSS, agreements are entered into and kept in force that ensure the service is included in the RTSS.¹⁸⁵
- A3.23 The “must-carry” obligation means that an RTSS provider must, in respect of each DIPS, enter into arrangements with the provider of the DIPS for the RTSS to include that DIPS and keep such arrangements in force.¹⁸⁶ RTSS providers will also be required to ensure that the DIPS and, where appropriate, content on the DIPS that contributes to the delivery of the

¹⁷⁷ Section 362AH of the Act. A TSS is designated and subject to the statutory obligations of an RTSS as soon as it meets a description in regulations, whether or not the relevant provider notifies Ofcom. Failure to notify Ofcom would be a breach of the duty in section 362AH; failure to comply with the statutory obligations would amount to a separate breach of the relevant duties.

¹⁷⁸ On commencement of the new regime, Ofcom will publish and maintain an up-to-date list of RTSS (including the RTSS providers). The lists will be published on a publicly accessible part of the Ofcom website (section 362AI of the Act).

¹⁷⁹ Section 362AG(9) of the Act.

¹⁸⁰ Section 362AG(10) of the Act.

¹⁸¹ Section 362AA(2) of the Act.

¹⁸² Section 362AE(5) of the Act. Section 362AE(6) of the Act says that the fact a TSS relies to any extent on algorithms to determine the prominence given to an IPS or any programme provided by the IPS does not prevent a person from having general control.

¹⁸³ Section 362AA(2) - (5) of the Act.

¹⁸⁴ Section 362AJ(1) of the Act. Section 362AJ(1) to (3) does not apply to the BBC.

¹⁸⁵ Section 362AJ(2) of the Act.

¹⁸⁶ Section 362AK of the Act.

PSB's remit are given an appropriate degree of prominence on their services.¹⁸⁷ These services must also be accessible to those with disabilities (particularly those affecting sight or hearing).¹⁸⁸ The Act requires Ofcom to issue a code of practice recommending actions that RTSS providers should take when seeking to ensure that the presentation of IPS to its users are compliant with those accessibility obligations.¹⁸⁹

A3.24 Providers of both DIPS and RTSS have a duty to act consistently with the "agreement objectives" when negotiating the arrangements required to meet the requirements of their "must carry" and "must offer" obligations.¹⁹⁰ The agreement objectives are that: (a) DIPS are given an appropriate degree of prominence within an RTSS (which includes public service remit content and any listed channel included in the DIPS);¹⁹¹ (b) the arrangements between the providers do not adversely affect the ability of the provider of the PSB to fulfil the public service remit for its channel; and (c) arrangements do not disproportionately restrict how the provider of an RTSS may make innovations in the ways that users may select and access IPS.¹⁹² The Act requires Ofcom to prepare and publish guidance about how providers of DIPS and providers of RTSS may act consistently with the agreement objectives.¹⁹³

A3.25 The Act gives Ofcom a dispute resolution function¹⁹⁴ and enforcement powers.¹⁹⁵

Economic growth duty

A3.26 Section 108 of the Deregulation Act 2015 sets out Ofcom's duty to have regard to the desirability of promoting economic growth when exercising its regulatory functions. In order to consider the promotion of economic growth, Ofcom will exercise its regulatory functions in a way that ensures that:

- a) regulatory action is taken only when it is needed; and
- b) any action taken is proportionate.¹⁹⁶

A3.27 The government's statutory guidance on this duty recognises drivers of economic growth to include innovation and competition.

Public sector equality duty

A3.28 Section 149 of the Equality Act 2010 (the 2010 Act) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and

¹⁸⁷ Section 362AO(1) and (3) of the Act.

¹⁸⁸ Section 362AO(4) of the Act.

¹⁸⁹ Section 362AP(1) of the Act.

¹⁹⁰ Sections 362AJ(3) and 362AK(2) of the Act.

¹⁹¹ Section 362AM(2) of the Act.

¹⁹² Section 362AM(1) of the Act.

¹⁹³ Ofcom's guidance must also include how the BBC may act consistently with the agreement objectives in carrying out any of its duties under the BBC Charter and Agreement that are comparable to the requirement on other DIPS providers (in section 362AL(2) of the Act) under section 362AJ(3) of the Act.

¹⁹⁴ Sections 362AT to 362AY of the Act.

¹⁹⁵ Sections 362AZ to 362Z5 of the Act.

¹⁹⁶ Section 108(2)(b) of the Deregulation Act 2015.

foster good relations between persons who share specified protected characteristics and persons who do not. Section 75 of the Northern Ireland Act 1998 (the 1998 Act) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.

Welsh language duty

- A3.29 The Welsh Language (Wales) Measure 2011 established a legal framework to impose duties on certain organisations to comply with standards in relation to the Welsh language. The standards issued to Ofcom are listed in Ofcom's compliance notice¹⁹⁷ effective from 25 January 2017.
- A3.30 The Welsh Language Policy Making Standards require Ofcom to assess (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language, when formulating a new policy or reviewing or revising an existing policy.

¹⁹⁷ <https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/how-ofcom-is-run/nations/wales/hysbysiad-cydymffurfio44-y-swyddfa-gyfathrebiadau-en.pdf?v=370643>