
Ofcom broadcasting codes: proposed amendments to the Broadcasting Code and the Code on the Scheduling of Television Advertising

[Ofcom broadcasting codes: proposed amendments to the Broadcasting Code and the Code on the Scheduling of Television Advertising](#) – Welsh translation

STATEMENT:

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1. Overview

- 1.1 This Statement sets out amendments Ofcom is making to the Broadcasting Code and the Code on the Scheduling of Television Advertising (“COSTA”) following recent legislative changes.
- 1.2 The Audiovisual Media Services Regulations 2020 (“the AVMS Regulations”) came into force on 1 November 2020. The Regulations implement the revised Audiovisual Media Services Directive (“AVMSD”) into UK law. They amend Section 319 of the Communications Act 2003 (“the Act”), which sets the standards objectives that underpin Ofcom’s Broadcasting Code.
- 1.3 From 1 January 2021, the AVMS Directive itself and the country of origin principle will no longer apply as they did to UK television services that broadcast into the EU. However, the content rules set by the AVMSD prior to that date will still apply. This means both the rules that already existed, and the ones on which we have been consulting to implement the AVMSD, will still apply, and our rules which implemented the AVMSD will be interpreted as they were before.
- 1.4 In addition, the European Convention on Transfrontier Television (“ECTT”) framework will still apply and the legislation requires Ofcom to implement it. This means that services established in the UK and that broadcast to ECTT countries are required to comply with broadcast standards set out in the ECTT, which include those on the amount of advertising broadcasters can transmit and where this is scheduled.
- 1.5 On 24 November 2020, Ofcom published a consultation on proposals for amendments to the Broadcasting Code and COSTA resulting from the legislative changes (“[the consultation](#)”). We received seven responses from stakeholders, which we address below. No respondent said they considered Ofcom’s proposed amendments to either the Broadcasting Code or COSTA failed to reflect appropriately revised legislative requirements. Having carefully considered stakeholders’ responses, Ofcom has therefore decided to amend the following, as proposed:
 - Section Three (Crime, disorder, hatred and abuse) of the Broadcasting Code;
 - Section Nine (Commercial references on TV) of the Broadcasting Code; and
 - the Code on the Scheduling of Television Advertising Code on the Scheduling of Television Advertising (“COSTA”).
- 1.6 As set out in the consultation, we are also making non-substantive changes to the Broadcasting Code, which will remove references that are no longer relevant and update references as appropriate.

What we have decided – in brief

Ofcom has decided to amend:

- the definition of hate speech in Section Three (Crime, disorder, hatred and abuse) of the Broadcasting Code to reflect the characteristics covered under the European Charter on Fundamental Freedoms;
- the rules in Section Nine (Commercial references on TV) of the Broadcasting Code, to reflect revised product placement restrictions affecting specific programme genres and products and add a general rule in this section, to reflect the requirements of the ECTT; and
- COSTA, to reflect the ECTT’s advertising provisions.

We are also making non-substantive changes to the Broadcasting Code, removing references that are no longer relevant and updating references as appropriate.

Next steps

- 1.7 Both the revised [Broadcasting Code](#) and the revised [COSTA](#) will take effect from 23:00 today (31 December 2020), when the Brexit transition period ends.

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

2. Legislative Background

The Broadcasting (Amendment) (EU Exit) Regulations 2019

- 2.1 Broadcast regulation in the UK is currently governed by the AVMS Directive, which is based on the ‘Country of Origin’ principle. This enables linear TV service providers to broadcast services across the EU, provided they comply with the rules of the country which has jurisdiction over the service.
- 2.2 The UK Government has made changes to the law that applies to broadcasting in and to the UK. The changes are made by The Broadcasting (Amendment) (EU Exit) Regulations 2019 (“the Exit Regulations”)¹, which will come into force immediately after the end of the transition period, at 23:00 on 31 December 2020.
- 2.3 Under the Exit Regulations, jurisdiction over linear TV services will be based on:
- where a service is based, e.g. where the head office and programme scheduling decisions are made;
 - where a service is broadcasting to, e.g. to the UK or another country; and
 - how a service broadcasts, e.g. through cable, satellite or online.
- 2.4 The following summarises changes Ofcom has made to TV licensing arrangements² as a result of the Exit Regulations:
- UK country of destination licensing: any TV service that appears on a ‘regulated UK EPG’ needs to be licensed and regulated in the UK. The exceptions to this are TV services from countries party to the ECTT, as well as the Irish services TG4, RTÉ1 and RTÉ2; and
 - ECTT: This is a Council of Europe treaty that is based on a similar country of origin principle to the AVMSD. Where TV services based in the UK are broadcasting to another ECTT country, they are regulated under the provisions of the ECTT. Where TV services broadcasting to the UK are based in an ECTT country, they will not need a licence from the UK but will be regulated by that country to the standards required by the ECTT.
- 2.5 The Exit Regulations provide that Ofcom must treat a service as one that can be received in an ECTT country if, but only if, the service:
- a) can be received by the general public in all parts of the relevant State using standard consumer equipment, and

¹ <https://www.legislation.gov.uk/ukdsi/2019/9780111176733/contents>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0020/207821/brexit-avms-statement.pdf

- a) can be accessed in the relevant State by means of an electronic programme guide which:
 - i) is licensed or otherwise regulated under the law of the relevant State, or
 - ii) if the relevant State is a State other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant State.
- 2.6 In this document, we refer to services that can be received in this way by an ECTT country other than the UK as “ECTT Services”.
- 2.7 The following countries have signed and ratified the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey.
- 2.8 Although some elements of law which referred to the AVMSD have had to be changed, the Exit Regulations contain provisions designed to ensure that the protections the AVMSD gives to audiences will not be lost. For example, quotas for European Works and limits on advertising will remain in force even after the end of the transition period.

The Audiovisual Media Services Regulations 2020

- 2.9 Under Section 211 the Communications Act 2003 (“the Act”), Ofcom has a duty to regulate television broadcast services that are under the jurisdiction of the UK for the purposes of the AVMS Directive. Section 319 requires Ofcom to set, and from time to time, review and revise, standards for the content of television and radio programmes. These standards must secure the standards objectives.
- 2.10 In 2018 the EU completed a review of the AVMS Directive, introducing a number of changes to the regulation of audiovisual media services, including television. Under the terms of the Withdrawal Agreement, the UK Government committed to implementing EU legislation up to the end of the Brexit transition period on 31 December 2020. The UK Government consulted on its proposed approach to implementing the revised Directive in 2019 and the AVMS Regulations 2020 were laid before Parliament on 30 September 2020 and came into force on 1 November 2020.
- 2.11 The AVMS Regulations include changes to the standards objectives in Section 319 of the Act.

Impact

- 2.12 The changes we are making are required by law, as detailed above, and appropriate impact assessments have already therefore been carried out. We do not consider the way in which Ofcom is implementing these changes has any incremental impact on any persons.

3. Broadcasting Code revisions

The AVMS Regulations and the ECTT

- 3.1 The ECTT and the AVMS Directive set standards that apply to the content of programmes transmitted by television services that fall within scope. For services that fall under UK jurisdiction, these standards are reflected in the Broadcasting Code.
- 3.2 This section explains the changes we are making to the Broadcasting Code to ensure these standards are met.

Incitement to Hate

- 3.3 Until the recent revision of the AVMS Directive, Article 6 of the Directive required EU Member States to secure that television services under their jurisdiction did not contain any incitement to hatred based on race, sex, religion or nationality. This is implemented by section 319(2)(b) of the Act, which requires Ofcom to set standards to secure that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television services. More broadly section 319(2)(f) requires generally accepted standards to be applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material.
- 3.4 The 2018 amendment to the AVMS Directive broadens the scope of Article 6 to require Member States to prohibit incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the European Charter on Fundamental Freedoms (“the Charter”).
- 3.5 Article 21 of the Charter contains an expanded list of protected characteristics and captures, in addition to those set out above, colour, ethnic or social origin, genetic features, language, belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation.
- 3.6 Rules in Section Two and Section Three of the Code secure the standards in section 319(2)(b) and (f). Specifically, Section Two of the Code contains rules that provide general protections for audiences from material likely to cause harm or offence. Section Three provides protections from material inciting crime, from hatred, and from abusive and derogatory treatment and contains a definition of hate speech, which sets out the characteristics covered by the rules.

What we proposed

- 3.7 We therefore proposed amending the definition of hate speech to include the characteristics, as set out in Article 21 of the Charter, as follows:

Meaning of “hate speech”: all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, social origin, sex, gender, gender reassignment, nationality, race, religion or belief, sexual orientation, colour, genetic features, language, political or any other opinion, membership of a national minority, property, birth or age.

- 3.8 We noted that this proposal would expand the list of characteristics on the basis of which a hate speech finding could be made. However, it was Ofcom’s view that the nature of the characteristic concerned is relevant to whether or not content can be considered hateful. We also noted that the proposed amendments would not affect the weight we would place on the importance of freedom of expression in relation to political matters and content that is in the public interest.
- 3.9 Ofcom welcomed stakeholders’ views on whether the proposed amendments appropriately reflected the requirements of the AVMS Directive.

Stakeholders’ views

- 3.10 We received two responses about our proposed amendments. ViacomCBS Networks International reminded Ofcom of the need to continue to consider context when themes of hate or abuse are explored within programmes where “no harm is intended but content...challenges boundaries and uses humour to explore societal issues”. An individual respondent considered the definition of hate speech was far too broad, particularly relating to opinions “political or otherwise”, and stated that what constitutes hate speech is very subjective.³

Ofcom’s response

- 3.11 Our proposal to include the relevant characteristics in the definition of ‘hate speech’ in Section Three of the Code was on the basis that this would provide greater transparency. However, we noted that content amounting to hate speech would be caught in any event by Section Two of the Code. Context is a very important part of Ofcom’s thinking when considering the rules in either Section.
- 3.12 As we explained, the wording of the proposed amendment reflects the changes to Article 6 of the AVMS Directive and the expanded list of protected characteristics under Article 21 of the Charter and the Code as a whole is drafted in light of the Human Rights Act and the European Convention on Human Rights (“the Convention”). In particular, the right to freedom of expression, as expressed in Article 10 of the Convention, which encompasses the audience’s right to receive creative material,

³ The same individual made comments relating to content on video sharing platforms. These were not relevant to our consultation, which related to the regulation of linear television services.

information and ideas without interference but subject to restrictions required by law and necessary in a democratic society.

- 3.13 The importance of freedom of expression in relation to political matters and content that is in the public interest is central to Ofcom's application of the Code and the proposed amendment does not change this.
- 3.14 Ofcom has therefore amended the definition of hate speech in Section Three of the Broadcasting Code, as proposed.

Section Nine: Commercial references on TV

- 3.15 Section Nine of the Broadcasting Code contains rules that apply to commercial references in television programming (e.g. references to products and services). These have been set under section 319(2) and include general rules that apply to all commercial references and more targeted rules for specific forms of commercial references, such as product placement (section 319(2)(fa)) and sponsorship (section 319(2)(j)). The rules help ensure that broadcasters maintain editorial independence over programming and that there is distinction between editorial content and advertising

Changes resulting from the AVMS Regulations

- 3.16 Under the current rules, product placement is not permitted in any news or children's programme, regardless of where the programme is made. In addition, product placement is not permitted in religious, consumer affairs or current affairs programmes that are made under UK jurisdiction
- 3.17 The AVMS Regulations implement the revised Directive by extending the statutory prohibition on product placement in religious, consumer affairs or current affairs programmes to all programmes that fall within these genres, regardless of where they are made.
- 3.18 The amended Act also extends the list of products that cannot be placed in programmes to include placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers.

Changes resulting from the application of the ECTT to certain services

- 3.19 In relation to advertising, Article 11(5) of the ECTT goes further than the existing rule requiring broadcasters to maintain editorial control over programming, in that it prohibits advertisers exercising any editorial influence over the content of programmes.

What we proposed

3.20 Ofcom proposed amending Section Nine of the Broadcasting Code to reflect the above changes to the AVMS Regulations and to add a rule for ECTT Services only to reflect the ECTT requirements.

3.21 Our proposed changes were set out as follows:

Current rule	Proposed rule
n/a – new rule applicable to ECTT services	Rule 9.1(a) applies only to services that are subject to the ECTT. 9.1(a) Broadcasters must ensure that no advertiser exercises editorial influence over the content of programmes.
9.6 Product placement is prohibited except in the following programme genres: a) films; b) series made for television (or other audiovisual media services); c) sports programmes; and d) light entertainment programmes.	9.6 Product placement is prohibited in: a) news programmes b) children’s programmes
9.7 Programmes that fall within the permitted genres must not contain product placement if they are: a) news programmes; or b) children’s programmes.	Rule 9.7 applies to programmes, the production of which began after 31 October 2020. 9.7 Product placement is prohibited in: a) religious programmes b) consumer affairs programmes c) current affairs programmes <i>Note:</i> <i>For religious, consumer affairs and current affairs programmes made before 1 November 2020, Rule 9.12 applies.⁴</i>
9.11 The product placement of the following products, services or trade marks is prohibited: a) cigarettes or other tobacco products;	9.11 The product placement of the following products, services or trade marks is prohibited: a) cigarettes or other tobacco products;

⁴ As Rule 9.7 will now include the first reference to current affairs programmes in Section Nine of the Code, the note, ‘Meaning of “current affairs programmes”’, which currently follows Rule 9.12, will be moved to follow this Rule (in addition to the new note cited here and the note, ‘Meaning of “children’s programme”’, which already follows this Rule).

- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- c) prescription-only medicines; or
- d) electronic cigarettes or refill containers.

- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- c) prescription-only medicines;
- d) electronic cigarettes or refill containers; or
- e) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers, if the programme in which the placement occurs began production after 31 October 2020.

9.12

Product placement is not permitted in the following:

- a) religious programmes;
- b) consumer advice programmes; or
- c) current affairs programmes.

9.12

Product placement is not permitted in programmes made under UK jurisdiction, if:

- a) the production of the programme began before 1 November 2020; and
- b) the programme is a:
 - I. religious programme;
 - II. consumer advice programme; or
 - III. current affairs programme.

Note:

For religious, consumer advice or current affairs programmes made under any jurisdiction after 31 October 2020, Rule 9.7(c) applies.

*Meaning of “current affairs programme”:
See meaning under Rule 9.7.*

- 3.22 Ofcom welcomed stakeholders’ views on whether these proposed amendments to Section Nine reflected appropriately the requirements of both the Communications Act, as amended by the AVMS Regulations, and the ECTT.

Stakeholders’ views

- 3.23 Ofcom received one submission on these proposals from ITV, which identified an inconsistency between the proposals in the table for Rules 9.7 and 9.12 and the wording of those rules in the draft Code. ITV suggested amendments to the draft Code that it considered would improve presentational consistency and clarify interpretation of these rules.

Ofcom's response

- 3.24 Ofcom has amended the relevant rules and accompanying notes in the Code to clarify the programmes in which product placement is prohibited.

3.25 This means the rules are changed as follows:

Old rule	New rule
<p>9.7</p> <p>Programmes that fall within the permitted genres must not contain product placement if they are:</p> <p>a) news programmes; or</p> <p>b) children’s programmes.</p>	<p>9.7</p> <p>Rule 9.7 applies to programmes, the production of which began after 31 October 2020.</p> <p>9.7</p> <p>Product placement is prohibited in:</p> <p>a) religious programmes</p> <p>b) consumer affairs programmes</p> <p>c) current affairs programmes</p> <p><i>Note:</i></p> <p><i>For religious, consumer affairs and current affairs programmes made under UK jurisdiction, Rule 9.12 also applies.</i></p>
<p>9.12</p> <p>Product placement is not permitted in the following:</p> <p>a) religious programmes;</p> <p>b) consumer advice programmes; or</p> <p>c) current affairs programmes.</p>	<p>9.12</p> <p>Product placement is not permitted in programmes made under UK jurisdiction, if:</p> <p>a) the production of the programme began before 1 November 2020; and</p> <p>b) the programme is a:</p> <p>I. religious programme;</p> <p>II. consumer advice programme; or</p> <p>III. current affairs programme.</p> <p><i>Note:</i></p> <p><i>For religious, consumer advice or current affairs programmes made under any jurisdiction and the production of which began after 31 October 2020, Rule 9.7 applies.</i></p>

Other amendments

What we proposed

- 3.26 Ofcom proposed to make the following amendments to the Broadcasting Code:
- Remove references and requirements in the Cross Promotion Code that relate to digital switchover, which was completed in 2012;
 - Remove references to European parliamentary elections in Section Six (Elections and referendums)⁵; and

⁵ We similarly proposed to remove all references to the European parliamentary elections from Ofcom’s rules on Party Political and Referendum Broadcasts (see https://www.ofcom.org.uk/data/assets/pdf_file/0035/99188/pprb-rules-march-2017.pdf).

- Amend the explanatory text accompanying the definition of “the Watershed” in Section One (Protecting the under-eighteens) of the Code to reflect Rule 1.24 of the Code, which came into force in January 2019 and allows programmes that are unsuitable for children that would usually be scheduled after the watershed to be broadcast pre-2100 and post-0530, provided that mandatory daytime protection is in place.

Stakeholders’ views

3.27 Ofcom received no submissions on the proposals.

Ofcom’s response

3.28 Ofcom has therefore amended the Broadcasting Code, as proposed.

Other responses

Stakeholders’ views

3.29 An individual respondent considered that, while the proposed changes set out in the consultation were appropriate, Ofcom should consider amending Rule 2.11 of the Code. This rule requires that “Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.” The respondent considered the wording of this rule could be clearer.

Ofcom’s response

3.30 The provisions in the current Code implement requirements of the AVMSD on subliminal advertising⁶ which are the same as requirements of the ECTT.⁷ The amendments proposed by the respondent would not be consistent with those requirements and we therefore do not consider it appropriate to accept them.

Further amendments

3.31 Ofcom has identified further non-substantive changes that need to be implemented in order to bring the Broadcasting Code up to date. For example, reference to the “Welsh Assembly” in Section Six (Elections and referendums) has been amended to “Welsh Parliament” (i.e. Senedd Cymru).⁸ Further, as the Broadcasting Code is now published on the Ofcom website and is no longer available in print, we have reduced the

⁶ Article 9

⁷ Article 13

⁸ <https://www.legislation.gov.uk/anaw/2020/1/schedules>

supporting material provided – in appendices, for example – retaining only that concerning financial promotions and investment recommendations, which details provisions by which all broadcasters must abide (under Rules 9.35 & 10.3). Cross references have therefore been removed or amended throughout.

4. Revisions to the Code on the Scheduling of Television Advertising

Changes resulting from the AVMS Regulations

- 4.1 Rules that apply to how much advertising a broadcaster can transmit and where advertising is scheduled are set out in the Code on the Scheduling of Television Advertising (“COSTA”).
- 4.2 The ECTT contains requirements that apply to advertising.
- 4.3 The advertising provisions in the ECTT differ to those that are currently required under COSTA in the following areas:
 - a) The ECTT contains a definition of advertising that captures material that is intended to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster.
 - b) The ECTT contains different requirements on the amount of advertising that can be broadcast and where this can be scheduled, including the requirement that, generally, there must be at least a 20-minute period between advertising breaks. The number of teleshopping windows that can be transmitted is also limited.

What we proposed

- 4.4 Ofcom proposed adding a new part to COSTA, that would apply to ECTT Services only, reflecting the ECTT provisions. Our proposals were set out as follows:

Current COSTA (now Part A) rule/reference	New COSTA Part B rule/reference	Relevant section of the ECTT
<p>Definitions</p> <p>‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property rights and obligations, in return for payment.</p>	<p>Definitions</p> <p>‘television advertising’ means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person which is intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea, or to bring about some other effect</p>	Article 2(f)

	desired by the advertiser or the broadcaster itself.	
Rule 1 Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used.	Rule 1 Broadcasters must ensure that television advertising and teleshopping is clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means.	Article 13(1)
Rule 6 Teleshopping windows must be at least 15 minutes long.	Rule 6 (a) Teleshopping windows must be at least 15 minutes long. (b) The total duration of all teleshopping windows shall not exceed three hours per day. (c) Broadcasters may transmit a maximum of eight teleshopping windows per day.	Article 12(3)
Rule 9 Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.	Rule 9 (a) Advertising and teleshopping spots shall be transmitted in blocks of at least two advertisements/spots. This rule does not apply to programmes subject to Rule 9(c), below. (b) Unless otherwise specified below, where programmes are interrupted by advertising or teleshopping spots, a period of at least twenty minutes should elapse between each successive advertising or teleshopping break within the programme. This rule does not apply to programmes subject to Rule 9(c), below. (c) In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and tele-shopping	Article 14

spots shall only be inserted between the parts or in the intervals.

<p>Rule 10 The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes.</p>	<p>Rule 10 The transmission of films may be interrupted by advertising or teleshopping once for each complete period of at least 45 minutes, provided their scheduled duration is at least 45 minutes. A further interruption is permitted if the scheduled duration is at least more than 20 minutes longer than two or more complete periods of 45 minutes.</p>	<p>Article 14(5)</p>
<p>Rule 12 Children’s programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children’s programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.</p>	<p>Rule 12 Any news, current affairs, documentary, religious or children’s programme that has a scheduled duration of less than 30 minutes must not be interrupted by advertising or teleshopping.</p>	<p>Article 14(5)</p>

- 4.5 Ofcom welcomed stakeholders’ views on whether these proposed amendments to COSTA reflected appropriately the requirements of the ECTT, together with any other comments they wished to make on them.

Stakeholders’ views

- 4.6 Ofcom received two responses from individual broadcasters about our proposed amendments to COSTA. One was fully confidential and did not raise substantive issues. The other was from a Local TV broadcaster that objected to the application of existing Rule 10 of COSTA to Local TV services. The broadcaster considered that it restricted “optimal commercial and editorial schedules” on such services, adding that it was not required under UK law.
- 4.7 In addition, we received a response from COBA, the industry body for commercial broadcasters and on-demand services, which requested an implementation period of six months for the requirements for ECTT Services on the basis that it would be difficult and disruptive for broadcasters to comply. It believed a precedent for this had been set, as such a period had already been granted by Ofcom for services needing an

Ofcom licence if they continued to broadcast into the UK from the EU after the Brexit transition period ended.

Ofcom's response

- 4.8 Ofcom responded directly to the broadcaster that submitted its views confidentially, which had raised no substantive issues.
- 4.9 Ofcom has a statutory duty to implement these requirements of the ECTT and does not have a discretion to waive the requirements for 6 months.⁹ The implementation period of six months afforded to EU broadcasters requiring Ofcom licences after the Brexit transition period ends was provided for in legislation¹⁰.
- 4.10 The submission relating to rule 10 of COSTA did not relate to the changes Ofcom was consulting on, and would require a review of COSTA, involving further work and further consultation. As stated in the consultation, our proposed amendments were to reflect changes required by the AVMSD and ECTT in our Codes. We have noted the response.
- 4.11 We have therefore amended COSTA, as proposed.

⁹ See section 319(2)(i) and 319(7) of the Communications Act 2003

¹⁰ See regulation 5 of the Broadcasting (Amendment) (EU Exit) Regulations 2019 (SI 2019/224)

5. The revised Codes

Next steps

- 5.1 Both the revised [Broadcasting Code](#) and revised [COSTA](#) take effect from 23:00 on 31 December 2020.