

# Regulating the quantity and scheduling of television advertising on public service channels

Call for evidence

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## **CALL FOR EVIDENCE:**

Publication date: 15 July 2022

Closing date for responses: 7 October 2022

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# 1. Overview

## Why are we calling for evidence?

- There are restrictions on the quantity and scheduling of advertising that any UK television broadcaster is allowed to show on its channels. These restrictions were put in place to ensure that viewers are not exposed to excessive amounts of advertising and that the quality of the viewing experience is maintained.
- For over 30 years, the rules that apply to PSB channels (Channel 3 services (ITV and STV), Channel 4, Channel 5 and S4C) have been stricter than the rules that apply to non-PSB channels.
- There have been significant changes in how television is distributed and watched since these differential rules were first introduced, including the expansion of non-PSB channels and the introduction of on-demand television and online streaming services.
- Against this backdrop, we think it is time to review these particular rules to ensure that Ofcom does not maintain regulatory burdens on PSB channels that may have become unnecessary.

## What evidence are we seeking and by when?

- We are keen to hear from stakeholders on the arguments for removing the stricter rules that apply to PSB channels or keeping them as they are.
- We are also seeking evidence and information on how removing these stricter rules may impact audiences, broadcasters, advertisers and the process of competition.
- The deadline for responses to this call for evidence is Friday 7 October 2022. We will assess the information we receive to consider whether we should consult on a proposal to remove from Ofcom's Code on the Scheduling of Television Advertising the stricter rules that apply to PSB channels.

## 2. Call for evidence

### Introduction

- 2.1 This section explains why we are considering changes to the current regulation of the quantity and scheduling of television advertising on PSB channels.<sup>1</sup>
- 2.2 We are seeking evidence-supported views from stakeholders to help us consider whether there is a justification for PSB channels remaining subject to stricter rules than non-PSB channels.

### Background to current regulation

- 2.3 The quantity and scheduling of advertising on television in the UK has always been subject to regulation, with rules first being put in place for the launch of commercial television broadcasting in the 1950s.

### ITC Rules on Advertising Breaks

- 2.4 The PSBs and non-PSBs have been subject to different rules on the amount of advertising they can broadcast since 1991 when Ofcom's predecessor the Independent Television Commission (ITC) published the ITC Rules on Advertising Breaks (ITC Rules),<sup>2</sup> in part to give effect to the Television without Frontiers Directive (TWF Directive) which was adopted in 1989.
- 2.5 The ITC said that it had no remit to secure the quality of non-PSB channels and that they should be allowed the maximum flexibility permitted by the TWF Directive. In contrast, it said that it did have an obligation to protect the quality of the viewing environment on PSB channels.<sup>3</sup> It recognised however that, over time, the difference between the rules applying to the PSBs and non-PSBs could be held to constitute an unfair competitive advantage.<sup>4</sup>
- 2.6 Since Ofcom took over the ITC's role, the distinction between PSB and non-PSB channels has remained in Ofcom's rules on the amount of advertising – currently in Ofcom's Code on the Scheduling of Television Advertising (COSTA).<sup>5</sup>

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<sup>1</sup> The following key definitions are used in this call for evidence: “PSBs” means public service broadcasters of PSB channels as defined below – it does not include the BBC or local digital television programme services (L-DTPS); in line with the definition of “public service channels” in COSTA, “PSB channels” refers to Channel 3 services (ITV and STV), Channel 4, Channel 5 and S4C – it does not include the non-PSB channels belonging to the PSBs (e.g. ITV2 and E4); “non-PSB channels” refers to all licensed commercial television channels except for the PSB channels – it includes L-DTPS services.

<sup>2</sup> ITC Rules on Advertising Breaks, January 1991.

<sup>3</sup> ITC Rules on Advertising Breaks, January 1991, page 3, paragraph (e).

<sup>4</sup> ITC Rules on Advertising Breaks, January 1991, page 3, paragraph (g).

<sup>5</sup> [Code on the Scheduling of Television Advertising](#), Ofcom, 28 April 2022.

## Ofcom’s 2011 statement on regulating the quantity of advertising on television

2.7 In December 2011, we published a statement on a review we had carried out in relation to the rules in COSTA on the quantity and scheduling of television advertising.<sup>6</sup> We concluded that the various interests that the regulation was designed to serve were being delivered effectively through COSTA, as set out at the time, and decided not to consult on any changes to the rules. However, we said that our decision did not preclude us from reconsidering this issue in the future.

## Current rules on the quantity and scheduling of television advertising

2.8 The current rules that set out how much advertising a television broadcaster can transmit and where it can be scheduled are set out in COSTA. Among other things, COSTA prohibits any channel from showing more than 12 minutes of television advertising in any clock hour,<sup>7</sup> and places limits on the average amount of advertising television broadcasters can transmit, the frequency with which programmes can be interrupted by advertising, and the amount of time that broadcasters can devote to teleshopping spots.<sup>8</sup>

2.9 As set out in Figure 1, in some areas the rules are more restrictive for PSB channels than they are for non-PSB channels.

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<sup>6</sup> [Regulating the quantity of advertising on television](#), Ofcom, 15 December 2011. Ofcom conducted another review of COSTA in 2015, which focussed on Ofcom’s approach to its enforcement of advertising placement rules, rather than proposing any changes to the COSTA rules. Further changes were effected on 31 December 2020, but these were limited to reflecting amendments to the legal framework arising out of Brexit: [Ofcom broadcasting codes: Proposed amendments to the Broadcasting Code and Code on the Scheduling of Television Advertising](#), Ofcom, 31 December 2020.

<sup>7</sup> “**Television advertising**” is defined in COSTA as 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.

<sup>8</sup> “**Teleshopping**” is defined in COSTA as direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

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

	PSB channels	Non-PSB channels																												
<b>Average amount of advertising per hour</b>	On PSB channels, time devoted to television advertising and teleshopping spots must not exceed: <ul style="list-style-type: none"> <li>i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and</li> <li>ii) an average of 8 minutes per hour between 18:00 and 23:00. <b>(Rule 4)</b></li> </ul>	Non-PSB channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising. <b>(Rule 3)</b>																												
<b>Advertising break duration</b>	Advertising breaks during programmes on PSB channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes and 30 seconds. <b>(Rule 5)</b>	<i>There are no specific restrictions on the duration of advertising breaks during programmes on non-PSB channels.</i>																												
<b>Number of permitted advertising breaks per programme based on scheduled duration</b>	<table border="1"> <thead> <tr> <th>Scheduled duration (mins)</th> <th>Number of breaks</th> </tr> </thead> <tbody> <tr> <td>21 – 44</td> <td>One</td> </tr> <tr> <td>45 – 54</td> <td>Two</td> </tr> <tr> <td>55 – 65</td> <td>Three</td> </tr> <tr> <td>66 – 85</td> <td>Four</td> </tr> <tr> <td>86 – 105</td> <td>Five</td> </tr> <tr> <td>106 – 125</td> <td>Six</td> </tr> </tbody> </table> <p><b>(Rule 16, Table 1)</b></p>	Scheduled duration (mins)	Number of breaks	21 – 44	One	45 – 54	Two	55 – 65	Three	66 – 85	Four	86 – 105	Five	106 – 125	Six	<table border="1"> <thead> <tr> <th>Scheduled duration (mins)</th> <th>Number of breaks</th> </tr> </thead> <tbody> <tr> <td>&lt; 26</td> <td>One</td> </tr> <tr> <td>26 – 45</td> <td>Two</td> </tr> <tr> <td>46 – 65</td> <td>Three</td> </tr> <tr> <td>66 – 85</td> <td>Four</td> </tr> <tr> <td>86 – 105</td> <td>Five</td> </tr> <tr> <td>106 – 125</td> <td>Six</td> </tr> </tbody> </table> <p><b>(Rule 16, Table 2)</b></p>	Scheduled duration (mins)	Number of breaks	< 26	One	26 – 45	Two	46 – 65	Three	66 – 85	Four	86 – 105	Five	106 – 125	Six
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<b>Teleshopping windows</b>	On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00. <sup>9</sup> <b>(Rule 7)</b>	<i>There are no restrictions on when teleshopping windows can be scheduled on non-PSBs channels.</i>																												

2.10 These current UK rules are based on the Audiovisual Media Services Directive (**AVMSD**). As permitted by the AVMSD framework, COSTA goes beyond the minimum requirements of the AVMSD in several places, including (as shown in Figure 1) by limiting the total amount

<sup>9</sup> “Teleshopping windows” are defined in COSTA as extended teleshopping features with a minimum uninterrupted duration of 15 minutes.

of advertising which may be shown in one clock hour to 12 minutes and by drawing a distinction between PSB and non-PSB channels.<sup>10</sup>

- 2.11 The AVMSD was implemented in the UK by the Audiovisual Media Services Regulations 2020 on 1 November 2020. They amended section 319 of the Communications Act 2003 (the **Act**), which sets the standards objectives that underpin Ofcom’s Broadcasting Code as well as COSTA. Since 1 January 2021, the AVMSD itself no longer applies within the UK<sup>11</sup>. However, the rules that already existed and had been brought in to implement the AVMSD, continue to apply and will be interpreted as they were before. As such, the AVMSD content rules implemented prior to 1 January 2021, such as those relevant to COSTA, remain in effect.
- 2.12 Ofcom may change the rules set out in COSTA pursuant to its statutory duty to set, and from time to time, review and revise, standards for the content of television and radio programmes (section 319 of the Act).
- 2.13 Further detail on the relevant legal framework is provided at Annex 1.<sup>12</sup>

## Ofcom’s review of public service media

- 2.14 In 2020/21, we carried out an in-depth review of the future of public service media (**PSM**), which we concluded in July 2021 with a published set of recommendations to Government (**PSM recommendations**),<sup>13</sup> calling for the renewal of the PSM system.
- 2.15 In our PSM recommendations, we said that COSTA was one of several important areas of advertising regulation affecting the sustainability of commercial PSM providers.
- 2.16 We said we would engage with stakeholders on suggestions they had made in response to our December 2020 consultation, including in relation to COSTA,<sup>14</sup> and that we would consider how we can ensure an appropriate balance between audience interests and the financial sustainability of broadcasters, including the PSBs.

## Stakeholder engagement

- 2.17 Following our PSM recommendations, we have engaged informally with several PSB and non-PSB broadcasters to understand their views on the current rules in COSTA on the

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<sup>10</sup> In particular, Article 23 of the current AVMSD only restricts spot advertising to 20% of the period between 06.00 and 18.00 and 20 % of the period between 18.00 and 24.00.

<sup>11</sup> As per the changes made by the Broadcasting (Amendment) (EU Exit) Regulations 2019 which came into force on 23:00 on 31 December 2020.

<sup>12</sup> We note that on 29 June 2022, the CMA published a [consultation](#) on changes proposed by ITV to undertakings it gave to the CMA in 2003 as a result of the Carlton and Granada merger regarding the sale of its advertising time. The undertakings relate to the technical detail of how ITV sells advertising minutes across its broadcasting regions, which is distinct from the total number of minutes which ITV is allowed to sell under Ofcom's COSTA rules.

<sup>13</sup> [Recommendations to Government on the Future of Public Service Media](#), Ofcom, 15 July 2021.

<sup>14</sup> [Small Screen: Big Debate Consultation – The Future of Public Service Media](#), Ofcom, 8 December 2020. Consultation responses can be found at <https://www.smallscreenbigdebate.co.uk/statement>, including responses from Channel 4, ITV and STV which specifically raised the rules in COSTA on the quantity and scheduling of television advertising.

quantity and scheduling of advertising. This indicated a significant difference in opinion between the PSBs and non-PSBs, as well as some difference between the PSBs themselves.

- 2.18 The PSBs have questioned the ongoing rationale for differences in their treatment compared to non-PSB channels, particularly in relation to the permitted amount of television advertising. In contrast, it is clear from our discussions that many non-PSB channels are opposed in principle to removal of the stricter rules in COSTA that apply to PSB channels.

## Market developments

### Viewing habits

- 2.19 Since the introduction of the ITC Rules in 1991, the range of television channels in the UK has increased dramatically. Viewers have moved from having access to four terrestrial channels and a small number of satellite and cable channels to hundreds of channels providing a variety of mainstream and niche content, many of which are funded in whole or in part by advertising.<sup>15</sup> As a result, non-PSB channels now account for 44% of broadcast television viewing, compared to 25% for advertising-funded PSB channels.<sup>16</sup>
- 2.20 Audiences also have access to a wider range of viewing options than ever before with a range of on-demand and streamed services available through apps and the open internet, with 17 million households subscribing to one or more subscription video on demand (SVOD) service in Q3 2020.<sup>17</sup> As viewers have started spending more time watching on demand content, the amount of viewing of traditional broadcast television has declined; live television represented less than half of all viewing in 2020, and just 17% of viewing amongst those aged 16-24.<sup>18</sup>
- 2.21 Some services (e.g. YouTube) are entirely or partially supported by advertising, but many are not, including some of the largest SVOD services such as Netflix and Disney+. As viewing patterns have changed, the volume and variety of adverts that people are exposed to has also shifted. For example, while differences in measurement make direct comparison difficult, it has been estimated that the total duration of video ads seen by adults aged 16-34 across all media has been declining since 2016, and is still mostly made up of advertising on linear television.<sup>19</sup>

### Advertising revenues

- 2.22 Television advertising revenues have fallen in recent years. After peaking in 2015, total television advertising revenues declined each year, reaching £4.5bn in 2019, down 17%

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<sup>15</sup> BARB now reports on the viewing figures of 294 different channels (<https://www.barb.co.uk/resources/tv-facts/tv-since-1981/2021/reported/>), though many other smaller channels are not included.

<sup>16</sup> [Media Nations 2021: Interactive report - Ofcom](#), Ofcom, 5 August 2021, Broadcast TV: Viewing: Share.

<sup>17</sup> [Media nations: UK 2021](#), Ofcom, 5 August 2021, page 15.

<sup>18</sup> [Media Nations: Interactive Report 2021](#), Ofcom, 5 August 2021, Total Video: Viewing.

<sup>19</sup> [Cost, value and how we should plan today's TV](#), Thinkbox, 28 January 2020.



from 2015.<sup>20</sup> Television advertising revenues fell further in 2020 owing to the pandemic, and then rebounded sharply in 2021.<sup>21</sup> However, some analysts believe this does not represent a reversal of the downward trend.<sup>22</sup>

- 2.23 These changes in television advertising revenues have occurred at the same time as rapid growth in online advertising. Television advertising was overtaken by online in terms of total value in 2011, and by 2019 was worth less than 30% of online advertising revenues.<sup>23</sup> Many forms of online advertising are not directly comparable with television, but online video is the largest and one of the fastest growing display advert formats, and broadcaster VOD now only makes up a third of in-stream<sup>24</sup> online video spend.<sup>25</sup>
- 2.24 We note that Freevee, which is owned by Amazon, provides advertising-funded content and that Netflix has said it is planning an advertising-funded offering.<sup>26</sup> If offerings such as these are successful, they will likely lead to further changes in video advertising spend.
- 2.25 As viewing and advertising spend continue to move online, broadcasters have responded with the launch of a number of new products to improve their advertising offer across television and video on demand, allowing for greater personalisation and targeting as well as enhanced measurement.<sup>27</sup> These offerings continue to evolve, and will provide advertisers with more sophisticated approaches to optimising and measuring their ad spend, potentially increasing the value of individual television and VOD adverts.

## Significance for future regulation

- 2.26 In light of the market developments outlined above, we have identified three possible reasons why the stricter COSTA rules that apply to PSB channels should perhaps be removed:
- given the significant change in viewing habits since the early 1990s, the stricter COSTA rules that apply to PSB channels might no longer be justified on the basis that they are needed to protect the quality of the viewing experience;

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<sup>20</sup> Media Nations: UK 2021, Ofcom, 5 August 2021, Figure 3.2.

<sup>21</sup> [£1 billion more invested in TV advertising in 2021](#), Thinkbox, 9 March 2022.

<sup>22</sup> We note ITV has warned investors that advertising revenue in 2022 may be impacted by geopolitical and macroeconomic factors ([ITV warns of ad slump but is on track with new streaming brand launch](#), The Guardian, 11 May 2022) and JPMorgan Cazenove forecasts an advertising slowdown in 2022 and 2023 (An Xceptional opportunity - Modelling ITVX, returns and Sensitivities, JPMorgan Cazenove, 20 June 2022).

<sup>23</sup> Media Nations: UK 2021, Ofcom, 5 August 2021, Figure 3.2.

<sup>24</sup> In-Stream ads are those shown directly before, during or after video content, as opposed to video ads shown elsewhere on websites, apps or social media feeds.

<sup>25</sup> [2021 IAB UK & PwC Digital Adspend Study, 2022](#).

<sup>26</sup> [Netflix confirms an ad-supported tier is really, actually happening](#), The Verge, 24 June 2022.

<sup>27</sup> For example, Channel 4 and Sky have signed deals with The Trade Desk to allow for programmatic ad buying on their services, and ITV, Channel 4 and Sky have combined to launch CFlight, a tool that allows advertisers to understand the combined reach of their adverts across linear and VOD.

- removal of the stricter COSTA rules that apply to the PSB channels might help the financial sustainability of the PSBs;<sup>28</sup> and
- the relevant COSTA rules might be operating as a distortion of competition, particularly given that non-PSB channels are long established in the UK.

## Section 9 of the Broadcasting Code

- 2.27 Since 1991, both PSB and non-PSB channels have also benefitted from the liberalisation of rules that enable them to generate income from programmes, such as those that apply to programme sponsorship and product placement. For example, in 2011 the prohibition on product placement was lifted for TV programmes made for UK audiences. This enabled broadcasters to receive payment in return for featuring brands in programmes, subject to certain rules contained in Section 9 of the Broadcasting Code.
- 2.28 We have heard from some broadcasters that Ofcom’s application of the rules in this area is too restrictive, therefore limiting the income they can generate from such arrangements. They have said that clearer guidance on the rules around sponsorship and product placement could potentially help them by clarifying opportunities to monetise content (e.g. through ad funded programming) and increase revenue.
- 2.29 In response to this, we are conducting audience research to gain a better understanding of attitudes towards commercial references in programmes, including those that result from sponsorship and product placement arrangements. Subject to the outcome of this research, we intend to engage with broadcasters separately, with a view to updating our guidance on Section 9 of the Broadcasting Code. This may lead to new content funding opportunities for broadcasters.

## Request for evidence

- 2.30 We are seeking to understand whether the COSTA rules that apply only to PSB channels may be operating as a distortion of competition, and whether aligning the rules for PSB channels with the rules for non-PSB channels, as described above, would contribute to the sustainability of PSBs and/or have a negative impact on audiences.
- 2.31 We have not seen any evidence to date which indicates that COSTA is no longer fit for purpose overall, and are therefore not considering a broad review of all the rules.<sup>29</sup> However, the COSTA rules that impose stricter requirements on PSB channels than on non-

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<sup>28</sup> On 29 June 2022, we published our report to the Secretary of State on the Licensing of Channel 3 and Channel 5: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/psb/channel-3-and-channel-5-relicensing>. In the report we give our opinion on the ability of the Channel 3 and 5 licensees to contribute to the fulfilment of the purposes of PSB, at a commercially sustainable cost, over the next ten-year licence period (starting in 2025). We refer to the COSTA rules in our analysis of commercial sustainability.

<sup>29</sup> We note the Government consulted in 2019 on whether a review of advertising minutage in the UK should take place in anticipation of the new AVMSD being implemented in the UK, and concluded that it had not received definitive evidence to justify doing so ([Audiovisual Media Services, Government response to public consultations on the government’s implementation proposals](#), 30 May 2019).

PSB channels may be a regulatory burden that is no longer necessary, given the changes in the market discussed above, and so might be removed.

- 2.32 We are therefore seeking evidence and views from stakeholders to help us consider whether the rules in COSTA that apply only to PSB channels remain justified. In particular, we are keen to hear from stakeholders – including PSBs, non-PSBs, advertisers and sales houses as well as audience and consumer groups – on the arguments for or against the following potential changes to COSTA:
- **Removing Rule 4**, which applies only to PSB channels, and **amending Rule 3** to apply to all PSB and non-PSB channels equally. This would mean that all PSB and non-PSB channels would be subject to the same limit of showing no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.
  - **Removing Rule 5** so that advertising breaks broadcast during programmes on PSB channels are no longer subject to a maximum duration.
  - **Amending Rule 16** so that PSB channels are subject to the same restrictions as non-PSB channels on the number of internal breaks permitted in programmes.
- 2.33 Although we are focusing on the COSTA rules that regulate the amount and frequency of advertising, we welcome any views that stakeholders may have on Rule 7, which requires that on PSB channels, teleshopping windows may be scheduled only between 00:00 and 06:00.
- 2.34 **In responding to this call for evidence, please provide evidence, where available, on the potential impacts (positive or negative) of the potential changes described above on audiences, broadcasters, the advertising sector and competition in the television market.**
- 2.35 We are also interested in views and evidence from all respondents on how broadcast television advertising is likely to develop over the next five to ten years, with or without the above potential changes to COSTA.

## Next steps

- 2.36 The deadline for responses to this call for evidence is Friday 7 October 2022.
- 2.37 We intend to assess the information we receive to consider whether we should consult on a proposal that the rules on the quantity and scheduling of television advertising should apply equally to all Ofcom-licensed television channels.
- 2.38 Information from this call for evidence may also inform potential audience research that we carry out as part of considering the relevant COSTA rules.
- 2.39 Later this year, we plan to publish the responses to this call for evidence and will outline next steps.

# A1. Relevant legal framework for considering changes to the COSTA rules

## The Communications Act 2003 (the “Act”)

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

### Ofcom’s broad statutory duties under the Act

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

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

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

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

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

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

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

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

- i) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;
- ii) the desirability of promoting competition in relevant markets;

- iii) the needs of persons with disabilities, of the elderly and of those on low incomes; the opinions of consumers in relevant markets, and of members of the public generally; and
- iv) the different interests of persons living in the different parts of the United Kingdom of the different ethnic communities within the UK and of persons living in rural and urban areas.

- A1.7 Under section 6 of the Act Ofcom must keep the carrying out of its functions under review with a view to securing that regulation does not involve:
- a) the imposition of burdens which are unnecessary; or
  - b) the maintenance of burdens which have become unnecessary.

### **Ofcom's specific television advertising statutory duties under the Act**

- A1.8 Under section 319(1) of the Act, it is Ofcom's duty to set, and from time to time, review and revise, standards for the content of programmes to be included in television and radio services as appears to it best calculated to secure the standards objectives set out under section 319(2) of the Act.
- A1.9 The standard objectives related to advertising and relevant for the purposes of this CFE are section 319(2)(i) of the Act, which requires *"that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with"*<sup>30</sup> and section 319(2)(ha)<sup>31</sup>, which requires that the requirements of any EU directives, as they had effect immediately before 31 December 2020 ("**IP completion day**"), with respect to advertising included in television and radio services are complied with. The latter would include the rules under the AVMSD as they were in place at the time of IP completion day.
- A1.10 The standards set by Ofcom under section 319 of the Act must be included within one or more codes, with COSTA being such a code. In setting or revising such a code, Ofcom must have regard, in particular and to such extent as appears to it to be relevant to securing of the standards objectives, to each of the following matters:
- a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
  - b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
  - c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;

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<sup>30</sup> Section 319(2)(i) of the Act.

<sup>31</sup> Inserted by Broadcasting (Amendment) (EU Exit) Regulations 2019/224.

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

## A2. Responding to this consultation

### How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Friday 7 October 2022.
- A2.2 You can [download a response form](#) from the Ofcom website. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [CostaRules@ofcom.org.uk](mailto:CostaRules@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Content Policy  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
  - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.

### Confidentiality

- A2.8 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on [the Ofcom website](#) at regular intervals during and after the consultation period.

- A2.9 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.10 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.11 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website. This is the Department for Business, Energy and Industrial Strategy (BEIS) for postal matters, and the Department for Culture, Media and Sport (DCMS) for all other matters.
- A2.12 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

## Next steps

- A2.13 Later this year, we plan to publish the responses to this call for evidence and will outline next steps.
- A2.14 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A2.15 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.16 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.17 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)



## A3. Ofcom's consultation principles

### Ofcom has seven principles that it follows for every public written consultation:

#### Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A4. Consultation coversheet

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)