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# **Review of the mandatory daytime protection rules in the Ofcom Broadcasting Code**

Consultation

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**CONSULTATION:**

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## About this document

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The Ofcom Broadcasting Code (“the Code”) allows for films rated up to ‘15’ by the BBFC<sup>1</sup> to be broadcast during the daytime on premium subscription channels and up to ‘18’ on pay per view film channels, provided that they are protected by a mandatory PIN code. This form of protection is called **mandatory daytime protection** and cannot be removed or bypassed by viewers.

This document sets out a proposal to extend the mandatory daytime protection rules in the Code to allow programmes which can currently only be shown after the 9pm watershed to be broadcast on scheduled television channels before this time, but only if mandatory daytime protection is in place. Audiences today have access to an extensive range of programmes almost anywhere and at any time through subscription and on-demand services. We therefore consider that the proposed extension of the mandatory daytime protection rules would enable the Code to reflect the evolving UK TV viewing landscape and could allow adults to have increased choice in daytime viewing. However, our proposal also maintains the 9pm watershed as a fundamental feature of broadcast services and ensures continuing robust protection to children.

In what follows we therefore assess the potential impacts of updating the Code to extend the current mandatory daytime protection rules to non-film content. We draw on audience research to examine current viewing habits and attitudes to the use and effectiveness of PIN protection systems. We also look at the potential effects on consumers (including children) and on various parts of the broadcasting sector.

Ofcom understands that only channels available on pay TV platforms would currently be able to implement a mandatory daytime protection, and that for technical reasons it is currently unfeasible for free-to-air services delivered via Digital Terrestrial Television (“DTT”), such as on Freeview.

We welcome views on our proposal for change, including information and evidence from stakeholders across the following areas:

- the protection of children;
- the technical requirements for implementing a mandatory daytime protection system;
- potential effects on competition within the broadcasting sector; and
- draft amendments to the Code rules which we propose to make if the mandatory daytime protection rules are extended.

We will take all responses to this consultation and information we receive into account before reaching our final conclusions.

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<sup>1</sup> British Board of Film Classification.

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# Glossary

## **Audiovisual Media Services Directive (AVMSD)**

A directive that governs EU-wide coordination of national legislation on traditional TV services and on-demand programme services.

## **Broadcasting Code**

Ofcom's rule book which all TV and radio broadcasters must abide by. All broadcast content (programmes and films)<sup>2</sup> are subject to the rules in the Code.

## **Digital terrestrial television ("DTT")**

The television technology that carries the Freeview service.

## **Digital video recorder ("DVR")**

(Also known as 'personal video recorder' and 'digital television recorder'). A digital TV set-top box including a hard disk drive which allows the user to record, pause and rewind live TV.

## **Electronic programme guide ("EPG")**

A programme schedule, typically broadcast alongside digital television or radio services, to provide information on the content and scheduling of programmes and to provide access to them.

## **Free-to-air**

Broadcast content that people can watch or listen to without having to pay a subscription or a charge for viewing that content.

## **Internet protocol television ("IPTV")**

The term used for the television platform that delivers channels to viewers using internet

protocol ("IP") technology over a broadband connection. Typically used in the context of streamed channels and on-demand content.

## **Mandatory PIN**

A compulsory audience protection tool for consumers to restrict access to unsuitable content. This tool cannot be removed by the user and requires a PIN (personal information number) to be entered each time the user accesses the content. The PIN must be chosen by the account holder and allows only those authorised to view the content.

## **Metadata**

A set of data that describes and gives information about other data.

## **On-Demand Programme Service (ODPS)**

A Video-on-Demand (VOD) service which is regulated by Ofcom under the Communications Act 2003. Examples include broadcasters' catch-up services (such as ITV Hub, All4), on-demand subscription services (like Amazon Prime and Amazon Video) and services providing a library of archive TV content.

## **'Over-the-top' video ("OTT")**

Refers to audio-visual content delivered on the 'open' internet rather than over a managed IPTV architecture (such as Netflix).

## **Pay TV**

Either pay-per-view content or a subscription-based service, usually charged at a monthly fee, offering multichannel television services beyond those available free-to-air. It can be

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<sup>2</sup> And BBC on-demand programme services ("ODPS").

delivered through cable, satellite, digital terrestrial and/or the internet (such as IPTV).

### **Public service broadcasting (“PSB”)**

(or public service broadcaster). The PSB services are all BBC channels, ITV (including GMTV, STV and UTV), Channel 4, Channel 5 main channels and S4C.

### **Streaming content**

Audio or video files sent in compressed form over the internet and consumed by the user as they arrive. Streaming is different to downloading, where content is saved on the user’s hard disk before the user accesses it.

### **SVOD**

Subscription video-on-demand (“SVOD”), usually paid monthly, such as Netflix or Amazon Prime Video.

### **Scheduled TV**

TV programmes broadcast and viewed according to a schedule set by the broadcaster. These programmes are available to all viewers at the same time and are listed in the EPG. Catch-up TV refers to on-demand services that allow consumers to watch content on a non-live basis after the initial broadcast.

### **Time-shifted viewing**

The viewing of programmes recorded and subsequently played back on a television set

after the live broadcast, as well as viewing after pausing or rewinding live TV.

### **Vertically integrated platform**

A platform provider which has full end-to-end control of the functionality of the devices in its estate.

### **Video-on-demand (“VOD”)**

A service which allows TV content to be viewed at a time chosen by the viewer. VOD services include both catch-up services offered by broadcasters (e.g. BBC iPlayer, All4) and SVOD services (e.g. Netflix, Amazon Prime Video. VOD services subject to regulation by Ofcom are called on-demand programme services (“ODPS”).

### **Voluntary PIN**

An audience protection tool that allows consumers to restrict access to certain channels, programmes or VOD services. When a PIN is set, users must enter a four-digit number to access the restricted content. However, users can opt out or switch off this tool if they choose.

### **9pm Watershed**

The watershed is an audience protection tool and only applies to television. The watershed begins at 21:00. Material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

# 1. Introduction

- 1.1 Ofcom’s Broadcasting Code (“the Code”) requires television broadcasters to comply with two key requirements which have been put in place to protect children from content which might be unsuitable for them:
- the watershed (referred to in this document as the “**9pm watershed**”). This is an audience protection tool that requires that broadcasters should not, in general, show material unsuitable for children before 21:00 and after 05:30. The 9pm watershed is a widely recognised and trusted child protection tool, and is highly valued by audiences<sup>3</sup>; and
  - mandatory restricted access (referred to in this document as a “**mandatory daytime protection**”). This is an audience protection tool that uses a mandatory PIN (personal identification number) to provide a mechanism for restricting access to unsuitable material which cannot be removed by the user. It requires that a PIN must be entered on each occasion to authorise access to the content. Currently, the Code only allows this method of protection in relation to BBFC<sup>4</sup> ‘15’ or ‘18’ rated films broadcast during the daytime on premium subscription and pay per view film channels.
- 1.2 We consider the 9pm watershed and mandatory daytime protection to be complementary tools to protect children from content that is unsuitable for them.
- 1.3 Ofcom is proposing to extend the mandatory daytime protection rules, beyond premium subscription and pay per view film channels, so that programmes which can currently only be shown after the 9pm watershed<sup>5</sup> could be shown on scheduled television channels at any time of day, provided that a mandatory PIN protection is in place.
- 1.4 An extension of mandatory daytime protection would be contingent on broadcaster and platform capability. Ofcom understands that only channels available on pay TV platforms would currently be able to implement a mandatory PIN system, and that for technical reasons it is currently unfeasible for free-to-air (“FTA”) services delivered via Digital Terrestrial Television (“DTT”), such as on Freeview. This is explored further in Section 5.
- 1.5 This document assesses the potential impact, based on the evidence currently available to us, of updating the Code to extend the current mandatory daytime protection rules to non-film content. We draw on audience research to examine current viewing habits, and attitudes to the use and effectiveness of PIN protection systems. We also look at the potential effects on consumers (including children) and on various parts of the broadcasting sector.

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<sup>3</sup> Daytime PIN Research, page 6. Kantar Media, 20th February 2018

<sup>4</sup> British Board of Film Classification.

<sup>5</sup> Or 20:00 in relation to 15-rated films. See paragraph 1.9.

## Background to the rules and review

- 1.6 Under section 319 of the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to us best calculated to secure the standards objectives. One of the standards objectives is to ensure that “persons under the age of eighteen are protected”<sup>6</sup>. This is reflected in Section One of the Code. We consider the standards we have set for the protection of children to be among the most important in the Code, and they will continue to be a priority for us.
- 1.7 Under Rule 1.4 of the Code, television broadcasters must observe the 9pm watershed. This means that television material unsuitable for children should not, in general, be shown before 21:00 or after 05:30. The 9pm watershed exists to protect children from television content that is unsuitable for them. Ofcom’s research demonstrates that the 9pm watershed is the most valued and important protection tool for parents.
- 1.8 However, since the Code was first introduced in 2005, it has also allowed particular types of television content that are unsuitable for children to be broadcast before the 9pm watershed (i.e. between 05:30 and 21:00) if “mandatory restricted access” is in place (i.e. a mandatory PIN). This is defined in the Code:
- “Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view”.*
- 1.9 Specifically, premium subscription film channels are allowed to broadcast BBFC 15-rated films, or their equivalent, at any time of the day as long as there is a form of mandatory PIN protection in place between 05:30 and 20:00. Also, pay per view services may broadcast up to BBFC 18-rated films as long as there is a mandatory PIN to restrict viewing between 05:30 and 21:00.

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<sup>6</sup> Section 319 (2) (a)

**Rule 1.24:** Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.

In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.

**Rule 1.25:** Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers

- 1.10 The 9pm watershed and mandatory daytime protection are just two of a range of audience protection tools that exist. For a fuller list, please see the table on page 18 below.
- 1.11 Since the Code was first introduced in 2005, technology and methods of content delivery have changed considerably. For instance, there has been a significant growth in the provision and viewing of video on-demand (“VOD”) services, with six in ten adults (59%) now watching programmes on VOD<sup>7</sup>. VOD services include both catch-up services, e.g. BBC iPlayer, the ITV Hub, All4<sup>8</sup>, and ‘over-the-top’ subscription video streaming services which include content not necessarily previously broadcast, e.g. Amazon Prime Video and Netflix. There has also been a significant increase in time-shifted viewing where digital video recorder (“DVR”) devices are used to record programmes (including post-9pm watershed programmes) to watch post-broadcast at a time of the viewer’s choosing which may be outside the watershed hours. In 2017 62% of households had DVRs<sup>9</sup>.
- 1.12 The Code only applies to broadcast television services. There is no equivalent watershed requirement for “on-demand programme services” or “ODPS”<sup>10</sup>. This reflects the fact that whereas broadcasters are in control of setting and scheduling when content is shown on their television services, audiences of ODPS have full control of when they view content

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<sup>7</sup> Daytime PIN Research, page 17. Kantar Media, 20th February 2018

<sup>8</sup> Under the new BBC Charter and Agreement, the Code does however apply, where relevant, to the BBC iPlayer.

<sup>9</sup> Communications Market Report, page 79. Ofcom, 3rd August 2017

<sup>10</sup> The Communications Act 2003 (as amended) sets the statutory framework for ODPS. These services (with the exception of the BBC iPlayer) are not subject to the Code but a set of higher level statutory rules ([https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/54922/rules\\_and\\_guidance.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/54922/rules_and_guidance.pdf)).



made available on-demand. Therefore, the standards rules applicable to ODPS<sup>11</sup>, which implement the minimum requirements of the Audiovisual Media Services Directive<sup>12</sup> place no restrictions on what time viewers can watch ODPS content that might be unsuitable for children.

- 1.13 In practice however, most ODPS voluntarily provide a range of audience protection measures to prevent children from accessing unsuitable material (see paragraph 3.10 for more information on these different protection tools). For example, members of the Commercial Broadcasters Association (“CoBA”)<sup>13</sup> signed a voluntary Statement of Practice in February 2016, committing to making child safety a priority on their VOD services and provide viewers with a range of protections for their on-demand and catch-up services that are accessed through a television<sup>14</sup>. The Public Service Broadcasters (BBC, ITV, Channel 4 and Channel 5), which are not members of CoBA, all also provide various parental controls such as PIN protections which can be set up to restrict access to rated content on their respective ODPS (BBC iPlayer, ITV Hub, All4, and My5).

## Call for inputs and research

- 1.14 In October 2014, we received a submission to Ofcom’s Annual Plan consultation<sup>15</sup> from members of CoBA requesting Ofcom to consider revising PIN protection rules in the Code in light of developments in on-demand viewing. CoBA members have responded to subsequent Annual Plan consultations stating that Ofcom should review PIN protection across different platforms, since – in CoBA’s view – the majority of scheduled services were constrained by an increasingly outdated level of regulation<sup>16</sup>.
- 1.15 In Autumn 2015, Ofcom conducted a series of meetings with broadcasters and platform providers to discuss mandatory PIN protection, including the feasibility of extending mandatory daytime protection. In March 2016, Ofcom published a Call for Inputs<sup>17</sup> to gather a wider range of stakeholder views on a possible broadening of the current Code rules for the use of mandatory daytime protection beyond film content. The Call for Inputs gathered information and explored stakeholder views around four key areas:
- benefits/negative impacts for audiences;
  - technological constraints for platforms and content providers;

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<sup>11</sup> Ibid. The only rule applicable to the protection of under 18s is Rule 11, which currently requires that: “An ODPS must not contain any specially restricted material [such as R18-rated content] unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it”.

<sup>12</sup> Directive 2010/13/EU of 10 March 2010. The provisions relating to on-demand programme services are reflected in section 368A and following of the Act.

<sup>13</sup> CoBA members are: MTG, NBC Universal, Fox, QVC, Sky, Viasat World, Scripps Networks International, A+E Networks, Discovery, Sony, Walt Disney, Turner and AMC Networks. Affiliate members include Viacom and UKTV.

<sup>14</sup> [http://www.coba.org.uk/coba\\_latest/content-providers-commit-to-protect-on-demand-viewers/](http://www.coba.org.uk/coba_latest/content-providers-commit-to-protect-on-demand-viewers/)

<sup>15</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/76344/cba.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/76344/cba.pdf)

<sup>16</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/97954/COBA.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/97954/COBA.pdf) p.3

<sup>17</sup> The Call for Inputs and published stakeholder responses can be found here on the Ofcom website:

<https://www.ofcom.org.uk/consultations-and-statements/category-3/mandatory-daytime-pin-protections>

- impact on the watershed and the effectiveness of mandatory restricted access; and
  - any related competition issues.
- 1.16 The information and views received on the four areas listed above are considered throughout this consultation and have informed Ofcom’s proposal and consultation questions.
- 1.17 In summary, responses to the Call for Inputs showed that broadcasters and platform providers are largely divided in their support for updating the mandatory daytime protection rules between those who can and those who cannot readily offer, or make use of, a mandatory daytime PIN system. Those in favour included the providers (such as Sky and Virgin Media) who have full control of their set-top-box (“STB”) estate and so are able to implement mandatory daytime protection on rated content.
- 1.18 In contrast, FTA platforms said in 2016 that they were opposed to updating the Code. They did not have the same technical control of their STB estate to enable PIN restrictions on services delivered over DTT, so in the short to medium term these channels could not, in their view, make use of a rule change until technical advances allowed mandatory daytime protection to be guaranteed on all STBs/ TVs. These technological constraints are outlined in Section 5 and the impacts on consumer choice and competition are considered in more detail in Section 6.
- 1.19 The responses to our Call for Inputs also suggested that, in general, broadcasters would be unlikely to use mandatory daytime protection on a widespread basis. This is also explored further in Section 4.
- 1.20 Alongside the Call for Inputs, in 2016 we commissioned Kantar Media to conduct initial quantitative research on audiences’ awareness, usage of, and attitudes towards PIN systems, as well as on viewing habits across scheduled TV and VOD services<sup>18</sup>.
- 1.21 Ofcom has made use of the time since the Call for Inputs to commission Kantar Media to conduct further research on family viewing habits as well as audience awareness, usage of and attitudes towards PIN systems. This research both updated the 2016 quantitative research mentioned above and included new qualitative research on audience attitudes including detailed reactions to the possibility of extending mandatory daytime protection. The report by Kantar Media, commissioned by Ofcom, can be found here: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/daytime-pin-research>. This research has been crucial in informing Ofcom’s review.

## What is the purpose of this review and consultation?

- 1.22 This consultation proposes an extension to the rules for mandatory daytime protection to allow a broader range of content to be broadcast during the daytime that currently can

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<sup>18</sup> The 2016 data tables can be found here: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/daytime-pin-research>

only be shown after the 9pm watershed. Mindful of our statutory duties set out in paragraphs 1.28 to 1.31 below, we think it is appropriate to consider whether the rules in this area should be updated, taking account of the evidence we have gathered from the 2016 Call for Inputs and the results of the audience research we have conducted.

- 1.23 Ofcom has not considered the scope of the current mandatory daytime protection rules since the Code was first put in place in 2005 and since then, the market has changed considerably. Audiences now have access to an extensive range of content almost anywhere and at any time. People are increasingly supplementing viewing of live (scheduled) TV services with viewing of on-demand services (and time-shifted viewing), where viewers can watch content at a time they choose, including watching post-9pm watershed programming during the day. The current viewing landscape is explored further in Section 3.
- 1.24 The 9pm watershed is still the most recognised and valued audience protection tool for parents to supervise and exercise control over their children’s viewing on scheduled television channels and it will continue to remain central to family viewing. However, like other audience protection mechanisms, the 9pm watershed can only govern the scheduling and accessibility of content; it cannot control parental choice and responsibility. Our research shows for example that some children watch programmes without their parents after 9pm. Some children also said that they watch post-watershed content alone on occasions via on-demand services (see more on this in paragraph 3.7).
- 1.25 Ofcom does not seek in any way to undermine the 9pm watershed in providing a safe viewing environment during the daytime and early evening. Rather, we have always considered mandatory daytime protection as complementary to the 9pm watershed because it serves to protect children from broadcast content that might be unsuitable for them.
- 1.26 CoBA’s response to the 2016 Call for Inputs, and those from a number of other broadcasters and platform providers, showed a clear appetite for broadening the rules. Many of these respondents cited benefits such as increased choice for audiences and positive effects on competition. By contrast, some PSB and FTA channels were not in favour of updating the rules in this area. Amongst other reasons, these broadcasters argued that it would create an uneven playing field between FTA and pay TV sectors.
- 1.27 The 2016 Call for Inputs and Ofcom’s audience research have helped us to understand the various benefits, risks, and challenges associated with updating the current mandatory daytime protection rules. This consultation explains Ofcom’s assessment of the evidence and puts forward a proposed expansion of the mandatory daytime protection rules in the Code, on which we welcome stakeholders’ views. We also identify areas where we are seeking further information to help inform our decision-making. We invite views and comments from stakeholders on the analysis we have set out, supported by evidence where available. At the same time, we are also seeking comments on a set of draft amendments to the Code which we propose to make if we do decide to update the mandatory daytime protection rules. The draft amendments are explained in Section 7. We

will carefully consider all responses to this consultation, including any further information we receive, before we reach any final decision.

## What are the regulatory objectives?

- 1.28 Ofcom’s principal duty under section 3 of the Act is to further the interests of citizens and consumers, where appropriate by promoting competition. In carrying out this duty, Ofcom is required to secure a number of things, such as:
- the availability of a wide range of television and radio services which (taken as a whole) are both of high quality and appealing to a variety of tastes and interests;
  - the application of standards that provide adequate protection to members of the public from potentially offensive and harmful material in TV and radio services.
- 1.29 In performing its duties Ofcom must also have regard, amongst other things, to: the desirability of promoting competition in relevant markets; the desirability of encouraging investment and innovation in relevant markets; and the vulnerability of children.
- 1.30 Ofcom has a statutory duty to set, and from time to time to review and revise, standards to secure the standards objectives in section 319 of the Act. This is achieved through the rules set out in the Code. In particular, Section One of the Code includes rules for the scheduling of content that is unsuitable for children. These include the 9pm watershed and the mandatory daytime protection rules.
- 1.31 Ofcom also has a duty to ensure that unnecessary regulatory burdens on the broadcasters we regulate are minimised. It is important, therefore, to ensure that the rules remain relevant and proportionate, and that they reflect changing viewing behaviours and audience expectations.

## What is and is not covered by this review?

- 1.32 We are seeking views on the proposed extension to the existing mandatory daytime protection regime under Section One of the Code and on draft revisions to Section One which would be necessary to extend the rules in this area.
- 1.33 Only the rules for mandatory daytime protection (mandatory restricted access) are under review. Ofcom has no intention of altering any other Code rules for the 9pm watershed.
- 1.34 Rule 1.18 of the Code allows adult sex material<sup>19</sup> to be shown after 22:00 on premium subscription/ pay per view services with a mandatory PIN in place. Ofcom is **not** reviewing the rules relating to adult sex material and no amendments will be made to the mandatory

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<sup>19</sup> The Code defines “adult sex material” as “material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation”.

restricted access under Rule 1.18 as a result of this review. Similarly, this consultation does not open up for review the prohibition of R18<sup>20</sup> material on linear broadcast (Rule 1.17).

- 1.35 As noted in paragraph 1.12 above, the Code does not apply to ODPS services<sup>21</sup>, and no amendments to the rules which apply to ODPS services will be made as a result of this review.
- 1.36 The rest of this document is structured as follows:
- **Section 2** looks in more detail at what we are proposing and why;
  - **Section 3** sets out current viewing trends of linear and on-demand content in the UK and provides high level findings from our audience research;
  - **Section 4** explores the implications that extending mandatory daytime protection could have on the protection of children;
  - **Section 5** considers in more detail the technical limitations involved in our proposed extension to mandatory daytime protection;
  - **Section 6** assesses the potential competitive impacts on different stakeholder groups; and
  - **Section 7** invites comments on the draft amendments to Section One of the Code which we propose to make if Ofcom decides to extend the rules for mandatory daytime protection.

## Impact Assessment and Equality Impact Assessment

- 1.37 This document does not contain a separate impact assessment. Instead, the document as a whole constitutes an impact assessment. Some specific points to note are provided below.
- 1.38 Ofcom is required by statute to have due regard to any potential impacts on particular equality groups, i.e. people sharing a protected characteristic, such as: sex, disability or race<sup>22</sup>. In relation to equality (whether in Northern Ireland or the rest of the UK), we consider on the whole that an extension to the mandatory daytime protection regime would be likely to affect citizens and consumers in the same way, and would not have particular implications for the different equality groups.
- 1.39 We have identified two groups of citizens and consumers for whom the proposal in this consultation may have greater implications. Children (under the protected characteristic of “age”) could be subject to an increased risk of viewing unsuitable, and therefore potentially harmful, content if mandatory daytime protections were not effectively

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<sup>20</sup> BBFC R18-rated content is a special and legally-restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Such content may only be shown to adults in specially licensed cinemas, or supplied to adults only in licensed sex shops.

<sup>21</sup> With the exception of the BBC iPlayer.

<sup>22</sup> See the Equality Act 2010.

implemented. We will carefully examine the significance of this risk. People who have a visual impairment are likely to also be negatively affected by any wider application of mandatory daytime protection because a PIN would be prompted by a visual cue on screen requesting a PIN to be entered<sup>23</sup>. We are keen to understand what accessibility features are currently available for PIN restricted content, or could in future be implemented, to increase the ease of use for visually impaired people and therefore lessen the negative impact.

- 1.40 Our equality duties in Northern Ireland, under section 75 of the Northern Ireland Act 1998, require us to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group. We consider that our proposal is consistent with these duties and does not warrant a more in-depth equality impact assessment.

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<sup>23</sup> Ofcom is currently consulting on proposed improvements to Electronic Programme Guides (EPGs) to make them easier to use for people with visual impairments:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/108404/consultation-epg-accessibility.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/108404/consultation-epg-accessibility.pdf)

## 2. What are we proposing and why?

- 2.1 We are minded to extend the application of the mandatory daytime protection rules in the Code beyond premium subscription and pay per view film services. The proposal would permit scheduled broadcast channels to show programmes, in addition to 15 or 18-rated films, which were originally only permissible after 21:00 and before 05:30, during daytime hours, provided a mandatory PIN system is in place, i.e. a PIN that cannot be removed.
- 2.2 Our proposal takes account of: our duties and the regulatory objectives referred to in Section 1 above; developments in the wider audiovisual landscape; Ofcom’s audience research; and the responses to the Call for Inputs. Responses to this consultation will provide Ofcom with an additional evidence base to inform our final decision.
- 2.3 Expanding the mandatory daytime protection rules in this way would require updating the rules in Section One of the Code. Section 7 of this document invites comments on draft amendments to the rules of the Code that we propose to make if, following this consultation, the use of mandatory daytime protection is extended. These include a requirement to clearly explain the new security systems in place to all users, and to provide clear guidance information with programmes to assist adults in assessing whether content is suitable for children.
- 2.4 Implementation of the revisions to Section One would be contingent on platform and broadcaster capability. Ofcom would need to be satisfied that platforms and broadcasters wishing to operate mandatory daytime protection have the full technical capability to ensure the protection of children through the use of mandatory PIN systems on all devices.
- 2.5 The table below sets out the similarities and differences between the 9pm watershed and the proposed extended mandatory daytime protection rules.

	9pm watershed	Proposed extended mandatory daytime protection rules
<b>How does it work?</b>	Programmes unsuitable for children should not be shown before 9pm (or after 5.30am)	Programmes unsuitable for children could not be made available before 9pm (or after 5.30am) unless a PIN code is entered to allow access to that content
<b>What’s allowed?</b>	Up to 18-rated content or equivalent	Up to 18-rated content or equivalent (see paragraph 2.6)
<b>Who does it apply to?</b>	All broadcasters	All broadcasters if on a platform with the technical capability
<b>Who does it <u>not</u> apply to?</b>	VOD services (including catch-up and SVOD) and recorded content	VOD services (including catch-up and SVOD) and recorded content

<p><b>What are the risks to children? - how can children get around it?</b></p>	<p>Child might stay up past 9pm; child might watch post-9pm recorded programmes earlier in the day; child might watch post-9pm programmes on VOD services.</p>	<p>Child might know the PIN code; child might watch post-9pm recorded programmes earlier in the day; child might watch post-9pm programmes on VOD services</p>
<p><b>How does Ofcom regulate against broadcasters who do not comply?</b></p>	<p>Ofcom records a breach of the Code if a broadcaster is found to have shown material unsuitable for children before the watershed, and the material was not appropriately scheduled.</p> <p>Ofcom can sanction a broadcaster (including financial sanctions) for serious, repeated, deliberate or reckless breaches of the Code.</p>	<p>Ofcom would record a breach of the Code if a broadcaster was found to have shown material unsuitable for children without mandatory restricted access in place.</p> <p>Ofcom could sanction a broadcaster (including financial sanctions) for serious, repeated, deliberate or reckless breaches of the Code.</p>
<p><b>What other protection measures are used alongside it?</b></p>	<p>Programme information and guidance, such as that provided on the EPG<sup>24</sup> and in continuity announcements to assist viewers in assessing the suitability of content.</p>	<p>Programme information and guidance, such as that provided in the EPG and in continuity announcements, to assist viewers in assessing the suitability of content.</p>

## What content could be shown with mandatory daytime protection?

- 2.6 The current rules for mandatory PIN protections allow for films rated up to 15 by the BBFC to be shown on premium subscription films channels before 20:00 (they can be shown without a PIN after 20:00) and up to BBFC 18-rated films to be shown on pay per view services before 21:00.
- 2.7 There is no content rating system for the 9pm watershed, but broadcasters must abide by Ofcom’s rules on scheduling<sup>25</sup>. Context, particularly the audience profile and expectations of a channel and the specific programme are important factors for scheduling. For example, channels such as Sky Atlantic or Fox often show relatively strong (often BBFC-18 rated) dramas at 9pm because the channel is aimed at adults and less likely to have a high child audience<sup>26</sup>. Public service broadcasters however usually show the strongest content

<sup>24</sup> Electronic Programme Guides.

<sup>25</sup> See Code Rules 1.1 – 1.7

<sup>26</sup> This is just one in a number of factors Ofcom may take into consideration when deciding if content is appropriately scheduled.



later on in the schedule due to the greater likelihood of younger audiences at 9pm as a spill-over from more family orientated viewing earlier in the evening. However, for all channels, the Code<sup>27</sup> requires that the transition to more adult material must not be unduly abrupt at the 9pm watershed.

- 2.8 We consider that any content that is currently permitted after the 9pm watershed should be permitted behind mandatory daytime protection. This would mean that any material unsuitable for children (which might be up to 18-rated or its equivalent) may be broadcast during the daytime, provided it complies with all other relevant rules in the Code. This is because any extension to mandatory daytime protection would be aimed at enabling greater viewing choice for adults and aligning broadcast viewing with current expectations of content availability on ODPS platforms. Up to 18-rated content is currently available during the daytime through on-demand services and via time-shifted viewing, which have no mandatory restricted access measures in place.
- 2.9 If an extension to mandatory daytime protection were to be implemented, broadcasters could choose to keep the mandatory restricted access system in place past 9pm if they intend to broadcast content that is not suitable for broadcasting immediately after the 9pm watershed.
- 2.10 No amendments to the rules would allow for adult sex material to be shown – this will continue to be restricted to broadcast only after 22:00 and before 05:30 on pay per view and premium subscription channels behind a mandatory PIN (as under the current Rule 1.18).

## **What genres of content would be shown with mandatory daytime protection?**

- 2.11 In the 2016 Call for Inputs, we asked which broadcasters would be interested in using mandatory daytime protection for their channels. Sky stated that it would primarily want to show more original and commissioned UK drama on Sky Atlantic. Much of this content is currently unsuitable for pre-watershed scheduling. Other broadcasters indicated that they would be likely to use mandatory daytime protection for genres such as for crime documentaries (AETN UK), films (other than premium services), and music videos.
- 2.12 This suggests that, in general, broadcasters' initial use of an expanded mandatory daytime protection regime would likely be relatively focused. Through this consultation we are seeking up to date information on broadcasters' appetite for expanding the regime and which types of content they would be likely to use it for.

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<sup>27</sup> Rule 1.6 states that: "The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule."

## Why are we making this proposal?

- 2.13 Based on the evidence available to date, it is our view that an extension to the existing rules in this area would provide extra flexibility for broadcasters and enable the Code to reflect the evolving UK TV viewing landscape. It could enable adults to have increased choice in daytime viewing while still providing robust protection to children.
- 2.14 While we recognise the potential concerns about younger viewers accessing content, our current view is that allowing broadcasters to use mandatory daytime protection would be unlikely fundamentally to increase the risk of children viewing inappropriate content. The 9pm watershed remains a robust and highly-valued audience protection tool, but we consider it is at its most effective when used by parents along with other protection measures. We consider that mandatory PINs are an important and strong form of protection, used successfully for many years by premium subscription and pay per view film channels, and therefore could also be successfully used in conjunction with the 9pm watershed for other types of content.
- 2.15 Ofcom recognises that there are arguments for and against extending mandatory daytime protection and we explore these further in the following sections. However, overall, we think that an extension to the Code rules in this area would be a practical reform, based on a forward-looking assessment of changes in viewing habits.
- 2.16 In Section 3 we set out the context of current viewing habits in the UK. In Sections 4, 5 and 6 we consider respectively: the protection of children; the technical and practical issues of implementing mandatory daytime protection; and the potential effect on competition (in relation to audiences, platform providers and broadcasters). Section 7 of this document invites comments on draft amendments to the rules of the Code that we propose to adopt to allow for an expansion to the mandatory daytime protection regime, if we were to proceed with our proposed approach.
- 2.17 We welcome views and comments from all stakeholders, supported by evidence where available, on all aspects of Ofcom's analysis of the issues and impact assessment.

## 3. Current viewing habits

- 3.1 Developments in audio-visual delivery over the last decade mean that audiences now have access to an extensive range of content almost anywhere and at any time they choose, both inside and outside the home. This section explores:
- a) current viewing habits on scheduled TV (TV which is broadcast and viewed according to a schedule set by the broadcaster);
  - b) current viewing habits for on-demand services (this includes the catch-up and video-on demand (“VOD”) services offered by broadcasters, and subscription VOD (“SVOD”) services such as Netflix and Amazon Prime Video);
  - c) post-9pm watershed viewing habits;
  - d) the protection measures adopted by services and parents to protect children from unsuitable content; and
  - e) the effectiveness of PINs (both mandatory and voluntary) as an audience protection mechanism.
- 3.2 This section provides a high-level summary of Ofcom’s research findings on these topics. Further detailed findings and analysis can be found in the main report by Kantar Media: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/daytime-pin-research>.

### Television viewing habits

**Scheduled television remains a core part of family viewing, although there is ever increasing use of on demand services.**

- 3.3 Scheduled television remains a strong part of family viewing, especially in free-to-air households. On average people in the UK spend 3 hours 32 minutes a day watching scheduled TV on TV sets<sup>28</sup>. Despite the growing gap between the viewing habits of older and younger audiences, the reach of scheduled TV is still high among children and young people: our research shows that 94% of 11 to 15 year-olds reported using a television to watch TV content at the time of broadcast.
- 3.4 However, the UK’s TV landscape is evolving, and viewers are not confined to broadcasters’ schedules. The increasing availability of on-demand services alongside the proliferation of connected devices has allowed greater viewing control and choice as people are increasingly supplementing scheduled broadcast TV with on-demand and streaming services. Two thirds of parents say they watch on-demand services at home, and 45% say their children (aged 6-17) also watch these services. When asked directly, over eight in ten older children (aged 11-15) said they watch programmes via on-demand services at home.

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<sup>28</sup> Ofcom’s Communications Market Report 2017

- 3.5 The typical family viewing experience can look quite fragmented, with family members accessing different content through different devices at the same time, and often in the same room. However, the television set is still the most used device for watching TV at the time of broadcast, reflecting enduring traditional types of family viewing behavior. Our research suggests that who chooses what to watch on the TV set in family households depends on the time of day. Younger children (aged 6-11) tend to dominate the TV set during the daytime and early evening, with adults regaining choice in the later evening. This pattern changes at weekends however, with children watching later, often as part of shared family viewing.

## Post-9pm watershed viewing

### Post-9pm watershed content is already viewed during the day, via on-demand services, by adults and by some older children

- 3.6 The 9pm watershed is seen by parents as the most salient protection tool and its existence is reassuring as well as practical. However, Ofcom's research shows that there is a high level of post-9pm watershed viewing among older children, with 72% of 11-15s and 87% of 16-17s saying that they watch television after the 9pm watershed. Much of this viewing is done with the consent of parents with eight in ten (78%) of 11-17 year-olds claiming to watch TV after 9pm with adults, although 46% of 11-15s claim to also watch television after the 9pm watershed alone on occasions. The research suggests that younger children (aged 6-10) are less of a concern as they usually have earlier bedtimes.
- 3.7 Post-9pm watershed content is also being viewed by children during the daytime and early evening, using VOD services. Over half (56%) of 11-15 year olds claim to watch post-9pm watershed content during the day using VOD services – rising to 76% among 16-17 year olds. Among those 11-15 year olds who watch post-9pm watershed content during the day, over half (55%) sometimes watch it alone.
- 3.8 Over two-thirds (69%) of adults who use VOD services claim to use them to view post-9pm watershed content during the daytime and early evening. There is no requirement under the rules which apply to these services (the On-Demand Programme Service Rules<sup>29</sup>) to have protection mechanisms in place to restrict access to post-9pm watershed programming during the daytime<sup>30</sup>. However, a range of parental control mechanisms are available to assist parents, as described below.

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<sup>29</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/on-demand-programme-service-rules>

<sup>30</sup> "Specially restricted material" such as R18 content however must only be available in a manner which secures that people under the age of 18 will not normally see or hear it.

## Parental control mechanisms

**Parents continue to value the 9pm watershed and consider it an important protection tool, especially when used alongside other protection measures.**

- 3.9 Children’s viewing safety is a concern for parents – particularly those with older children (aged 11-15) who are developing their own viewing interests and beginning to view content unsupervised, with a risk of finding unsuitable programming.
- 3.10 Broadcasters, content and platform providers offer multiple audience protection tools to ensure that younger family members can be protected from unsuitable content. These range from the provision of information in the EPG about a programme to allow for personal regulation of viewing, to digital preventative methods, such as PINs.

### The 9pm watershed

Parents consider the 9pm watershed to be the most important tool for protecting children from unsuitable content. It provides a safe viewing environment before 9pm, especially compared to the internet, most of which is not subject to regulation, and therefore of greater concern to many parents. However, like all protection measures, it is not infallible, as shown by the relatively high numbers of children viewing post-9pm watershed content.

The watershed only applies to scheduled television. With such a varied TV landscape on offer in most homes, parents are increasingly adopting alternative protection measures alongside the 9pm watershed to ensure younger family members are protected from unsuitable content.

### Programme information and ratings

Programming is often accompanied by information describing the different types of potentially unsuitable material contained within the broadcast. This could be information or ratings found in the EPG, guidance notes provided alongside programmes on on-demand services, or information given in continuity announcements voiced by the channel before a programme starts or after an advert break. Parents may use this information, typically in conjunction with other audience protection tools, to assess the appropriateness of certain programming. Our research found that many parents say that they rely on such information when deciding whether new or unfamiliar post-9pm watershed content is suitable for their children to view.

### Tick box age verification

This is a type of tool used on some VOD services, for example where users must confirm that they are over a certain age (usually 16 or 18) before accessing post-9pm watershed material. Although parents expressed mixed feelings about the effectiveness of this type of tick box age verification in recent research, it was described as a useful signal to potentially unsuitable content.

### Registration to a VOD service

Users are required to sign in to many VOD services and provide their age or date of birth. Content is then limited by age appropriateness. Netflix is an example of a service which provides an extended version of this by giving users the ability to set up multiple profiles on one account. Content can be limited by maturity level on different profiles, including a specific “Kids’ zone”.

### Voluntary PIN protection

A PIN (personal identification number) can be set up to block access to unsuitable content except to those with the correct code. PINs can be set to restrict certain programmes or channels and can also be used to prevent programmes recorded after 9pm from being watched before that time. On VOD services (including those accessed through the television set), PINs can be set up to restrict access to all or certain content. However, users can opt out or switch off this tool if they choose.

### Mandatory PIN protection

By contrast to a voluntary PIN, this is a compulsory tool that users cannot remove and restricts access solely to those with knowledge of the code. Currently, under the Code rules, mandatory PINs are required to:

- view up to BBFC 15-rated films on premium subscription film services before 8pm, and up to BBFC 18-rated films on pay per view services before 9pm; and
- access adult sex material on either premium subscription or pay per view channels between 22:00 and 05:30.

- 3.11 Our consumer research has also found that trust is important. Many parents give older children the opportunity to make suitable viewing choices for themselves, trusting them to talk to their parents about material they are unsure of. Indeed, the biggest single reason amongst parents of 11-15s for not using PIN protection is trusting their child to be responsible.

## Effectiveness of PINs

### PINs are considered to be an effective protection mechanism by parents

- 3.12 Our research suggests that awareness among parents of PIN protection measures is high with almost eight in ten (78%) aware of ‘any’ voluntary or mandatory PIN protection tool. This awareness of PIN protection is higher in pay TV households.
- 3.13 Half of parents of children aged 11-15 said they have currently set a voluntary PIN to restrict their child’s access to content. This reduced to 31% with parents of 16-17s. Parents of younger children (aged 6-10) feel more in control of their children’s viewing as there are higher levels of supervision, reducing the need for a PIN. The vast majority of 11-15 year-olds (94%) who have a PIN set in their household named their parent or guardian as the person who set the PIN.

## Review of the rules for mandatory daytime protection

- 3.14 As with other audience protection measures, PIN protections can only control access to a certain extent, as effective use relies on parental responsibility to keep PINs secure. Three in ten parents of 11-15 year-olds are aware their child knows the PIN and correspondingly four in ten 11-15 year-olds claim to know it. However, six in ten (59%) of these children claim to have been given it by their parents.
- 3.15 Despite this, our research found that parents consider PINs to be an important and relatively effective protection tool, especially when used alongside other audience protection measures. The qualitative research found that PINs have the added benefit of acting as an alert to both parents and children about potentially unsuitable content, often prompting a discussion. The majority (85%) of parents of older children (aged 11-15) are confident that the PIN protections they have in place provide adequate protected viewing for the child / children with 53% feeling very confident. It could be argued that the relatively high level of confidence in PIN protection amongst parents is also reflected by the very low level of concern expressed through complaints to Ofcom about the technical robustness of mandatory audience protection tools.
- 3.16 The discussion of PINs in the qualitative aspect of the research encouraged some parents to suggest ways in which PIN security could be enhanced. Mandatory PINs were considered safer than voluntary ones because they are in place by default, but some thought they could be improved in several ways.
- 3.17 One suggestion was for an SMS-generated PIN reminder to help parents who get stuck remembering PINs. A similar idea was for an alert to be sent to a parent's mobile phone when a PIN is entered incorrectly, as seen elsewhere when using online services. Individual logins, making viewing history available, and timed-out access were also suggested. A more radical suggestion was to replace PINs with fingerprint access, as seen on smartphones, or voice recognition, as used by some telephone banking services.
- 3.18 Our research shows that the PIN systems currently used, especially mandatory PINs, are considered to be a strong form of protection, but we welcome information and views from stakeholders about any measures which are already available or could be developed which can increase the robustness of PINs. We discuss the effectiveness of mandatory PINs further in paragraphs 4.8 – 4.14.

## 4. The protection of children

- 4.1 In the previous section we considered changes in how TV content is provided to viewers, and the current viewing habits of different age groups. We also considered the levels of protection offered by the 9pm watershed to families, as well as the effectiveness of the protection offered by PIN codes.
- 4.2 The protection of children is a fundamental concern for Ofcom. There are some risks involved with all measures designed to protect younger viewers from accessing unsuitable content, and any extension to the mandatory daytime protection rules should not pose a significant increase in this risk. A limited mandatory daytime protection already exists for some film services which has not given Ofcom cause for concern regarding its risk to children, but it is important that any expansion of it continues to provide a robust means of protecting children from unsuitable content.
- 4.3 In this section we assess the potential implications for the protection of children that extending the use of mandatory daytime protection beyond premium subscription film services could have. We also set out where we would welcome more information to help inform Ofcom's decision making.
- 4.4 It is important to note that not all broadcasters could currently implement mandatory daytime protection. This is because of the high degree of technical coordination/integration required between the channel, the platform(s) on which the channel is/are provided, and the viewer's set top box ("STB"), in order to ensure that it is sufficiently robust and able to operate as the proposed Code rules would require. We consider the technical issues associated with this in Section 5, and possible effects on competition as a result in Section 6.

### **Would extending mandatory daytime protection have an adverse impact on the 9pm watershed?**

- 4.5 As part of the Call for Inputs we asked stakeholders whether extending the mandatory daytime protection rules might have an adverse impact on the 9pm watershed. The 9pm watershed is a highly valued tool which some stakeholders feel understandably strongly about preserving. Channel 4, Channel 5, UKTV, and YouView were among those who raised concerns that an expansion to the mandatory daytime protection rules risks eroding the understanding and public confidence of the 9pm watershed, especially if adopted by many broadcasters. Conversely, members of CoBA saw no adverse impacts. Rather, CoBA members felt that an extended mandatory daytime protection regime was unlikely to be widely used as many broadcasters might not wish to put a PIN between audiences and their content – thereby keeping the 9pm watershed intact. Ofcom acknowledges the strength of both these lines of argument.
- 4.6 It is Ofcom's view that the highest level of protection for children can be achieved when a range of audience protection measures are used in conjunction with one another. The use of PINs to restrict access (both mandatory PINs, and those voluntarily set up by parents)



alongside other protection tools (set out above in paragraph 3.10), is increasingly commonplace in a converged viewing space, and is therefore unlikely to be at odds with current audience expectations.

## Are mandatory PINs an effective form of protection?

- 4.7 A range of views on this issue was expressed following the Call for Inputs. The NSPCC raised concerns, echoed by UKTV, that PINs are an inadequate form of protection because children often gain knowledge of the PIN, either through parents or older siblings, and may then access potentially harmful content for extended periods of time until a parent opts to change the PIN. The NSPCC also said that children may sometimes be more “tech savvy” than their parents, particularly older adults, and parents can be dependent on their children to install PINs on devices. Channel 4 said that entering a PIN would likely introduce a substantial amount of frustration for a viewer which may lead them to minimise this frustration by selecting an easy PIN such as 0000 or 1234, so reducing its effectiveness in protecting children.
- 4.8 Conversely, respondents who considered mandatory PINs to offer sufficiently robust protection – such as BT, AETN, Sky and CoBA, among others – considered that there was no evidence to show that this mechanism has not been working since its introduction in 2005.
- 4.9 A limited mandatory daytime protection has been in place since 2005 on premium subscription and pay per view film channels. In this time Ofcom has published one Decision in the Broadcast and On Demand Bulletin where a BBFC 15-rated film was broadcast on the Sky Movies Premiere channel on the Virgin platform without a mandatory PIN protection in place<sup>31</sup>. This was due to the incorrect labelling of the film as a PG in the Virgin Media EPG.
- 4.10 As mentioned in paragraph 3.12, Ofcom’s recent research found that awareness and usage of current PIN systems (both mandatory and voluntary) is high, particularly in pay TV households. They have become an established part of TV viewing due to the greater technical capability of devices and the increased choice of scheduled and on-demand content available in the home. Parents generally consider PINs to be an effective and important protection mechanism. Our research found that the majority (85%) of parents of 11-15 year-olds are confident that the PIN protection they have in place provides adequate protected viewing for their child/children.
- 4.11 Most parents who took part in the qualitative discussion groups also considered mandatory PINs to be safer than voluntary PINs because with mandatory PINs the responsibility is taken away from the parent to set it up in the first place<sup>32</sup>.
- 4.12 It is Ofcom’s view, supported by our research, that PINs are an important and relatively strong protection tool, and can be a useful signal to all viewers about the potential unsuitability of content selected. However, like all protection mechanisms, they can only control the accessibility of content. Like the 9pm watershed PINs rely on parental choice

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<sup>31</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/53756/issue\\_309.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/53756/issue_309.pdf)

<sup>32</sup> Daytime PIN Research, page 26. Kantar Media, 20th February 2018

and responsibility. Ofcom recognises that PINs are most effective when used alongside other protection measures such as the 9pm watershed and guidance/ provision of information on individual content. For example, many parents rely on information in the EPG about programmes to make informed decisions about whether content is suitable for children to view<sup>33</sup>.

- 4.13 In its response to the Call for Inputs CoBA highlighted that technology exists to issue regular reminders to parents to update their PIN numbers, and these numbers can often be changed online or via an app. Ofcom considers measures such as these would lessen the risk of children guessing or learning the PIN code without parental permission and would therefore increase the effectiveness of an extended mandatory PIN system.

### **What is the appetite among adults and parents for an extension to mandatory daytime protection?**

- 4.14 Many (although not all) parents in the qualitative group discussions that took place as part of our research felt that post-9pm watershed content should be available to view during daytime as long as mandatory PIN protection was in place. For some parents, the opportunity to consume more content during the daytime underpinned their acceptance of the proposal. In particular, those parents who worked either part-time or shifts were more in favour of an extension to mandatory daytime protection on this basis.
- 4.15 The principle of choice was mirrored in the quantitative research which found that a majority of adults (58%) thought that adults should be able to view post-9pm watershed content on TV channels during the daytime or early evening if a mandatory PIN was in place to prevent children from accessing the content. Agreement levels were higher (73%) among those who watch post-9pm watershed content during the day on catch-up and VOD services. However, personal interest (in viewing post-9pm watershed content on TV channels during the daytime or early evening if a mandatory PIN was in place) was lower (24%), with the main reason cited that they tended not to watch television during the day or early evening, rather than an objection to being able to view post-9pm watershed programmes behind mandatory daytime protection<sup>34</sup>.
- 4.16 Most parents (79%) felt that the use of a mandatory PIN to watch post-9pm watershed content during the day would offer the same or greater levels of protection for children compared to the 9pm watershed<sup>35</sup>.
- 4.17 When asked whether the necessity to enter a mandatory PIN would affect whether they wanted to view programmes on certain channels using mandatory daytime protection, just 29% of all adults believed this would negatively affect their use of those channels.

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<sup>33</sup> Daytime PIN Research, page 8. Kantar Media, 20th February 2018

<sup>34</sup> Daytime PIN Research, page 10. Kantar Media, 20th February 2018

<sup>35</sup> Daytime PIN Research, page 39. Kantar Media, 20th February 2018

Ofcom fully supports safeguarding the 9pm watershed. However, we also consider that because a limited mandatory daytime protection has operated effectively alongside the 9pm watershed since 2005, that an extended version of this could continue to work side by side to protect child audiences on scheduled TV channels.

PINs are increasingly commonplace in a modern day viewing environment and while they are often used effectively and robustly, we recognise that PINs (including mandatory PINs) can only control the accessibility of content and there is more that can be done to ensure children do not find a way around them. Mandatory daytime protection would be bolstered by better awareness about PIN security and advice for parents on the importance of setting, and regularly changing, strong PIN codes. If, following consultation, we proceed with our proposed amendments to the Code, we will ensure that clear information is made available to viewers about the changes and would expect broadcasters to raise awareness.

*Question 1: Would extending mandatory daytime protection have an adverse impact on the 9pm watershed? Could the change erode public confidence in the 9pm watershed?*

*Question 2: Would extending mandatory daytime protection increase the risk of children viewing post watershed content?*

*Question 3: How effective are mandatory PINs currently in protecting children? As part of this response we welcome views on the effectiveness of the protection offered for younger and older children.*

*Question 4: What more could be done to bolster the effectiveness of PINs?*

## 5. Technical issues

- 5.1 In this section we explore the technical requirements and practicalities of implementing an extension to the mandatory daytime protection rules. We also set out where we would welcome more information to help inform Ofcom’s decision making.
- 5.2 Some channels available on pay TV platforms can currently use a mandatory PIN to protect content during the day, whereas channels which are only available on FTA platforms cannot. This is due to the technical requirements involved in putting in place a mandatory daytime protection system. In this section we explore the technical issues further.
- 5.3 In summary, a mandatory daytime protection system works as follows:
- descriptive information (known as metadata – see paragraph 5.17) is transmitted with all TV programmes. For Pay TV broadcasters this information is encrypted (see box below for more detail on the encryption process);
  - to operate mandatory daytime protection on a scheduled TV channel, a TV receiver unit - either in the TV itself or the set-top-box (“STB”) - needs to be able to process this descriptive information and interpret it;
  - once interpreted, the TV receiver unit triggers a PIN protection prompt to be presented to the viewer when content unsuitable for children is selected;
  - correct entry of the PIN number makes the content available to view; but
  - failure to enter the PIN correctly or an attempt to bypass it should not reveal the content to the viewer.

#### How does encryption on pay TV work?

- Encryption is used within the pay TV industry to prevent unauthorised access to premium content. To summarise, encryption scrambles the TV content by use of secret digital keys and complex algorithms, so that only authorised holders of the secret digital key may unscramble and view the protected broadcast content.
- Pay TV services are transmitted encrypted and are then decrypted when the signal is processed using the subscriber's unique secret key stored in their viewing card.
- The viewing card is held in a smartcard reader slot or "Conditional Access Unit" typically in the STB or incorporated into the TV.
- The viewing card contains the secret keys which allow the decryption or unscrambling of the protected content.
- Each viewing card is linked to an account. If the account holder is authorised to view the programmes behind a mandatory PIN, it will decrypt the broadcast feed and recognise the need to trigger a PIN prompt.
- Digital Terrestrial Television ("DTT") and certain satellite platforms (e.g. FreeSat) carry channels which are transmitted without encryption.

5.4 Overall, there is a high degree of coordination needed between channels, platforms and the devices to deliver a robust mandatory PIN system. Platforms currently using mandatory daytime protection for premium subscription and pay per view film channels are technically able to do so because they have end-to-end control of the functionality of all STB devices in their estate (i.e. they are "vertically integrated platform providers").

#### Which broadcasters and platforms are currently able to use mandatory daytime protection and why?

5.5 At present, Sky uses mandatory daytime protection permitted under Rule 1.24<sup>36</sup> for its offering of Sky Cinema channels on scheduled TV. Sky previously used the mandatory daytime protection permitted under Rule 1.25<sup>37</sup> for its pay per view film service, Sky Box Office. In October 2017 Sky ceased broadcasting pay per view films on the Sky Box Office channel, instead making films available to rent and download via the Sky Store<sup>38</sup>. The Sky Cinema (premium subscription) channels are not available on Free-to-air ("FTA") platforms delivered via DTT such as Freeview.

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<sup>36</sup> Rule 1.24 states that: "Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530."

<sup>37</sup> Rule 1.25 states that: "Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530."

<sup>38</sup> Sky Store is a notified ODPS service. As previously mentioned at paragraph 1.12, the Broadcasting Code rules do not apply to ODPS.

- 5.6 Sky is a vertically integrated platform provider. This means that the broadcast channels, technology and STBs are under the direct control of a single operator. As mentioned above, Sky, and any other vertically integrated platform providers are therefore currently more readily able to implement an expanded mandatory daytime protection regime.
- 5.7 To extend this capability beyond premium film channels may in some cases require a software update to current devices. This could be done remotely over a network connection. However, the STBs of vertically integrated platform providers, such as Sky and Virgin Media, can be remotely updated by satellite or cable.
- 5.8 In contrast, for operators of FTA TV services, which do not use encryption (services that do not necessarily require a subscription, for example FreeSat and Freeview), providing software updates to accommodate changes in PIN protection is more complex. FTA STBs are often manufactured under licence by third parties and sold via third party retail outlets. The operators of these FTA services may not have access to accurate data concerning the location, age and technical capability of STBs in UK TV households. The manufacturer may have ceased production or support for a range of STBs. In addition, the legacy STB may not have the hardware or software capability to adopt new functionality. Legacy devices may present a serious child protection risk, and the affected platforms would therefore not be able to implement a mandatory daytime protection regime.
- 5.9 For FTA services which are delivered over DTT, rather than through IP (the internet), there may be technical workarounds to feasibly implement mandatory daytime protection, but it is likely to be impractical to do this for all FTA viewer equipment. A limited over the air software update facility is defined in the Digital Video Broadcast standard<sup>39</sup>. However, we believe this would require extensive co-ordination between STB manufacturers, broadcasters and multiplex operators. The firmware update could then be downloaded via a website or introduced via a USB thumb drive<sup>40</sup>. However, the number of DTT STBs able to receive an over the air update or capable of operating with PIN functionality is unknown.

### What does this mean in practice for viewers?

- 5.10 In practice, the technical limitations of implementing an extension of the mandatory daytime protection rules mean that broadcasters would not be able to introduce such services robustly on FTA services (as they could not guarantee that they would work properly). In other words, for customers with FTA only services, there could be no change to the current scheduled channels and programmes available to view.
- 5.11 In contrast, mandatory PIN protection would be technically feasible on pay TV platforms. If the mandatory daytime protection rules were to be extended, viewers in pay TV

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<sup>39</sup> Digital Video Broadcasting (DVB); Specification for System Software Update in DVB Systems DVB Document A77

[https://www.dvb.org/resources/public/standards/a77\\_dvb-ssu\\_spec.pdf](https://www.dvb.org/resources/public/standards/a77_dvb-ssu_spec.pdf)

<sup>40</sup> A USB thumb drive is a small solid-state drive that connects to a device through a USB port.

households would then be able to view a channel using this protection if the correct PIN code was entered.

## What about unconnected devices?

- 5.12 Unconnected devices are STBs and TVs which are not connected to the internet. They would therefore be unable to receive a software update required to implement a mandatory daytime PIN system. Some older STBs may also contain technology which is too old to support a software update.
- 5.13 If a channel was broadcast without encryption via DTT and received by a device which had not been updated for the required PIN protection capability, it would be unable to trigger a PIN prompt and the restricted content could be made available to view. This would clearly present a fundamental and serious protection risk to children. Therefore, until Ofcom could be satisfied that the behaviour of unconnected or older devices do not present this risk, the affected platforms would not be able to implement any mandatory daytime protection regime.
- 5.14 **YouView** stated in its response to the Call for Inputs that unconnected or rarely connected devices in its estate posed a possible protection risk to audiences as they would not be able to PIN restrict content. It noted that work would need to be undertaken to investigate a solution to this. **Freesat** also stated that for those devices unable to be updated it may be technically challenging, without adding encryption to otherwise unencrypted broadcast services, to impose a blank screen or a static message confirming the device could not receive the content.
- 5.15 Ofcom is keen to hear from all platform providers and broadcasters on this issue to fully understand any protection risks that may arise from unconnected or older devices across all platforms (see question 7 below).
- 5.16 Ofcom is also seeking information on how broadcasters and platform providers wishing to use an extension of the mandatory daytime protection rules would be able to ensure that there would be no risk of restricted content being shown without the necessary protections when using live pause or rewind/ fast forward functions on a DVR (see question 8 below).

## Metadata

Metadata is a set of data that describes and gives information about other data. Metadata for programmes carries a broad range of identifying descriptive information such as titles, programme guidance, or content ratings. This information is necessary for programme management, discoverability, and scheduling.

- 5.17 If a broadcaster wishes to schedule content using mandatory daytime protection, the broadcaster must provide adequate metadata to the platform. Accurate and consistent metadata would be essential to ensure that mandatory PIN protections were in place at the correct times and would work effectively.

5.18 Some responses to the Call for Inputs highlighted that additional metadata would be required on post-9pm watershed programmes to trigger mandatory daytime protection, and that currently the use of programme metadata is not standardised across the industry:

- **Freesat** saw the provision of metadata as a key obstacle. It suggested that only some broadcasters provided the metadata that STBs use to prevent access to on-demand content pre-watershed. Channels wishing to use mandatory daytime protection would need to provide additional metadata to the STBs in a standard form that the STBs could interpret. Freesat cited that this may present a barrier to smaller channel providers who may not be in a position to provide this additional metadata.
- **Youview** explained that its devices also need to receive metadata in a recognisable format to implement a PIN protection. YouView stated that it would be likely to need to make changes to its business-to-business and business-to-consumer interfaces to communicate any new metadata to STBs.
- There are two ways which broadcasters can restrict access to channels on the **Sky** Platform:
  - a watershed PIN system (currently used for film channels). This requires broadcasters to provide a parental rating in the programme metadata used to populate the Sky EPG; or
  - a content access PIN system (currently used for adult channels). For this type a technical change would be required to the broadcaster’s scheduling system to add a piece of meta-data to explicitly identify post-9pm watershed content before the 9pm watershed. This change would need to be made before schedules are provided to TV platforms to trigger a mandatory PIN.

Sky have informed Ofcom that if the Code was changed in this area, they would work closely with third party pay TV broadcasters to ensure they could make use of the relevant PIN functionality on Sky’s platforms. Sky have stated their commitment to continue to take steps to check the meta-data received from channels.

5.19 It is the responsibility of broadcasters (channels) to ensure that content is scheduled and coded correctly, with additional metadata to identify the need to enable PIN protection. Just as, at present, channels are ultimately responsible for the mandatory PIN protection of film and adult services on pay TV platforms, not the platform they are available on.

5.20 However, Ofcom would expect broadcasters and platforms to work together (through contractual agreements where necessary) to ensure the correct and consistent labelling, and checking, of content before transmission.

5.21 For some broadcasters wishing to use mandatory daytime protection, this could be readily incorporated within current processes for scheduling, transmission and encryption of content. For others, more work might need to be done to ensure programmes had the correct metadata which could be interpreted by all relevant STBs. Ofcom is interested in hearing from broadcasters (particularly smaller broadcasters) on this issue, and any cost implications which might be involved (see question 10 below).



## Which broadcasters and platforms have said that they would be able to use an extension to mandatory daytime protection?

5.22 We received several responses to the Call for Inputs from platform providers and broadcasters on this issue:

- **Sky** informed that it would be able to implement a mandatory daytime protection on non-film services immediately and that there would be no technical changes required to the Sky set top boxes to accommodate a mandatory daytime PIN.
- **Virgin Media** informed us that, with a lead time to develop bespoke solutions for content delivered via PCs and apps, it could readily apply mandatory daytime protection to programmes on newer STBs (such as TiVo boxes). However, for legacy ‘Liberate’ STBs it would be necessary to PIN-restrict the entire channel regardless of the age rating of the content (for Sky Cinema channels, Virgin Media currently PIN protects the entire linear channel on Liberate STBs). The impacts of this for channels and viewers are considered in paragraph 6.7 below.
- **YouView** provides mandatory daytime protection for premium subscription film services delivered over IP channels, and therefore could implement the same for other IP channels. However, YouView also stated that it *“anticipates that there would be technological challenges in replicating the PIN system that operates across IP channels to DTT channels, given the differences in broadcast infrastructure”*.
- Similarly, **BT** have informed us that PIN protection could be implemented for IP channels on its BT YouView boxes, and on EE STBs. However, that PIN protection may not be viable for DTT channels should the development costs prove to be prohibitive.
- **Freesat** also noted that mandatory daytime protection would be only feasible for introduction through an update to more modern IP-connected STB devices. It is a more difficult task for FTA providers where they would be required to influence manufacturing partners to develop future STB devices and TVs with PIN protection capability. Freesat did not believe its manufacturing partners would be easy to influence in this area. Freesat stated that a change to the PIN protection rules should only be imposed with agreement from all device manufacturers.
- **A PSB** outlined the technical constraints which would make implementing a mandatory daytime protection system on DTT impossible. **Channel 4** stated that Ofcom should wait until the technology for PIN systems has caught up to the extent that it could be rolled out across all platforms. Both Channel 4 and another PSB argued that a change in the rules would unfairly disadvantage providers who do not have the technical capability to enable PIN access. These effects on competition are considered further below in Section 6.

5.23 The information Ofcom received on the platforms’ technical capability was correct as of Spring 2016. We therefore welcome new information from respondents on any advances or changes in technical infrastructure.

**Implementation of mandatory daytime protection would be contingent on broadcast channel and platform capability. In summary, we understand only channels available on pay TV platforms would currently be able to implement the PIN system required for a mandatory daytime protection. It is currently technically unfeasible for free-to-air (“FTA”) services delivered via Digital Terrestrial Television (“DTT”), such as on Freeview. Platforms would also need to receive correct and consistent metadata from broadcasters to trigger the mandatory daytime protection.**

*Question 5: Do you agree with Ofcom’s assessment of the technical limitations involved in implementing an expansion to the mandatory daytime protection rules? Have there been any technical advancements in this area since the Call for Inputs in 2016?*

*Question 6: As a broadcaster or platform provider, do you foresee any issues with the provision or collection of metadata required for an extension to the mandatory daytime protection rules?*

*Question 7: How would unconnected and legacy devices behave with the introduction of extended mandatory daytime protection rules? How do broadcasters and platform providers intend to ensure that there would be no risk of inadvertently broadcasting unsuitable content which is not secured by mandatory PIN protection?*

*Question 8: How would mandatory daytime protection interact with the live pause/rewind/ fast forward functions on certain devices?*

*Question 9: What accessibility features are currently available, or could in future be implemented, to assist visually impaired people in accessing content restricted by a mandatory PIN?*

*Question 10: Are there any other technological, practical or cost issues involved which Ofcom should be aware of?*

## 6. Competition issues

- 6.1 The proposed extension to the mandatory daytime protection rules beyond premium subscription and pay per view film channels might potentially have some effects on competition within the broadcasting sector. These are considered in this Section from three perspectives:
- a) The effects for viewers;
  - b) The effects for platform providers; and
  - c) The effects for broadcasters/ channels.

### **An extension of mandatory daytime protection could increase viewing choice for some households**

- 6.2 The proposed extension of the mandatory daytime protection rules beyond premium subscription and pay per view film channels might lead to increased viewing choice for pay TV households. Programmes previously only available to watch between 21:00 and 05:30, would be available behind a mandatory PIN code during the daytime and early evening.
- 6.3 Pay TV subscribers who value these programmes, and wish to view this content at those times, may benefit from the proposed changes to the Code. This may be the case for a number of different types of Pay TV subscriber:
- adults in pay TV households without children, who work during daytime hours but would like to watch post-9pm watershed content earlier in the evening;
  - a small number of households which purchase pay TV services but do not have access to catch up/on-demand services via the internet (an alternative way of accessing post watershed content at any time).<sup>41</sup> This may be because:
    - they choose not to purchase internet services; or
    - they are in an area where the internet is not available or in an area where internet access is relatively poor;
  - older people<sup>42</sup>, such as those who are retired, who may rely more heavily than other groups on TV for entertainment (these groups tend to make up the largest proportion of daytime viewing<sup>43</sup>);

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<sup>41</sup> According to the Ofcom Technology Tracker 2017 (H2 QH1B) – 59% of UK adults have ‘any kind of paid for TV’ as their main platform and of these UK adults, 4% do NOT have access to internet at home.

<sup>42</sup> 59% of UK adults have ‘any paid for TV’ as their main TV platform – of these adults, 14% are 65+ years old (source: Ofcom Technology Tracker 2017 H2 QH1B)

<sup>43</sup> For instance, in 2017 the over 65s made up around 40% of those watching live TV between the hours 13:00 to 13:59 and were the largest group of viewers throughout the early afternoon. Source: BARB.

- adults of working age who are not employed in paid work, such as stay-at-home parents, students, and the unemployed<sup>44</sup>; and
  - adults with less traditional work patterns, such as part-time and shift workers, or people who work from home<sup>45</sup>.
- 6.4 Participants in the qualitative discussion groups (which took place as part of Ofcom’s research<sup>46</sup>), recognised the increased viewing choice that would be available to a number of particular groups of viewers, as outlined in paragraphs 4.15 to 4.16. Similarly, several respondents to the Call for Inputs also said that it could improve viewer choice.
- 6.5 As discussed in paragraph 2.11, we also understand that several multi-channel broadcasters are particularly interested in using mandatory daytime protection, were the current rules to be expanded. These include not only niche channels, such as the Crime & Investigation from AETN<sup>47</sup>, but also more mainstream entertainment channels such as Sky Atlantic<sup>48</sup>. Audiences of these channels may therefore particularly benefit from any such rule change.
- 6.6 On the other hand, there may be viewers who enjoy the content currently broadcast on these channels during the day and early evening and would not view any changes in programming available to them at those times as beneficial. For example, households with very young children.
- 6.7 Further, some respondents to the Call for Inputs noted that an extension of mandatory daytime protection could prove inconvenient or frustrating to some viewers. Viewers would have to enter a PIN each time they selected a restricted programme, even when switching between channels, such as during an advert break. In its response to the Call for Inputs, Virgin Media said that its older ‘Liberate’ STBs would need to PIN restrict the entire channel, as they cannot specify individual programmes. Therefore, households who wish to view any content on those channels, including that which is age appropriate for children, would have to enter a PIN to do so. It is possible that viewers would get used to this with time, but it may deter viewing of channels choosing to use a mandatory daytime protection.
- 6.8 It is not clear whether these potential downsides to some viewers are likely to be material. Pay TV platforms broadcast a large number of channels with a variety of content aimed at households with children during the day. Similarly, channels such as the PSBs and other

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<sup>44</sup> 59% of UK adults have ‘any paid for TV’ as their main TV platform – of these adults, 8% are ‘Not working (i.e. under 8 hours per week) and are housewives/disabled/other’; 5% are ‘Not working (i.e. under 8 hours per week) and are students; and 4% are ‘Not working (i.e. under 8 hours per week) and unemployed (registered/not registered but looking for work). (source: Ofcom Technology Tracker 2017 H2 QH1B, QZ9)

<sup>45</sup> 59% of UK adults have ‘any paid for TV’ as their main TV platform – of these adults, 17% work part time (8 to 29 hours per week). (source: Ofcom Technology Tracker 2017 H2 QH1B, QZ9)

<sup>46</sup> Daytime PIN Research, page 10. Kantar Media, 20th February 2018

<sup>47</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/72417/aetn\\_uk.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/72417/aetn_uk.pdf)

<sup>48</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0011/112034/Sky.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0011/112034/Sky.pdf)

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/72417/aetn\\_uk.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/72417/aetn_uk.pdf)

family channels, which are popular with viewers of all ages, are unlikely to introduce mandatory daytime protection.

- 6.9 Further, Ofcom notes that it would only be in broadcasters' interests to use mandatory daytime protection if it increased viewing of their channels. The multi-channel broadcaster group (CoBA) is strongly in favour of this change<sup>49</sup>, which suggests that it believes that viewing of channels would increase if it were introduced. In addition, just three in ten (29%) of adults surveyed thought that mandatory daytime protection would be likely to negatively affect their viewing of programmes on the channels involved<sup>50</sup>.
- 6.10 Overall, Ofcom considers it likely that certain pay TV subscribers would see a material increase in viewing choice as a result of the introduction of the mandatory daytime protection facility. Further, that any downsides to other groups are probably immaterial. However, we would welcome more information from stakeholders about the size of these different groups. We would also welcome information about the extent of any reduction in choice which might be faced by pay TV households with children.

*Question 11: Which particular types of pay TV subscribers could benefit from increased viewing choice, as a result of an extension in mandatory daytime protection? We welcome information and evidence from stakeholders about the size of such groups.*

*Question 12: To what extent could an extension of mandatory daytime protection result in any decreased choice for households with children? We welcome information and evidence from stakeholders.*

*Question 13: As a broadcaster, would you be likely to use mandatory daytime protection to broadcast content on your channel(s)? What type of content would this be? Please provide an estimate of the number of hours of broadcast that would be likely to take place in a typical month.*

## The extent of any positive effect for particular types of pay TV households is unclear

- 6.11 While it may be material, the extent of any positive effect on viewer choice within certain groups of pay TV households, is unclear. First, we understand that an extension of mandatory daytime protection is likely to be adopted by a relatively low number of channels. Second, and importantly, many pay TV viewers are already likely to be able to record programmes broadcast post-9pm watershed on DVRs to watch during the day or download programmes from VOD services.
- 6.12 However, not all broadcasters have on-demand programme rights (particularly for US imported programmes) and the recording of programmes on DVRs requires some planning ahead and organisation. Scheduled broadcast TV remains the main way of viewing content

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<sup>49</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/83696/the\\_commercial\\_broadcasters\\_association.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/83696/the_commercial_broadcasters_association.pdf)

<sup>50</sup> Daytime PIN Research, page 11. Kantar Media, 20th February 2018

– despite the growth of these other viewing options. Estimates by *3 Reasons* of legal, long-form viewing across all devices in 2016 show that people spend 80% of their viewing time watching scheduled TV, with recorded viewing accounting for 12%, and on-demand 8%<sup>51</sup>. If viewing of scheduled TV is the first choice of most viewers and if viewing choice is relatively ‘passive’ (i.e. viewers scroll until they find something that they want to watch), then the provision of PIN-restricted post-9pm watershed content for greater hours during the day and early evening, may lead to greater viewing of this content than if the household had planned this activity (either by recording or actively searching through on-demand content).

- 6.13 Provision of such non-film content with mandatory daytime protection could provide a new option for broadcast of appealing content and so represent an attractive expansion of choice for many pay TV viewers. This is at a time when audiences are becoming more flexible in their approach to consuming television services and have changing expectations about content availability.
- 6.14 However, Ofcom is aware that these markets may be changing rapidly, and we would welcome views on the extent of the improvements in viewing choices that mandatory daytime protection would offer to particular pay TV groups.

*Question 14: To what extent would there be any increase in choice for pay TV household groups as a result of the expansion of the mandatory daytime protection rules? We welcome information and evidence.*

### **While the extension of mandatory daytime protection would be unavailable on FTA platforms, it could offer some benefits to pay TV platform operators**

- 6.15 As discussed in Section 5, Ofcom considers that the technical requirements for mandatory daytime protection mean that it could only be introduced on pay TV platforms, and not FTA at present.
- 6.16 Hence, an extension of the rules may only increase viewing choice for pay TV subscribers. Pay TV is taken by a majority of UK households (58% of UK TV households at the end of 2016<sup>52</sup>), but there would be many, such as those who solely take FTA services, who would see no change in their viewing options.
- 6.17 Any FTA households who would particularly value the increased viewing choice offered via mandatory daytime protection, would have the choice to switch, at a cost, to pay TV to obtain such services. The ability to watch post-9pm watershed content behind mandatory daytime protection during the day, would be an incremental benefit of purchasing pay TV. It may result in the benefits of subscription outweighing the costs for some FTA households.

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<sup>51</sup> Source: The Communications Market 2017, page 92. Ofcom, 3<sup>rd</sup> August 2017

<sup>52</sup> Source: The International Communications Market 2017, page 107. Ofcom, 18<sup>th</sup> December 2017

- 6.18 However, levels of switching have been historically low across TV markets and FTA households seem particularly 'sticky'. Ofcom doubts that, on its own, the ability to view post 9pm watershed content on some pay TV channels during the day and early evening via a mandatory pin, would represent a significant incremental benefit to current FTA- only households. Hence, we doubt that material numbers of FTA households would switch to pay TV platforms. However, we would welcome views as to the likely extent of switching away from FTA platforms that could occur, as a result of the provision of mandatory daytime protection only on pay TV platforms.
- 6.19 The proposed extension of the mandatory daytime protection rules could arguably provide some other benefits to pay TV platforms.
- 6.20 For Sky, whose Sky Atlantic channel for example broadcasts content such as *Game of Thrones*, mandatory daytime protection could enable the broadcast of popular imported US dramas outside the hours of the traditional 9pm watershed. Broadcasters may not always have the on-demand rights for this type of content – so viewers wanting such content would be unable to 'catch up' via VOD services. Daytime broadcasts via mandatory daytime protection may therefore be an attractive option for current subscribers who signed up to the pay TV platforms largely to receive such content. Hence, it may reduce the likelihood of subscribers switching away from a platform, and stabilise pay TV providers' revenues.
- 6.21 Pay TV platforms may also benefit from increased revenues from channels who wish to use mandatory daytime protection. These may be channels currently on their platform but also any channels who decide to broadcast on the pay TV platform in order to use this service. However, any increased revenues would be offset to some extent by any costs of developing and managing the mandatory daytime protection system.
- 6.22 One response to the CFI (Channel 4) suggested that mandatory daytime protection would make pay TV platforms more attractive than FTA platforms to channels, as it would give channels greater freedom to schedule content. However, they also noted that it would be costly for channels to broadcast on both the FTA and pay TV platforms. This is because they would need two channel feeds (one with the restricted content and one without, which would have different programme edits and different scheduling). Channel 4 suggested that some channels would therefore stop broadcasting on FTA, reducing the variety of content shown on the FTA platforms relative to pay TV platforms, so further decreasing the attractiveness of the FTA platforms to households.
- 6.23 Ofcom considers it unlikely that many channels would stop operating on FTA platforms for these reasons. FTA platforms account for a large proportion of households and hence viewing – and most commercial channels depend on viewing to gain advertising revenues. Any decision by a channel to completely switch away from the FTA platform would have to weigh the benefits of doing so (for instance, reduced costs as there would be no need for two channel feeds), against the loss of viewing from FTA viewers. However, we would welcome any evidence from stakeholders who are concerned about the effect of any expanded mandatory daytime protection regime on the number of channels operating on the FTA platform.

- 6.24 Overall, we consider that there could be some increase in platform competition through the expansion of mandatory daytime protection, though it is difficult to judge the degree of this increase. We acknowledge that FTA platforms are unlikely to be able to supply, and therefore benefit from, this service. However, effective competition does not require that all providers supply exactly the same service. There is already considerable variety in the channels and services provided by different platforms. Mandatory daytime protection on non-film channels would be an additional feature increasing the variety of services available on pay TV platforms relative to FTA. It may therefore stimulate competition in the short term to some degree between the different platform services.
- 6.25 Viewers are already able to watch post-9pm watershed content during the day via VOD services, DVRs, and via subscription film channels behind a mandatory PIN. In Ofcom's view, enabling the use of expanded mandatory daytime protection on pay TV platforms would remove an outdated barrier to platform innovation, which may be beneficial to viewers in the longer run. In other words, an increase in competition could encourage innovation and investment by FTA platforms to tempt back viewers, or by pay TV platforms to continue to retain viewers. This innovation could be in a related area of child protection or something completely different which adds to the wider appeal of the platform.

*Question 15: To what extent might households be likely to switch away from FTA platforms due to the provision of mandatory daytime protection on pay TV platforms only? Ofcom would welcome information and evidence.*

*Question 16: To what extent would channels which currently broadcast on FTA platforms be likely to stop broadcasting on those platforms, because mandatory daytime protection can only be used on pay TV platforms? Ofcom would welcome information and evidence.*

*Question 17: To what extent could platform competition be stimulated as a result of an extension to mandatory daytime protection? What effects could there be in the longer run on innovation and investment? Ofcom would welcome views and evidence.*

### **Mandatory daytime protection may benefit some channels relative to others, but this would be the result of improved choice for viewers**

- 6.26 As noted above, a number of multi-channel operators are strongly in favour of an extension to mandatory daytime protection. This implies that these channel operators consider that the benefits of using it would outweigh the costs, i.e. that any net increase in their channels' viewing share and resultant increase in advertising revenues, would outweigh any costs of introducing the system.
- 6.27 Costs to channels may arise from any work necessary to fulfil the technical requirements of the system and any costs of additional content. The platforms themselves may impose higher charges on those broadcasters for enabling and maintaining these systems.
- 6.28 However, such broadcasters may also be able to save some costs through the use of mandatory daytime protection. In their response to the Call for Inputs, some channels



suggested that mandatory daytime protection could reduce editing costs<sup>53</sup>: this is because broadcasters would not need to re-edit post watershed programmes if they wished to broadcast them in a daytime schedule.

- 6.29 Several respondents to the CFI suggested that the extension of mandatory daytime protection may also enable scheduled TV channels to better compete with the growth of on-demand viewing. It is possible that once ‘in’ on-demand content, viewers may stay within this environment longer than a single programme – as a result of ‘recommendations’ and ‘binge’ viewing. The extension of mandatory daytime protection may lead some viewers, who currently use VOD during the day or early evening because they do not find current broadcast TV schedules appealing, to choose instead to view post-9pm watershed content on scheduled TV channels.
- 6.30 Adoption of mandatory daytime protection by a number of scheduled TV channels could affect competition between channels:
- i) **First, pay TV channels using mandatory daytime protection may see their share of viewing rise at the expense of channels not using such services.** The set of channels whose viewing might fall could include the PSB channels who are required to provide their services free-to-air.
  - ii) **Second, as higher shares of viewing are more attractive to advertisers, there are likely to be knock on effects on the relative levels of advertising revenues received by the different channels.** Those using mandatory daytime protection could see increases and those channels not using it could experience revenue falls. In other words, some channels may be worse off as a result of the changes in regulation.
- 6.31 It is difficult to assess the materiality and nature of changes in viewing share and advertising revenues before the fact. Ofcom would welcome any information from stakeholders which would provide evidence of the likely changes in channels’ viewing and advertising share as a result of extending mandatory daytime protection.
- 6.32 However, we note that channel viewing within the FTA platforms should be unaffected by any change (as no channels would operate a mandatory PIN). If share of viewing is measured across all viewers on all platforms, then those channels which operate across both pay TV and FTA, such as the PSBs, would only see a proportion of their viewing affected (the proportion generated by pay TV viewers).
- 6.33 Further, while certain channels may be worse off if they lose viewers and, potentially, advertising revenues, the changes in viewing and advertising revenue share would be the result of viewers acting on their improved viewing choices. As such, it would reflect the normal processes of competition.

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<sup>53</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/74284/channel\\_4.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/74284/channel_4.pdf)  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0032/83696/the\\_commercial\\_broadcasters\\_association.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0032/83696/the_commercial_broadcasters_association.pdf)

- 6.34 In the longer run, the competitive effects of any extension of the mandatory daytime protection rules are unclear. In its response to the 2016 Call for Inputs, Sky suggested that it would create opportunities for broadcasters to invest in and show more original and UK commissioned content. This content could then be broadcast for a greater number of hours. Whilst Ofcom accept that the attractiveness of investing in post watershed content could increase, we are not convinced that this implies that such content is necessarily 'original and UK based'. Respondents also noted that extension of mandatory daytime protection would enable broadcasters to innovate with their scheduling and make decisions based on viewers' preferences.
- 6.35 When considering longer run dynamic effects, it is worth bearing in mind that the main investors in UK content are the PSBs. It is possible that the extension of mandatory daytime protection may reduce their viewing and, for the commercial PSBs, their advertising revenues. This may have negative consequences for their levels of investment and programme making. On the other hand, there are potentially several ways that these channels could react and innovate if the mandatory daytime protection regime was expanded.
- 6.36 Ofcom would welcome any views and evidence in relation to the possible effects of extension of mandatory daytime protection on channel competition and UK programme making in the short and longer run.

*Question 18: To what extent are viewers likely to switch to channels that offer content behind mandatory daytime protection?*

**Overall, certain audience groups using pay TV may have an increase in viewing choice as a result of the mandatory daytime protection facility. However, while material, the extent of this positive effect on choice is unclear. We also consider that an extension of mandatory daytime protection may have a small positive effect on platform competition and potentially on dynamic platform competition (levels of innovation and investment).**

**Channel competition may also increase, though longer term effects on UK programme investment are more difficult to assess.**

**It is difficult to gauge the extent of the effects on competition issues and as such we welcome stakeholder views, supported where possible by evidence.**

*Question 19: Do you agree with our competition assessment above? Please give reasons and evidence where available for your answer.*

*Question 20: Are there any other relevant competition considerations that Ofcom has not taken into account? Please give details.*

## 7. Draft Code amendments

- 7.1 If, following consultation, Ofcom adopts its proposal for an extended mandatory daytime protection regime beyond premium subscription and pay per view film content, it will require an update to the relevant rules in Section One of the Broadcasting Code (“the Code”). To this end, this Section of the consultation invites comments on the draft amendments which we propose to make in the event that mandatory daytime protection was to be extended. These revisions would be necessary to allow for post-9pm watershed content to be shown in pre-watershed hours.
- 7.2 This is an opportunity for stakeholders to provide comments on the draft rule amendments. We will publish a Statement to conclude this review in early Summer 2018 and, if we conclude that the proposed extension of mandatory daytime protection is the right outcome within that Statement, we will set out then the revised wording of the Code rules. We do not intend to consult again before implementing new rules.
- 7.3 Section One of the Code fulfils Ofcom’s duty to set standards objectives to ensure that people under the age of eighteen are protected. There are 30 rules in the section covering:
- scheduling and content information;
  - the coverage of sexual and other offences in the UK involving under-eighteens;
  - drugs, smoking, solvents and alcohol;
  - violence and dangerous behaviour;
  - offensive language;
  - sexual material;
  - nudity;
  - films, premium subscription film services, pay per view services;
  - exorcism, the occult and the paranormal; and
  - the involvement of people under eighteen in programmes.
- 7.4 The revisions Ofcom would make to allow for an extension to mandatory daytime protection would only affect the rules in “*Films, premium subscription, pay per view services*”. We do not suggest making any amendments or additions to any rules under other sub-sections.

### What changes to the rules are we proposing?

- 7.5 If an extension to mandatory daytime protection is adopted, we suggest it could be best achieved by revising the current Rule 1.24 relating to premium subscription film channels (see the current rule in the box below). We also propose that other minor amendments to some of the other rules in the sub-section would be required.

Rule 1.24: *Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.*

*In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.*

*(See meaning of “mandatory restricted access” under Rule 1.18 above.)*

7.6 The suggested replacement for Rule 1.24 and amendments to the rest of the rules in the current “films, premium subscription films, and pay per view services” section are outlined in the box below with new text in grey highlight. The draft revisions we would propose to make are summarised as follows:

- a) A new title of the sub-section of the rules encompassing Rules 1.22 to 1.26 for clarity: “Films and mandatory daytime protection”.
- b) A new meaning of “mandatory daytime protection” to be set out above the rules. The current meaning of “mandatory restricted access” would continue to apply for adult sex material under Rule 1.18 where content is not permitted for broadcast during the daytime.
- c) No amendments to Rule 1.22.
- d) A minor amendment to Rule 1.23 to remove the reference to “pay per view services” and replace it with “mandatory daytime protection”. We consider that this would widen the exception in the brackets to all programmes and films protected by a mandatory PIN, including pay per view films.
- e) The removal of the reference to premium subscription film services in Rule 1.24 which would instead apply to all content. The new wording would provide consistency for all films and programmes which are unsuitable for pre-watershed scheduling to broadcast only if behind mandatory daytime protection. This new rule would remove the carve out in the current version of Rule 1.24 to allow BBFC 15-rated films to be shown at 20:00 on premium subscription services. This is because we consider that any extension of the mandatory daytime protection should be applied consistently across programmes and films. We welcome views on this.
- f) A requirement for broadcasters to provide programme information to assist viewers in making a decision about the suitability of the content. We know from our audience research that programme information and ratings are a useful and valued tool for parents, used in conjunction with the watershed and PINs. We would include a note with the rule to assist broadcasters in understanding the types of programme information Ofcom would take into account under this rule.
- g) A requirement for broadcasters to provide a clear explanation of mandatory daytime protection to all viewers. Stakeholders are invited to provide practical suggestions in this area which balance the need to avoid any unnecessary burden on broadcasters

with the need to ensure that viewers, and in particular parents and carers, are provided with adequate information about any mandatory daytime protection system they intend to use.

- h) A reference in Rule 1.24 to Ofcom's rules on scheduling to be clear that when mandatory daytime protection is not in place, broadcasters must abide by the 9pm watershed and related rules. For example, Rule 1.6 requires that the transition to more adult material at the watershed must not be unduly abrupt.
- i) A minor amendment to Rule 1.25 to replace the reference to "mandatory restricted access" with "mandatory daytime protection". There would be no other alterations to any other parts of this rule and pay per view services would not be incorporated into Rule 1.24 due to the additional requirement for detailed billing systems within this rule.
- j) No amendments to Rule 1.26. BBFC R-18 films will continue to be prohibited on all channels.

#### **Films and mandatory daytime protection, ~~premium subscription films and pay per view services~~**

##### *Meaning of "mandatory daytime protection"*

*Mandatory daytime protection means there is a PIN protection system in place pre-2100 and post-0530 which cannot be removed by the user and restricts access solely to those authorised to view.*

*This does not apply to 'adult sex material' which under Rule 1.18 can only be shown between 2200 and 0530 **and** must be behind mandatory restricted access (See Rule 1.18).*

1.22 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast, unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:

- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
- the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.

1.23 BBFC 18-rated films or their equivalent must not be broadcast before 2100, on any service (except behind mandatory daytime protection ~~pay per view services~~), and even then, they may be unsuitable for broadcast at that time.

1.24 Provided that mandatory daytime protection is in place pre-2100 and post-0530, programmes that are unsuitable for children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day. Clear information must be provided with programme and film content that will assist adults to assess its suitability for children, and the mandatory daytime protection which is in place must be clearly explained to all viewers.

When not using mandatory daytime protection, broadcasters must comply with Ofcom's rules on scheduling and the watershed (see Rules 1.1 to 1.7).

**Notes**

'Clear information about programme and film content' may include but is not limited to:

- information about the programme provided in the EPG referring to any potentially unsuitable material such as "strong language", "nudity", "scenes of graphic violence", or "sexual images";
- ratings (BBFC or equivalent); and/or
- information given in continuity announcements.

1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory daytime protection ~~mandatory restricted access~~ is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of "mandatory daytime protection ~~mandatory restricted access~~" under Rule ~~1.18~~ above.)

1.26 BBFC R18-rated films must not be broadcast.

*Question 21: Do you have any comments on the proposed revisions to the rules in Section One to allow for an extension to the mandatory daytime protection regime?*

*Question 22: Should the revised rules allow up to BBFC 15-rated films to be shown at 20:00 on premium subscription film channels (as the current rules do)? Or would consistency across all channels be more beneficial?*

*Question 23: What information should/ could be provided with programmes using a mandatory daytime protection to inform viewers on the suitability of the content?*

# A1. Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Wednesday 9 May 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/mandatory-daytime-protection>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [MDP.Review@ofcom.org.uk](mailto:MDP.Review@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Standards and Audience Protection team  
CSLE, Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 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.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please email [MDP.Review@Ofcom.org.uk](mailto:MDP.Review@Ofcom.org.uk).

## Confidentiality

- A1.11 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 all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 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.
- A1.13 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.
- A1.14 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 at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in Summer 2018.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A1.18 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.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:



**Review of the rules for mandatory daytime protection**

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

## A2. Ofcom's consultation principles

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

#### Before the consultation

- A2.1 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 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.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. 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.

## A3. Consultation coversheet

### BASIC DETAILS

Consultation title: organisation realise

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 seeks to publish responses on receipt. 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)

## A4. Consultation questions

A4.1 The full set of consultation questions is listed below. Stakeholders are invited to respond to any questions to which they have views or information. It is not necessary to provide responses to all questions.

*Question 1: Would extending mandatory daytime protection have an adverse impact on the 9pm watershed? Could the change erode public confidence in the 9pm watershed?*

*Question 2: Would extending mandatory daytime protection increase the risk of children viewing post watershed content?*

*Question 3: How effective are mandatory PINs currently in protecting children? As part of this response we welcome views on the effectiveness of the protection offered for younger and older children.*

*Question 4: What more could be done to bolster the effectiveness of PINs?*

*Question 5: Do you agree with Ofcom's assessment of the technical limitations involved in implementing an extension to the mandatory daytime protection rules? Have there been any technical advancements in this area since the Call for Inputs in 2016?*

*Question 6: As a broadcaster or platform provider, do you foresee any issues with the provision or collection of metadata required for an extension to the mandatory daytime protection rules?*

*Question 7: How would unconnected and legacy devices behave with the introduction of extended mandatory daytime protection rules? How do broadcasters and platform providers intend to ensure that there would be no risk of inadvertently broadcasting unsuitable content which is not secured by mandatory PIN protection?*

*Question 8: How would mandatory daytime protection interact with the live pause/rewind/fast forward functions on certain devices?*

*Question 9: What accessibility features are currently available, or could in future be implemented, to assist visually impaired people in accessing content restricted by a mandatory PIN?*

*Question 10: Are there any other technological, practical or cost issues involved which Ofcom should be aware of?*

*Question 11: Which particular types of pay TV subscribers could benefit from increased viewing choice, as a result of an extension in mandatory daytime protection? We welcome information and evidence from stakeholders about the size of such groups.*

*Question 12: To what extent could an extension of mandatory daytime protection result in any decreased choice for households with children? We welcome information and evidence from stakeholders.*

*Question 13: As a broadcaster, would you be likely to use mandatory daytime protection to broadcast content on your channel(s)? What type of content would this be? Please provide an estimate of the number of hours of broadcast that would be likely to take place in a typical month.*

*Question 14: To what extent would there be any increase in choice for pay TV household groups as a result of the expansion of the mandatory daytime protection rules? We welcome information and evidence.*

*Question 15: To what extent might households be likely to switch away from FTA platforms due to the provision of mandatory daytime protection on pay TV platforms only? Ofcom would welcome information and evidence.*

*Question 16: To what extent would channels which currently broadcast on FTA platforms be likely to stop broadcasting on those platforms, because mandatory daytime protection can only be used on pay TV platforms? Ofcom would welcome information and evidence.*

*Question 17: To what extent could platform competition be stimulated as a result of an extension to mandatory daytime protection? What effects could there be in the longer run on innovation and investment? Ofcom would welcome views and evidence.*

*Question 18: To what extent are viewers likely to switch to channels that offer content behind mandatory daytime protection?*

*Question 19: Do you agree with our competition assessment above? Please give reasons and evidence where available for your answer.*

*Question 20: Are there any other relevant competition considerations that Ofcom has not taken into account? Please give details*

*Question 21: Do you have any comments on the proposed revisions to the rules in Section One to allow for an extension to the mandatory daytime protection regime?*

*Question 22: Should the revised rules allow up to BBFC 15-rated films to be shown at 20:00 on premium subscription film channels (as the current rules do)? Or would consistency across all channels be more beneficial?*

*Question 23: What information should/ could be provided with programmes using a mandatory daytime protection to inform viewers on the suitability of the content?*