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## Listed Events

Identifying television services that are free-to-view and widely available

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**CONSULTATION:**

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Closing Date for Responses: 18 January 2019

## About this document

The 'listed events' rules are intended to ensure that certain events of national interest, such as major sporting contests, are available to view live, and for free, by the widest possible audience.

Ofcom's role is to maintain a list of television channels that are free-to-view and widely available.

The current list of qualifying services was published in 2008. In light of developments in how viewers access television, in particular the increase in viewing via IPTV and the use of devices other than television sets to do so, we consider it appropriate to publish an updated list. We are therefore consulting on the methodology which we propose to use to assess which services qualify to be on the list.

We are not considering what the events of national interest are, as that is determined by Government. We are also not considering the associated rules for the broadcast of these events or the requirement that television channels on the list need to be free-to-view and widely available, as that is a matter for Parliament.

# Contents

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## Section

1. Executive summary	1
2. Introduction	3
3. Our proposed methodology for assessing the qualifying conditions	5
4. Applying our proposed methodology to current services	15
5. Amending the list of qualifying services in the future	17

## Annex

A1. Responding to this consultation	18
A2. Ofcom's consultation principles	21
A3. Consultation coversheet	22
A4. Consultation questions	23

# 1. Executive summary

- 1.1 The ‘listed events’ rules are intended to ensure that certain events of national interest are available to view live, and for free, by the widest possible audience. The list of events is set by the Secretary of State and currently includes major sporting events, including the FIFA World Cup and Wimbledon Tennis Finals. Ofcom’s role is to maintain a list of television channels that are free-to-view and are received by 95% of the UK population. Television channels which meet these two qualifying conditions are referred to as “qualifying services”.
- 1.2 This document sets out our proposals to update the list of qualifying services, which was last reviewed in 2008. It does not consider what the events of national interest are, as that is determined by Government. It also does not consider the associated rules for the broadcast of these events or the definition of qualifying services, as that is a matter for Parliament.
- 1.3 We are reviewing and updating the list of qualifying services, taking account of significant changes in the ways people now watch TV, in particular the increase in online viewing and the use of devices other than television sets. Most TV services are received through a broadcast digital TV platform such as satellite (Sky, Freesat), cable (Virgin Media) or digital terrestrial TV (Freeview). A growing number of viewers choose to receive services through the internet (IPTV)<sup>1</sup>, either alongside or without a broadcast TV platform. For example, a household may be able to receive broadcast services via DTT on their internet connected television, which can also access IPTV services. Many people can receive the same service through multiple platforms, but not all TV services or platforms are available throughout the UK.
- 1.4 We are consulting on our proposed methodology to determine the updated list of qualifying services. Two key aspects of our methodology, which reflect developments in how audiences receive and watch television programmes, are:
- First, in 2008, we assessed whether a service was received on broadcast platforms only. We now propose to assess whether a channel meets the 95% reception threshold taking account of all TV platforms, including IPTV;
  - Second, in 2008, we assessed whether a service was viewed on a TV set. We now propose to measure reception of a television channel based on a household’s “main screen” for watching TV channels; this may be their television set, but equally, for some households, this may be a computer or tablet.
- 1.5 Applying our proposed methodology, a television channel will only meet the two qualifying conditions if it (a) is on satellite and cable platforms, can be viewed by all DTT viewers and

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<sup>1</sup> Internet Protocol TV (IPTV) are internet delivered TV services that can either be streamed from platform providers such as BT or TalkTalk, or be streamed ‘over the top’ (OTT) by their service providers directly to consumers.

is also streamed on IPTV, and (b) is provided either without charge or in a 'basic' subscription package.

- 1.6 For indicative purposes, on the basis of the data used for the purpose of this consultation, the following television channels would meet those conditions: BBC 1, BBC 2, Channel 3 Network (broadcast as ITV, STV, UTV), Channel 4, ITV2, ITV3, BBC 4, More 4, Film 4, ITV4, CBBC, CBeebies, BBC News, and BBC Parliament. We emphasise that this is an indicative list based on our proposed methodology. Following this consultation, we will reach a decision on the methodology that we will use, and we will apply our methodology using up-to-date information to update and publish the list of qualifying services.
- 1.7 We are now seeking views on our proposals. The closing date for responses is 18 January 2019.

## 2. Introduction

### The listed events legislation

- 2.1 The listed events legislation is intended to ensure that certain events of national interest are available to view live, and for free, by the widest possible audience. It was established by Parliament in the Broadcasting Act 1996.<sup>2</sup>
- 2.2 Under the legislation, the Secretary of State publishes a list of events to which the regime applies (the “listed events”), which can include sporting events or other events of national interest. The Secretary of State can revise the list of events over time. The current list was revised in 1998 and includes sporting events like the Olympic Games, the FIFA World Cup and Wimbledon.<sup>3</sup>
- 2.3 The listed events regime divides the services people use to watch television into two categories. One category consists of those services which satisfy certain qualifying conditions intended to ensure that they are freely available to the large majority of the population (“Qualifying Services”). The other category consists of those services which do not satisfy those conditions (“Non-qualifying Services”).
- 2.4 The regime imposes certain rules about the contractual arrangements that may be made to show listed events, by reference to these two categories of services. It also places restrictions on the exclusive broadcasting of live coverage of listed events. In particular, a service in one category (either a Qualifying Service or a Non-qualifying Service) may not show exclusive live coverage of a listed event unless a service in the other category has also acquired the right to show coverage of the same event (or unless they have Ofcom’s prior consent).<sup>4</sup>

### Ofcom’s role in relation to Qualifying Services

- 2.5 Television programme services and EEA satellite services will be Qualifying Services if they meet both of the “qualifying conditions” set out in statute. The qualifying conditions are:
  - a) that the service is provided without any consideration being required for reception of the service (the “free-to-view condition”); and

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<sup>2</sup> Part IV of the Broadcasting Act 1996

<sup>3</sup> The revised list was set out in a statement by the Secretary of State [https://publications.parliament.uk/pa/cm199798/cmhansrd/vo980625/text/80625w12.htm#80625w12.html\\_sbhd6](https://publications.parliament.uk/pa/cm199798/cmhansrd/vo980625/text/80625w12.htm#80625w12.html_sbhd6). For clarity, it is also set out in Ofcom’s Code on Sports and Other Listed and Designated Events, available at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/35948/ofcom\\_code\\_on\\_sport.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/35948/ofcom_code_on_sport.pdf)

<sup>4</sup> We note that the Secretary of State has distinguished between Group A and Group B events. Broadly speaking, the intention is that Group A events will be shown live on a qualifying service, whereas Group B events will have at least secondary coverage (e.g. highlights or delayed broadcast) on a qualifying service.

- b) that the service is received by at least 95% of the population of the United Kingdom<sup>5</sup> (the “reception condition”).
- 2.6 Ofcom is required to publish, from time to time, a list of the services which it considers satisfy the qualifying conditions. We published the current list of qualifying services in 2008. The services included on that list are BBC1, BBC2, the Channel 3 network service (under licences now held by ITV plc and STV plc), Channel 4 and Channel 5.
- 2.7 In light of the developments in how viewers access television services, in particular the increase in viewing via IPTV and the use of devices other than television sets to do so, we think it is now appropriate to review and update the list of qualifying services.
- 2.8 This document is our consultation on our proposals to update the list of qualifying services. It does not deal with other aspects of the listed events regime, such as changes to the qualifying conditions<sup>6</sup>, changes to the list of listed events<sup>7</sup>, or the matters that will be taken into account in giving or revoking consent for exclusive coverage (as set out in Ofcom’s Code<sup>8</sup>).

## Structure of this document and next steps

- 2.9 The rest of this document is structured as followed:
- a) Section 3 explains our proposed methodology for assessing which services meet the qualifying conditions;
  - b) Section 4 explains how we propose to apply that methodology to current services;
  - c) Section 5 explains how we intend to allow for further amendments to the list of qualifying services beyond this review.
- 2.10 We welcome stakeholders’ views on the proposals set out in this document. Annex 2 explains how you should respond to the consultation. The closing date for responses to the consultation is 18 January 2019.
- 2.11 We have produced a model to show how we would implement our proposed methodology, and to provide an indicative assessment of the services that would meet the qualifying conditions under that methodology. The model uses BARB ES data for Q3 2017, so should be regarded as illustrative only. We will be publishing the model on our website on or before 23 November. In setting the deadline for responding to our consultation, we have taken account of the gap between the publication of this consultation document and the publication of the model.

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<sup>5</sup> Broadcasting Act 1996, section 98(2). The Digital Economy Act 2017 amended the legislation to allow the Secretary of State to amend the 95% figure for the reception condition by Statutory Instrument. However, the Secretary of State has not done so to date.

<sup>6</sup> This is a matter for Parliament

<sup>7</sup> As noted above, this is a matter for the Secretary of State.

<sup>8</sup> Code on Sports and Other Listed and Designated Events, available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/35948/ofcom\\_code\\_on\\_sport.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/35948/ofcom_code_on_sport.pdf)

## 3. Our proposed methodology for assessing the qualifying conditions

- 3.1 In this section, we first explain the different ways in which television services are received in the UK. We then explain our proposed methodology for determining which services meet the reception condition. Finally, we explain how we propose to determine which of the services that meet the reception condition also satisfy the free-to-view condition.

### Television platforms in the UK

- 3.2 UK viewers can now watch television via different types of technology and platforms. The most widely used platform is digital terrestrial television (DTT) which, following digital switch-over in 2012, replaced analogue terrestrial television. The DTT platform currently consists of eight national DTT multiplexes<sup>9</sup>, of which three are public service broadcaster (PSB) multiplexes<sup>10</sup>, and five are commercial multiplexes. The obligations in the PSB multiplex licences are designed to ensure that at least 98.5% of households in the UK have coverage from all three PSB multiplexes.<sup>11</sup> This is not the case for commercial multiplexes, and currently three of the commercial multiplexes reach approximately 90% of households, and two of the commercial multiplexes reach approximately 76% of households. The coverage area of the PSB multiplexes includes the coverage areas of the commercial multiplexes i.e. any household within the coverage area of the commercial multiplexes is also within the coverage area of the PSB multiplexes.
- 3.3 Television satellite services are available throughout the UK, and can be accessed through Sky's service, or Freesat's service. A range of core services can also be viewed free of charge through Sky's UK viewing card. Any home can, in principle, receive satellite services, if they have an appropriately positioned satellite dish and the necessary decoding equipment. However, approximately 2% of premises do not have the necessary line of sight to the satellites. Certain households, for example those living in blocks of flats, may also be precluded by lack of access because it may not be feasible to install a dedicated household dish.
- 3.4 Cable television services are available from Virgin Media's cable TV network, which currently passes approximately 45% of households. Any household within Virgin Media's

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<sup>9</sup> A DTT multiplex is a technology that bundles multiple TV services into a single broadcast data-stream.

<sup>10</sup> The PSB Multiplexes are PSB 1, PSB 2 and PSB 3 multiplexes. PSB 3 carries High Definition (HD) services. The Commercial Multiplexes are COM4, COM5, COM6, COM7, COM8. There are additional Local and Regional TV Multiplexes with smaller coverage areas.

<sup>11</sup> The coverage of the public service digital television multiplexes was designed to meet the same level of coverage that analogue services achieved: 98.5% of all UK households. The requirement to broadcast at this level of coverage is set out in the PSB service licences. [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/27359/no2factsheet.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/27359/no2factsheet.pdf)

network footprint can receive cable services through Virgin’s pay-TV service, with the appropriate set-top box and viewing card.

- 3.5 Increasingly, viewers also access television services using Internet Protocol Television (IPTV). Internet connected devices – such as connected televisions, tablets, smartphones and streaming devices – allow viewers to access both linear TV services and related catch-up content, and non-catch-up on-demand content. Such services can be streamed from platform providers such as BT or TalkTalk, or be provided ‘over the top’ (OTT<sup>12</sup>) directly by the service provider. Unlike broadcast platforms (satellite, cable and DTT), for which there is no limitation to the number of people which can receive the signal (provided they are within the platform’s footprint and have the necessary equipment), television services delivered via IPTV requires the provider to be able to deliver a separate stream to each device, normally through the use of a Content Delivery Network (CDN<sup>13</sup>).
- 3.6 Many viewers nowadays use multiple screens and platforms to watch television services. For example, a household may have a main television set which receives services via satellite, a secondary set which receives services via DTT, and multiple internet-connected devices (such as smartphones) to access IPTV. An increasing proportion of UK households now connect their main TV set to the internet as well as to a satellite, cable, or DTT broadcast platform.

## The reception condition

### “Receiving” a service

- 3.7 The reception condition requires that the service is “received” by at least 95% of the population of the United Kingdom. It is important to explain at the outset what we consider it means to “receive” a service for the purpose of the reception condition.
- 3.8 We consider that a service is only “received” on a given platform if (1) a person can receive the signal or data by which the platform transmits services to their home, and (2) they have the necessary equipment to decode the signal or data and view services on that platform in their home.
- 3.9 With reference to the platforms described above, this means that:
- a) services on a DTT platform can be received in any home that has an appropriate aerial connected to a DTT receiver (within a TV set, or through a set top box) and which has a usable signal from one or more of the DTT multiplexes.

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<sup>12</sup> Over the top (“OTT”) delivery is a term used to refer to content providers that distribute streaming media directly to consumers over the internet outside of an IPTV platform.

<sup>13</sup> A Content Delivery Network is a system of servers at the edge of the network that serve content close to the location of the consumer.

- b) services on a satellite platform can be received in any home that has access to signals from an appropriate dish using an integrated Freesat television set or a Freesat box, or a Sky box with a valid viewing card (including 'Freesat by Sky').
  - c) services on a cable platform can be received in any home passed by Virgin's network that has a Virgin set top box with a valid viewing card.
  - d) IPTV services can be received in any home that has broadband or other IP connectivity, with the ability to watch television programme services<sup>14</sup>.
- 3.10 We note that, for the purposes of the reception condition, we must assess whether a service is received by 95% of the **entire** population, including those who choose not to receive any television services.

## Summary of our proposed methodology

- 3.11 In this consultation, we are proposing a methodology designed to identify the services that appear to us to meet the qualifying conditions, in accordance with the legislative framework. When assessing the reception of individual services for the purpose of the reception condition we have made judgments and reasonable simplifying assumptions, recognising that there is no perfect set of data for this purpose. However, we consider that our proposed methodology represents an appropriate and proportionate approach to the task, using the best data we have available for the purpose, and making reasonable assumptions where necessary.
- 3.12 In order to calculate the proportion of the population that can receive a television service for the purpose of assessing whether the reception condition is met:
- a) Using data from the BARB Establishment Survey (BARB ES), we calculate the percentage of people who can receive content by the different means of distribution on their households' main screen – this can be either cable, satellite, DTT or IPTV.
  - b) In the case of DTT, using data from the UK Planning model, we calculate the percentage of DTT viewers able to receive content distributed by the PSB multiplexes, and the percentage of DTT viewers able to receive content distributed by the commercial multiplexes.
  - c) With reference to the reception of each platform, and the platforms the television service is available on, we calculate the proportion of the population which can receive the television service.
  - d) Where the platforms on which the television service is available includes IPTV, we assess whether the relevant broadcaster ensures the availability of its service through reliable IPTV streams.

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<sup>14</sup> We note that, as explained below, for the purpose of assessing whether the reception condition is met, we only take account of the ability to view television programme services on a household's main screen.

- 3.13 Following application of the reception condition, we identify whether each service which meets the reception condition appears to us to satisfy the free-to-view condition.

### Key aspects of our methodology

- 3.14 The two key aspects of our methodology, which reflect developments in how audiences receive and watch television services, are as follows:
- a) First, we propose to include reception of services by IPTV as well as broadcast TV platforms. A growing number of viewers now access television services by IPTV. While some viewers do so in addition to viewing services through traditional broadcast platforms, a growing proportion of viewers exclusively use IPTV. To exclude IPTV from our calculations would therefore have the effect of understating the proportion of the population that receive those services.
  - b) Second, we propose that in assessing whether an individual receives a television service, we should consider whether it can be viewed on the household's "main screen". We take a household's "main screen" to be the household's largest television screen, or if there is no television screen, then we include computers and tablets. However, we believe it would not be desirable to consider the platforms which are accessible on other "secondary" screens (i.e. screens other than a household's main screen). This is because doing so would mean some viewers would not have the option to view listed events on their main screen, which is typically the screen they would prefer for the type of events included on the list. This is especially undesirable, as the listed events regime targets those events of national importance which "serve to unite the nation"<sup>15</sup> and for which a shared viewing experience is likely to be particularly important.

### Calculating reception of content on platforms using BARB data

- 3.15 As noted above, in order to calculate the proportion of the percentage of people who can receive content by the different means of distribution, we assess whether the television service can be received by an individual via satellite, cable, DTT or IPTV on the individual's main screen.
- 3.16 The most widely used source of data on the reception and viewing of television services is the BARB Establishment Survey (BARB ES)<sup>16</sup>. BARB survey 53,000 people annually to establish, among other things, the manner in which households receive television services. Specifically, BARB collect data on the proportion of households which receive television services, and what technology is used to receive those services. BARB also survey the proportion of individuals who have broadband, whether they watch television programmes online (on demand or live), and how they watch television programmes online: on their TV

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<sup>15</sup> DCMS leaflet "coverage of sport on television":

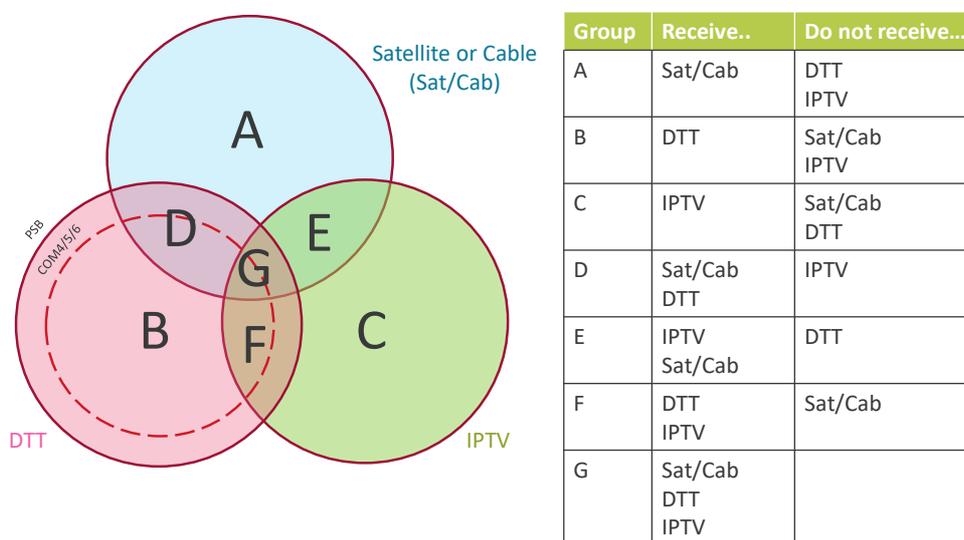
[http://webarchive.nationalarchives.gov.uk/http://www.culture.gov.uk/PDF/sport\\_on\\_television.pdf](http://webarchive.nationalarchives.gov.uk/http://www.culture.gov.uk/PDF/sport_on_television.pdf)

<sup>16</sup> BARB Establishment Survey publications: <https://www.barb.co.uk/resources/establishment-survey/>

set (e.g. via a connected set-top box, integrated TV connection or games console) or on a different internet connected device (laptop, tablet or mobile).

- 3.17 We consider that this data corresponds with how we apply the reception condition, in that it identifies households who can receive the transmission signal for a particular platform and have the necessary equipment to watch services on that platform in their home. We also consider that the BARB ES data is the most robust data available for our purposes.
- 3.18 BARB also collects data about household profiles. These profiles, combined with Office of National Statistics data, enables BARB to estimate the “individuals in households” represented by its sample. This means that it can be used to give a reliable estimate of the proportion of the population receiving particular services (and not just the proportion of households).
- 3.19 On our behalf, a BARB-licensed agency has used the survey data to calculate the size of different groups of users as a proportion of the population.<sup>17</sup> The following diagram sets out the different groupings of users and where they receive a single platform or multiple platforms. The accompanying table sets out which platform users in the group receive and which they do not receive. For example, Group F are those users who receive DTT and IPTV, but not Satellite or Cable<sup>18</sup>. We note the Groups with DTT (B, D, G, F) may include users who receive services available on the PSB multiplexes only and users who also receive services available on the commercial multiplexes (COM4/5/6). This is discussed further below.

**Figure 1: Schematic diagram of different groups of platform users**



Source: Ofcom, based on BARB ES

<sup>17</sup> The groups of users calculated are different from those set out in the BARB ES reports, which are based on households and different combinations of technologies in these.

<sup>18</sup> BARB ES collects data separately for satellite and cable users. However, we consider them together for the purpose of our methodology because in almost all cases, one platform is received to the exclusion of the other on the household’s main screen. We have also represented this as such in Figure 1.

## Adjusting for differences between PSB and commercial DTT multiplexes

- 3.20 As noted above, the coverage of the commercial DTT multiplexes is lower than the coverage of the PSB multiplexes. Therefore, some individuals accessing television services via DTT will only be able to view television services available on the PSB multiplexes, whereas others will be able to view television services available on the PSB multiplexes and television services available on the commercial multiplexes. It is important for us to be able to assess the proportion of the population that is only able to view services available on the PSB multiplexes because these people will not be able to access services that are carried on the commercial multiplexes. However, BARB does not collect data which allows us to distinguish between those individuals.
- 3.21 In order to calculate the percentage of DTT viewers only able to access the PSB multiplexes and the percentage able to access both the PSB and the commercial multiplexes, we propose to use data from the UK Planning Model (the software tool we have used to estimate DTT coverage for Digital Switchover and subsequent spectrum projects), as published in Ofcom's Connected Nations report.<sup>19</sup> This sets out that each of the DTT multiplexes PSB1, PSB2 and PSB3 can currently be received by 99% of households in the UK. The COM4, COM5 and COM6 multiplexes can be received by 90% of households. COM7 and COM8 can be received by 76% of households.<sup>20</sup>
- 3.22 Our proposed methodology assumes that DTT viewers who can receive all multiplexes and DTT viewers who can receive only the PSB multiplexes are distributed geographically in the same way as all of the DTT viewers reported in the BARB data<sup>21</sup>. We therefore assume that, of the DTT viewers, 9% are able to access services only from the PSB multiplexes, whereas the remaining 91% can access services on both the commercial and PSB multiplexes.<sup>22</sup>
- 3.23 This adjustment therefore implicitly assumes (1) that households able to receive only the PSB DTT Multiplexes are as likely to be DTT-only households as those that can receive all of the channels; and (2) that their household profile (in terms of number of individuals in the households) is the same as all DTT-only households. While it may be the case that households in areas which are not covered by the commercial multiplexes would be more likely to use a different platform in order to access a wider range of television services, we do not have data about the actual geographic distribution of DTT-only viewers which can only view services on the PSB multiplexes.
- 3.24 In addition, we have undertaken sensitivity analysis to understand whether a skew to satellite/cable or IPTV would change our assessment as to the qualifying services set out in

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<sup>19</sup> Paragraph 9.4, available at

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/108517/connected-nations-evolution-television-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/108517/connected-nations-evolution-television-2017.pdf)

<sup>20</sup> Coverage is subject to change and could increase. However, it has been constant since digital switch-over.

<sup>21</sup> The relationship between household size and platform mix is derived from the BARB ES data. Further, we have assumed that the individuals present in each multiplex area have, on average, the same household profiles as present on a national basis.

<sup>22</sup> We recognize that of 91% of DTT users who can access PSB and commercial multiplexes, not all users will be able to access services on all commercial multiplexes. We note that COM4, COM5 and COM6 have higher coverage than COM7 and COM8. For the purpose of assessing reception, we have therefore not, at this stage, separately considered the services available on COM7 and COM8.

section 4. Specifically, we found that even making an extreme assumption for a PSB multiplex-only area - that DTT usage drops by 50%, with those households using satellite/cable or IPTV instead - our indicative assessment of qualifying services based on the current data would not change.

## Calculating reception of television services

3.25 For the purposes of this consultation we have applied our proposed methodology set out above to calculate the proportion of individuals in the UK which receive television services on different platforms on their household's main TV. Our calculations are based on the BARB ES for Q3 2017, so should be regarded as illustrative only. Before publishing a list of services that meet the qualifying conditions, we will update the calculations based on the most recent BARB ES data.

3.26 The figures below<sup>23</sup> set out these calculations:

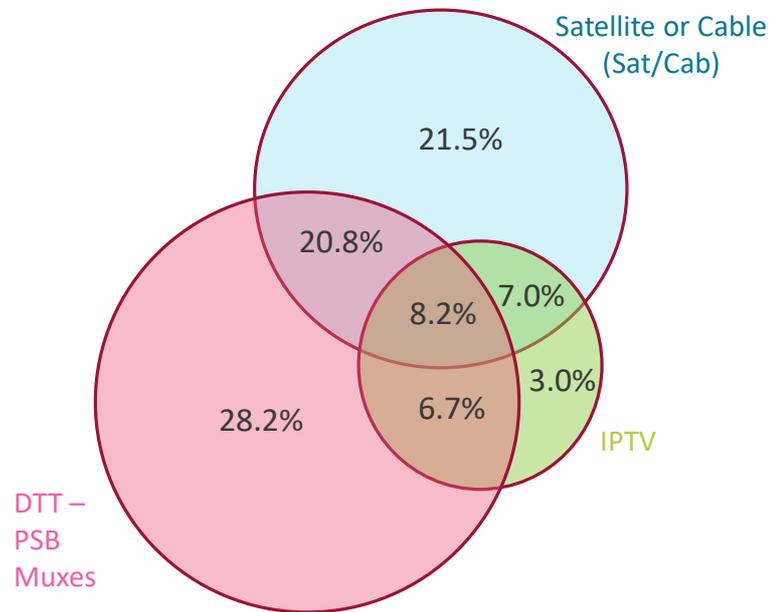
- Figure 2: services available on PSB DTT multiplexes, satellite, cable, and IPTV. A service available on all of these platforms could be received by 95.3% of the population.
- Figure 3: services available on Commercial DTT multiplexes, satellite, cable, and IPTV. A service available on all of these platforms could be received by 93.2% of the population.<sup>24</sup>

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<sup>23</sup> The calculations are to 0.1 decimal place, and therefore total differently to Figure 2 and 3 due to rounding.

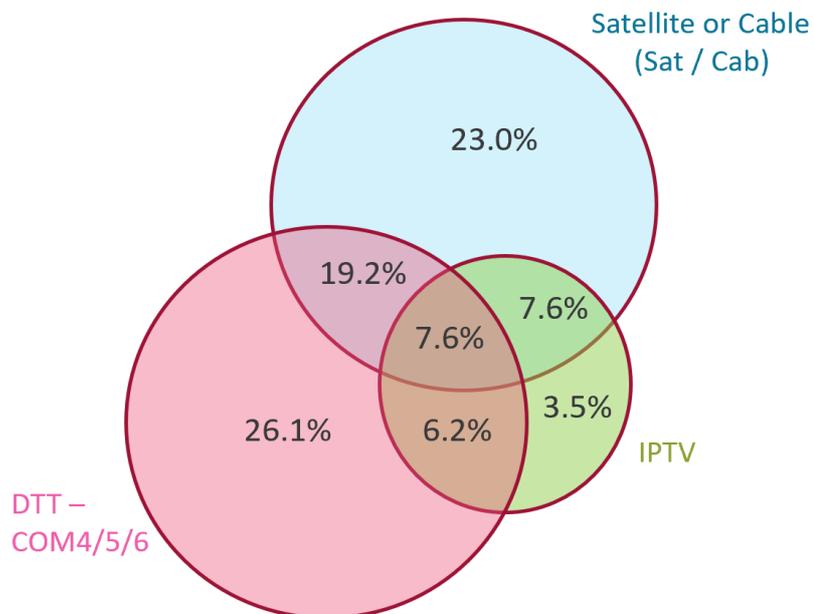
<sup>24</sup> Applying the sensitivity test described at paragraph 3.24, the proportion of individuals in the UK which receive a television service available on commercial DTT multiplexes, satellite, cable and IPTV would remain below 95% of the population.

Figure 2: Proportion of the UK population receiving services available on the PSB DTT multiplexes, satellite, cable and IPTV



Source: Ofcom, based on BARB ES Q3 2017

Figure 3: Proportion of the population receiving services available on the commercial DTT multiplexes, satellite, cable and IPTV



Source: Ofcom, based on BARB ES Q3 2017

## Need for IPTV multi-stream capability

- 3.27 Unlike broadcast platforms, IPTV is constrained by the number of live streams that can be served concurrently by a service provider for a given service. We have therefore considered whether we need to assess the ability of a television programme service provider to serve the audience which may watch television services via IPTV only (Group C in Figure 1). We could, for example, do this by reference to the number of IPTV streams which the television service provider (or a content delivery network (CDN) on its behalf) makes available.
- 3.28 However, we do not propose to require a service to be able to deliver a specified number of IPTV streams in order to satisfy the reception condition. Our starting point is an assumption that, for commercial or public service reasons, a provider who acquires rights to show listed events will typically already be incentivised to ensure that sufficient IP streams are available to meet the demand for those events. Further, we do not consider it is appropriate to quantify the required number of IPTV streams sufficient to meet the demand for an event: this would not be practicable, as this would likely fluctuate depending on the popularity of the event. Nor do we consider it appropriate to require sufficient IPTV streams to meet concurrent demand from all people with access only to IPTV services, as this would go beyond what is necessary for the service to be received by all viewers of the event.
- 3.29 Nevertheless, we would expect a television service provider to ensure the availability of its service through reliable IPTV streams which can meet the potential demand for IPTV, either by delivering those itself or by contracting with one or more CDNs. In the absence of that – for example where the television service is made available by a third party because such third party chooses to do so, but in the absence of a contractual agreement – we would not consider the service to be “received” via IPTV. If we had concerns that this was the case for a television service which relied on IPTV to meet the reception condition, we would assess this when considering the inclusion of the television service on the list of qualifying services.

## The free-to-view condition

- 3.30 The domestic legislation for the listed events regime does not provide any further guidance about the interpretation of the free-to-view condition. However, the Audiovisual Media Services Directive makes provision for a listed events regime; it defines ‘free television’ as broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in each Member State (such as licence fee and/or the basic tier subscription fee to a cable network).<sup>25</sup> We consider that it is appropriate to interpret the free-to-view condition consistently with this definition.

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<sup>25</sup> AVMS Directive, Recital 53

- 3.31 The PSBs are prohibited from charging for reception of their PSB services. We consider that other services broadcast unencrypted, or that are included in the basic-tier or entry-level TV packages on all of the DTT, satellite, cable and IPTV platforms, would meet the free-to-view requirement. This could be demonstrated by inclusion in either the 'free' package or in a 'basic' or 'entry' level tier package as published by the platform operator. Where there is doubt, we may consider distribution contracts or agreements for services and whether these exclude charges to viewers. The same principles would apply to delivery via IPTV without additional financial charge.
- 3.32 In the UK, a television service would be considered to meet the free-to-view condition on the platforms below provided it is made available on the following basis:
- i) DTT: as part of the "Freeview" suite of channels;
  - ii) Satellite: on Freesat, via Sky's "Freesat by Sky" viewing card and available in Sky's basic tier pay-TV package;
  - iii) Cable: in Virgin Media's basic tier pay-TV package;
  - iv) IPTV: the IPTV stream is made available free of charge or is available in a basic tier package on an IPTV platform.
- 3.33 The assessment of whether a service that meets the reception condition also meets the free-to-view condition is discussed in section 4.

### **Consultation Question 1**

- Q1. Do you agree that our proposed methodology is appropriate? In particular -**
- a) Do you agree that it is appropriate for us to consider the reception of TV programme services through all four main TV platforms, including IPTV?**
  - b) Do you agree that it is appropriate for us to consider the reception of TV programme services on the main device in the house, being the largest screen - a TV set if that is available, or a computer or tablet if not?**
  - c) Do you agree that it is appropriate for us to use data collected through the BARB ES survey in order to calculate the proportion of the population that can receive services?**
  - d) Do you agree that our proposed adjustment for individuals able to receive services on the commercial DTT multiplexes compared with the PSB DTT multiplexes is appropriate?**
  - e) Do you agree that our proposed approach in relation to IP multistream capability is appropriate?**
  - f) Do you agree that our proposed approach in relation to assessing the 'free-to-view' condition is appropriate?**

**Please set out reasons for your views and supporting evidence. In particular if you do not agree that our proposed approach is appropriate, please explain what alternative approach you consider would be appropriate. Similarly, if you consider that we should use alternative or additional data, please explain what that data is and provide it to us if possible.**

## 4. Applying our proposed methodology to current services

4.1 In this section, we explain how we propose to apply the methodology set out in section 3 to current services, to establish which services are Qualifying Services.

### Types of service that can be Qualifying Services

4.2 We first note that under the statutory framework for listed events, a service can only be a ‘Qualifying Service’ if it is a “television programme service” or an “EEA satellite service” as defined in the Communications Act 2003. Television programme services are defined in the Communications Act 2003 and include “a television broadcasting service”, “a television licensable content service”, “a digital television programme service” and “a restricted television service”. We note that IPTV services fall within the definition of a television licensable content service: however, on-demand programme services do not.

4.3 An EEA satellite service is defined in the Broadcasting Act 1996 as “any service which (a) consists in the broadcasting of television programmes from a satellite so as to be available by members of the public (within the meaning of Part 3 of the Communications Act 2003), and (b) is provided by a person who for the purposes of the Audiovisual Media Services Directive is under the jurisdiction of an EEA State other than the United Kingdom.”<sup>26</sup>

### The reception condition

4.4 Based on the methodology set out in section 3, and our illustrative calculations based on Q3 2017 BARB ES data, it appears to us that a service will likely only satisfy the reception condition if it is available across all of the broadcast TV platforms (satellite (Sky and Freesat), cable and the PSB DTT multiplexes), and is streamed on IPTV. A service available on the commercial DTT multiplexes (in addition to satellite, cable and IPTV) but not the PSB multiplexes, would not currently qualify. Equally, a service which is available on the PSB DTT multiplexes, satellite and cable, but not IPTV, would not currently qualify.

### The free-to-view condition

4.5 Based on the methodology set out in section 3, it appears to us that all services that are available across each of the broadcast TV platforms, including the PSB DTT multiplexes, and main IPTV platforms, meet the free-to-view condition.

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<sup>26</sup> Broadcasting Act 1996, section 98(6)

## Indicative list of qualifying services

- 4.6 For indicative purposes only, we have looked at which television programme services are currently made available on the basis set out above. These are: BBC 1, BBC 2, Channel 3 Network (broadcast as ITV, STV, UTV), Channel 4, ITV2, ITV3, BBC 4, More 4, Film 4, ITV4, BBC 4, CBBC, CBeebies, BBC News, and BBC Parliament.
- 4.7 The indicative list does not include the High Definition (HD) simulcast of some of these services. Although these are separate TV services that are made available as HD services across the same platforms, our research suggests only 63% of adults have the necessary equipment to receive these services<sup>27</sup>. They would therefore not be able to meet the reception condition. It also does not include the “+1 hour” time-shifted versions of the ITV1 and Channel 4 services. Although these are separate TV services, as they are not made available via IPTV they would not meet the reception condition. Finally, some television services on the PSB multiplexes are not broadcast in all areas of the UK and therefore would not meet the reception condition.
- 4.8 We note that Channel 5, which appears on the list of qualifying services published in 2008, does not currently provide a live IPTV stream, and on that basis would not currently meet the reception condition.
- 4.9 We emphasise that this is an indicative list based on our proposed methodology. Following this consultation, we will reach a decision on the methodology that we will use, and we will apply our methodology using up-to-date information to update and publish the list of qualifying services.

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<sup>27</sup> Ofcom Technology Tracker Connected Nations 2017

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/108517/connected-nations-evolution-television-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/108517/connected-nations-evolution-television-2017.pdf)

## 5. Amending the list of qualifying services in the future

- 5.1 The methodology that we are consulting on, as described in section 3, is intended to enable us to identify the services that satisfy the Qualifying Conditions now and in the foreseeable future. We have explained, in section 4, how we propose to apply that methodology to current services.
- 5.2 However, the broadcasting industry is dynamic, and services that do not currently satisfy the Qualifying Conditions may do so in the future. Equally, services that currently satisfy the Qualifying Conditions may not do so in the future. For example, services may change from being paid services to free services (or vice versa). Or they may change some aspect of their distribution to platforms, affecting the percentage of the UK population that can receive the service. This may increase the need for more frequent reviews of the list.
- 5.3 We recognise the importance of keeping the list of Qualifying Services up to date beyond this review, to provide a degree of certainty to industry when negotiating commercial agreements for broadcasting listed events. And while we cannot fetter our discretion in relation to future changes to our list of Qualifying Services, we consider it appropriate to give some indication to stakeholders how we intend to go about this, in the interests of transparency.
- 5.4 We therefore propose two principal ways in which we will keep the list up to date beyond this review.
- 5.5 First, where broadcasters believe that, on the basis of the methodology set out when we publish our statement, the status of the services they offer has changed, we would welcome them providing appropriate evidence to us to enable us to consider updating the list accordingly. Where it is possible to update the list in relation to an individual service based on evidence provided to us, we will endeavour to do this quickly, adopting an administrative process appropriate to the circumstances.
- 5.6 Second, we anticipate conducting our own periodic reviews of the list to identify whether more general updates should be made, for example by updating our methodology to reflect further technological changes or changes in viewing habits. It is not appropriate to set the timescales for these periodic reviews in advance. If stakeholders consider that we should carry out such a review, we will welcome them approaching us with any relevant evidence to support this.

### **Consultation Question 2**

- Q2. Do you agree that our proposed approach for keeping the list of qualifying services up to date is appropriate?**

# 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 18 January 2019.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/listed-events>. 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 [listedevents@ofcom.org.uk](mailto:listedevents@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>). This email address is for this consultation only, and will not be valid after the close of the consultation period.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Content Policy Team  
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 contact the Content Policy Team on 0207 981 3000, or by email to [listedevents@ofcom.org.uk](mailto:listedevents@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 2019.

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 2.
- 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 the corporation secretary:

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

## 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:

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 We are now seeking views on our proposals. The closing date for responses is 18 January 2019.

### Question 1:

Do you agree that our proposed methodology is appropriate? In particular -

- a) Do you agree that it is appropriate for us to consider the reception of TV programme services through all four main TV platforms, including IPTV?
- b) Do you agree that it is appropriate for us to consider the reception of TV programme services on the main device in the house, being the largest screen - a TV set if that is available, or a computer or tablet if not?
- c) Do you agree that it is appropriate for us to use data collected through the BARB ES survey in order to calculate the proportion of the population that can receive services?
- d) Do you agree that our proposed adjustment for individuals able to receive services on the commercial DTT multiplexes compared with the PSB DTT multiplexes is appropriate?
- e) Do you agree that our proposed approach in relation to IP multi-stream capability is appropriate?
- f) Do you agree that our proposed approach in relation to assessing the 'free-to-view' condition is appropriate?

Please set out reasons for your views and supporting evidence. In particular if you do not agree that our proposed approach is appropriate, please explain what alternative approach you consider would be appropriate. Similarly, if you consider that we should use alternative or additional data, please explain what that data is and provide it to us if possible.

### Question 2:

Do you agree that our proposed approach for keeping the list of qualifying services up to date is appropriate?