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

STATEMENT

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About this document

The Ofcom Broadcasting Code (“the Code”) allows for films rated up to ‘15’ by the BBFC¹ 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 (“MDP”)** and cannot be removed or bypassed by viewers.

Following our consultation in March 2018, this document sets out Ofcom’s decision to extend the application of the MDP rules in the Code to permit scheduled television channels to show programmes, which can currently only be shown after the 9pm watershed, before this time, but only if mandatory daytime protection is in place.

Ofcom has carefully considered all consultation responses in reaching this decision and this statement concludes the review. The revisions to the relevant rules to extend MDP beyond premium film content will come into force on 1 January 2019.

¹ British Board of Film Classification.

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Glossary

Broadcasting Code

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

Digital terrestrial television ("DTT")

The television technology that carries the Freeview service.

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 (FTA)

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.

Legacy devices

Refers to set-top-box devices for which the manufacturer has ceased production or support, or for which the platform operator does not have access to accurate data

concerning the device's location, age and technical capability.

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

² 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.

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. Summary

What is the current situation?

- 1.1 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”.³ This is reflected in Section One of the Broadcasting Code (“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.
- 1.2 Rule 1.4 of the Code requires that 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.
- 1.3 Since the Code was first introduced in 2005, it has allowed particular types of television content that are unsuitable for children to be broadcast before the 9pm watershed, if a mandatory PIN is in place, i.e. a PIN that cannot be removed. Specifically, premium subscription film channels are allowed to broadcast up to 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 21:00.⁴
- 1.4 Mandatory daytime protection is an existing and effective protection measure which complements the 9pm watershed in protecting children from broadcast content that might be unsuitable for them.

What did we propose and why?

- 1.5 In March 2018, we published a consultation to gather stakeholder views on our proposal to extend the application of the mandatory daytime protection (“MDP”) rules in the Code beyond premium subscription and pay per view film services.⁵ In summary, we proposed to:
 - Permit scheduled broadcast channels to show programmes and films, which are unsuitable for broadcast before 21:00, during daytime hours, provided a mandatory PIN is in place.
- 1.6 Our proposed change to the rules included a requirement for broadcasters to clearly explain the new mandatory PIN systems in place to all users, and to provide clear guidance

³ Section 319 (2) (a)

⁴ The existing Code Rules can be found on pp. 41-43 of our [consultation](#)

⁵ The consultation, along with published stakeholder responses can be found on the Ofcom [website](#).

information with programmes to assist adults in assessing whether content is suitable for children.

- 1.7 In making our proposals, we took account of our regulatory duties⁶, which include having regard to the vulnerability of children, and applying standards that provide protection to members of the public from potentially offensive and harmful material in TV and radio services. Ofcom must also have regard to the desirability of promoting competition, and encouraging innovation and investments, in relevant markets. We also need to ensure that the Code rules remain relevant and proportionate and that they reflect changing viewing behaviours and audience expectations.
- 1.8 We took account of the significant developments in the wider audio-visual landscape since the introduction of the Code Rules in 2005; in particular the growth in on-demand viewing, and the increased availability of connected devices. We also took account of our audience research (both qualitative and quantitative) which we commissioned in 2017.⁷
- 1.9 Our research findings showed that on-demand viewing is commonplace (two thirds of parents and over eight in ten 11-15s said that they watch on-demand services at home) and awareness and opinions of PINs (mandatory and voluntary) is high. Our findings showed that while respondents saw the 9pm watershed as the most important child protection tool, PINs were also considered to be an important and relatively effective measure: 85% of parents considered PINs to be an effective protection measure to protect their child's viewing.
- 1.10 The consultation acknowledged that an extension of MDP 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.
- 1.11 We carried out a competition impact assessment, which considered the potential competitive effects that an extension to mandatory daytime protection would have on viewers, platforms and broadcast channels. Overall Ofcom considered that the competitive effects were likely to be positive but materially small, in part because we understood that broadcasters would be unlikely to use MDP on a widespread basis.

What have we decided?

- 1.12 We received 10 stakeholder responses to the consultation from: A+E Networks, BT, COBA, MediaWatch-UK, Sky, Viacom, Virgin Media, YouView, a small unnamed broadcaster, and one person. Following careful consideration of the responses, we have decided to adopt our consultation proposals to extend the application of the MDP rules in the Code beyond

⁶ Ofcom's regulatory duties are set out under Section 3 of the Act. Ofcom's regulatory duties in regard to its Standards Code are set out under Section 319 of the Act.

⁷ The consumer research report by Kantar, commissioned by Ofcom, can be found on our [website](#).

premium subscription and pay per view film services. The revisions to the MDP rules in the Code are set out in Section 5 and will come into force on 1 January 2019.

- 1.13 Having considered all information received from stakeholders, we have decided to maintain the carve out in the current Rule 1.24 which permits up to BBFC 15-rated films, or their equivalent, to be shown after 20:00 on premium subscription film channels without mandatory daytime protection. We explain this decision in Section 5.
- 1.14 The changes we have decided to make to the MDP rules do not affect any other Code rules, including the 9pm watershed rules, which have not been in the scope of this review. The 9pm watershed will continue to be a fundamental feature of broadcast services to protect children from unsuitable content. Similarly, there will be no amendments to the rules for adult sex material which will continue to be restricted to broadcast only after 22:00 on pay per view and premium subscription channels behind a mandatory PIN.⁸
- 1.15 We expect broadcasters and platform providers who intend to make use of MDP to inform their viewers about the new regime, and about the importance of parents setting strong PIN codes. We set out our expectations in more detail in Section 2.
- 1.16 In making our decisions, we have taken account of responses to our consultation, alongside our regulatory duties⁹, a Call for Inputs carried out in 2016¹⁰, and our consumer research. In Sections 2, 3 and 4, we set out our consideration of respectively; the protection of children; the technical and practical issues of implementing MDP; and the potential effects on competition (in relation to audiences, platform providers and broadcasters).

Impact Assessment and Equality Impact Assessment

- 1.17 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.
- 1.18 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 race¹¹. In relation to equality (whether in Northern Ireland or the rest of the UK), we consider, on the whole, that an extension to the MDP regime would be likely to affect citizens and consumers in the same way and would not have particular implications for the different equality groups.
- 1.19 In the consultation, we identified that our proposals may have greater implications for children (under the protected characteristic of “age”) and people with visual impairment. In Section 2, we explain why we do not consider that the extended MDP regime will significantly increase the risk of children viewing unsuitable, and therefore potentially harmful content.

⁸ Under Rule 1.18 of the Broadcasting Code

⁹ See footnote 6.

¹⁰ The Call for Inputs and published stakeholder responses can be found here on the Ofcom [website](#).

¹¹ See the Equality Act 2010

- 1.20 In Section 2, we also explore the potential impact of the extended MDP regime on people with visual impairments. We note that Ofcom has introduced requirements on EPG providers to use reasonable endeavours to introduce certain accessibility features¹² and we expect these measures will help to mitigate the potentially negative impact on visually impaired individuals.
- 1.21 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.

What are the next steps?

- 1.22 The revisions to the relevant rules to extend MDP beyond film content will come into force on 1 January 2019. Broadcasters and platforms intending to make use of the new rules should inform viewers of the upcoming changes in advance and encourage households, which may not have done so already, to set strong PINs.

¹² For a full description of the requirements see [Ofcom's EPG Accessibility Statement](#)

2. The protection of children

Summary

- Ofcom considers that extending mandatory daytime protection (MDP) will not significantly increase the possibility of children accessing programmes that might be unsuitable for them. The MDP rules will complement the 9pm watershed to protect children from unsuitable content.
- PINs are increasingly commonplace in today's viewing environment and are often used effectively and robustly. However, like the 9pm watershed, PINs rely on parental choice and responsibility to be effective.
- It is important that parents set, and keep safe, robust PINs. We strongly encourage platforms providers to advise their customers of the importance of setting and regularly changing strong PINs and to boost the robustness of PIN protection through technical measures. We also require broadcasters and platforms using the MDP to make their viewers aware of the new regime.

The consultation

- 2.1 In the consultation (published in March 2018) we set out how the protection of child audiences is one of Ofcom's most important duties. The rules of the Broadcasting Code require that children are protected from content which might be unsuitable for them during the daytime through the use of the 9pm watershed and mandatory PIN protections on premium subscription and pay per view film services. Ofcom considers these to be complementary tools to protect children from content that is unsuitable for them.
- 2.2 We recognised that there are some risks involved with all measures designed to protect younger viewers from accessing unsuitable content. For example, some children stay up past 9pm – our consumer research found that 46% of 11-15s say that they watch post-watershed programmes alone, and we know that some children know their parents' PIN codes (40% of 11-15s).¹³ We considered that any extension to the mandatory daytime protection (MDP) rules should not pose a significant increase in the risk to children.
- 2.3 We welcomed views from stakeholders on the effects that an extension to MDP might have on the protection of children.

What impact could extending mandatory daytime protection have on the 9pm watershed?

What respondents said

- 2.4 **COBA** stated that MDP would complement the watershed and strengthen the principles that underpin it. COBA considered that this form of protection helps audiences distinguish between what is suitable and unsuitable in a digital age. **A+E Networks** and **Sky** similarly

¹³ See [Daytime PIN Research, page 20. Kantar Media, 2018](#)

noted that extending MDP would not dilute the significance of the 9pm watershed. The additional layer of protection is an obvious way of indicating unsuitable content, particularly with the access to supporting programme information and ratings and would therefore strengthen the range of protection tools already on offer. **A+ E Networks** commented that parents are already familiar with using PINs on VOD services, but also continue to rely on the watershed as the main method of protection.

- 2.5 **Virgin Media** said that there was no reason to believe that extending the MDP rules would have an adverse effect on the watershed. The existence of film subscription channels which currently use mandatory PINs supports this. It also noted that the introduction of MDP for other pre-watershed content could bolster consumer confidence in the 9pm watershed by further drawing consumers' attention to its role.
- 2.6 **YouView** commented that in theory the extension to MDP could erode the effectiveness of the 9pm watershed which is a trusted and well-known signpost.
- 2.7 **BT** noted that the 9pm watershed is still relevant but may be becoming less so given changing viewing habits and that arguably the proliferation of connected devices pose a greater risk to the watershed.
- 2.8 **Viacom** said that extending MDP could weaken the watershed as over time there would be a diminution of clarity and understanding of it as the *"gold standard for protecting children from inappropriate content"*.
- 2.9 **Mediawatch-UK** stated that the proposal would have an adverse impact on the watershed and would send a confused message about its relevance and importance. It argued that simply accepting the status quo in changing viewing habits could *"too easily be used as the justification for making post-watershed material more widely available and lead to an overall weakening of the watershed when grounds for further concessions arise"*. Broadcasters have a responsibility to create content which is suitable for the age profile of the audience. **Mediawatch-UK** suggested it may be time to consider a later watershed to protect children and young people more effectively. It also noted that the appetite from consumers for this rule change is not evident and it may be unwise to risk further dilution of the watershed.

Our response

- 2.10 In Ofcom's view the highest level of protection for children can be achieved when a range of audience protection measures are used in conjunction with one another. Our research found that, while parents highly value the 9pm watershed as the most important protection measure, they also consider PINs to be an important and relatively effective protection tool, especially when used alongside other protection measures. We consider that MDP, used together with the provision of information to allow appropriate viewing decisions, can complement the 9pm watershed in protecting children from broadcast content that might be unsuitable for them.

- 2.11 We do not share **Mediawatch-UK**'s concern that a change to the rules risks weakening the watershed by accepting the 'status quo'. In line with our regulatory duties¹⁴, Ofcom needs to ensure that the Code rules remain relevant and proportionate and reflect changing viewing behaviours and audience expectations. With the increased availability of on-demand services alongside the proliferation of connected devices, PINs (mandatory and voluntary) have become increasingly commonplace and confidence in their effectiveness is high.¹⁵
- 2.12 In response to **Mediawatch-UK**'s suggestion of a later watershed, we note from our media tracker research that the majority of adults (around 60%) consider that 9pm is the right time for the watershed (18% think the watershed should be earlier).¹⁶ In response to **Viacom**'s concern that extending MDP might weaken understanding of the watershed, we note that our ongoing media tracker research shows that awareness of the watershed has remained consistently high since 2005 (with 89% of adults stating that they were aware of the watershed in 2017).¹⁷ We will continue to monitor awareness levels over time. Overall, it is our view that extending the mandatory daytime protection rules beyond film content would not have an adverse impact on the 9pm watershed.

Would extending mandatory daytime protection increase the possibility of children viewing post watershed content?

What respondents said

- 2.13 **COBA** stated that extending MDP may provide a stronger protection to children by clearly signalling to audiences that the content behind a PIN is unsuitable. It cited recent complaints about high profile content to Ofcom as proof that the watershed is not perfect. COBA also stated that channels using MDP are likely to be targeted at adults.
- 2.14 **A + E Networks** said that both MDP and the watershed require parental control to protect children effectively. Parents play a role both in keeping PIN codes safe from children and in determining whether children watch post-watershed content. It noted that it primarily envisions implementing MDP on channels targeted to adults such as its Crime and Investigation and History channels; children make up less than 5% of daytime viewing to these channels.
- 2.15 **Virgin Media** responded that extending MDP would not increase the risk to children since there are already risks to children of viewing broadcast content after the watershed and accessing material online.

¹⁴ As set out under Section 3 of the Communications Act 2003

¹⁵ Our research showed that 78% of parents are aware of 'any' voluntary or mandatory PIN protection tool, that 50% of parents of children aged 11-15, and 31% of parents of 16-17s, said they have currently set a voluntary PIN to restrict their child's access to content, and that 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..

¹⁶ See Ofcom's [Cross Platform Media Tracker](#), 2017

¹⁷ Ibid.

- 2.16 **BT** stated that on-demand viewing via devices such as mobiles and games consoles provides a greater risk to children than extending MDP.
- 2.17 **Mediawatch-UK** and a **broadcaster** stated that extending MDP would increase the risk to children. **Mediawatch-UK** noted that it would create extra work for Ofcom to monitor the efficacy of any MDP measures implemented.

Our response

- 2.18 PINs are an important and strong protection tool and can be a useful signal to all viewers about the potential unsuitability of content. Both the 9pm watershed and MDP can only control the accessibility of content and both rely on parental choice and responsibility to be effective. While some children claim to know their parents PIN codes (40% of 11-15s), relatively high numbers of children also claim to view post-watershed content without adult supervision (46% of 11-15s watch post-watershed programmes on TV alone, and 55% watch these programmes via on-demand services alone).¹⁸ Moreover, responses to our consultation indicate that MDP is likely to be introduced primarily on channels targeted at adults and therefore unlikely to appeal to child audiences. Taking these factors into account, and the views received from stakeholders, we do not consider that the introduction of MDP would significantly increase the risk of children viewing post watershed content.
- 2.19 Ofcom has a robust complaints-led framework which works effectively in alerting us to potential breaches of the Code, including the 9pm watershed and MDP rules. We also conduct on-going consumer research which captures awareness and use of voluntary and mandatory PINs by adults, along with opinions on their effectiveness and the proportion of children aware of the PIN codes in use.¹⁹

How effective are mandatory PINs in protecting children?

What respondents said

- 2.20 **Sky** stated that MDP effectively protects children on its premium subscription movie channels. Similarly, **COBA** said that PIN systems are already widely used and robust across a range of services and platforms, including Sky, BT, BBC iPlayer and Virgin. There are also technical tools which boost the effectiveness of PINs, for example in issuing regular reminders to parents.
- 2.21 **Virgin Media** said that PINs (both mandatory and voluntary) are already used effectively on its TV service, and the efficacy of PINs is illustrated through Ofcom's research and the fact that it only has a couple of customer complaints related to PINs each year.
- 2.22 **A + E networks** stated that PIN protection is well established and effective in protecting children in European countries, such as the Netherlands and Germany.

¹⁸ See our [Daytime PIN Research, page 20. Kantar Media 2018](#)

¹⁹ See our [Children's and Parents' Media Use and Attitudes Reports](#),

- 2.23 **Mediawatch-UK** raised concerns that PIN numbers are often shared within families.
- 2.24 A **broadcaster** raised concerns that children can easily replicate PINs which are often left on the default or set to a simple number, for viewers' ease in switching channels.
- 2.25 An **individual** stated that children can learn PIN numbers and gave the example that a parent might give a child a PIN to access one 12 rated film, which the child can then use on further occasions to access programmes with higher age ratings.

Our response

- 2.26 As mentioned above, awareness and usage of current PIN systems (both mandatory and voluntary) is high, along with opinions on their effectiveness, thereby supporting the statements from Sky, Virgin Media, COBA and A+E Networks. 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. Most parents who took part in our qualitative research 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.²⁰
- 2.27 As several respondents have referenced, MDP has been used successfully on premium subscription and pay per view film channels since 2005. In this time there have been very few complaints to Ofcom about the technical robustness of MDP, and Ofcom has only recorded one breach related to MDP not being in place.²¹
- 2.28 While it is possible for children to learn PIN codes, all protection measures require parental responsibility to be effective, and, as set out below, we encourage broadcasters and platforms to raise awareness about the importance of setting strong PINs.

What more could be done to bolster the effectiveness of PINs?

What respondents said

- 2.29 **BT** proposed an awareness campaign around MDP and said that the Internet Matters programme²² could be a good vehicle for broadcasters and platforms to communicate the changes.
- 2.30 **COBA** said that channels could issue regular reminders to parents to change their PIN number, and allow them to do so online or via an app.

²⁰ See our [Daytime PIN Research, Kantar Media, 2018](#)

²¹ 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. This was due to the incorrect labelling of the film as a PG in the Virgin Media EPG. See https://www.ofcom.org.uk/_data/assets/pdf_file/0026/53756/issue_309.pdf

²² Internet Matters is not-for-profit organisation supported by BT, Sky, Talk Talk, and Virgin Media to keep children safe in the digital world. See: <https://www.internetmatters.org/>

- 2.31 **A+E Networks** said that if it implemented MDP, it would have a responsibility to provide viewers with information about how it works. It said that it would work closely with platforms to ensure that PIN protection is robust and accompanied by information for viewers.
- 2.32 **YouView** said that there should be a joined-up approach to restrictions on VOD, time-shifted and recorded content to avoid users circumnavigating the linear PIN by accessing content from another source.
- 2.33 **Sky** said that it would expect to put in place a “limited customer communications plan” if it implemented MDP, although it did not consider that this would require extensive communications as PIN use is well understood on its platforms. It said that this could include notices on its website, information in EPG guides and on-screen information and announcements around PIN protected programmes.
- 2.34 A **broadcaster** said that PINs would be more effective if it was not possible to change the number to a simple default code, and if codes were sent to users in the same way that banks delivered pins.
- 2.35 **Mediawatch-UK** said that alerts sent to parents when PINs had been activated or attempted would be useful and noted the importance of awareness raising to educate parents on using PINs. It also said Ofcom should encourage a uniform approach from broadcasters and platform providers, since the variations in parental controls and settings are frustrating and contribute to people’s apathy.

Our response

- 2.36 As noted above, the effectiveness of any MDP regime relies on adults setting and keeping safe robust PINs. We consider that awareness campaigns about MDP, which also inform parents on the importance of setting strong PINs, will be significant in bolstering the effectiveness of PINs when MDP is introduced.
- 2.37 As explained in Section 1, the extension to the MDP rules will come into force on 1 January 2019. Before making use of MDP on non-film channels, broadcasters and platforms must ensure that they have taken reasonable steps to inform viewers of the upcoming changes in advance.
- 2.38 We expect broadcasters and platforms to work together to communicate the changes effectively and to advise viewers on the importance of setting, and regularly changing, strong PINs using a range of communications methods. This could include information on providers’ websites, information in EPG guides, and on-screen information and announcements. We also welcome the suggestion for “Internet Matters” to be a vehicle for broadcasters and platforms to jointly communicate the changes and the importance of setting strong PIN codes.
- 2.39 While the onus is on broadcasters and platforms to raise awareness of the changes, Ofcom will also communicate the rule changes and what they mean for consumers on our website, via our social media outlets and in the Broadcast and On Demand Bulletin.

2.40 Our consumer research showed that while the vast majority of 11-15 year olds (94%) who have a PIN-protected TV set at home said that their parents set the PIN, a small proportion said they had set up the PIN themselves. Our research also suggests that almost one in ten (9%) of 16-17 year-olds claim to have set up the PIN themselves.²³ It is important that broadcasters and platforms implement measures to ensure that only authorised adults can set up or change PINs. We strongly encourage platforms to use control measures which verify that the user is aged 18 or over at the point of setting up a PIN. In line with Ofcom's guidance for age verification on ODPS²⁴, the control measures should require adults to input data that cannot be readily predicted by another person. For example, we do not consider the following measures to effectively verify age:

- relying on the user to confirm their age (for example, by ticking a box)
- checking against easily known information (such as name, address and date of birth)
- using online payment methods which may not require a user to be over 18 (for example, a Debit, Solo or Electron card).

2.41 In addition to setting strong PINs in the first place, it is important that parents regularly change their PINs in order to reduce the risk of children guessing or learning the PIN code without permission. We do not consider it appropriate to mandate any particular technical standard for PIN protection, as this risks constraining product development and innovation. However, we strongly encourage platform providers to implement technical measures which ensure that parents set and regularly change robust PINs. As pointed to by consultation respondents (COBA, Mediawatch-UK and a small broadcaster), we are aware of the following measures which can boost the protection offered:

- reminders to change PIN numbers and allowing viewers to do so online or via an app;
- alerts to parents when PINs have been activated or attempted; and
- ensuring it is not possible to change PINs to a simple default code.

2.42 Ahead of the new rules coming into effect, we will update the published guidance document which accompanies Section One of the Code²⁵. This will include guidance for broadcasters on the application of the new rules, including how to ensure the mandatory protection in place is as robust as possible.

2.43 Regarding **YouView**'s suggestion that there should be a joined-up approach towards PIN protection on different kinds of content, our rules for the protection of under 18s under Section One of the Code (which includes rules on scheduling and PIN protections) apply to TV and radio services only. They do not apply to content consumed via on-demand or

²³ See our [Daytime PIN Research, page 33. Kantar Media 2018](#)

²⁴ Ofcom is currently consulting on guidance for age verification controls which apply to On Demand Programme Services when providing access to "specially restricted material" to secure that people under the age 18 'will not normally see or hear' such material. See: <https://www.ofcom.org.uk/consultations-and-statements/category-2/restricted-material-age-verification-odps-guidance> .

²⁵ Our current guidance for Section 1 of the Code can be found on our [website](#).

catch-up services which are legally subject to a more minimal set of rules²⁶, or content which is downloaded to a set-top box (STB) or a digital video recorder (DVR).

²⁶ Ofcom regulates on-demand programme services (“ODPS”) which are not subject to the Broadcasting Code rules (https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54922/rules_and_guidance.pdf). The rules for ODPS cover the protection of children, protection from incitement to crime and hate speech, and sponsorship/product placements. The rules place no restrictions on what time viewers can watch ODPS content that might be unsuitable for children.

3. Technical issues

Summary

- Implementation of mandatory daytime protection is contingent on broadcast channel and platform capability. The consultation responses received confirmed our understanding that MDP is currently possible on pay TV platforms such as Sky and Virgin Media.
- Only those platforms which present no risk of unsuitable content being broadcast on their devices (including legacy and unconnected devices) will be permitted to use MDP. Platforms would also need to receive correct and consistent metadata from broadcasters to trigger MDP.
- Platforms would need to ensure that PIN protection is activated each time viewers ‘enter’ PIN protected content using MDP regardless of how they access it (including for example by using the live pause/ rewind/ fast forward functions or by switching between channels).
- We note that the extension of MDP has the potential to negatively impact people with visual impairment because a PIN would be prompted by a visual cue on screen requesting a PIN to be entered. However, we consider that the accessibility requirements on EPG providers²⁷ will help to mitigate this risk, and we strongly encourage other providers to also make use of accessibility features which can assist people with visual impairment to access PIN protected content.

The consultation

- 3.1 In the consultation we set out our understanding of the technical requirements and practicalities of implementing an extension to the MDP rules. We considered that to fully comply with Ofcom’s regulatory requirements, implementation of MDP would be contingent on broadcast channel and platform technical capability. On that basis, only channels available on vertically integrated pay TV platforms²⁸ would be technically able to implement the PIN system required. It is currently technically unfeasible for free-to-air (“FTA”) services delivered via Digital Terrestrial Television (“DTT”), such as on Freeview. For viewers this means that only those customers of a pay TV platform may be able to view MDP channels. For FTA viewers there would be no change as these channels would not be available.
- 3.2 Unconnected devices are STBs and TVs which are not connected to the internet. These may therefore be unable to receive the software update required to implement MDP. Some older STBs may also contain technology which is too old to support a software update. Without the required software update, these STBs would be unable to operate MDP and trigger unsuitable content to be PIN protected. We considered that this would clearly present a fundamental and serious protection risk for children and therefore sought more information from platform providers on this issue.

²⁷ The EPG providers are currently Sky, Virgin, YouView, Freesat, Digital UK for Freeview, BT, EE and TalkTalk

²⁸ This means that the broadcast channels, technology and STBs are under the direct control of a single operator.

- 3.3 We also considered the importance of metadata. Metadata is information attached to a programme that carries a range of identifying descriptive information such as titles, programme guidance, or content ratings. Platforms would need to receive correct and consistent metadata from broadcasters to trigger the mandatory daytime protection.
- 3.4 We welcomed views and further information from stakeholders on these technical issues.

Which broadcasters and platforms can use MDP?

What respondents said

- 3.5 **Virgin Media** stated that since Ofcom's Call for Inputs in 2016 it has undertaken investment work so that all its set-top-boxes (STBs) are now capable of supporting MDP. It noted that its TV GO app would require development work to support MDP on its linear channels.
- 3.6 **Sky** stated that it is confident that MDP would be technically possible across all channels (both pay and free-to-air) on its platforms without the need for additional development on its STBs. It noted that it would need to develop its internal scheduling systems to allow programmes normally locked for scheduling after 9pm to be scheduled earlier in the day. It said that if MDP was implemented it would write to third party broadcasters with instructions as to how they could use MDP on its platform. Sky stated that it anticipated that third party broadcasters would have to make small changes to their systems to use MDP on its platform.
- 3.7 **YouView** said that it has not yet considered the technical implementation work and resulting costs of implementing MDP across all linear content. It reiterated that DTT STBs may not be compatible with the underlying software required to implement this change. **BT** provided a confidential response to this question.

Our response

- 3.8 Taking into account the consultation responses, our understanding remains that only channels available on pay TV platforms (such as Virgin Media and Sky) would currently be able to implement the PIN system required for a mandatory daytime protection. It is currently technically unfeasible for FTA services delivered via DTT, such as on Freeview. In the consultation, we set out in detail our understanding of the technical requirements for implementing MDP, including the challenges of implementing MDP on FTA platforms.²⁹
- 3.9 Broadcasters will not be permitted to introduce MDP if there is any risk of broadcasting post-watershed content during the day unprotected. This includes where channels are delivered on different devices or apps. Broadcasters and platforms may need to invest in the necessary technology so that MDP can be implemented on different devices, but otherwise can simply choose not to introduce MDP on their channels.

²⁹ See [Consultation: review of the mandatory daytime protection rules](#), pp. 25-27

Are there issues with the provision or collection of metadata for MDP?

What respondents said

- 3.10 **Virgin Media** and **Sky** stated that broadcasters need to be responsible for providing metadata which accurately categorises their content. **Sky** said that it would monitor that the correct metadata is being provided by broadcasters using its platform to trigger MDP.
- 3.11 **Youview** said that it is likely that it would have to make technological changes so that its STBs could receive the metadata from broadcasters, and that broadcasters would have to provide metadata in a format it recognised.
- 3.12 **COBA** stated that channels can weigh up any costs of providing metadata with the potential benefits of implementing MDP. Responding to a concern raised by a Call For Inputs respondent, it noted that some smaller channels in its membership are considering using MDP and do not consider the provision of metadata to be a problem.
- 3.13 **A+E Networks** said that it already provides a wide range of accurate metadata related to content and scheduling restrictions, and that it would be relatively straightforward to link metadata information with MDP. It mentioned there would be some development work to allow it to schedule programmes with a post 21:00 time code before the watershed with MDP.
- 3.14 **BT** said that it does not foresee significant issues with the collection of metadata from content providers, and that it is the content provider's responsibility to provide the correct metadata that is compatible with its specifications.

Our response

- 3.15 It is the responsibility of broadcasters to ensure that content is scheduled and coded correctly, with additional metadata to identify the need to enable PIN protection. Under the Code rules broadcasters will ultimately be responsible for the mandatory PIN protection of content on their channels, not the platform they are available on. However, Ofcom expects broadcasters and platforms to work together (through contractual agreements where necessary) to ensure the correct and consistent labelling, and checking, of content before transmission.
- 3.16 We note that consultation respondents do not generally foresee significant issues with the provision or collection of metadata for MDP. Broadcasters should not introduce MDP on their channels if they are not able to provide accurate metadata to trigger MDP effectively.

How would MDP interact with unconnected and legacy devices?

What respondents said

- 3.17 **COBA** stated that channels and platforms would need to ensure that MDP can be provided safely. Channels can choose not to implement MDP if they consider that the costs and challenges outweigh the potential benefits

- 3.18 **Virgin Media** stated that all of its STBs are capable of supporting MDP, and that its devices do not work when not connected to the internet.
- 3.19 **Sky** said MDP on Sky's STBs does not require an internet connection, so unconnected devices will function in the same way as connected devices. It said that MDP works on premium movie channels on legacy devices, so it considers that MDP will similarly work on all channels on legacy boxes.
- 3.20 **Youview** stated that its STBs would require a software update to implement MDP, which would not be receivable by devices that do not connect to the internet, and legacy devices. It stated that there is a risk that these devices would not be able to operate a PIN to protect restricted content, and it would have to undertake significant work to investigate if there were a solution to this. **BT** provided a confidential response to this question outlining the capabilities of its platforms.

Our response

- 3.21 Only those platforms which can fully implement MDP across all devices will be able to utilise a change to the rules. We note that Virgin and Sky are confident that MDP will work effectively across their STBs. Platforms which cannot guarantee that there is absolutely no risk of unsuitable material being broadcast without the required PIN protection on legacy or unconnected devices will not be able to make use of MDP. Platforms such as YouView will need to explore solutions for unconnected devices before allowing channels on the platform to use MDP.

How would MDP interact with the live pause/ rewind/ fast forward functions?

What respondents said

- 3.22 **Virgin Media** stated that the MDP functionality would not be affected by the live pause/ rewind/ fast forward functions. The PIN acts as a kind of 'front door' to the content behind, and once it is unlocked by the account holder, the user is then responsible for whether they use functions which alter the viewing time.
- 3.23 **YouView** stated that currently its PIN mechanism applies during time-shifted mode as it is linked to the programme metadata rather than the broadcast clock.
- 3.24 **BT** said that if a programme has been paused whilst being viewed pre-watershed, customers would not be prompted to enter the PIN again as it was entered at the start of the programme. BT stated that further development would be required to ensure the same functionality would work for programmes requiring a mandatory PIN across all channels on its platforms.
- 3.25 **COBA** said that MDP is in use on Sky for premium film channels, and it is not aware of any problems with its interaction with the live pause/ rewind/ fast forward functions.

Our response

- 3.26 Many TVs and STBs now offer functions where live (scheduled) TV can be paused, re-winded, and then also fast forwarded. Platform providers have informed us that the programme metadata would prompt a PIN each time the viewers attempted to ‘enter’ content on the PIN protected channel. Once the PIN has been accepted, the live pause/rewind/ fast forward functions could then be used at the discretion of the viewer, but if the viewer were to leave the PIN protected programme on that channel (for example during an advert break), then the PIN would be required again on return.
- 3.27 While it is not possible to fast-forward to watch something ahead of the time it is broadcast, the live pause and rewind functions could be used by viewers to access content from the time they began watching the channel, and therefore allowing viewers to move around between programmes. Platforms must ensure that viewers are required to enter a PIN if they move into PIN protected content via the live pause/ rewind/ fast forward or any other equivalent functions. Broadcasters and platforms should not implement MDP unless they can ensure that viewers are required to input a PIN each time they move into PIN protected content, regardless of the method used – whether, for example, by switching between channels or by using the live pause/ rewind/ fast forward or any other equivalent functions.

What accessibility features could assist visually impaired people with MDP?

What respondents said

- 3.28 **Virgin Media** said that its STBs alert viewers when an incorrect PIN is entered with a low-pitched ping. It said that it is considering how it might make PINs more accessible for visually impaired people, but that there are child protection considerations; for instance, an audio described PIN could reveal a PIN to others in the room.
- 3.29 **YouView** and **BT** stated that they currently provide various high contrast and zoom options to assist the visually impaired with PIN protection and anticipate that voice integration could also assist visually impaired people with MDP.
- 3.30 **COBA** said that voiceover guidance about the contents of the programme in addition to the need to enter a PIN, could assist visually impaired people.

Our response

- 3.31 In June 2018, Ofcom introduced requirements on EPG providers³⁰ to use reasonable endeavors to introduce certain accessibility features where practicable (including high contrast displays, tools to magnify or enlarge text and text-to-speech functionality).³¹ We believe that these features will assist those with visual impairment in accessing PIN

³⁰ The EPG providers are currently Sky, Virgin, YouView, Freesat, Digital UK for Freeview, BT, EE and TalkTalk

³¹ For a full description of the requirements see [Ofcom's EPG Accessibility Statement](#)

protected content via an EPG; both in entering the PIN and in accessing the programme information and ratings provided alongside PIN protection.

- 3.32 We also strongly encourage providers that do not fall under the EPG requirements to make use of accessibility features to increase the ease of use of MDP for people with visual impairment who may face difficulty in seeing when a PIN is required or in manually entering the PIN number. Such features could include voice technologies, text to speech functionalities, high contrast displays and tools to magnify or enlarge text. When introducing such features in relation to MDP, providers should consider security issues such as audible PIN data. We consider that such features are highly important in reducing the potentially negative impact of the extension of MDP on those with visual impairment.

What are the other technological, practical or cost issues?

What respondents said

- 3.33 **BT** stated that further technological development would be required to enable MDP on apps, websites and games consoles, as well as significant technological, practical and costs associated with older STBs.
- 3.34 **YouView** and **A+E Networks** pointed to other costs involved, including for a communication campaign to inform users about MDP, and for broadcasters and providers to modify their content management system.
- 3.35 **Virgin Media** said that it would likely not incur costs associated with implementing the proposal, but that *“Ofcom should work to ensure the entire industry is able to comply at the same date, before changing the rules to ensure a level playing field”*.

Our response

- 3.36 We recognise that there will be costs and technological development work required for broadcasters and platforms to introduce MDP, and that some pay TV providers face fewer challenges in this regard. However, we note that broadcasters and platforms can choose not to implement MDP on their channels if they consider the costs or technical challenges to be prohibitive.
- 3.37 We do not agree that MDP should not be implemented until the entire industry is ready to comply. Ofcom promotes competition that delivers good outcomes for consumers and we do not think it necessary to delay the benefits that MDP could bring to some groups of pay TV viewers. In allowing players who are ready to proceed with MDP to do so, it will encourage investment and innovation from others (Section 4 below explores the competitive effects of MDP in more detail). We recognise however that for those pay TV platforms that are technically ready to utilise MDP, there may be benefits to channels on those platforms and the audiences of them if there is a coordinated start date and would encourage the relevant platforms to work together on this.

4. Competition issues

Summary

- We consider that there would be a small increase in viewer choice as a result of the extension of MDP.
- We consider that the extension of MDP could have limited but positive effects on platform competition in the short run, and on platform innovation and investment in the longer term.
- We consider that the extension of MDP could have a positive effect on channel competition. However, we remain unconvinced that MDP would stimulate investment in original UK content.

The consultation

- 4.1 In our consultation document, we discussed how an extension to the MDP rules might affect competition in the broadcasting sector. We considered these potential competitive effects from three perspectives:
- The effects on viewers;
 - The effects on platforms; and
 - The effects on broadcasters/channels.
- 4.2 We said in the consultation that the competitive effects were likely to be positive overall but materially small. There would probably be some degree of increased choice for some viewer groups and some greater levels of platform and channel competition. However, we noted that it was difficult to gauge the extent of these competitive effects and welcomed evidence and views from stakeholders.

The effects on viewers

Which viewing groups could benefit from increased viewing choice?

- 4.3 We said in the consultation that, because MDP is not currently technically feasible on FTA platforms (such as Freeview), FTA-only households would not have any greater viewing choice as a result of the proposed changes. However, because MDP is technically feasible on pay TV platforms (such as Sky and Virgin Media), some groups of pay TV viewers might particularly benefit from increased choice during the day as a result of an extension of the MDP rules. We specifically mentioned:
- a) Adults in households without children who work in the daytime but would like to watch post watershed content before 9pm;
 - b) Households which purchase pay TV but live in an area with relatively poor internet access so therefore cannot watch on-demand or catch up services;
 - c) Older people who may rely more heavily on TV for entertainment than other groups, and are the highest consumers of TV during the day;

- d) Adults of working age who are not employed in paid work, such as stay-at-home parents, students, and the unemployed; and
- e) Adults of working age with less traditional work patterns or who work from home.

What respondents said

- 4.4 Several respondents (**Sky, Virgin, BT, A+E Networks, COBA**), agreed that the extension of MDP would probably increase viewing choice for some groups, and specifically identified many of the groups listed above. **Virgin Media** noted that MDP would allow viewers to come across new content which they might not have seen unless seeking it out via on-demand services. Similarly, **Sky** noted that it would benefit people who prefer to use the EPG to discover content.
- 4.5 **Virgin Media** also commented that consumer appetite has shifted towards big production programmes with a cinematic feel. These tend to have more mature adult narratives, so people who enjoy this type of content will benefit from the increased choice available.
- 4.6 **BT, Sky and A+E Networks** commented that extending the MDP rules would allow for greater diversity of programming for the broadcasters which choose to take advantage of the rule change. More flexibility in the schedule would allow broadcasters to show a broader range of content, thus benefiting the consumer.

Our response

- 4.7 Respondents have supported our view that there is a broad range of pay TV subscriber groups which could see an increase in viewing choice as a result of extending MDP and the additional flexibility it offers to programme scheduling. However, the material extent of this choice is unclear, particularly given that MDP is unlikely to be used on a widespread basis (see below).

Which broadcasters would use MDP and to what extent?

What respondents said

- 4.8 **COBA** responded that a number of its members see immediate potential in using MDP. Genres being considered include: high-end drama, sports, crime documentaries, film channels (other than premium service) and music videos, amongst others. COBA stated that Turner Classic Movies (TCM) would use MDP to show post-watershed films during the day.
- 4.9 **Sky** said that it would use MDP for channels such as Sky Atlantic, which are aimed at adult audiences, allowing them to remain in step with audience expectations.
- 4.10 In relation to Ofcom's question about the expected number of hours for which broadcasters might use MDP, Sky said that it would test customer acceptance before more widely using MDP and explained how it anticipated doing so. [X]

- 4.11 **BT** said that it would be unlikely to change its output if the MDP rules were updated. It noted that it may be useful to deploy MDP for events such as UFC (Ultimate Fighting Championship). However, as the number of UFC events vary year on year, it would be difficult to estimate how many hours of content per month this would comprise.
- 4.12 **A+E Networks** envisaged limited use of MDP, mainly for the Crime + Investigation channel and History channel and for content which it can currently offer as a post-watershed version to viewers, such as *Vikings* and *The Jail: 60 Days In*. A+E Networks also said that programmes are likely to be broadcast under MDP for a maximum of two hours a day.
- 4.13 **Viacom** noted that should Ofcom remain committed to implementing its proposal, then it should be on a limited, trial-basis only and that there should be annual evaluations going forwards to monitor its impact.

Our response

- 4.14 We note that the broadcasters with an appetite for using MDP and the content they wish to use it for have not changed since our Call for Inputs in 2016 and, in general, broadcasters' use of the MDP regime would be relatively focused. Extending MDP would mostly affect audiences of Sky Atlantic, Crime + Investigations, History channel, and Turner Classic Movies. There would be some small, but material increase in choice to viewers of these channels.
- 4.15 We acknowledge Viacom's suggestion to trial MDP, and we welcome Sky's intention to trial customer acceptance before implementing more widely. We would encourage other broadcasters wishing to utilise the MDP rules to run similar trials in the first instance. Trial periods should also be used to ensure that viewers are fully informed about the changes and provide information on the importance of setting strong PIN codes in households with children (see Section 2). In response to Viacom's suggested annual evaluations of MDP, it is important to note that Ofcom can review and revise the Code rules at any time, whenever we consider it necessary, so we do not think it appropriate to commit to an annual review.

Are there potential downsides for viewers?

What respondents said

- 4.16 One small **broadcaster** said that MDP could lead to a reduction in the number of channels aimed at households with children. However, other respondents (**A+E Networks, BT, COBA, and Virgin Media**) did not foresee any decrease in choice for this group. **A+E Networks** and **COBA** noted that the channels likely to use MDP would not be aimed at, or attractive to children, so there would be no appreciable reduction in the choice of content available to them.
- 4.17 In its response, **BT** said that viewers have been accustomed to entering PINs for on-demand content and would be unlikely to be deterred from viewing a channel because it required a PIN to be entered.

Our response

- 4.18 We recognised in the consultation that extending MDP may not produce benefits for all pay TV viewers and that households with children may not consider the changes beneficial. However, we agree with the responses above that MDP would not lead to a significant reduction in choice for households with children, because the channels most likely to use this rule change would not be aimed at child viewers and there are currently a large number of channels on pay TV aimed at children and families. We do not anticipate that the number of these channels would reduce as a result of the extension of MDP, and nor did respondents suggest that it would.
- 4.19 Ofcom's consultation also recognised a potential inconvenience for viewers of MDP channels when switching between channels during an advert break, as they would have to re-enter the PIN. We agree with BT's argument however that viewers are accustomed to using PINS for on-demand content. We also consider that if this inconvenience was significant and outweighed the benefits from viewing the content, then viewing of the channel would be negatively affected and channels would be unlikely to use/continue to use this technology.

The effects on platforms

What would be the impact on competition and switching between FTA and pay TV?

What respondents said

- 4.20 **Viacom** said that it considered that an extension to MDP would distort competition between pay TV and FTA broadcasters because FTA platforms do not have the technical capability to utilise the rule change. However, Viacom focused mainly on the benefits this could confer on the pay TV channels through extra viewing rather than competition between the platforms per se.
- 4.21 In contrast, **Virgin Media** said that each platform has its own characteristics and content offer to differentiate it in the market and that this diversity helps to create a competitive market.
- 4.22 **BT** said that, to some extent, broadcasters using MDP as a way of differentiating their offering could cause viewers to churn away from their existing service (but have no evidence to support this view). **BT** also suggested that non-linear (on-demand) viewing to mobile devices arguably posed more of a threat to FTA platforms than the extension of MDP rules.
- 4.23 **COBA** said that MDP might conceivably lead to a small, incremental increase in the attractiveness of a platform. However, they considered it extremely unlikely to be a factor in a viewer switching platforms, as they do not expect use of MDP to be widespread.
- 4.24 **Sky** agreed with our view that this innovation represented part of the normal competitive process. [✂]

4.25 In response to the Call for Inputs³², Channel 4 had suggested that the ability to use MDP would encourage many channels, which currently broadcast on both FTA and pay TV platforms, to become Pay TV only. They believed that reduced channel numbers on FTA would reduce the variety and attractiveness of the FTA platforms to end viewers. In the consultation, we observed that FTA households still comprise a large proportion of viewing and so have a large effect on channel advertising revenues. As such, we doubted that ability to use MDP on pay TV platforms would result in many channels leaving FTA platforms. However, we asked for stakeholders' views on this. We did not receive any evidence on this in response to the consultation, nor did Channel 4 submit a response. We therefore, continue to believe that our view is correct that few channels, if any, are likely to leave FTA platforms.

Our response

- 4.26 As we highlighted in the consultation, effective competition does not require all suppliers to provide exactly the same service. There are already considerable differences in the channels and services provided by the various platforms. We continue to believe that the increase in differentiation represented by the extension of MDP could be an additional source of competition in the market.
- 4.27 Some respondents have suggested that there could be some small movement of viewing towards more attractive PIN protected content on pay TV platforms; however, there is no available evidence to show whether this would lead to material levels of platform switching. Switching levels have been historically low across the TV platforms and, on its own, we maintain the view expressed through our consultation that we do not consider that MDP would result in significant incremental switching from FTA to pay TV.
- 4.28 In the consultation, we noted that the extension of MDP could, however, offer other benefits to pay TV platforms. It might help stabilise the pay TV subscriber base, if current pay TV households viewed it as an important extra feature i.e. it could reduce switching away from pay TV. Pay TV platforms may also benefit from increased revenues from channels who use MDP (though this would need to be set against any extra costs of facilitating the service). We note, however, that respondents did not offer any comments on these suggestions or their likely materiality.
- 4.29 Our consultation noted that enabling MDP would remove a potentially outdated barrier to platform innovation. This could stimulate innovation and investment by both FTA and pay TV platforms and benefits to viewers in the longer run. As noted by COBA, in the hypothetical situation event that lack of MDP was driving consumers away from FTA platforms, then these platforms could consider investing in the required technology to enable MDP on FTA.

³² The Call for Inputs and published stakeholder responses can be found here on the Ofcom [website](#).

The effects on channel competition

What about competition between channels?

4.30 The extension of MDP could result in increased choice for certain types of viewers. In the consultation, we said that this could result in some viewers switching their viewing between channels.

What respondents said

4.31 **Viacom** argued that competition would be inhibited, as FTA channels would not be able to introduce the required technology to compete with pay TV channels. In Viacom's view, FTA channels, including PSBs will remain constrained by the watershed provisions of the Code, which would inevitably lead to some shift in viewing from FTA to Pay TV channels. This would negatively impact the advertising revenue of FTA channels. However, Viacom did not provide any evidence either that viewers would shift to Pay TV channels, or on the likely magnitude of any switching or effect on advertising revenue.

4.32 **COBA** said that certain channels might benefit from an increase in viewers. In particular, the Turner channels, such as Turner Classic Movies which previously has not been able to show post-watershed films during the day, would benefit from the extension of MDP beyond premium subscription film channels. COBA anticipates a significant increase in viewing as a result of the rule change.

4.33 **COBA** also suggested that the types of channels using MDP would be unlikely to be in direct competition with channels not using MDP, such as those aimed at family-oriented viewing. **A+E Networks** similarly said that pay TV channels are not targeting the same audiences as FTA channels, so any competition impact would be very limited.

4.34 **BT** said that extending MDP could allow for healthy competition among broadcasters, particularly in the context of changing viewing habits and increased competition with on-demand services.

Our response

4.35 Having considered the responses we conclude that although there may be some shifts in viewing towards MDP channels on pay TV, we consider that any negative effects on share of viewing and share of advertising revenue of other individual channels are likely to be relatively small.

4.36 While we accept that some channels may see a loss of viewing and advertising revenue because viewers may switch towards more attractive PIN protected content, we consider, as we explained in the consultation, that this would reflect the normal processes of competition. Some of the increased viewing of MDP-enabled channels may also come from increased total hours of viewing, if watching TV before 9pm has become a more attractive leisure activity for certain viewers.

- 4.37 As we noted in the consultation, only viewing of channels which broadcast on the pay TV platforms would be directly affected. Channels solely on FTA platforms (where MDP is not feasible) should not see any direct change in viewing share as a result of MDP. Similarly, those channels operating across both FTA and pay TV would only see a proportion of their viewing (and potentially advertising revenues) affected.

Would MDP increase competition with on-demand services?

- 4.38 We considered in the consultation that MDP may also enable scheduled TV channels to better compete with the growth of on-demand viewing, as it is possible that once ‘in’ on-demand content, viewers stay and “binge” on programmes. MDP may instead lead some viewers to view more scheduled TV if they find the content available appealing.

What respondents said

- 4.39 **COBA** suggested that rather than competition between pay TV and FTA platforms, there is “far more meaningful competition” between platforms using MDP and on-demand platforms.
- 4.40 **A+E Networks** also suggested that the relevant competitive market for the MDP regime is on-demand and catch-up services. It noted that subscription channels are in direct competition with OTT services such as Amazon Prime, Netflix and Apple TV, rather than FTA services. It noted that the use of PIN protection during the day is already widely established in this market. Similarly, **YouView** also stated that allowing post-watershed content to be broadcast during the day using MDP would level the playing field with on demand services.

Our response

- 4.41 We agree with respondents that MDP may enable the scheduled linear channels to compete more readily for viewers with new on-demand services. As highlighted above, on-demand and catch-up services can already show post-watershed content at any time of day without the need for a mandatory PIN. As we set out in the consultation, it is possible that some viewers who currently use on-demand or catch-up services during the day or early evening, may instead watch the content available behind MDP. We see this as a positive way to promote competition in the viewing market, and ultimately provide viewers with increased choice.

Would MDP lead to investment in new content?

- 4.42 In our consultation, whilst we acknowledged that investment in post-watershed content by channels using MDP might increase, we were unconvinced that this content would necessarily be ‘original or UK based’. We considered that, to date, the PSBs represent the main source of investment in UK content and that these channels would be unlikely to engage in or benefit from MDP. Extending MDP could result in a relatively small reduction to viewing to PSB channels – and, for commercial PSBs, this could consequently have a small impact on their advertising revenues – disincentivising UK programme investment.

On the other hand, channels might invest and innovate (defensively to attract back viewers) if their viewing were reduced by extension of MDP.

What respondents said

- 4.43 Where longer run investment and innovation is concerned, **A+E Networks** noted that diversifying programme choice will encourage broadcasters to invest more heavily in high-end content. Similarly, **Sky** said that it has invested significantly in UK drama, but is unable to show much of it during the day.
- 4.44 On the other hand, **Viacom** suggested that reduced revenue would diminish the ability to invest in UK content, thereby placing additional pressures on PSBs (which are obliged to be offered FTA) to fulfil their licence obligations.

Our response

- 4.45 Overall, we do not think that respondents have provided any evidence that MDP will have significant effects on UK programme investment.

5. Code amendments

- 5.1 In the consultation we set out draft amendments to the rules in Section One of the Broadcasting Code which we proposed to adopt in the event that mandatory daytime protection was to be extended. The suggested revisions would be necessary to allow for post-9pm watershed content to be shown in pre-watershed hours using MDP.
- 5.2 As part of the draft new rules we proposed to remove the existing reference to premium subscription film services in Rule 1.24 so that MDP would apply consistently to all content (programmes and films). This proposal removed a carve out which currently allows for BBFC 15-rated films (or equivalent) to be shown at 8pm on premium subscription services (without mandatory PIN protection).
- 5.3 We provided stakeholders the opportunity to comment on the draft rule amendments and welcomed views on the proposed change for BBFC 15-rated films.
- 5.4 In summary the proposed changes to the relevant rules were:
- 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” provided with the rules. This would distinguish it from “mandatory restricted access” which applies for adult sex material under Rule 1.18 where content is not permitted for broadcast during the daytime.
 - c) A minor amendment to Rule 1.23 to remove the reference to “pay per view services” and replace it with “mandatory daytime protection”.
 - d) A newly drafted Rule 1.24 which removes the reference to premium subscription film services so as to instead apply to all content consistently.
 - e) A requirement for broadcasters to provide programme information to assist viewers in making a decision about the suitability of the content.
 - f) A requirement for broadcasters to provide a clear explanation of mandatory daytime protection to all viewers.
- 5.5 We received no comments or objections to the proposed revisions to the rules in Section One (question 21 of the consultation), other than in relation to the proposed change for up to BBFC 15-rated films to no longer be able to be shown at 20:00. We discuss this below.

The 8pm watershed for films

What respondents said

- 5.6 **BT, Virgin Media** and **YouView** responded that a consistent approach in the regulation that applies across channels would be beneficial.
- 5.7 **COBA** said that it saw no need for change on this point.

- 5.8 Sky opposed Ofcom’s proposal to remove the carve out for 15-rated films to be shown at 8pm, stating that it may have the unintended consequence of introducing an additional restriction. The 8pm watershed for premium subscription film channels has been in place for many years and is well understood by viewers. By moving the watershed on premium subscription films from 8pm to 9pm, Sky claimed that the change would be perceived negatively by viewers as it would create inconsistencies with their previous experience. Sky stated that scheduling would be negatively affected by this proposed change. Currently, the prime-slot is 8pm, as this is when a film (other than a U or a PG) can be shown when a PIN isn’t required. Starting such films at 9pm would mean a much later finish, and consequently many viewers would choose not to watch. Sky said that although it welcomes the flexibility to utilise MDP generally, it also recognises “that for some viewers a pin can be an obstacle and therefore seek to only use it where beneficial”.
- 5.9 In its response Sky suggested that the 8pm watershed for premium subscription films be re-inserted into Rule 1.24: *“Provided that mandatory daytime protection is in place pre-2100 (or pre-2000 on Premium subscription film services) 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...”*.

Our response

- 5.10 We have carefully considered responses to this question and the evidence provided by Sky - currently the only provider of premium subscription film services through its Sky Cinema channels. Our proposals for MDP sought to provide increased choice for viewers, and flexibility for linear broadcasters in a converged viewing market. It is not Ofcom’s intention to introduce additional limitations for broadcasters which may have a negative impact on viewers. We have therefore decided to maintain the current carve out in the Code which allows films to be shown at 8pm on premium subscription channels without MDP. We are confident that, as this rule has been in place since 2005, viewers will have established expectations for these channels and there will not be an increased risk for child viewers as a result of maintaining this aspect of the current regime. We also recognise the competition faced by linear film channels from SVOD services which have no scheduling restrictions and can make all classifications of films available at any time of day without PIN protection.
- 5.11 Ofcom notes Sky’s suggested amendments to Rule 1.24. However, we think it is important to make reference to the film certification which will be permitted at 8pm for clarity (as in the current Rule 1.24).

Provided that mandatory daytime protection is in place pre-2100 and post 0530 (or pre-2000 and post 0530 for up to BBFC 15-rated films or their equivalent on premium subscription film services), 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.

What information should be provided with programmes using MDP to inform viewers on the suitability of the content?

What respondents said

- 5.12 **A+E Networks and BT** said that information such as programme title, programme synopsis, certification information and warnings could be provided with programmes using MDP which would help viewers gauge the suitability of the content prior to watching it.
- 5.13 **YouView** stated that it is ultimately dependent on the provision of metadata from its content partners, but ideally, age rating guidance is useful signposting to viewers.
- 5.14 **COBA** noted that some on-demand content can include an explanation of why a PIN is required, such as an on-screen warning that the programme contains violence or swearing. It considers that such warnings might be included for a limited time while the system beds in and viewers become accustomed to MDP.
- 5.15 **Virgin Media** said that it provides rating information alongside programming. However, its PIN does not support providing any further information. It stated that Ofcom should support a uniform industry-wide approach to platforms and broadcasters communicating about mandatory PINs to ensure consumer clarity around the changes.

Our response

- 5.16 Ofcom’s audience research shows that information and ratings included with programmes are a useful and valued tool for parents to use in conjunction with the watershed and PINs to determine the suitability of content. In the consultation we proposed to include a requirement in the relevant Code rules for broadcasters to provide clear programme information for programmes protected by a mandatory PIN. We also proposed the inclusion of a “note” outlining the types of information that Ofcom would take into account under this rule. The types of information included in this note (warnings about the types of potentially unsuitable material in the programme, ratings, and continuity announcements) are consistent with stakeholder responses above.
- 5.17 We do not consider, as COBA suggests, that warnings about adult themed content should be in place for a limited time while the system “beds in”. To maximise the protection offered to children, we consider that this type of information should always be available with programmes using MDP. We will therefore maintain the requirement to provide information in Rule 1.24 and the accompanying guidance note.

What does the requirement to clearly explain MDP to all viewers mean?

- 5.18 The mandatory PIN rules of the Code have always included a requirement to ensure that the protection systems in place are clearly explained to all viewers. We have set out in Section 2 our expectations for platforms and broadcasters to work together to

communicate the changes effectively and to advise viewers on the importance of setting, and regularly changing, strong PINs. This communication should reach existing subscribers and viewers. Platforms must also ensure that new customers have a clear explanation about the mandatory protection systems in place so that they understand what they are setting a PIN code for.

The Rule amendments

5.19 Below we set out the relevant revisions to the rules in Section One of the Code. These will come into force on 1 January 2019. Until that time the current rules will remain in effect.

Films and mandatory daytime protection

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), 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 (or pre-2000 and post 0530 for up to BBFC 15-rated films or their equivalent on premium subscription film services), 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 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 above.)

1.26 BBFC R18-rated films must not be broadcast.