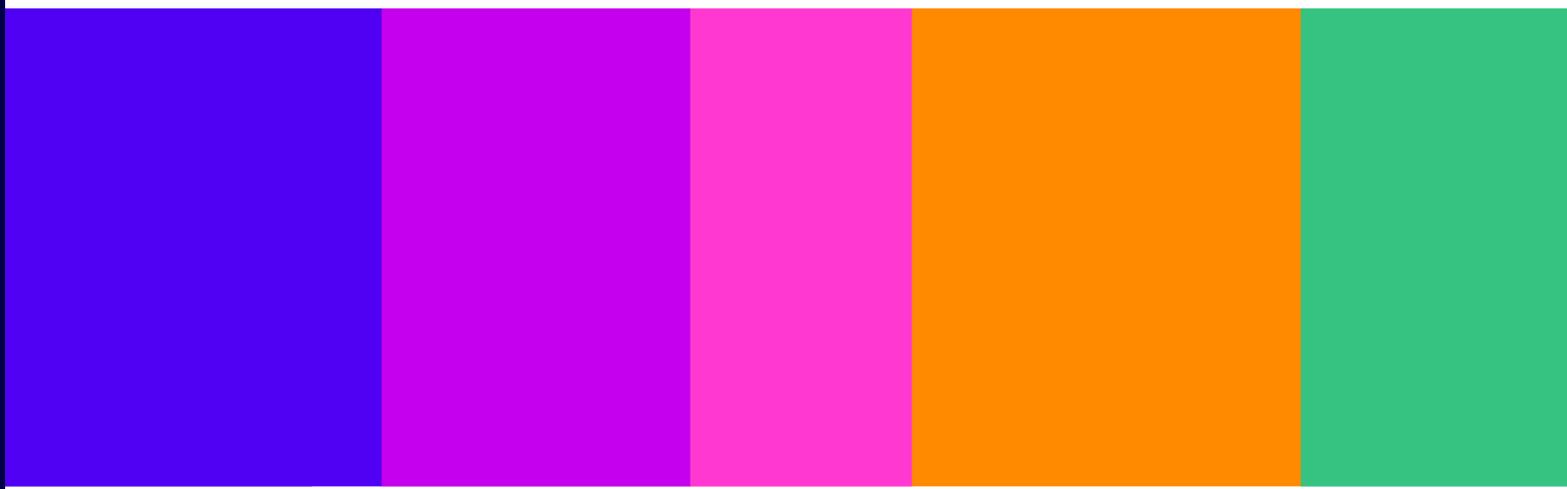


Designation of Radio Selection Services

Statement of Principles and Methods

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1. Statement of Principles and Methods

About this document

A1.1 This document is the Statement of Principles and Methods to be applied by Ofcom when preparing a report which makes recommendations to the Secretary of State regarding the designation of radio selection services under Section 362BC of the Communications Act 2003 (“the Act”). Section 362BC(7) of the Act requires Ofcom to produce and maintain a statement setting out these principles and methods.

Legal framework

A1.2 The aim of the radio selection service regime in Part 3B of the Act is to ensure that audiences can access online streams of UK radio services in particular circumstances, namely when a listener makes a voice request to a radio selection service (we explain what a radio selection service is in the following section). To achieve this, the providers of designated radio selection services must ensure that when a listener asks for a particular UK radio service, the radio selection service plays that service.¹ The regime also places other requirements on providers of designated radio selection services relating to the interruption or overlaying of the online stream with other content,² and the method used to play the online stream.³ These requirements are subject to preferences set by users of designated radio selection services.⁴ Further, providers of designated radio selection services are prohibited from charging the providers of the online streams of UK radio stations for doing what they are required to do to comply with the regime.⁵

A1.3 Online streams of radio services are called “internet radio services”.⁶ In summary, the radio selection service regime applies to internet radio services which correspond⁷ to UK analogue or DAB radio services provided by the BBC or provided under a broadcasting licence issued by us.⁸ These are called “relevant internet radio services” and will be included in a list maintained by us.⁹

A1.4 The Secretary of State may make regulations which designate specific radio selection services.¹⁰ This power can only be exercised if the Secretary of State considers that the level of use of the radio selection service in the UK to listen to internet radio services is

¹ Section 362BI(1) of the Act.

² Section 362BI(2) of the Act.

³ Section 362BI(3), (4) and (5) of the Act.

⁴ Section 362BI(5) of the Act

⁵ Section 362BI(6) of the Act.

⁶ “Internet radio service” is defined in section 362BF of the Act.

⁷ “Correspond” has the meaning set out in section 362BG(4) of the Act.

⁸ The specific categories of analogue and DAB radio services which are within scope of the regime are set out in section 362BI(11).

⁹ “Relevant internet radio service” is defined in section 362BG of the Act.

¹⁰ Section 362BB(1) of the Act.

“significant”. This may be a level of use which the Secretary of State considers to be significant in certain circumstances, such as while in a vehicle.¹¹

- A1.5 The Secretary of State must have received a report from Ofcom before making or amending designation regulations.¹² Our report must set out recommendations on how the Secretary of State should exercise their regulation making powers. We may decide to prepare such a report on our own initiative.¹³ Alternatively, the Secretary of State may ask us to prepare a report, in which case we must do so as soon as practicable.¹⁴
- A1.6 The Act provides Ofcom with information gathering powers that can be used to obtain information that we consider necessary to inform our report to the Secretary of State.¹⁵ These powers allow Ofcom to require information to be obtained or generated by the person receiving the request.¹⁶
- A1.7 Ofcom must publish a statement about the principles and methods it will apply when preparing a report for the Secretary of State. This document is that statement. We may revise or replace this statement.¹⁷
- A1.8 A more detailed legal framework is set out in Annex 1.

Principles and methods for preparing our report on designation of radio selection services

What is a radio selection service?

- A1.9 A radio selection service or RSS is a service provided via the internet which enables (or among other things enables) the user to do the following things by giving “spoken commands” recorded by equipment connected to the internet:
- a) to make a selection between internet radio services provided by different providers; and
 - b) to cause a selected internet radio service to play.¹⁸
- A1.10 In order to fall within the definition of an RSS, a service must be able to play internet radio services in response to a voice command from a user. Services that don’t directly play streams of internet radio services (for example, those that are only capable of providing links for users to access radio streams) would not meet the definition of a ‘radio selection service’ under the Act.

¹¹ Section 362BB(2) of the Act.

¹² Section 362BB(3) of the Act.

¹³ Section 362BC(1) of the Act.

¹⁴ Section 362BC(2) and (3) of the Act.

¹⁵ Section 362BQ of the Act.

¹⁶ Section 362BQ(2) of the Act.

¹⁷ Section 362BC(7) and (8) of the Act.

¹⁸ Section 362BA(1) of the Act. The Secretary of State may modify the definition of “radio selection service” under section 362BA(2) of the Act. Ofcom will apply the definition in force at the time of preparing a report.

How Ofcom will make assessments

A1.11 Section 362BC(3) of the Act sets out the matters Ofcom must consider when preparing a report making recommendations about the exercise of the Secretary of State's power to designate an RSS. A report prepared by Ofcom must include an assessment, in relation to each RSS in question, of:

- a) the number of members of the public using the service;
- b) the manner in which the service is used by those persons;
- c) whether the level of use of the service is significant; and
- d) such matters as OFCOM consider likely to affect the matters referred to in paragraph (a), (b) or (c).¹⁹

A1.12 We set out below the principles and methods we will apply when assessing these matters.

(a) The number of members of the public using the service

A1.13 Ofcom will assess the number of members of the public using the RSS to listen to internet radio services.²⁰ To achieve this:

- a) We will use the best available evidence to provide an objective and reliable basis for measuring the number of people in the UK using each RSS to listen to internet radio services.
- b) If we consider individual user numbers cannot be measured reliably, we may use a proxy for user numbers. We may take an approach that involves combining more than one metric or proxy.
- c) We will apply a consistent methodology to our assessment of each RSS to ensure fair treatment.

(b) The manner in which the service is used by those persons

A1.14 We will generally take account of the different ways in which an RSS can be used to listen to internet radio services. We may consider a broad range of information (such as where listening is taking place (home, car etc), how often and for how long users are listening to internet radio) in our approach.

(c) Whether the level of use of the service is significant

A1.15 We will set a threshold that we consider to be significant:

- a) When setting this threshold, we will seek ensure that relevant internet radio services are widely available to users of RSS.
- b) We will generally consider what level of use is significant every time we prepare a report. We will consider any relevant factors which may affect what is significant at that particular time, recognising that significance is context dependent. As such, where we have previously given recommendations, we will consider if the threshold used in that report is still appropriate.

¹⁹ Section 362BC of the Act.

²⁰ The Secretary of State must consider that the level of use of a RSS in the UK to listen to internet radio services is significant in order to designate it (section 362BB(2) of the Act).

c) We will determine the threshold in a proportionate way. We will take into account that designation of an RSS will impose regulatory obligations on providers of RSS.

A1.16 Generally, we will recommend the designation of an RSS at or above a threshold we consider to be a significant level of use. However, taking into account the other principles and methods in this statement, we may consider it appropriate not to recommend the designation of such an RSS. For example, we may not recommend the designation of an RSS if evidence suggests that the level of use is declining and is unlikely to be over the threshold for a reasonable period of time after designation. We will explain why we have or have not recommended the designation of RSS that are at or above the threshold.

(d) Any other matters Ofcom considered likely to affect the above

A1.17 We will consider whether it would be appropriate to assess any other factors that are likely to affect the matters referred to above, taking into account our relevant statutory duties.²¹

A1.18 These matters may include level of use by different audience groups, market indicators such as growth projections or other market factors contributing to the way in which audiences are accessing radio services via the RSS. The relevance of these factors is likely to depend on the circumstances at the time we are preparing a report. We will also have regard to the Secretary of State's power to designate a radio selection service if the level of use is significant in certain circumstances (such as while in a vehicle as referred to in Section 362BB(2)).

General principles

A1.19 We will explain why we have taken a particular approach in our report and how that approach is consistent with the principles and methods set out in this statement.

A1.20 However, we may consider it appropriate or necessary to follow different principles and methods to those set out in this statement. If we follow different principles and methods, then we will explain why we have done this.

A1.21 We may use our information gathering powers in section 362BQ of the Act to gather evidence to inform our report.

A1.22 We will publish the reports that we give to the Secretary of State.²²

²¹ Our relevant statutory duties are set out in the annex to this statement.

²² Section 362BC(5) of the Act.

A2. Legal Framework

Legal Framework

- A2.1 This Annex sets out the statutory framework regarding the designation of radio selection services (RSS) under Part 3B of the Communications Act 2003 (the Act), which was inserted into the Act by Part 6 of the Media Act 2024. This Annex is only a summary of the relevant provisions, it is not a substitute for reference to the statute.
- A2.2 Also relevant are Ofcom’s general duties in carrying out its functions, to further the interests of citizens in relation to communications matters and consumers in relevant markets, where appropriate, by promoting competition.²³ In doing so, Ofcom must have regard to a number of matters including the desirability of encouraging investment and innovation in relevant markets.²⁴
- A2.3 In performing its general duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, and any other principles appearing to Ofcom to represent the best regulatory practice.²⁵
- A2.4 As explained further below, RSS that are designated by the Secretary of State (designated RSS or DRSS) will have to comply with various statutory obligations related to access to relevant internet radio services.²⁶

Radio selection services

- A2.5 The Act defines an RSS as “a service provided by means of the internet which enables, or among other things enables, a user of the service—(a) to make a selection between internet radio services²⁷ provided by different providers, and (b) to cause a selected internet radio service to play, by giving spoken commands that are recorded by equipment connected to the internet.”²⁸
- A2.6 The Secretary of State may by regulations amend the definition of “radio selection service”.²⁹ The amendments that may be made by the Secretary of State include adding, removing or altering a thing that a radio selection service is to enable a user to do.³⁰

²³ Section 3(1) of the Act.

²⁴ Section 3(4)(a) of the Act.

²⁵ Section 3(3) of the Act.

²⁶ Section 362BI of the Act.

²⁷ Section 362BF of the Act defines an internet radio service as “a service, or a dissociable section of a service, which consists in the provision by a person of programmes consisting wholly of sound (together with any ancillary services) with a view to their being made available for reception by members of the public by being distributed by means of the internet (whether by the provider of the service or another person)”.

²⁸ Section 362BA(1) of the Act.

²⁹ Section 362BA(2) of the Act.

³⁰ Section 362BA(3) of the Act.

Designated radio selection services

- A2.7 A "designated radio selection service" (DRSS) is a radio selection service designated by the Secretary of State by regulations.³¹
- A2.8 The Secretary of State may designate a radio selection service only if the Secretary of State considers that the level of use of the service in the United Kingdom to listen to internet radio services is significant (and the Secretary of State may consider the level of use to be significant if the Secretary of State considers it to be significant in certain circumstances, such as while in a vehicle).³²

Ofcom's report to the Secretary of State

- A2.9 Before the Secretary of State can make regulations designating a RSS, the Secretary of State must have received a report from Ofcom, containing Ofcom's recommendations on the exercise by the Secretary of State of their powers to make regulations to designate the radio selection service in question.³³
- A2.10 Ofcom may decide on its own initiative to provide the Secretary of State with a report.³⁴ Alternatively, the Secretary of State may request a report from Ofcom, in which case we must prepare one as soon as practicable.³⁵
- A2.11 Ofcom's report must include our assessment, in relation to each radio selection service in question, of—
- a) the number of members of the public using the service;
 - b) the manner in which the service is used by those persons;
 - c) whether the level of use of the service is significant;
 - d) such matters as we consider likely to affect the matters referred to in paragraph (a), (b) or (c).³⁶
- A2.12 Ofcom must provide such a report to the Secretary of State and we must also publish it.³⁷
- A2.13 Ofcom's role in preparing reports for the Secretary of State is limited to recommendations on the Secretary of State's power to designate RSS. There is no statutory power for Ofcom itself to designate an RSS.
- A2.14 If the Secretary of State exercises their power to designate in a manner which differs from recommendations made in Ofcom's report, the Secretary of State must publish, no later than the time at which the regulations are made, a statement of the reasons for doing so.³⁸

³¹ Section 362BB(1) of the Act.

³² Section 362BB(2) of the Act.

³³ Section 362BC (2)(a) of the Act.

³⁴ Section 362BC(1) of the Act.

³⁵ Section 362BC(2) and (3) of the Act.

³⁶ Section 362BC(4) of the Act.

³⁷ Section 362BC(5) of the Act.

³⁸ Section 362BC(6) of the Act.

Ofcom's statement of principles and methods

- A2.15 Ofcom must prepare and publish a statement about the principles and methods we will apply in preparing a report to the Secretary of State making recommendations about the exercise of their powers to make designation regulations.
- A2.16 We may revise or replace that statement and must publish the revised or replaced statement.³⁹

List of relevant internet radio services

- A2.17 The new regime requires providers of designated RSS to comply with requirements relating to the provision of "relevant internet radio services". These are internet radio services which are included in a list maintained by Ofcom.
- A2.18 These are the conditions that must be satisfied in order for an internet radio service to be included in the list (and become a relevant internet radio service):
- a) the provider of the service has in place an effective system or process for securing that the service "corresponds" to a UK radio service that is provided by them. An internet radio service corresponds to a UK radio service if (disregarding advertisements) all of the programmes included in the internet radio service are broadcast on the UK radio service at the same time as they are provided by the internet radio service; and
 - b) the provider of an internet radio service has given notice to Ofcom requesting that the service be included in the list.
- A2.19 Providers of UK radio services are not required to make online streams of their services available. Where a provider of a relevant internet radio service decides to cease provision of the online stream, they must notify Ofcom. Ofcom would remove the service from the list and it would accordingly no longer be a relevant internet radio service.⁴⁰

Effect of designation

- A2.20 Where an RSS is designated, the provider of the DRSS must comply with the new regime. A summary of the requirements applying to DRSS providers is set out below.
- A2.21 First, the provider of a DRSS must take all reasonable steps to secure that users can select relevant internet radio services, and cause them to play, by giving spoken commands.⁴¹
- A2.22 Second, the provider of a DRSS must take all reasonable steps to secure that, where the DRSS is used as described the previous paragraph, no items are played before the selected internet radio service, and there are no interruptions to the internet radio service. The prohibition on playing items before the selected internet radio service has some exceptions:
- a) a brief identification of the selected internet radio service can be played;

³⁹ Section 362BC(8) of the Act.

⁴⁰ Section 362BG(5) of the Act. The service may be removed from the list by notice from the provider of the service; and the provider must give notice to Ofcom if they cease to be the provider of the internet radio service or the corresponding UK radio service, or if provision of the internet radio service has ceased.

⁴¹ Section 362BI(1) of the Act.

- b) if the DRSS uses another internet service to cause the selected internet radio service to play, a brief identification of that other internet service can be played; and
- c) one or more advertisements can be played, if the provider of the selected internet radio service agrees.⁴²

- A2.23 Third, if the provider of a relevant internet radio service requests the provider of a DRSS to secure that the service employs a particular method as regards that relevant internet radio service, the DRSS provider must take all reasonable steps to secure that method is used when playing the selected internet radio service.⁴³
- A2.24 Finally, providers of DRSS are prohibited from charging the providers of relevant internet radio services for doing what DRSS providers are required to do to comply with the requirements described above.⁴⁴
- A2.25 The Act requires Ofcom to issue a code of practice recommending actions that DRSS providers should take when seeking to ensure that they comply with these requirements.⁴⁵ Providers of DRSS are also required to draw up and publish a statement about how they intend to comply with the requirements.⁴⁶

Economic growth duty

- A2.26 Section 108 of the Deregulation Act 2015 sets out Ofcom's duty to have regard to the desirability of promoting economic growth when exercising its regulatory functions. In order to consider the promotion of economic growth, Ofcom will exercise its regulatory functions in a way that ensures that:
- a) regulatory action is taken only when it is needed; and
 - b) any action taken is proportionate.⁴⁷
- A2.27 The government's statutory guidance on this duty recognises drivers of economic growth to include innovation and competition.

Public sector equality duty

- A2.28 Section 149 of the Equality Act 2010 (the 2010 Act) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and

⁴² Section 362BI(2) of the Act. Section 362BI(5) provides that these obligation on DRSS providers do not require the provider to override user preferences as to the way in which the DRSS operates.

⁴³ Section 362BI(3) and (4) of the Act. Section 362BI(5) provides that these obligation on DRSS providers do not require the provider to override user preferences as to the way in which the DRSS operates.

⁴⁴ Section 362BI(6) of the Act.

⁴⁵ Section 362BK of the Act.

⁴⁶ Section 362BJ of the Act.

⁴⁷ Section 108(2)(b) of the Deregulation Act 2015.

foster good relations between persons who share specified protected characteristics and persons who do not.

- A2.29 Section 75 of the Northern Ireland Act 1998 (the 1998 Act) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.

Welsh language duty

- A2.30 The Welsh Language (Wales) Measure 2011 established a legal framework to impose duties on certain organisations to comply with standards in relation to the Welsh language. The standards issued to Ofcom are listed in [Ofcom's compliance notice](#) effective from 25 January 2017.
- A2.31 The Welsh Language Policy Making Standards require Ofcom to assess (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language, when formulating a new policy or reviewing or revising an existing policy.