EXPLANATORY MEMORANDUM TO

THE INTERNET TELEVISION EQUIPMENT REGULATIONS 2024

2024 No. 1056

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Stephanie Peacock MP, Minister for Sport, Media, Civil Society and Youth at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Mark Griffin, Deputy Director for TV and Broadcasting, at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mark Griffin at the Department for Culture, Media and Sport or email: enquiries@dcms.gov.uk can be contacted with any queries regarding the Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations specify the descriptions of the apparatus which are considered to be "internet television equipment" for the purposes of the prominence regime set out at Part 3A of the Communications Act 2003 ("the 2003 Act"), as inserted by Part 2 of the Media Act 2024.

Where does the legislation extend to, and apply?

4.2 Part 2 of the Media Act 2024 introduces a new regulatory framework which will require particular TV platforms (referred to in the legislation as "regulated television selection services") to ensure that particular public service broadcasters' (PSBs') TV apps (referred to in the legislation as "designated internet programme services") are available and easy to find on those TV platforms.

4.3 "Designated internet programme services" are those programme services, provided by PSBs or their associates and distributed by means of the internet, which Ofcom consider are capable of making a significant contribution to that PSB's public service remit; and whose public service remit content included within is easy to find and promoted by the service (section 362AA of the 2003 Act).

4.4 "Regulated television selection services" will be those television selection services which the Secretary of State designates in regulations and considers are used by a significant number of UK viewers (section 362AF of the 2003 Act), having considered advice from Ofcom as to this fact (section 362AG).

4.5 For the purpose of this new prominence framework, a "television selection service" is the service which:

a) enables users to select and access apps, or between programmes provided by those apps;

b) is provided by means of the internet; and

c) is provided in connection with "internet television equipment"

4.6 These Regulations specify what apparatus used in connection with a television selection service is to be considered "internet television equipment", in order that the Secretary of State is able separately to designate which television selection services will be regulated.

4.7 The territorial extent of this Instrument is England and Wales, Scotland and Northern Ireland.

4.8 The territorial application of this Instrument is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 An important goal of the UK's public service broadcasting (PSB) system is to ensure that public service content is easy to find. This is currently achieved for linear (live) broadcasting through rules set out by Ofcom which require regulated electronic programme guides (TV guides/channel listings) to give the first five slots to the PSBs' main channels (i.e. BBC One, BBC Two, ITV1 etc) - the so-called 'prominence' regime. PSBs get this benefit in exchange for additional obligations, e.g. news provision.

5.2 The current regulatory framework for prominence under the 2003 Act does not extend to the PSBs' on-demand services. A new bespoke online prominence regime has now been introduced via the Media Act which will require particular regulated television selection services (or "RTSSs") to carry and give an appropriate degree of prominence to designated PSB internet programme services (their smart TV apps - such as BBC iPlayer and ITVX) within their user interfaces. PSBs argue that securing prominence in the new TV ecology is the most important regulatory reform required for their future sustainability, given the growing challenges they are experiencing in negotiations with TV platforms over carriage on their services.

5.3 Furthermore, although linear broadcast remains a popular way to watch TV, viewers are now increasingly watching TV online. Ofcom's Media Nations report[1] in 2023 found that subscription on-demand services like Netflix are now being used by 68% of households in the UK. As viewing habits shift away from linear, the prominence regime needs to be extended to ensure that PSB services and content remain easy to find for UK audiences online. PSBs play a crucial role democratically and provide an important source of news and information (demonstrated previously during the Covid-19 pandemic), and they are uniquely positioned to bring UK audiences together for national 'shared moments'. This new regulatory framework therefore seeks to ensure that this valuable PSB content continues to be made available and easily accessible for audiences.

[1] Ofcom Media Nations Report 2024: https://www.ofcom.org.uk/media-use-and-attitudes/media-habits-adults/media-nations-2024/

5.4 The purpose of these Regulations are to set the initial parameters of the online prominence regime and specify what is considered internet television equipment. This approach via secondary legislation is to ensure regulation is both targeted and proportionate, which means only those devices used by a significant number of UK viewers as a main way of accessing TV will be captured.

Specified as internet television equipment: Smart TVs, set-top boxes, streaming sticks

5.5 Based on the key criterion that a device's main purpose should be the delivery of TV, and the responses the Department received from stakeholders, the Regulations specify the following devices as internet television equipment: smart TVs, set-top boxes, and streaming sticks. The data we have received highlights watching TV, including PSB content, is a primary function of smart TVs, set-top boxes and streaming sticks, and that these devices are used by a high proportion of UK households as their main way of consuming TV.

5.6 Given the close similarities in functionality between set-top boxes and streaming sticks, these Regulations use one definition of 'streaming devices'.

Not specified as internet television equipment: Smartphones, laptops, tablets, and PCs, video games consoles and newer devices

5.7 The Regulation does not specify the following devices as internet television equipment: PC/Desktop, smartphones, laptops, tablets, video games consoles, LED smart/home cinema projectors, internet connected car touchscreens, virtual reality headsets, smart watches and in-home screens (including smart fridges, smart speakers). These devices do not pass the test of being primarily used to watch TV and therefore it would not be proportionate to specify them as internet television equipment at this stage.

5.8 This position could change in the future, depending on future trends around the use of these devices, particularly games consoles. Therefore, the Government will keep the designation of these devices under review.

What was the previous policy, how is this different?

5.9 The current regulatory framework for prominence under the 2003 Act ensures public service content is easy to find through rules set out by Ofcom that affect the position (or channel number) of designated PSB channels accessed via the TV guide (or electronic programme guide). For example, the framework currently guarantees the first five channels in England are BBC1, BBC2, ITV1, Channel 4 and Channel 5. (In northern and central Scotland, STV replaces ITV1, and in Wales S4C replaces Channel 4).

5.10 However, this framework does not extend to the PSBs' on-demand services. The new online prominence regime, which has now been introduced via the Media Act 2024, seeks to address this shift in viewing habits from linear (live) broadcasting to on-demand and will ensure that viewers can continue to find public service content online.

6. Legislative and Legal Context

How has the law changed?

6.1 The Media Act received Royal Assent on 24 May 2024. Part 2 of the Act amends the 2003 Act by inserting a new Part 3A which establishes a new online prominence framework for "internet programme services" where they appear on regulated

"television selection services". A necessary element of a "television selection service" is that the service is provided in connection with "internet television equipment". This Regulation provides that smart televisions and streaming devices are "internet television equipment".

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Throughout the development of the new online prominence regime, both Ofcom and the Department have engaged with industry and affected stakeholders.

7.2 In July 2019, Ofcom published a review on prominence which made a number of high-level recommendations, including the need for new legislation to keep PSB content prominent online, and the Department committed to taking forward their proposals[2]. Ofcom also consulted and provided further recommendations to the Government on prominence as part of their previous review of public service broadcasting - 'Small Screen; Big Debate' in 2020/21[3].

7.3 Building on this – and following engagement with a range of stakeholders from across industry, including PSBs, commercial broadcasters, platforms and TV manufacturers, in April 2022 the Department published a Broadcasting White paper, Up Next, setting out its commitment to introduce a new online prominence regime in the context of a changing TV landscape[4]. There was engagement with industry following the publication of this White Paper throughout the development of the Media Bill, which was published in draft in March 2023.

7.4 Following the Bill's publication in draft, there was a period of technical engagement with industry on the drafting by DCMS, as well as pre-legislative scrutiny carried out by the Culture, Media and Sport Select Committee. All of the feedback provided by the stakeholders and recommendations issued by the Committee was taken into consideration ahead of introduction in Parliament on 8 November 2023.

7.5 In relation to this SI, between October and December 2023, the Department engaged with industry to understand what devices are in the market, how devices are used, and the ways in which consumers watch TV. DCMS received responses from PSBs, device manufacturers, pay-TV operators and games console providers. Stakeholder views were mixed, and in some cases there was limited data (especially on newer devices in the market).

7.6 Industry identified a range of devices which can be used to watch TV content - some well-established on the market including smart TVs, set-top boxes, streaming sticks, as well as some newer devices, such as smart monitors and home projectors. All but one stakeholder support the specification of smart TVs, set-top boxes and streaming sticks as internet television equipment. While PSBs suggested that the definition of internet television equipment should encompass a wider range of devices to ensure the legislation is sufficiently future proofed, platforms were generally supportive of the

[2] Ofcom Review prominence for public service broadcasting (4 July 2019): https://www.ofcom.org.uk/tv-radio-and-on-demand/public-service-broadcasting/epg-code-prominence-regime/
[3] Ofcom Small Screen: Big Debate (15 July 2021): https://www.smallscreenbigdebate.co.uk/statement
[4] DCMS White Paper, *'Up Next'* (28 April 2022): https://www.gov.uk/government/publications/up-next-the-governments-vision-for-the-broadcasting-sector/eaf7e080-5671-4bd0-b45e-fc6dfd9e6f63

then Government's approach to excluding devices where watching TV was not the main function.

7.7 Based on the key criteria that a device's main purpose should be the delivery of TV, and the industry input into the engagement described above, the Department has published a Policy Statement on GOV.UK[5]. This sets out the evidence received and how it has informed policy thinking as to whether or not certain devices should be considered internet television equipment for the purposes of the new online prominence framework.

8. Applicable Guidance

8.1 These Regulations do not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been produced for this Instrument as no, or no significant impact, on the private, voluntary or public sector is foreseen.

9.2 Costs and benefits have been assessed at a high-level in the Department's Impact Assessment[6] for the Media Act 2024 and a Policy Statement has been published which sets out the evidence provided by industry which informed the Department's position on the devices to be specified as internet television equipment. We expect to provide a further Impact Assessment in respect of the regulations made under section 362AF. These will specify the television selection services or the specified description of television selection services which are to be regulated under this new framework.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies for the reasons set out above.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Culture, Media and Sport intends to monitor this instrument and has committed to reviewing the list of internet television equipment one year after full implementation of the new prominence regime. Section 362AZ9 also gives Ofcom a monitoring role under the new online prominence regime.

10.2 The Instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Stephanie

[5] Prominence - specifying internet television equipment: a policy statement: https://www.gov.uk/government/publications/prominence-specifying-internet-television-equipment-a-policy-statement

[6] Media Act 2024 Impact Assessment: A principles-based framework for a new prominence regime for PSB online services: https://assets.publishing.service.gov.uk/media/6541125e1f1a600010360b51/Prominence_Final_IA_-_Published_Version__1_.pdf

Peacock MP, Minister for Sport, Media, Civil Society and Youth at the Department for Culture, Media and Sport has made the following statement:

"A statutory review class is not necessary because the specification of the apparatus considered to be "internet television equipment" is only part of the definition of "television selection services", which may be designated in regulations made under section 362AF of the Communications Act 2003. As such it does not, in itself, regulate business."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Stephanie Peacock MP, Minister for Sport, Media, Civil Society and Youth has made the following statement regarding Human Rights:

"In my view the provisions of the Internet Television Equipment Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").