

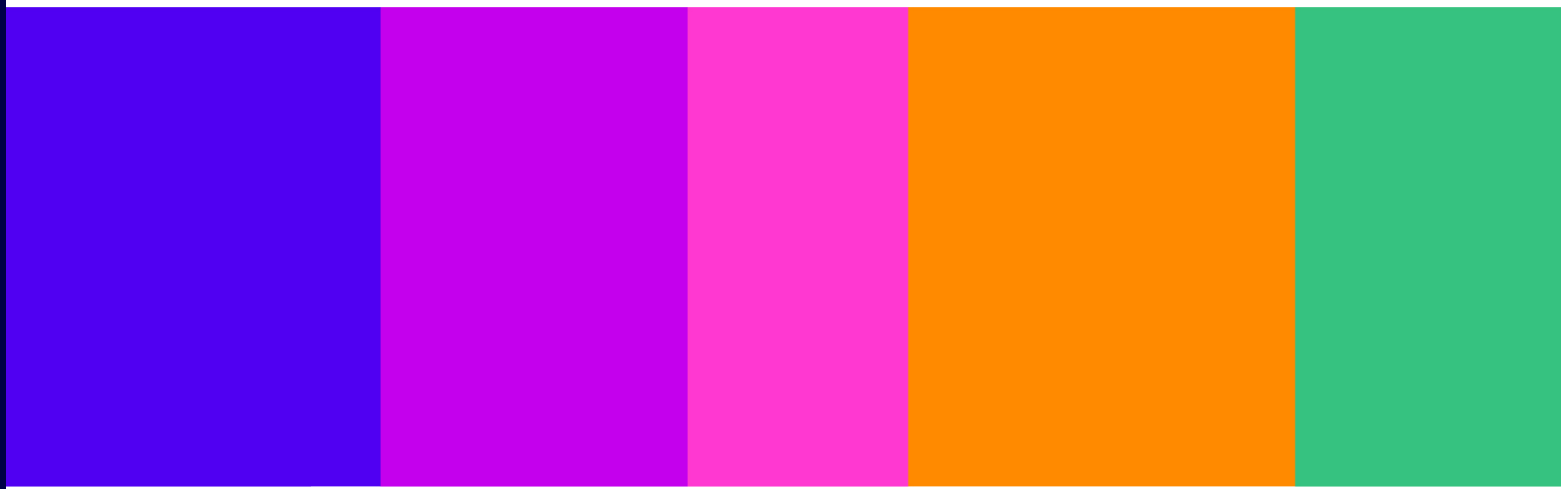
Listed Events

Implementing the Media Act

Call for Evidence

Published 18 July 2024

Closing date for responses: 26 September 2024



1. Overview

What we are calling for evidence on – in brief

The Media Act 2024 represents the first major update to UK media legislation for 20 years. It sets out to make sure people across the country continue to have access to a wide range of high-quality live and on-demand TV, ensuring that audiences are protected from harm and that regulatory structures are reformed to enable the media industry in the UK to thrive.

One change introduced by the Media Act is to the listed events regime, which applies to broadcast coverage of specific events of national interest, such as the Olympic Games, the men's and women's World Cup and European Championship football tournaments, and the Grand National. The listed events regime aims to ensure that coverage of these events remains widely available to audiences. However, it does not guarantee that listed events will be broadcast live or on a free-to-air channel, as rights holders are not required to sell live rights and broadcasters are not obliged to purchase them or show the events.

The Media Act amends the listed events regime, so that “qualifying services” which benefit from the regime can only be provided by public service broadcasters (PSBs), like the BBC and ITV. It aims to ensure that rights to live coverage of listed events are offered to PSBs, as well as to other services which are termed “non-qualifying services”. The Media Act also broadens the scope of the regime so that a range of new providers, including streaming services, will in future be subject to the rules. It does not change which events are, or are not, listed events (which is a matter for the Secretary of State).

As part of implementing these changes, Ofcom is required to define a number of terms used in the regime and to revise our Code on listed events.

In this call for evidence, we are seeking input to help us carry out this work. We would particularly welcome evidence about how viewing of listed events has been impacted by changes in audiences' viewing preferences, and by changes in technology and in the wider media landscape. We are also interested in how rights for listed events are packaged and sold.

Ofcom would like to receive responses by 5pm on 26 September 2024.

We plan to consult on proposals in 2025.

- The World Athletics Championship
 - The Cricket World Cup - the Final, Semi-finals and Matches Involving Home Nations' Teams
 - The Ryder Cup
 - The Open Golf Championship
- 2.3 The current listed events regime works by prohibiting in some circumstances the live coverage of a listed event without prior consent from Ofcom.² It seeks to ensure that rights to live coverage of listed events are offered to broadcasters which meet certain criteria, known as “qualifying services”. At present, the regime designates certain broadcast channels – those free-to-air channels which are receivable by at least 95% of the population – as qualifying services, and all other services as “non-qualifying services”.

The Media Act will change the listed events regime

- 2.4 Since the listed events regime was devised, the media landscape has changed considerably. Though live broadcast TV and radio services continue to be widely used and valued, the expanded choice, which has been enabled by technological change and embraced by audiences, has gone hand-in-hand with declines in broadcast viewing and listening. In 2023, people in the UK watched on average 51% less broadcast TV than in 2014.³ Audiences now access content through a wide range of services and on a variety of devices. This means that broadcasters must compete with global media platforms both for audiences' time and attention, and to acquire the rights for programmes, including sporting events.
- 2.5 Nonetheless, public service broadcasting still has the power and mass reach to bring people together to create shared national experiences. For example, an average of 6.2 million people watched Scotland's opening match at this year's Men's European Championship on ITV/STV/UTV, either live or later that same day - the equivalent of 44% of those watching broadcast TV at the time. England kicked off their Euros campaign against Serbia on 16 June with an average audience on the day of 10.5 million, which was 60% of people watching broadcast TV at the time.⁴
- 2.6 Given the changes in the media landscape, Parliament has enacted significant changes to the listed events regime through the Media Act. Among other things, the Media Act will change the definition of “qualifying services” so that only services provided by a PSB may now qualify, including on PSBs' on-demand services, such as BBC iPlayer or ITVX, where “designated” for the purpose of new rules on prominence created by the Media Act. It also broadens the scope of the regime to capture a range of new providers, including streaming services.

How the new listed events regime will work

- 2.7 The new listed events regime will continue to apply to “live coverage” of listed events. Instead of being restricted to traditional broadcast channels, it will now include any services

² Our criteria for giving consent is explained in our [Code on sports and other listed and designated events](#). We will update this Code in implementing the changes to the listed events regime.

³ Barb 28-day consolidated on TV sets only, individuals (4+).

⁴ Barb live + VOSDAL on TV sets only, individuals (4+). ITV1 includes ITV +1.

Coverage levels of listed events

- 2.14 The level of coverage that the regime aims to secure is shown on qualifying services differs:
- For Group A events, the regime aims to secure that the same level of live coverage is available on both qualifying and non-qualifying services, other than for Group A events involving more than one sport, where it aims to secure that at least an adequate level of live coverage on qualifying services is available.
 - For Group B events, it aims to secure that an adequate level of alternative coverage (including coverage on qualifying services) is available.

Implementation of the new regime

- 2.15 Our expectation is that the new listed events regime will not take effect until 2026. This is because some of the changes depend on other changes to the regulatory framework for media services in the Media Act which will take time to implement. Ofcom's plans for implementing the Media Act more broadly are set out in our [roadmap to regulation](#).
- 2.16 The Media Act provides that the new listed events regime will not apply to contracts entered into before it takes effect.

Ofcom has a role in implementing the changes to the regime

- 2.17 Ofcom is required to make further provision in secondary legislation to define certain terms used in the listed events regime. These are:
- “live coverage”;
 - “adequate live coverage” (for the purposes of the authorisation applicable to events that involve different sports, such as the Olympic Games); and
 - “adequate alternative coverage” (for the purposes of the authorisation applicable to Group B events).
- 2.18 Ofcom is also required to draw up a code giving guidance about certain matters relating to the regime. These are the matters we will take into account in determining:
- whether to give consent to show live coverage of listed events, where a provider requires this;
 - whether to give consent to televise an event designated by an EEA State⁶ or other CTT state⁷, where a broadcaster requires this;
 - whether to revoke consent given for those purposes; and
 - whether it was unreasonable to expect a person to comply with the restrictions on showing live coverage of listed events or on televising an event designated by an

⁶ A member state of the European Union or any other state which is party to the European Economic Area agreement.

⁷ A state, other than an EEA State or the United Kingdom, which is party to the European Convention on Transfrontier Television.

3. Terms to define

- 3.1 This section explains the terms that Ofcom is required to define in the listed events regime. It sets out the relevant requirements introduced by the Media Act and any relevant provisions in our current [Code on sports and other listed events and designated events](#) (the ‘Code’). This Code was drawn up by the Independent Television Commission (a forerunner to Ofcom) and was continued in effect by the Communications Act 2003. Ofcom has only made limited technical amendments to it to reflect changes in the law over the years.
- 3.2 We invite evidence from stakeholders to inform our work in defining these terms, ahead of consulting on proposals in 2025.

Live coverage

The listed events regime restricts providers of qualifying and non-qualifying services from showing live coverage of listed events without authorisation. It also regulates contracts granting rights to show such coverage.

Ofcom’s function

- 3.3 Ofcom has power to make provision determining “the circumstances in which the coverage of listed events generally, or of a particular listed event, is or is not to be treated as live coverage”.⁸
- 3.4 The definition of “live coverage” is important to the regime. It affects both the scope of the restriction on showing live coverage (without authorisation) and how the provisions regulating contracts granting rights to show live coverage of listed events apply.
- 3.5 The Media Act permits Ofcom to either define ‘live’ “generally” or “for a particular listed event” (i.e., enabling different definitions for different events).

Relevant provision in the current Code

- 3.6 Our current Code states that, in specifying the circumstances in which coverage is, or is not, to be treated as live, the interests of viewers lie in allowing them to participate in the event as it happens, as far as possible. It also states that live television coverage should be defined as coverage which is simultaneous with the event. However, the Code states no single definition is possible and offers the following interpretation:
- the restrictions on live coverage will apply while the event concerned is in progress;
 - if the event involves separate games or matches, the restrictions will apply while each game or match is in progress;
 - in the case of a single event which is scheduled to last over several days, the restrictions will apply to each day’s play, while it is in progress;

⁸ But this does not include power to define “live coverage” for the purposes of section 101B of the Broadcasting Act 1996 (restriction on televising of an event designated by EEA State or other CTT State): section 104ZA(2).

Adequate live coverage

The Media Act's changes will mean that live coverage of 'multi-sport' events, such as the Olympic Games, by a provider of non-qualifying services is authorised if "adequate live coverage" is also provided by qualifying services with limited rights (and vice versa). Ofcom must determine what constitutes adequate live coverage.

Ofcom's function

- 3.12 Ofcom is required to make provision for determining "what (whether generally or in relation to particular circumstances) is to be taken to represent the provision of adequate live coverage".
- 3.13 The legislation provides an authorisation for live coverage which applies to listed events which are "sporting events which involve different sports". We consider that the relevant events would currently be the Olympic Games and the Paralympic Games (from Group A) and the Commonwealth Games (from Group B).⁹
- 3.14 Live coverage of one of these 'multi-sport' events on a service will be authorised where:
- rights to include live coverage of that event in two or more additional services other than the first service have been acquired;
 - that additional coverage, taken as a whole, is adequate live coverage of the event;
 - at least two of the additional services are "television programme services"¹⁰; and
 - each of the additional services is provided by a different person to the provider of the first service, is provided for an area that includes all or almost all of the area for which the first service is provided, and falls into a different category to the first service.¹¹ (In other words, if the first service is a non-qualifying service, the additional services must be qualifying services.)
- 3.15 The definition of adequate live coverage will therefore determine the level of coverage it is necessary for additional services to have acquired for the live coverage to be considered 'adequate' and the authorisation to apply.
- 3.16 In defining adequate live coverage, Ofcom is also required to have regard to the forms of live coverage that are likely to satisfy the interests of audiences, as well as the desirability of facilitating arrangements resulting in providers in both categories having live rights. In this respect, the [Explanatory Notes](#) published alongside the Media Act set out that "the aim is to ensure that partnership arrangements between qualifying and non-qualifying broadcasters

⁹ While the legislation does not define a "sport", Ofcom considers that where a national governing body has been recognised by one or more Sports Councils in the UK (i.e. UK Sport, Sport England, Sport Wales, Sport Scotland and Sport Northern Ireland) for particular sporting activity, that sporting activity can be considered to be one sport. On this basis, the World Athletics Championship would not be considered to involve different sports, as the relevant sporting activity is governed by individual governing bodies (e.g. UK Athletics).

¹⁰ A "television programme service" means a television broadcasting service, a television licensable content service, a digital television programme service, or a restricted television service.

¹¹ An additional service will not be treated as different to the first service where the services are (or form part of) a designated internet programme service and such part of the service as includes programmes that may be accessed free of charge and the remainder of the service are regarded as separate services by virtue of section 98(2B).

need to consider whether the approach we propose would need to be regularly reviewed (for example, as the events evolve) and, if so, how this should be done.

- 3.19 Any approach would need to recognise that the multi-sport events to which the concept of “adequate live coverage” is relevant vary significantly. For example, the 2024 Summer Olympics will feature around 10,500 athletes competing in 329 events across 32 sports. By contrast, the 2022 Winter Olympics featured around 2,900 athletes competing in 109 events across 7 sports. We note that when Discovery secured exclusive multimedia rights to the 2022 Winter Olympics in Beijing and the 2024 Summer Olympics in Paris across 50 European countries, it committed to make at least 100 hours of coverage of the 2022 Winter Olympics, and at least 200 hours of the Summer Olympics, available free-to-air in each of these territories. It is also possible that new events are added to the list in future.

Other considerations

- 3.20 Ofcom has the power to include other requirements – beyond the number of streams or duration/percentage of an event – which coverage would need to meet to be “adequate live coverage”. This could include a requirement that broadcasters have the rights to provide streams throughout the entire duration of an event, or that there be no restrictions placed on the content of the streams being broadcast.
- 3.21 We may also want to consider what other contractual restrictions might be imposed on the provider with more limited rights (and the effect of these on viewers). For example, we may want to consider if it would be appropriate to ensure that rights enable specific viewing mechanism – like ‘watch from the start’ functionality – to be included, or that the provider is free to show streams on any of its services without restriction.

Question 2

What factors should Ofcom take into account in defining adequate live coverage? We’d particularly welcome views and evidence on:

- The ways in which audiences engage with coverage of multi-sport events and how this has changed over time, and
- The considerations that underpin arrangements where both PSBs and providers of non-qualifying services acquire live rights (including views from rightsholders).

Adequate alternative coverage of Group B events

Live coverage of Group B events is authorised and does not require consent from Ofcom if “adequate alternative coverage” is provided. In Ofcom’s current Code, such alternative coverage refers principally to highlights or delayed coverage. Ofcom must determine what constitutes adequate alternative coverage, as well as the requirements that must be met by services who have acquired the rights to provide adequate alternative coverage.

Ofcom’s function

- 3.22 The Media Act creates a new basis on which live coverage of Group B events can be authorised. Live coverage of a Group B event on a service will be authorised where:
- rights to provide coverage of the event have also been acquired by one or more other persons (in addition to the provider of the first service);

event taking place on any day), subject to a minimum of 30 minutes for an event (or the play in the event on any day) lasting an hour or more, whichever is greater”.¹⁵

- “the second service must have editorial control over the content and scheduling of the edited highlights or delayed coverage except that a restriction may be imposed that the second service shall not begin broadcasting the edited highlights or delayed coverage until a period has elapsed following the scheduled conclusion of the event (or the play in the event on any day)”. The maximum delay that may be set is shown in Figure 1 below.
- In addition, the right to provide live radio commentary on the event must also have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national (or near national) network.

Figure 1: The maximum delays permitted for highlights for events scheduled at different times

For an event scheduled to finish:	The maximum delay is:
After midnight and up to 08:00	To start not later than 10:00
Between 08:00 and 20:30	Up to two hours
Between 20:30 and 22:00	To start not later than 22:30
Between 22:00 and midnight	Up to 30 minutes

Areas for consideration

The provision of highlights for Group B events

- 3.26 Currently, for Group B events, the broadcaster that has acquired rights to secondary coverage must have control over scheduling (other than any delay permitted, as set out above) and must have rights to provide coverage of at least the minimum duration. There is no provision in the current Code on the format in which highlights must be delivered.
- 3.27 Broadcasters typically deliver Group B highlights by showing as a single programme at the end of each day of the event on a broadcast TV service, and on the on-demand service. However, the way audiences consume non-live sports coverage has evolved since the Code was drawn up. For example, it is now possible to access highlights or similar content online during or very quickly after an event, including in different programme formats, for example highlight reels of best shots shared on social media or short curated match summaries uploaded on YouTube.
- 3.28 The new listed events regime recognises these shifts. We note that the Code currently requires that the highlights or delayed coverage be on a service in scope of the regime, i.e. a linear television service. As a wider range of services are in scope of the new regime, a similar approach could mean that highlights or delayed coverage are accessible only through on-demand services (meaning, for instance, that Group B highlights might be shown only on BBC iPlayer and not on a broadcast channel).
- 3.29 We welcome input from stakeholders on whether the existing provisions in the Code, and the levels they are set at, remain appropriate - balancing both audience needs in accessing highlights in a timely way and commercial interests in preserving the value of live rights. We also invite evidence on how changes in the media landscape have impacted the delivery and

¹⁵ The current Code provides that, where an event has a number of different components taking place concurrently, the scheduled duration of the event is defined as the time elapsed between the scheduled beginning of the first component of the event taking place on any day and the scheduled finish of the last component of the event on that day.

4.Revising the Code

The current Code on listed events has not been updated for some time, with only limited technical amendments made to reflect changes in the law over the years. Ofcom is required to draw up an updated Code as part of implementing the Media Act's changes to the listed events regime. We welcome stakeholder views on the various aspects of drawing up this Code.

- 4.1 In the Code, Ofcom must give guidance about the matters we will take into account in determining:
- whether to give to show live coverage of listed events, where a provider requires this;
 - whether to give to televise an event designated by an EEA State¹⁷ or other CTT State¹⁸, where a broadcaster requires this;
 - whether to revoke consent given for those purposes; and
 - whether it was unreasonable to expect a person to comply with the restrictions on showing live coverage of listed events or on televising an event designated by an EEA State or other CTT State, for the purposes of deciding whether to take enforcement action.

Areas for consideration

Giving and revoking consent

- 4.2 The current Code sets out the matters Ofcom takes into account in deciding whether to give consent. This includes our consideration of whether broadcasters in both categories have had a genuine opportunity to acquire rights to a listed event on fair and reasonable terms.
- 4.3 The Media Act amends the listed events regime to introduce a number of 'automatic' authorisations for live coverage. These are set out in paragraphs 2.11 and 2.12. Where one of these authorisations applies, inclusion of live coverage in a relevant service will be authorised without the need for Ofcom's consent. We therefore expect that far fewer applications for Ofcom's consent will be made under the new regime.
- 4.4 In particular, the current Code makes provision about when Ofcom will give consent for exclusive live coverage of Group B events. The authorisation for cases where there is "adequate alternative coverage" of Group B events will mean that Ofcom's consent is no longer required in these circumstances.
- 4.5 Ofcom's Code is also required to give guidance about the matters we will take into account when deciding whether to revoke any consent given. This is likely to include, for example, where Ofcom's consent was given on the basis of false or misleading information.

Events designated by an EEA State or other CTT State

- 4.6 This relates to Ofcom's function of giving consent to broadcasters of services which are regulated in the United Kingdom to televise an event designated by an EEA State or another

¹⁷ A member state of the European Union or any other state which is party to the European Economic Area agreement.

¹⁸ A state, other than an EEA State or the United Kingdom, which is party to the European Convention on Transfrontier Television.

5. Next steps

- 5.1 We welcome responses to this call for evidence by 26 September 2024.
- 5.2 We plan to consult on proposals, including a draft Code and draft regulations, in 2025.

Confidentiality

- A1.11 Calls for evidence are more effective if we publish the responses before the call for evidence period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the call for evidence period.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A1.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A1.16 Following this call for evidence, Ofcom plans to consult on proposals in 2025.
- A1.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's processes

- A1.18 Ofcom aims to make responding to a call for evidence as easy as possible.
- A1.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

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

A3. Call for evidence questions

Question 1: What matters should Ofcom take into account in defining “live’ coverage”?

We’d particularly welcome views on:

- The existing approach treating coverage shown while the event is in progress as “live”;
- Where live coverage of an event begins and ends; and
- How the definition may need to reflect new functionalities, e.g. ‘watch from the start’.

Question 2: What factors should Ofcom take into account in defining adequate live coverage? We’d particularly welcome views and evidence on:

- The ways in which audiences engage with coverage of multi-sport events and how this has changed over time, and
- The considerations that underpin arrangements where both PSBs and providers of non-qualifying services acquire live rights (including from rightsholders).

Question 3: What factors should Ofcom take into account in defining adequate alternative coverage for Group B events? We’d particularly welcome views and evidence on:

- The minimum duration and maximum delay provisions;
- The requirement for live radio commentary for Group B events; and
- The ways in which audiences engage with highlights and radio coverage for Group B events and how this has changed over time.

Question 4: What matters should Ofcom consider when revising the listed events Code? We’d particularly welcome views on:

- Ofcom’s approach and process for giving and revoking consent;
- Ofcom’s approach and process for giving and revoking consent to televise an event designated by an EEA State or other CTT State;
- Ofcom’s approach to enforcing compliance with restrictions on showing live coverage of a listed event without authorisation; and
- Any additional comments on revising the Code.