



# A2. Call for evidence coversheet

## Basic details

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Call for evidence title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## Confidentiality

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Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing ☐
- Name/contact details/job title ☐
- Whole response ☐
- Organisation ☐
- Part of the response ☐

If you selected 'Part of the response', please specify which parts:

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes ☐ No ☐

## Declaration

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I confirm that the correspondence supplied with this cover sheet is a formal call for evidence response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the call for evidence period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the call for evidence has ended, please tick here.

Name

Signed (if hard copy)

# A1. Responding to this call for evidence

## How to respond

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- A1.1 Ofcom would like to receive responses by 5pm on 26 September 2024.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/tv-radio-and-on-demand/listed-sporting-events/implementing-the-media-act-2024/>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [listedevents@ofcom.org.uk](mailto:listedevents@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the call for evidence:
- Listed events team  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
  - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A1.8 You do not have to answer all the questions in the call for evidence if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in this call for evidence. The questions are listed at Annex 3. It would also help if you could explain why you hold your views.
- A1.10 If you want to discuss the issues and questions raised in this document, please contact the listed events team by email at [listedevents@ofcom.org.uk](mailto:listedevents@ofcom.org.uk).

country which is party to the European Convention on Transfrontier Television (“the ECTT”), for reception in that country.

- 4.7 Such broadcasters are prohibited from televising a designated event for reception in an EEA State or other CTT State “*where a substantial proportion of the public in that State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State*” (in accordance with the relevant law) without Ofcom’s consent.
- 4.8 The Media Act did not make any changes to these provisions. However, the current Code has not been amended to reflect changes to the legislation made as a result of the UK’s departure from the EU.<sup>19</sup> In particular, these changes extended the relevant provisions to apply to countries which are party to the ECTT but which are not EEA States. We will reflect these changes in the revised Code.

### Enforcing compliance with restrictions

- 4.9 Ofcom may only take enforcement action for a failure to comply with the restrictions on showing live coverage of a listed event without authorisation, or on televising a designated event without Ofcom’s consent, where we are “*not satisfied that in all the circumstances it would be unreasonable to expect the person to have complied*” with the restriction. Further guidance on this is offered in the current Code.

### Other parts of the Code

- 4.10 We also anticipate including within the code guidance about how the listed events regime works and on the procedure for applying for consent from Ofcom, and would welcome views on these matters.
- 4.11 We would also welcome views on any other matters stakeholders suggest should be included in the Code. For example, the accessibility of coverage of listed events for disabled people.

#### 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.

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<sup>19</sup> These amendments were made by the Broadcasting (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/224) (as amended).

consumption of highlights, and how this might be reflected in the provisions for adequate alternative coverage.

### Live radio commentary of Group B events

- 3.30 As outlined above, for alternative coverage of Group B events to be considered adequate under the current Code, 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. The Media Act provides sufficient flexibility for Ofcom to keep, update or remove this requirement in revising the Code.
- 3.31 Since the Code was issued, although listening through a radio set is still the most common way to listen (DAB accounts for 43% of weekly listening time and AM/FM accounts for 27%), listening through online platforms has seen some growth with smart speakers now accounting for 17% of listening time and other online devices for 11%.<sup>16</sup> We invite stakeholder views and evidence on whether the Code should be updated to reflect shifts in listening behaviour, as well as views more broadly on whether this provision continues to meet audience needs.

#### 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.

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<sup>16</sup> RAJAR Q1 2024.

- that additional coverage constitutes adequate alternative coverage of the event, and
  - the person or persons who have acquired rights to provide the additional coverage satisfy any requirements in relation to that coverage set out in regulations made by Ofcom.
- 3.23 Ofcom must determine what constitutes adequate alternative coverage (whether generally or in relation to particular circumstances, e.g. for particular Group B events). We must also determine any requirements related to that coverage that must be met by the person(s) who have acquired the rights to it, in order for live coverage of Group B events to be authorised and not require consent from Ofcom. This authorisation therefore enables the provider of a non-qualifying service to provide exclusive live coverage of a Group B event, provided that adequate alternative forms of coverage are also available (and vice versa).

### Case study: the Ryder Cup

The Ryder Cup can be used as an example to illustrate the authorisation for adequate alternative coverage of Group B events.

Sky holds the live rights to show the Ryder Cup until 2025. For the 2023 event, it broadcast live coverage on its Sky Sports channels. The BBC also acquired secondary coverage rights and showed daily highlights of the Ryder Cup on BBC Two (and on BBC iPlayer and the BBC Sport website and app), as well as having rights to provide live national radio coverage. Under the current regime, Ofcom's consent was required but given automatically under provision in the existing Code as there was adequate provision for secondary coverage (as defined in the Code) – Sky as the provider of “non-qualifying services” and the BBC as the provider of “qualifying services”.

Under the new regime, live coverage of the Ryder Cup will be authorised and not require consent from Ofcom if:

- The rights to provide coverage have been acquired by one or more other persons other than the provider of the first service, e.g., Sky holding rights to show live coverage and the BBC holding rights to show secondary coverage; and
- The secondary coverage meets any requirements set by Ofcom in deciding what constitutes “adequate alternative coverage” of a Group B event, and the BBC (for example) satisfies any requirements specified in relation to that coverage.

## Relevant provision in the current Code

- 3.24 The creation of an authorisation for adequate alternative coverage reflects existing practice for Group B events. The current Code states that Ofcom will give consent for exclusive live coverage of Group B events by a broadcaster providing a service in one category if “adequate provision” has been made for secondary coverage by a broadcaster in the other category.<sup>14</sup>
- 3.25 The current Code sets out that “adequate provision” requires that:
- *“the second service has acquired rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event (or the play in the*

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<sup>14</sup> Paragraph 1.18 of the Code.

may continue as they do now, acknowledging that the regime now covers a wider range of services”. The current deal between WBD and the BBC for the Olympic Games is indicative of this, and is explored further in the case study below.

- 3.17 This authorisation can be seen to recognise that the landscape of sports media rights is changing. The cost of rights is increasing, and traditional broadcasters have been competing with global media outlets for rights to listed events. It may become harder for PSBs to afford full rights to the major sporting events and more commercial broadcasters may acquire rights, as well as the potential for more arrangements between PSBs and non-qualifying services to show listed events.<sup>12</sup>

### Case study: the Olympic Games

The [2024 Olympic Games](#) act as a useful case study for the authorisation relating to “adequate live coverage”.

WBD holds multimedia rights to the 2024 Olympics across 50 European countries, including the UK. Live coverage of the Olympics will be shown in the UK on its two main sports channels, Eurosport 1 and Eurosport 2, as well as through its ‘discovery+’ streaming platform, enabling it to offer coverage of “*every moment of the Olympics – all 3,800 hours of live action*”.<sup>13</sup>

The BBC has acquired more limited rights which enable it to show live coverage on BBC One or BBC Two and one further stream (accessed through the BBC Red Button or BBC iPlayer) at any one time.

If the changes to the listed events regime were in force and applicable, WBD’s live coverage on each of its relevant services would be authorised if the additional coverage on the BBC’s services (taken together) provided “adequate live coverage”.

The other conditions set out in the legislation would be met: the BBC’s rights include rights to include live coverage in two or more services, including at least two television programme services, those services are provided throughout the UK, and will be qualifying services (in contrast to WBD’s non-qualifying services).

## Areas for consideration

### Measuring adequate live coverage

- 3.18 In defining adequate live coverage, we must decide whether to increase the minimum number of streams above the statutory minimum of two. We must also decide whether to introduce requirements on the duration of the live coverage (such as a set number of minutes or percentage of the listed event). We can include requirements generally or “for particular circumstances” (i.e., different requirements for different events). We may also

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<sup>12</sup> In its [Trends and Dynamics in the Sports Broadcasting Sector report](#), carried out for Ofcom in 2022, Ampere Analysis set out that streaming services and other modern commercial broadcasters are slowly increasing their market share of sports rights, the majority of which are held by Pay TV outlets and PSBs. The latest figures at the time showed that rights for major sporting events had become increasingly more fragmented since 2012, with £641 million worth of listed events rights held by more than one broadcaster in co-exclusivity agreements.

<sup>13</sup> Eurosport, 17 April 2024, [Warner Bros. Discovery marks key milestone by offering first look at its Paris 2024 production plan](#).

- in the case of an event which consists of defined separate parts which overlap in time (e.g., the Olympic Games or the FIFA World Cup Finals) and cannot therefore be televised simultaneously in full, the restrictions will apply to each match or competition as if it was a single event.

## Areas for consideration

- 3.7 Since the listed events regime was put in place, the ways in which audiences engage with key events in the sporting calendar, and how broadcasters have packaged and delivered coverage of them, has changed. It is no longer the case that ‘appointment-viewing’ sporting events require audiences to sit down in front of their television screen. People can view matches and competitions via different devices and platforms, delivered terrestrially and online, and often track progress on multiple screens using social media commentary, website live text, and other content that surrounds big sporting moments. In defining what “live coverage” means for the purposes of the new listed events regime, we wish to consider the relevance of these technological changes in how listed events are shown.
- 3.8 The guidance in the current Code essentially treats coverage shown while the event is in progress as “live” – depending on the sport, this could mean from the start of the day’s play to the end, or from the starting whistle to the final whistle. The current Code makes no reference to how the coverage is presented or packaged, and does not clearly address whether pre-, mid-, and post-match coverage is included.
- 3.9 However, new technologies, accessible to an ever-increasing number of viewers, are changing the ways audiences watch content. For example, it is now possible for audiences to begin viewing an event after it starts, but to experience it ‘as live’, using ‘watch from the start’ functionality. Some providers now also offer curated feeds, and other coverage which tailors coverage of live events (especially multi-part events like the Olympics) to the individual user, such as multi-view screens. If these forms of coverage and functionality are to be captured in the definition of ‘live’, it will need to be sufficiently broad.
- 3.10 The definition of ‘live’ may also need to be clearer about what constitutes the ‘event’ and whether additional content surrounding the sport itself is also relevant. For example, broadcasters showing listed events typically also provide coverage of opening/closing ceremonies and trophy/medal ceremonies, as well as providing pre-, mid-, and post-event punditry.
- 3.11 We invite input from stakeholders on the questions set out below and encourage stakeholders to submit any evidence to support their views.

### 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’.



EEA State or other CTT state, for the purposes of deciding whether to take enforcement action.

2.19 We turn to these in the next two sections.

which can be used to show live coverage of listed events to audiences in the UK, including the PSBs' on-demand players, global media platforms and other internet-based streaming services.

- 2.8 As before, these services are split into two categories, which we term “qualifying” and “non-qualifying services”. Qualifying services are now those provided by a PSB, which are available to audiences for free, and which make a significant contribution to the public service remit. All other services are non-qualifying. The regime aims to ensure that, where live rights to a listed event are being sold, they are offered to both a qualifying and non-qualifying service.
- 2.9 To show a listed event on a service within scope of the regime, that coverage needs to be authorised. In certain circumstances, authorisation will be automatic, or otherwise consent from Ofcom will be required.
- 2.10 The regime also regulates contracts granting rights to show live coverage of listed events. Any contract granting such rights must specify whether it allows the live coverage to be shown only on a qualifying service, or only on a non-qualifying service. For contracts for Group A events, the regime provides that contracts purporting to grant exclusive rights to show live coverage of such events are void. This means that providers of non-qualifying services are effectively prohibited from acquiring exclusive rights to a Group A event that would preclude rights to show live coverage from being granted to PSBs (and vice versa).

## Automatic authorisation

- 2.11 For both Group A and Group B events, live coverage will be automatically authorised where services in both categories have identical rights. For example, if rights to show live coverage of the Wimbledon finals are held by both a provider of a qualifying service (e.g., the BBC) and a provider of a non-qualifying service (e.g., Warner Bros Discovery ('WBD')), coverage on both services will be automatically authorised.
- 2.12 Other automatic authorisations include:
- For events which involve more than one sport (e.g., the Olympic Games), live coverage will also be authorised provided that rights to show “adequate live coverage” are held by provider(s) in the other category. This would allow full live coverage of an event such as the Olympic Games to be shown on non-qualifying services (e.g., services provided by WBD) provided that “adequate live coverage” is available on a PSB's qualifying services (e.g., services provided by the BBC) – or vice versa.
  - For Group B events, such as the Ryder Cup, live coverage will also be authorised where rights to show “adequate alternative coverage” are held by a person (or persons) in addition to the provider of the first service.<sup>5</sup>

## Ofcom consent

- 2.13 Ofcom can also give consent to show live coverage of a listed event. This is typically when only a provider in one of the two categories has rights. For cases such as these, Ofcom is required to draw up a code giving guidance about its approach to giving consent.

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<sup>5</sup> Ofcom is required to set out the detail of how this authorisation will work, as set out further below. This authorisation reflects the existing practice for Group B events as set out in Ofcom's Code on sports and other listed and designated events, where the principal form of alternative coverage is highlights or delayed coverage.

## 2. The changes to the listed events regime

### What are listed events?

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- 2.1 Listed events are sporting or other events of “national interest” designated by the Secretary of State. The listed events regime, established under Part 4 of the Broadcasting Act 1996, aims to ensure that coverage of these events is widely available to audiences.
- 2.2 The list of events is split into two groups – “Group A” and “Group B” – and the regime sets out different rules for Group A and Group B events. The events currently on the list<sup>1</sup> are:

#### Group A

- The Olympic Games
- The Paralympic Games
- The FIFA World Cup Finals Tournament
- The FIFA Women’s World Cup Finals Tournament
- The European Football Championship Finals Tournament
- The European Women’s Football Championship Finals Tournament
- The FA Cup Final
- The Scottish FA Cup Final (in Scotland)
- The Grand National
- The Wimbledon Tennis Finals
- The Rugby World Cup Final
- The Derby
- The Rugby League Challenge Cup Final

#### Group B

- Cricket Test Matches played in England
- Non-Finals play in the Wimbledon Tournament
- All Other Matches in the Rugby World Cup Finals Tournament
- Six Nations Rugby Tournament Matches Involving Home Countries
- The Commonwealth Games

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<sup>1</sup> This reflects the [latest version of the list](#) published on 25 April 2022 by the Department for Digital, Culture, Media and Sport (as it then was). Under section 25(2) of the Media Act 2024, the Secretary of State is required to revise and republish the list on the date on which section 21’s amendments to the listed events regime are commenced (but this does not require changes to be made to which events are listed).

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