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# **Review of the BBC's Materiality Assessment of Proposed Changes to the BBC iPlayer**

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Final interim directions

Non-Confidential version

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# 1. Interim directions

## Process to date

- 1.1 On 2 November 2018 Ofcom made a decision that the BBC's proposed changes to the BBC iPlayer were material and therefore directed the BBC to carry out a public interest test (PIT) under the relevant provisions of the Charter and Agreement. A non-confidential version of the full decision document is available here.<sup>1</sup> Our decision included draft interim directions to allow the BBC to make a limited number of the proposed changes.
- 1.2 The starting point in circumstances where a material change is to be assessed is that any proposals are not put into effect. In our decision we concluded however that it would be appropriate for the BBC to proceed with limited changes, striking a proportionate balance between enabling benefits to audiences and mitigating the risks of any adverse impact on fair and effective competition arising from the interim changes, pending the completion of the PIT and any further competition assessment. The interim directions enable the BBC to innovate on and evolve its BBC iPlayer services during the regulatory process.
- 1.3 We gave the BBC an opportunity to raise any practical concerns regarding the drafting of our interim directions. Other stakeholders also approached us to discuss the summary of the decision published on 2 November.<sup>2</sup>
- 1.4 This document contains:
  - the final interim directions; and
  - an explanation of the amendments we have made or rejected following the BBC's submissions.
- 1.5 We will keep the effect of the interim directions and whether they remain appropriate under review. To this effect, we are open to stakeholders, including the BBC, making representations to us on these interim directions, but we would expect to be provided with and see evidence of impact before considering whether it was appropriate to change them.

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<sup>1</sup> The full decision is available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/130752/Review-BBC-Materiality-Assessment-Proposed-Changes-BBC-iPlayer.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/130752/Review-BBC-Materiality-Assessment-Proposed-Changes-BBC-iPlayer.pdf)

<sup>2</sup> The summary of the decision is available at [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/124392/bbc-iplayer-materiality-assessment.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/124392/bbc-iplayer-materiality-assessment.pdf)

## Final Interim Directions

- 1.6 The BBC may only partially implement the Proposed Change in accordance with the following directions:
1. Subject to directions 2 to 4 below, the BBC must not make a programme available on the BBC iPlayer for longer than the Standard Period.
  2. If a programme was available on the BBC iPlayer on 2 November 2018 the BBC may continue to make that programme available on the BBC iPlayer for such period as it considers fit.
  3. If a programme is of a type that, before 2 November 2018, was ordinarily made available on the BBC iPlayer for longer than the Standard Period, the BBC may make that programme available on the BBC iPlayer for such period as it considers fit. The BBC must not make that programme available for longer than the maximum period for which a programme of that type was made available on the BBC iPlayer before 2 November 2018.
  3. If the BBC entered into an agreement prior to 2 November 2018 to commission a programme on the basis that it would be made available on the BBC iPlayer for longer than the Standard Period, the BBC may make that programme available on the BBC iPlayer for such period as it considers fit.
  4. In a Relevant Period, the BBC may make the following content available on the BBC iPlayer for a period exceeding the Standard Period:
    - (a) a maximum of [X] New Series for a period not exceeding [X] months from the date the last episode of the New Series was made available on the BBC iPlayer; and
    - (b) a maximum of [X] Archive Series for a period not exceeding [X] months from the date the last episode of the Archive Series was made available on the BBC iPlayer.
  5. The BBC may implement the Functionality Changes.
  6. On [X] January 2019, and on the [X] of each subsequent month, the BBC must provide to Ofcom an explanation of how the content that was available on the BBC iPlayer in the previous month was consistent with the obligations set out in directions 1 to 4.
  7. The BBC must provide such other information as Ofcom may request from time to time in relation to these directions.

In these directions the following terms shall have the following meanings:

“Archive Series” means a series which is broadcast or last made available before 2 November 2013;

“Functionality Changes” means the changes referred to at paragraph 2.3 of the BBC’s materiality assessment of 8 June 2018;

“New Series” means a series which is broadcast or made available for the first time in the Relevant Period;

“Proposed Change” means the proposed changes to the BBC iPlayer as set out in the BBC’s materiality assessment of 8 June 2018;

“Relevant Period” means:

- (i) the period of 12 months beginning on 1 April 2019; and
- (ii) each subsequent period of twelve months;

“Standard Period” means, in relation to a programme, the period of 30 days beginning with the day on which the programme was last broadcast or made available by the BBC.

## Changes to the draft interim directions

The following table provides a summary of the changes made to the draft interim directions.

BBC’s representation	Amendment in final interim directions
The BBC has requested that it be able to make a series available for more than 30 days where this occurs as a result of existing transmission patterns (i.e. prior to the proposal).	We have defined a “Standard Period” that refers to the period of 30 days starting on the day on which the programme was last broadcast or made available.
The BBC has requested clarification that any content which the BBC already normally makes available for longer than a 30 day period and is outside of the 2018/19 proposals is therefore not subject to the restrictions. This includes children’s, current affairs, nations, and acquired content.	We have amended the interim directions to allow for content already ordinarily made available on the BBC iPlayer for longer than the Standard Period, with the proviso that the BBC may not make that content available for longer than the maximum period it has made that type of content available for in the past.
The BBC has requested that in the relevant period they should be able to make available a limited number of returning series. It has also suggested a definition of “Returning Series” to be used for this purpose.	We do not consider this change would be consistent with the proportionate balance reached in our decision. Our reasoning for these restrictions was set out in Section 5 (particularly 5.7 to 5.16) of the full decision, and we do not consider any evidence has been provided that would alter our conclusion.
The BBC has requested that in a relevant period the permitted number of new and archive series are allowed to be shown for a longer period than in the direction on the basis this is consistent with ‘market norms’.	We do not consider this change would be consistent with the proportionate balance reached in our decision. Our reasoning for these restrictions was set out in Section 5 (particularly 5.7 to 5.16) of the full decision, and we do not consider any evidence has been provided that would alter our conclusion. We consider that such market norms are not yet established, and

	that the UK VoD market is still evolving and different providers offer different terms for content availability.
The BBC has requested that the Archive series definition be amended to clarify that it does not include the situation where it is linked to a new commission of that title.	We do not consider this change would be consistent with the proportionate balance reached in our decision. Our reasoning for these restrictions was set out in Section 5 (particularly 5.7 to 5.16) of the full decision, we do not consider any evidence has been provided that would alter our conclusion.
The BBC has suggested that the definition of Functionality proposals be removed from the interim directions. It has provided information on the functionality changes in the 2018/19 period and its view that these are business as usual or not related to its proposals to extend the availability of content.	We have reviewed the further information from the BBC as to the nature and implementation of its functionality changes. We note that the changes are either to technical standards or related to the user experience. We have amended the interim direction to allow for the changes set out.
The BBC has requested that the final specification and first reporting date of the reporting requirements should follow after the interim directions are finalised.	We will actively monitor the BBC's compliance with the interim directions. We will specify the precise detail of what is to be reported to Ofcom in a separate communication with the BBC. The first report is to be provided on [✂] January 2019.