

Review of rules for prominence of public service broadcasters and local TV

Consultation on proposed changes to the linear EPG Code and future of the regime

CONSULTATION:

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About this document

Ofcom has specific powers and duties in relation to public service broadcasters and local TV and their prominence on television guides, sometimes called electronic programme guides (EPGs). This includes a duty to draw up, and from time to time to review and revise, a Code of Practice (Code) for licensed EPG providers that, among other things, ensures such a degree of prominence as Ofcom considers appropriate for the designated channels.

The Digital Economy Act 2017 introduced a new duty for Ofcom to report from time to time on the prominence of linear PSB and video-on-demand (VoD) PSB services. The deadline for the first such report, along with a review of the Code, has been set to be completed by December 2020.

This consultation sets out the findings from our review of the prominence section of the Code and our proposed changes. In addition, we have separately published our first report on the prominence of linear PSB and VoD PSB services, as required under the Digital Economy Act 2017.¹

This review takes place at a time when the market is changing rapidly, and viewers are no longer bound by the linear television schedule or only able to watch content on a television set. Therefore, we are also seeking views on principles and ideas that could underpin any future changes that Parliament could make to the statutory regime, to maintain the prominence of PSB content and services in an online world.

¹ EPG Prominence: A report on the discoverability of PSB and local TV services, 2018: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/epg-prominence>

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1. Executive Summary

EPGs and prominence in a fast-changing market

- 1.1 Public service broadcasting (PSB) – which includes the BBC, ITV, Channel 4 and Channel 5 among others - is highly valued by audiences in the UK.² It provides a range of public benefits including high quality television that reflects the UK back to itself. The public service broadcasters can reach large audiences, bring the nation together at key moments, and inform, entertain and educate society.
- 1.2 In recognition of these benefits, Parliament requires that traditional, scheduled television – known as linear channels – that provides PSB programmes (the designated channels) should be given prominence within television guides (electronic programme guides or EPGs). This ensures that such programmes are easily available and discoverable to audiences, which should encourage more viewing, and greater public benefits.
- 1.3 For now, linear television continues to be an important part of people’s viewing, with live TV still accounting for 58% of all TV and audio-visual content viewed. This means the current prominence regime remains relevant. We are therefore consulting on proposed changes to the Code on the provision of EPGs (“the Code”) to secure appropriate prominence for the designated channels in the immediate term.
- 1.4 However, the wider media landscape in which the public service broadcasters operate is changing rapidly. In today’s market, viewers are no longer bound by the television schedule or watching programmes only on a television set. They have access to a much wider range of content, from a wider selection of providers ranging from Netflix and Facebook to YouTube and Sky Go. This has contributed to a drop in the viewing of live TV. As reported in our recent Media Nations UK report, viewing of broadcast television on a TV set fell for the sixth successive year. Between 2016 and 2017, viewing per person declined by 4.2% to 3 hours 22 minutes, down by nine minutes.
- 1.5 Younger viewers in particular are driving the fall in viewing. Nearly half (47.5%) of all the decline in TV viewing levels is due to under 25s. For young adults (16-34s), the consumption of non-broadcast sources (across all devices) is now greater than their broadcast-derived consumption. They watch subscription video-on-demand services (SVoD) for half an hour a day on average, but the largest chunk of their time is spent on YouTube, which they watch for an hour a day on average.
- 1.6 Audiences are also watching content on a much wider range of devices. This includes tablets, smartphones, internet-connected TVs, set-top boxes, and plug-in devices such as Amazon’s Fire TV stick. These can include advanced search and recommendation functions, which have the potential to affect how easily PSB content can be found.

² Source: Ofcom PSB tracker 2017

- 1.7 When Parliament legislated to ensure the prominence of public service content, internet television and VoD were in their infancy. Consequently, the Code and its prominence requirements apply only to licensed EPG providers and the designated linear TV channels, and not to content provided on-demand (for example through the BBC iPlayer or the ITV Hub).
- 1.8 If Parliament wishes for PSB to remain easy to find, then new legislation is needed to reflect the growth in television delivered via the internet. As we set in our publication in March 2018³, which considered PSB in the digital age, we would support such legislation in light of our duties to secure the health of the UK PSB system.
- 1.9 Designing a prominence regime that is fit for the digital age raises a number of complex questions. We have set out some of the key issues, along with possible options which Parliament might want to consider. We would welcome views from broadcasters and other stakeholders on the issues we have identified as part of this consultation, to inform the public debate.

Safeguarding prominence in a linear world

- 1.10 The linear TV channels which are afforded prominence (the ‘designated channels’) are set out in legislation. These are all of the BBC channels, the Channel 3 services (ITV, STV), Channel 4, Channel 5, S4C and local TV channels.
- 1.11 Not all the designated channels can or should be granted the same level of prominence. Ofcom’s first Code was published in 2004 and took a principle-based approach, stating that ‘appropriate prominence’ permits a measure of discrimination in favour of the designated channels but that we did not propose being prescriptive about what that meant. We set out three broad principles:
- a) EPG providers should ensure their approach to PSB prominence was set out in a statement and was objectively justifiable;
 - b) Ofcom would have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listing designated channels constituted appropriate prominence; and
 - c) EPGs should enable viewers of the designated channels in a region to select the appropriate regional versions of those channels through the primary listings for those channels, provided the relevant broadcaster had secured services that enabled this.
- 1.12 Therefore, the current Code affords a broad degree of flexibility to EPG providers in terms of where to position the designated channels on their respective EPGs.
- 1.13 This flexibility has, over time, led to some significant variations across EPG providers and to some designated channels being less easy to find depending on the platform and television device used. The current positions of all the designated channels across the different

³ https://www.ofcom.org.uk/data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf

platforms are presented in our report on the prominence of linear PSB.⁴ We also note that some EPG providers' approaches to allocating slots are changing.⁵

- 1.14 In light of these developments, we think it is now time to revise the Code so that it delivers the policy intention set out by Parliament in a way that provides regulatory certainty for designated channels and for EPG providers about our expectations of "appropriate prominence".
- 1.15 We have reviewed the Code with a view to ensuring that all the designated channels are easily discoverable on all EPGs and in positions which we consider are appropriately prominent across all platforms. We have taken into account the specificities of various types of EPGs (mainly whether they are provided on a UK-wide or regionalised basis).
- 1.16 Our proposals reflect the fact that appropriate prominence differs by channel, due to their varying character, content and target audiences. The revised Code should ensure that viewing and therefore public benefits are maximised. In developing these proposals we have taken into account the range of potential effects on other broadcasters and EPG providers to ensure our approach is proportionate.

Proposed changes to the Code

- 1.17 In summary, we are proposing that:
- The main five PSB channels (BBC One, BBC Two, the Channel 3 services, Channel 4 and Channel 5) should be guaranteed their current positions in the top five slots on EPGs operating UK wide or outside of Wales;
 - On EPGs provided for viewers specifically in Wales, the top three PSBs (BBC One, BBC Two, the relevant Channel 3 service) should be guaranteed the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 should be guaranteed a position on the first page;
 - BBC Four should be guaranteed a slot within the top three pages of any EPG;
 - The genre-specific designated channels (BBC News, BBC Parliament, CBBC and CBeebies) should have guaranteed slots on the first page of the relevant genre or section of EPGs, as applicable;
 - BBC Alba and BBC Scotland (due to launch in 2019) should have guaranteed slots within the top 3 pages of EPGs provided for viewers specifically in Scotland;
 - S4C, BBC Alba and BBC Scotland should have guaranteed slots within the top 3 pages of UK-wide EPGs; and

⁴ See Section 4 of our EPG report: https://www.ofcom.org.uk/data/assets/pdf_file/0026/116288/report-psb-local-tv-discoverability.pdf

⁵ More information about these changes is presented in Annex 8 (https://www.ofcom.org.uk/data/assets/pdf_file/0024/116286/annex-8-technical-annex.pdf) and the EMP report (https://www.ofcom.org.uk/data/assets/pdf_file/0025/116287/report-expert-media-partners.pdf).

- Local TV services should be located within the top 3 pages of any EPG. Only to the local service(s) broadcast within the relevant coverage area should be given prominence in that context.
- 1.18 The impact of our proposals will differ for different EPG providers, depending on what their current practice is. We have considered these impacts, alongside other options where relevant, to ensure that we meet our statutory duties relating to PSB and EPG prominence in an effective and proportionate way.
- 1.19 We are now seeking stakeholders' views on our proposals.

Safeguarding prominence in a digital world

- 1.20 As outlined above, given the significant changes in the broadcasting market, particularly the rise of content being watched and consumed on-demand, we are also seeking views on how prominence for PSB content could be safeguarded in the digital world.
- 1.21 We have outlined the issues and challenges when considering prominence in an online environment in five key areas:
- a) the discoverability of the linear EPG;
 - b) the prominence of the PSB players e.g. BBC iPlayer;
 - c) the prominence of PSB on-demand content discovered by routes other than the EPG and PSB players;
 - d) the extension of the current prominence regime beyond licensed EPGs to other TV platforms and devices; and
 - e) prominence in a less TV-centric world, where viewers are finding content via sources such as social media on a range of devices.
- 1.22 Despite the challenges presented in these areas, we note that it is possible to gain prominence for content in an online world, for example on Facebook, Google's search engine, and on platforms and services such as Amazon Prime Video, Netflix, NOW TV and YouTube.
- 1.23 We have set out some key considerations any future regime would need to take account of. This includes what level of prominence would be appropriate for public service broadcasters and their programmes, how prominence could be measured (e.g. number of clicks or decisions to reach PSB content), whether services should be prominent on every device, and the scale platforms or interfaces might need to reach to be captured by any new regulation.
- 1.24 We also believe that some key principles should be upheld under any new regime. This includes protecting the viewer's ability to personalise what they see (for example, arranging TV player apps in a way that the viewer decides), not preventing active consumer choice (for example, promotion of programmes based purely on personal preferences) and ensuring the transparency of search.

2. Background

- 2.1 In this section, we summarise:
- a) the PSB and local TV systems and the role of prominence;
 - b) the prominence regime and the role of Ofcom's Electronic Programme Guide Code (the Code); and
 - c) the purpose of this consultation.
- 2.2 More detail on the legislative basis of the Code and Ofcom's role is set out in Section 3 of this document.

The PSB and local TV systems

- 2.3 Public service broadcasting (PSB) was established by Parliament to ensure the public has access to high quality television that reflects the UK back to itself, brings the nation together at key moments, and informs and educates society. It also plays an important role in helping to ensure that certain types and genres of programmes, which would be less well provided if left to the market alone, get made e.g. arts, religion and original children's content. Crucially, PSB is available to everyone, and free at the point of use.
- 2.4 The public service broadcasters (PSBs) in the UK are the BBC, S4C, Channel 4, the Channel 3 services (ITV and STV), and Channel 5.⁶ These channels are collectively required to deliver content that meets the public service objectives⁷ as well as fulfilling particular purposes, remits or duties.
- 2.5 The PSBs also play an important role as investors in new UK-produced content. Their investment helps to ensure that UK programming continues to be made available to viewers, bringing a range of individual and social benefits, but also aiding the long-term sustainability of the UK TV production sector.
- 2.6 The broadcasting market has evolved considerably in recent years, and viewers now have access to a much wider selection of services and content than simply what is provided by the PSB channels on a television set. Despite this, viewing to PSB content remains high. Eight in ten people (81%) watched at least one of the main five PSB channels⁸ in a typical week in 2017 and half of all television viewing of broadcast content on television sets was to one of the main five PSB channels.⁹
- 2.7 Audiences also continue to value public service broadcasting. Ofcom's annual PSB Tracker research shows that in 2017, 78% of respondents rated the PSBs highly for showing well-made, high-quality programming.¹⁰ In addition, 72% respondents scored them highly for

⁶ Section 264(11) of the Communications Act 2003: <https://www.legislation.gov.uk/ukpga/2003/21/contents>

⁷ These objectives are set out in sections 264(4) and (6) of the Communications Act 2003.

⁸ The main five PSB channels are BBC One, BBC Two, Channel 3 services, Channel 4 and Channel 5.

⁹ Source: BARB. All individuals (4+), network. Reach criteria: 15+ consecutive minutes, full weeks used.

¹⁰ Ofcom PSB Tracker, 2017: https://www.ofcom.org.uk/data/assets/pdf_file/0015/112506/psb-2017-data-tables.pdf

showing programmes which help them understand what's going on in the world today, and 69% for showing new programmes made in the UK.

- 2.8 In late 2011 and 2012, Parliament introduced a new regulatory framework for local TV services. The objectives of this framework were to act as an enabler for growth in the media sector and the creative industries, while delivering wider social benefits by providing citizens with a new type of content such as: providing information to local residents, stimulating interest in the local area, supporting access to local services, and encouraging volunteering; as well as economic benefits including increased local employment, boosting the creative industries and boosting local businesses.¹¹ As part of this new regulatory framework, local TV services were added to the list of public services channels which ought to be granted prominence on Electronic Programme Guides (EPGs).¹²

Prominence of PSB channels

- 2.9 Viewing to PSB channels and public service programming brings a range of public benefits. This includes direct benefits to individuals such as providing them with greater individual knowledge of specific issues e.g. via documentaries, as well as bringing wider social value through greater social cohesion or greater knowledge of current affairs which may facilitate democratic debate. Local TV also aims to increase civic engagement at a local level and to put people in touch with what is happening in their local area.¹³ These factors are unlikely to be fully accounted for by individuals when making viewing choices and, as such, an unregulated market may under-provide these services to the detriment of audiences.
- 2.10 It is not enough to make sure a range of quality PSB content is made available to viewers, it must also be discoverable. This is recognised by Parliament, and there is therefore a regulatory regime in place which aims to ensure that channels which deliver public service content are easily discoverable. This in turn should encourage greater consumption of such content and help to deliver the individual and social benefits outlined above.
- 2.11 The discoverability of PSB and local TV is achieved through rules that affect their prominence on EPGs. EPGs consist of the listing or promotion (or both) of television programmes together with a facility for obtaining access to those programmes.
- 2.12 For the BBC, prominence can help increase viewing of its PSB channels. Increased viewing may increase its impact with audiences which, in turn, may contribute towards the BBC

¹¹ DCMS, A new framework for local TV in the UK, July 2011, paragraph 1.9:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/72920/Local-TV-Framework_July2011.pdf.

¹² This was done by way of an order from the Secretary of State, The Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, SI 2011/3003:

<http://www.legislation.gov.uk/uksi/2011/3003/contents/made>.

¹³ DCMS, A new framework for local TV in the UK, July 2011 paragraph 1.10

better delivering its mission and public purposes.¹⁴ For the commercial PSBs, higher viewing may contribute towards a greater fulfilment of their remit and duties. It can also result in greater advertising revenues and profitability, which can in turn be reinvested into content.

- 2.13 The discoverability and prominence of PSB content has however become more complex, as technology continues to change and audience habits evolve. As our accompanying report on prominence highlights, there is significant growth in internet-enabled TVs and devices. People are watching less ‘live’ TV (watched at the time of broadcast) while ‘catch up’ TV and subscription video-on-demand (SVoD) services continue to grow in popularity.¹⁵
- 2.14 However, prominence within the EPG remains a valuable asset as live TV is still a central component of TV viewing (with 58% of viewing time spent watching live TV in 2017¹⁶). The EPG also remains the primary method by which most consumers find and select programmes, with findings from the BARB’s Lifestyle Insights questionnaire¹⁷ reflecting that 41.9% of 16-24s claim to use it, 57.2% of 25-34s, 61.1% of 35-44s, 64% of 45-54s and 59% of 55-64s. The only exception is the over 65s who are more likely to say that they use newspaper supplements (47.4%), although the EPG is their second most used method (34.8%).
- 2.15 Live viewing figures for the TV also play a vital role in the economics of the industry, as these data underpin advertising pricing which continues to be a key revenue stream for many broadcasters, excluding the BBC’s public services.

The prominence regime

- 2.16 The Communications Act 2003 (the Act) gives Ofcom specific powers and duties in relation to the granting of prominence to designated channels in EPGs.¹⁸ These are explored in more detail in Section 3 but include a duty to draw up and, from time to time, to review and revise a code giving guidance as to the practices to be followed in the provision of EPGs. The Code must contain provisions requiring EPG providers to give designated channels such degree of prominence as Ofcom considers appropriate.
- 2.17 The designated channels entitled to prominence are also set out in legislation. These are: all BBC channels; the Channel 3 services (including ITV and STV); Channel 4; Channel 5; S4C

¹⁴ The BBC Mission and Public Purposes are set out in the Charter: <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

¹⁵ EPG Prominence: A report on the discoverability of PSB and local TV services, 2018: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/epg-prominence>

¹⁶ Source: Ofcom/BARB/BARB TV Player (census data)/Touchpoints/ComScore. See detailed methodology section of Ofcom’s Media Nations 2018 report, available [here](#), of how the sources are used to construct a total estimated view of video watched. Media Nations 2018 UK, page 20/21

¹⁷ Source: BARB Lifestyle Insights Questionnaire, January 2018

¹⁸ Set out in Sections 310 and 311

and local TV channels.¹⁹ The prominence requirements currently apply only to the provision of programmes on the broadcast channels²⁰ themselves, and not to content provided on-demand (for example through the BBC iPlayer or ITV hub).

- 2.18 Licensed EPG providers must comply with the Code on prominence and face penalties if they do not comply.²¹
- 2.19 Ofcom's first Code was published in 2004.²² The Code also contains provisions relating to accessibility and fair and effective competition, but those matters are not the subject of this consultation. Earlier this year, we separately consulted on the parts of the Code that ensure EPGs are easier to use for the growing number of people with visual impairments.²³

This review

- 2.20 The Digital Economy Act 2017 introduced a new duty for Ofcom to report from time to time on the prominence of linear PSB and video-on-demand (VoD) PSB services.²⁴ The deadline for the first such report, along with a review of the Code, has been set to be completed by December 2020.
- 2.21 This consultation sets out Ofcom's proposed changes to the prominence provisions within the Code and seeks views on how prominence for PSB content could be safeguarded for the future. Alongside this consultation, we have published our first report on the prominence of linear PSB and VoD PSB services.²⁵

Impact assessment

- 2.22 Impact assessments, as defined in section 7 of the Act, provide a valuable way of assessing the options for regulation and showing why the proposed option is preferred. The analysis presented throughout this consultation (including the annexes), provides our assessment of the impact of our proposals on stakeholders and therefore constitutes an impact assessment for our proposed changes to the linear Code.
- 2.23 We have also considered what potential future extensions to the prominence regime could entail and are asking for stakeholders' views in this area. We have not carried out an

¹⁹ Section 310(4) of the Communications Act 2003. Local TV channels have been entitled to prominence following an amendment made with effect from 31 January 2012 through the Code of Practice for Electronic Programmes Guides (Addition of Programme Services) Order 2011 ((SI 2011/3003)

²⁰ For commercial PSBs, it is the SD channel service which is subject to PSB obligations under broadcasting licence provisions and, as such, it is the SD service which is entitled to prominence rather than the HD version of the same channel.

²¹ The term 'EPG provider' means any organisation providing an electronic programme guide as defined by section 310 of the Communications Act under a Broadcast Act licence.

²² Statement on Code on Electronic Programme Guides, July 2004:

https://www.ofcom.org.uk/data/assets/pdf_file/0010/34003/statement.pdf

²³ We published our final statement, EPG Accessibility: Improvements for people with visual impairments, on 27 June 2018: <https://www.ofcom.org.uk/consultations-and-statements/category-2/epg-accessibility>.

²⁴ Section 95 of the Digital Economy Act 2017, introducing new section 311A to the Communications Act 2003: <https://www.legislation.gov.uk/ukpga/2017/30/contents>

²⁵ EPG Prominence: A report on the discoverability of PSB and local TV services, 2018

impact assessment for this part of the consultation as any extensions to the current regime would require new legislation.

Equality impact assessment

- 2.24 We assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. This is known as an equality impact assessment (EIA). EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.25 Annex 5 contains our EIA for the proposals set out in this consultation document. It is not apparent to us that the outcome of our review of the Code is likely to have any particular impact on any persons with protected characteristics. More generally, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

3. Legislative framework

3.1 This section sets out the legislative basis for EPG prominence.

The Communications Act 2003

3.2 In considering the issues addressed in this consultation, we take account of our statutory duties, as set out in the Act.

3.3 Ofcom's duties relating to the prominence of designated channels within EPGs are set out in section 310 of the Act. These are to draw up, and from time to time review and revise, a code giving guidance as to the practices to be followed in the provision of EPGs (section 310(1)).

3.4 Section 310(2) of the Act provides that the practices to be required by the Code must include the giving, in the manner provided for in the Code, of such degree of prominence as Ofcom consider appropriate to:

- a) the listing or promotion, or both the listing and promotion, for members of its intended audience, of the programmes included in each public service channel; and
- b) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.

3.5 The designated channels covered by the Code are all BBC channels, all Channel 3 services, Channel 4, Channel 5, S4C and local TV (section 310(4)). The Secretary of State may add or delete channels from this list by order after consulting with Ofcom (section 310(5)).²⁶

3.6 Under section 311, Ofcom is to set such licence conditions on EPG providers as it considers appropriate to ensure that the Code is observed. Those licence conditions mean that Ofcom is able to take enforcement action in the event that an EPG provider does not comply with the obligations contained in the Code.

3.7 A new provision was introduced by section 95 of the Digital Economy Act 2017. Section 311A(1) of the Act provides that it is the duty of Ofcom from time to time to prepare and publish a report dealing with:

- a) the provision by EPGs of information about programmes included in public service channels, or provided by means of on-demand programme services by persons who also provide public service channels; and
- b) the facilities provided by such guides for the selection of, and access to, such programmes.

²⁶ The Secretary of State added local TV channels to the list of public service channels under section 310(4) of the Act in 2011, pursuant to the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, SI 2011/3003, article 2.

- 3.8 Section 95(2) and 95(3) of the Digital Economy Act 2017 also requires that after publishing the first report under section 311A of the Act, Ofcom must review and revise the Code, and that the revision of the Code must be completed before 1 December 2020.
- 3.9 We have also taken account of other relevant statutory duties in carrying out our review of the Code and in developing our proposals for revising the Code, including the following:
- a) our principal duty to further the interests of citizens and consumers in relation to communication matters, where appropriate by promoting competition;²⁷
 - b) our duty to secure the availability throughout the UK of a wide range of high quality and diverse television and radio services;²⁸
 - c) our duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK;²⁹ and
 - d) our duty to have regard to the different interests of persons in different parts of the UK.³⁰

Ofcom's Code on Electronic Programme Guides³¹

- 3.10 Under the Broadcasting Act 1990, Ofcom licenses providers of EPGs that are 'made available for reception by members of the public' and consist of the listing or promotion (or both) of television programmes together with a facility for obtaining access to those programmes (the 'EPG licensees' or 'EPG providers'). EPG licensees are required to ensure that the rules set out in the Code are observed in the provision of EPGs.
- 3.11 The Code was adopted in 2004 and amended in March 2005. Paragraphs 2 to 4 of the Code concern the requirements that EPG providers should meet in relation to the prominence of the designated channels.
- 3.12 Specifically, paragraph 3 of the Code sets out three general principles with which EPG providers must comply:
- a) EPG providers should "ensure that the approach they adopt to the requirement for appropriate prominence is objectively justifiable and should publish a statement setting out their approach" (paragraph 3a);
 - b) Ofcom will "have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listing public service channels constitutes appropriate prominence" (paragraph 3b); and
 - c) "in giving appropriate prominence to PSB channels, EPGs should enable viewers in a region to select the appropriate regional versions of those channels through the

²⁷ Section 3(1) of the Communications Act 2003.

²⁸ Section 3(2)(c) of the Communications Act 2003.

²⁹ Section 3(4)(a) of the Communications Act 2003.

³⁰ Section 3(4)(l) of the Communications Act 2003.

³¹ The Code is available at: https://www.ofcom.org.uk/data/assets/pdf_file/0031/19399/epgcode.pdf.

primary listings for those channels provided the PSB in question has secured services that enable this” (paragraph 3c).

- 3.13 Paragraph 4 of the Code states that these principles would have “broad application” and that, for example, “they would justify a decision by an EPG operator using a menu-based approach to position public service channels no more than ‘one click’ from the home page. They might also justify giving public service channels first refusal on vacant listings higher in the category that they were placed”.

4. Our review of current PSB prominence

4.1 In this section, we:

- a) Describe the effects of a channel's linear EPG slot on its viewing;
- b) Summarise key findings from our report on PSB prominence; and
- c) Set out the rationale for amending the Code.

The impact of a channel's linear EPG slot

- 4.2 We have considered a range of available evidence³² to establish whether higher EPG slots (i.e. slots which are nearer the start of the EPG or near the top of a genre section) tend to result in increased viewing for channels relative to lower EPG slots. Broadly, all else being equal, the findings suggest that they do. Some of the evidence we have reviewed is a few years old. However, while we recognise the market has evolved, we have no reason to believe that the relationship between a channel's linear EPG slot and its viewing has fundamentally changed in the last few years. In particular, recent work we commissioned as part of our review of the prominence regime is consistent with the previous evidence.³³
- 4.3 As part of a report prepared for DCMS in 2012, Technologia interviewed stakeholders about EPG prominence. Those they spoke to stated that how close a channel is to the top of the EPG is one of the main determinants for prominence, and this is largely due to the fact that browsing the EPG continues to be the most common method viewers use to navigate.³⁴ In addition, two econometrics studies prepared by FEH for Ofcom in 2010 and 2013 also provided evidence that strongly supports the view that EPG positioning is likely to have a significant impact on a channel's audience performance. They found that the majority of examples of channels which have moved as a result of historical EPG reshuffles support an argument that EPG positioning affects their audience performance.³⁵
- 4.4 In addition, Technologia's work also found that on Sky's platform, where EPG slots are tradeable, higher EPG slots command a higher price.³⁶ For commercial channels, the value

³² In particular, we have reviewed the following reports: (i) [Technologia](#), The value and optimal management of channel position and prominence on electronic programme guides: A report for DCMS, 4 July 2012; (ii) [Attentional](#), An Analysis of the Audience Impact of Page One EPG Prominence: A report for Ofcom, July 2010; and (iii) [FEH Media Insight](#), An Analysis of the Audience Impact of Page One EPG Prominence: A Report for Ofcom, 29 April 2013. As Dr Farid El-Husseini was the author of both the Attentional and FEH Media Insight reports, for ease of reference we refer to them together as 'FEH'. We have also considered audience data from BARB on reach of channels on the main EPGs in the UK, set out in our EPG report: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/epg-prominence>

³³ We commissioned Expert Media Partners ("EMP") to examine and report on the market for EPGs, specifically the market price of EPG slots in the Entertainment, News and Kids sections on the Sky and Virgin Media platforms. We have published EMP's report alongside this consultation on the dedicated Ofcom webpage: <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>. See Expert Media Partners (EMP), Report on the UK Market in EPG Positions, July 2018, https://www.ofcom.org.uk/_data/assets/pdf_file/0025/116287/report-expert-media-partners.pdf.

³⁴ Technologia report, page 31

³⁵ FEH report, page 4

³⁶ Technologia report, pages 29, 34 and 60-61.

of an EPG slot is linked to the advertising revenues that could be generated from that slot, which in turn depends on the viewing that could be achieved from that slot. Therefore, the fact that higher EPG slots have a higher price suggests that higher EPG slots tend to increase viewing. The recent work we commissioned from Expert Media Partners (EMP) also found that slots higher up the EPG on Sky's platform command a higher price.³⁷

- 4.5 In our EPG report, we present a number of charts which plot the reach of channels by EPG slot for EPGs on the Freeview, Sky and Virgin Media platforms.³⁸ The charts suggest that, broadly, the reach of channels is highest at or near the top of the EPG and that this reach drops as one moves further away from the start of the EPG.³⁹ While the charts show that there is generally a sharp decline in reach between the first and the fifth EPG slots (reflecting the brand and historical position of the main five PSB channels), there is then a more gradual decline from slot six onwards. As such, there does not appear to be a simple 'cut-off' point below which it is clear that slots are no longer prominent.
- 4.6 While a higher linear EPG slot tends to increase viewing, we recognise that it is not the only determinant.⁴⁰ A number of other factors may also influence a channel's viewing, such as other features of the channel (e.g. brand, audience loyalty, quality or appeal of content, cross-promotion or other marketing) or other characteristics of the channel's EPG slot (e.g. proximity to channels which have high levels of audience loyalty or appeal, proximity to a parent or sister channel or a memorable channel number).⁴¹
- 4.7 More fragmented audience viewing habits also impact on whether or not a channel is viewed and, as noted in our EPG report, this behaviour is shifting, particularly amongst younger people. For example, while live TV viewing remains central for audiences, time-shifted and VoD viewing is becoming increasingly popular. These changes in audience behaviour may alter the impact EPG prominence has on a channel's viewing in the longer term.
- 4.8 In summary, the evidence suggests that, while there are a number of factors which can impact on viewing to a channel, higher linear EPG slots do tend to increase viewing for channels, all else being equal.

Relevant findings from our review of PSB prominence

- 4.9 As outlined earlier, we have a new duty under the Digital Economy Act 2017 to carry out a review of the prominence of linear and VoD PSB services. As part of this review we carried out mapping work to understand the current availability and discoverability of linear PSB and local TV content across a range of platforms and devices.

³⁷ EMP report, Tables 1, 3 and 5.

³⁸ EPG Prominence: A report on the discoverability of PSB and local TV services, 2018, pages 22-24

³⁹ In some EPGs there are blips in the reach of channels which appear to be accounted for by factors such as the start of popular genre listings or by channels which have high levels of audience loyalty/appeal.

⁴⁰ Technologia report, page 6, paragraph 12.

⁴¹ Technologia report, page 6, paragraphs 10-11.

- 4.10 For the main five PSB channels we found that a consistent approach is generally applied across the board with these being located in slots one to five or, where the EPG numbering starts at 100 or 101, 101 to 105 across all platforms and so these channels are found on the first page. The only variation is in Wales, where S4C generally occupies slot four or 104 on most platforms and Channel 4 appears lower down the EPG. However, this is not the case on the Virgin Media EPG, which is not regionalised so Channel 4 is carried in the fourth slot and S4C is carried lower down.
- 4.11 For the other PSB channels and local TV, we found that page and slot number varied considerably depending on the platform. The most notable variations were on the Virgin Media EPG, where local TV is on page nine compared to the first, second or third page of other EPGs; and within the children's section of the Sky EPG where CBeebies and CBBC are on the second page compared to the first page of most other EPGs' children's sections (or grouping of children's channels).
- 4.12 These variances in EPG position are in part due to the varying functionality of set top boxes. For example, whether the platforms are designed to provide regionalised EPGs (e.g. a different EPG depending on where the customer lives) and the number of available slots per page on different devices. These factors all impact on where channels are located.
- 4.13 Variations are also due to differences in how EPG providers operate their EPGs. For example, slots on Sky's EPG can be bought and sold through a secondary market (for further detail see the EMP report⁴²), while some platforms more directly control channel positions on their EPGs. However, the variations in slot positions across platforms identified in our report are also due to differences in how the current Code is interpreted by the EPG providers.

The importance of discoverability to viewers

- 4.14 In addition to our mapping work and data on audience habits outlined in our report, we also undertook an omnibus research questionnaire⁴³. This provided a view on the importance of discoverability to viewers as follows:
- Main five PSB channels: a significant proportion of viewers place at least some importance on these channels being easy to find in the EPG.
 - S4C: 22% of adults in Wales said that they place at least some importance on S4C being easy to find in their TV guide on their TV set. This is compared to 4% of adults across the UK as a whole.
 - BBC Four: 25% of UK adults said that they place at least some importance on BBC Four being easy to find in their TV guide on their TV set.
 - News: 37% of UK adults thought that it was important that BBC News was easy to find in their TV guide on their TV set, and 5% for BBC Parliament.

⁴² EMP report, pages 3-5

⁴³ EPG prominence research, 2018

- Children's: 33% of UK adults with children thought that it was important that CBBC was easy to find in their TV guide on their TV set, and 35% for CBeebies.
 - BBC Alba: 12% of adults in Scotland said that they place at least some importance on BBC Alba being easy to find in the TV guide on their TV set. This compared to 4% of adults across the UK as a whole.
 - Local TV: 22% of adults across the UK said that they place at least some importance on local TV channels being easy to find within their TV Guide on their TV set.
- 4.15 We have considered these findings in the context of audience behaviour data, as reflected in the report.

Rationale for amending the Code

- 4.16 As set out earlier, Ofcom's first Code was published in 2004. Under the Act, we have a duty to review and revise the Code from time to time. In light of the findings from our review on the availability and discoverability of PSB services, we undertook a review of the prominence section of the Code.
- 4.17 Under our current Code, EPG providers are required to comply with a set of general principles, rather than any specific rules or practices. As such, this gives them some flexibility as to how they apply the Code.
- 4.18 Our report on prominence of linear PSB shows that this flexibility has, over time, led to some significant variations across EPG providers and to some designated channels being less easy to discover depending on the platform and television device used. We also note that some EPG providers' approaches to allocating slots are changing.⁴⁴
- 4.19 We recognised that there could be possible issues with allowing this much flexibility in January 2014, after we received a complaint from ESTV regarding the slot it had been allocated on the Virgin Media EPG. ESTV considered that this slot did not provide it with what it believed to be sufficient prominence for its local TV service. While we did not uphold the complaint, we noted that the flexibility afforded to EPG providers under our existing Code "may not achieve the policy aims of the legislation". We added that consequently it may be appropriate for Ofcom to be more specific as to the outcomes which are to be secured in granting prominence to designated channels.⁴⁵
- 4.20 In light of these developments, we think it is now time to revise the Code so that it delivers the policy intention set out by Parliament in a way that provides regulatory certainty for the designated channels and for EPG providers about our expectations of "appropriate prominence".

⁴⁴ More information about these changes is presented in Annex 8 (https://www.ofcom.org.uk/data/assets/pdf_file/0024/116286/annex-8-technical-annex.pdf) and the EMP report (https://www.ofcom.org.uk/data/assets/pdf_file/0025/116287/report-expert-media-partners.pdf).

⁴⁵ Ofcom Broadcast Bulletin, Issue 269, 15 December 2014, page 54: https://www.ofcom.org.uk/data/assets/pdf_file/0024/47652/obb269.pdf

- 4.21 We have considered a number of relevant factors and options to ensure our proposals are in the interests of citizens and consumers, and that they would deliver the policy aim in a proportionate manner. In reaching our provisional views set out in this consultation as to what degree of prominence is appropriate for the designated channels, we have had regard to all the available evidence and our relevant statutory duties. Our proposals are outlined in detail in Section 5.

5. Proposed changes to the prominence code

In this section, we set out:

- a) Our proposed approach to determining appropriate prominence for the designated channels; and
- b) Our proposed changes to the Code. A draft prominence section of the Code reflecting these proposals is set out at Annex 6.

Our approach

- 5.1 Given the number of designated channels that are entitled to prominence and the nature of the linear EPG, not all channels can be afforded the same level of prominence. There are currently 12 PSB channels plus local TV channels⁴⁶ and the first page of any provider's EPG is typically no more than nine slots. Parliament has required us to exercise our judgement as to the degree of prominence we consider appropriate for these channels.
- 5.2 The designated channels have differing characters (e.g. some are national general entertainment channels while some focus on a specific genre or nation), content, current viewer bases and historical positions on EPGs.
- 5.3 In developing our approach and our proposals, we have grouped channels into broad categories with these factors in mind:
 - **Main five channels:** these are BBC One, BBC Two, Channel 3 services, Channel 4 and Channel 5. These channels provide a wide range of high quality, original content across a mix of content genres and aimed at a wide audience. Consequently, they all have a high reach and share of audiences.
 - **Other UK-wide PSB channels:** these channels are BBC Four, BBC News, BBC Parliament, CBeebies and CBBC. They provide a variety of more specialised public service content e.g. news, children's programming and arts and cultural programming, and are aimed at a more targeted audience, either on the basis of demographic or specific interest. Their audience share is lower than the main five PSB channels, which is to be expected given their more specialist nature.
 - **Nation and area specific channels:** these channels are S4C, BBC Alba and local TV. The indigenous language channels, S4C and BBC Alba, target (albeit not exclusively) the nations where these languages are primarily spoken i.e. Wales and Scotland respectively. Local TV channels target a specific area, normally a relatively small geographic area. We would also include the new BBC Scotland channel, due to start broadcasting in 2019, as a nation specific channel.

⁴⁶ This will rise to 13 PSB channels once BBC Scotland is launched, plus local TV channels.

5.4 In reaching our provisional views on appropriate prominence, we have set out the proposal that would deliver the degree of prominence that we consider appropriate for each group of channels in light of the groups' characters, the role that they play in the PSB landscape and the public value generated, in light of our relevant statutory duties. We also consider the impacts on different stakeholder groups that may arise as a result of changes to a channel's existing position under the proposals we have identified. There may be further consequential impacts in addition to those listed below, but we considered the following impacts to be the most material.⁴⁷

5.5 Effects on consumers and citizens:

- Viewing of designated channels generates personal value for viewers of these channels as well as public value for society (e.g. the democratic value of news, informal learning and access to culture).⁴⁸ Also, additional viewing may lead to greater profitability for the commercial channels and subsequently, opportunity for those broadcasters to invest in more content of benefit to audiences. Guaranteeing prominence for designated channels seeks to increase viewing and these benefits.
- Conversely, some non-designated channels may move down the EPG as a result of our proposals. This may cause audiences some disruption if channels are no longer located where they expect to find them. There may also be a reduction in personal value for viewers who no longer seek out those channels, and if some non-designated channels reduce their investment in attractive and/or UK originated content.⁴⁹ We recognise that setting requirements on the appropriate degree of prominence for the designated channels will limit the flexibility of EPG providers to arrange their EPGs and that this may affect consumers if it results in less choice or dampens innovation.

5.6 Effects on designated channels:

- For the BBC, greater viewing supports its ability to deliver its Mission and Public Purposes as set by the BBC Charter. Providing greater regulatory certainty may also strengthen its relative bargaining position with respect to EPG providers in the context of broader commercial negotiations.
- For the commercial designated channels, greater viewing may lead to an increase in their advertising/sponsorship revenues and thus their profitability and ability and incentive to invest in content (including PSB and/or UK originated content) and their ability to meet their public service obligations. Providing greater regulatory certainty about their EPG position may contribute to these effects (by reducing the

⁴⁷ Further consequential impacts might include scale or agglomeration impacts on the UK production sector, or any other follow-on effects further up the supply chain, but we have placed limited weight on these in our assessment.

⁴⁸ The public service remit and purposes of public service channels is established by Parliament in section 264 of the Communications Act 2003.

⁴⁹ Given UK-produced content may have social benefits (e.g. relating to representation of UK culture and experiences), a decline in investment in UK content may lead to a reduction in public value.

risk that their viewing falls) and strengthen their relative bargaining position with respect to EPG providers in the context of broader commercial negotiations.

5.7 Effects on channels that move down the EPG:

- For commercial channels (this includes the commercial PSBs' portfolio channels as well as fully commercial broadcasters), our proposals may lead to a drop in viewing and therefore a decrease in their advertising/sponsorship revenues and hence their profitability. Lower profitability and lower discoverability may, in turn, negatively affect their ability and incentive to invest in attractive and/or UK originated content. Channels that move down the EPG may also need to incur additional marketing/promotional costs to advertise their new location on the EPG.

5.8 Effects on EPG providers:

- We recognise that setting requirements on the appropriate degree of prominence for the designated channels may limit the flexibility of EPG providers to arrange their EPG in the manner they consider most attractive for their customers, and this may also lessen their opportunities to monetise their EPG slots (where applicable). Providing greater regulatory certainty as to designated channels' EPG positions may weaken EPG providers' relative bargaining position in the context of broader commercial negotiations. There may also be costs of administering changes to their EPGs (including revising their own EPG policies, drafting new guidance and managing any channel moves on their EPGs), although a period of transition may mitigate these costs to an extent.

5.9 We have taken into account the impacts identified above in reaching our provisional view on the appropriate degree of prominence for the designated channels.

Identifying Impacts

5.10 Our proposals seek to secure appropriate prominence, taking account of the positive effects and potential cost implications. Public value benefits are qualitative and are challenging to quantify in any meaningful way, however, we have highlighted the key qualitative factors in our consideration under each proposal and in the supporting annex 7.

5.11 As one part of our consideration, we have undertaken a quantitative assessment of the potential financial impact of our proposals on commercial channels' profitability (as a result of moving down the EPG) and on EPG providers' ability to monetise their EPG slots (where applicable). Annex 8 sets out our methodology, inputs, assumptions and results. Our modelling of the potential financial impacts of our proposals is published alongside this consultation.⁵⁰ We commissioned Expert Media Partners ("EMP") to examine and report on the market for EPGs, specifically the market price of EPG slots in the Entertainment, News

⁵⁰ We have published our model alongside this consultation on the dedicated Ofcom webpage: <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>. See Ofcom model, https://www.ofcom.org.uk/data/assets/excel_doc/0023/116294/economic-model.xlsx.

and Kids sections on the Sky and Virgin Media platforms.⁵¹ From EMP's data, we have estimated the price of individual EPG slots. We note that the estimated prices from EMP that underpin our calculations are relatively high on the Virgin Media EPG compared to those on the Sky EPG, given the relative number of subscribers on each platform.

- 5.12 However, not all the effects outlined above can be easily quantified and our assessment of financial impacts is only a proxy for the likely impact on commercial channels' profitability and on relevant EPG providers. There are a number of other factors affecting costs, such as an individual broadcaster's financial position, that we cannot reasonably model. We have had to make a number of modelling assumptions, as did EMP when generating the price estimates that underpin our calculations. Our estimates of the potential impact are therefore only indicative in nature. They are also just one factor in a range of considerations in ensuring that the rules around prominence support the discoverability of the designated channels and the creation of public value.
- 5.13 In formulating our proposals for appropriate prominence we have taken into account the likely impact on the commercial channels that would move down the EPG as a consequence of our proposals, and the main licensed EPGs, namely those provided by Digital UK, Sky, Virgin Media, Freesat and YouView. We believe that this captures the bulk of the costs and benefits since the other licensed EPG providers account for a small proportion of viewing.
- 5.14 We would also note that where we refer to current page numbers of PSB and local TV channels within platforms' EPGs, these are indicative and based on testing we undertook in May – June 2018 for our EPG report. This is because the number of channels per EPG page can vary for different box types (for instance the Sky+ and SkyQ boxes have different user interfaces) and channels available can vary by nation/region and depending on reception.⁵² The effect of any moves in response to our proposals also requires assumptions on different platforms' management approach to their EPG, for example, a platform may choose to reallocate slots, allow trading or undertake further reorganisation and auction available slots. Therefore, the number of slots we expect channels may have to move by is an estimate.

Our proposals for changes to the Code

- 5.15 We summarise our proposals below by channel grouping. A draft of a revised section on appropriate prominence for the Code that reflects how these proposals would be

⁵¹ We have published the EMP report alongside this consultation on the dedicated Ofcom webpage: <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>. See Expert Media Partners, Report on the UK Market in EPG Positions, July 2018, https://www.ofcom.org.uk/data/assets/pdf_file/0025/116287/report-expert-media-partners.pdf.

⁵² We note that EPG providers have flexibility in the number of channels they can list per page. The maximum we have seen in testing is 9 channels listed per page. So where proposed rules require channels to be within the first three pages, this implies that these channels should not be lower than slot 27 (or 127 where the EPG numbering starts at number 100 or 101) in the EPG.

implemented can be found at Annex 6. Further detail on our reasoning is provided in Annex 7.

- 5.16 As mentioned in Section 2, the Code also contains provisions relating to accessibility and fair and effective competition, but those matters are not the subject of this consultation. The changes we propose will require other sections of the Code to be updated with minor editorial amendments, for example in relation to paragraph numbering and cross-references to the section on appropriate prominence.
- 5.17 We have discussed regionalisation and functional variations with EPG providers and there are a number of commercial and technical reasons for the differing functionality. Our proposals therefore aim to take account of both UK-wide and regionalised EPG variants.

Main Five PSB Channels

Prominence for the main five PSB channels (BBC One, BBC Two, Channel 3 services, Channel 4 and Channel 5) on EPGs operating UK wide or outside of Wales

- 5.18 The main five PSB channels are the foundation of the UK's PSB provision, providing high-quality programmes across a wide range of genres that appeal to and are widely watched by audiences across the UK. These channels therefore deliver a range of benefits to viewers, including general entertainment, as well as programmes that inform and educate.
- 5.19 We propose to guarantee the main five PSB channels' current positions in the top five slots⁵³ on the EPGs operating on a UK-wide basis or outside of Wales. This proposed approach would provide regulatory certainty and secure what we believe the appropriate level of prominence for the main five PSB channels on these EPGs should be, in line with the intention of the prominence regime and our other broader relevant broadcasting duties.
- 5.20 These PSB channels remain highly viewed, despite the considerable changes that have occurred in the UK TV landscape. Guaranteeing that they retain their current slots should help ensure that these channels retain viewing and so help the commercial PSBs sustain their advertising revenues. For the BBC, high levels of viewing of BBC One and BBC Two should help it to achieve its mission and public purposes.
- 5.21 Establishing regulatory certainty could reduce their exposure to future commercial risk as they plan for future programme investment. This positive impact could be significant as these channels are the main providers of PSB programming. PSBs are significant investors in UK content, with the PSB channels investing a total of £2.46bn on networked first-run UK-originated content in 2017.⁵⁴
- 5.22 We do not consider this proposal to have any material cost implications for broadcasters or EPG providers as it does not require any channel moves.

⁵³ Top five slots means slots 1 to 5 / 101 to 105, noting some platforms' EPGs allow for a promotion channel in slot 0 or 100.

⁵⁴ Ofcom/Broadcasters, published in Ofcom's Media Nations 2018 report.

- 5.23 Some EPGs vary by nation and region. For those EPGs which are specific to Wales, S4C has traditionally taken the fourth slot. Therefore, the next sub-section considers the appropriate prominence of the main five PSB channels and S4C on EPGs for viewers specifically in Wales.

Q1) Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?

Prominence for the main five PSB channels and S4C on EPGs provided to viewers specifically in Wales

- 5.24 S4C was the fourth channel launched in Wales and has historically been located in slot four. It initially provided a mixture of programming in Welsh along with some Channel 4 programming. Following digital switchover,⁵⁵ Channel 4 became available across Wales and S4C became a 100% Welsh language channel. S4C retained its slot on EPGs provided for viewers in Wales and Channel 4 has been located in slots further down⁵⁶ on these EPGs.
- 5.25 We propose that BBC One, BBC Two and the relevant Channel 3 service are guaranteed the top three slots on EPGs for viewers specifically in Wales, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page. Guaranteeing S4C's position in slot four, whilst moving Channel 4 up to the first page of these EPGs, would provide benefits to both channels, in terms of discoverability, viewing and providing greater regulatory certainty.
- 5.26 As an indigenous language channel, broadcasting Welsh language programmes to Welsh speakers and learners, S4C has an important role facilitating national and cultural identity, as well as encouraging the education and practice of the Welsh language.
- 5.27 Channel 4 is one of the main UK PSBs. It has a PSB remit to deliver high quality, innovative content which exhibits a distinctive character and appeals to the tastes and interests of a culturally diverse society. It is commercially funded and operates a not-for-profit model, whereby surplus revenues go back into content investment.
- 5.28 We consider that the degree of prominence which is appropriate in these circumstances would be to maintain S4C in slot four on regionalised EPGs in Wales and to secure greater prominence for Channel 4 on the first page of EPGs. This would ensure S4C remains easy to find, supporting maintained viewing and associated public value, whilst also increasing viewing and value created by Channel 4 in Wales.
- 5.29 Guaranteeing Channel 4 a position on the first page of EPGs for viewers in Wales would result in it moving up from: page three on Sky in Wales; potentially from page two on

⁵⁵ In Wales digital switchover took place in 2009 and 2010.

⁵⁶ For example, page 3 on Sky Wales, page 1/2 on Freeview Wales (note, this is dependent on the number of slots per EPG page. In testing for the report, both Freeview boxes we tested had seven slots per page. However, some Freeview boxes do have six slots per page), page 4 on Freesat Wales.

Freeview in Wales⁵⁷; and page four on Freesat in Wales. Virgin Media operates a single EPG across the UK, so the prominence of S4C on these EPGs is considered from paragraph 5.54.

- 5.30 Viewing data shows that Channel 4's share of viewing is much lower on platforms in Wales where it holds a lower page position.⁵⁸ Therefore, an upward move to page one is likely to increase Channel 4's share of viewing in Wales. This may raise its advertising and sponsorship revenues and hence its profitability.⁵⁹
- 5.31 Channel 4 moving to the first page on EPGs provided to viewers specifically in Wales may involve some negative effects. These would include costs to commercial broadcasters that move down the EPG, through loss of viewing and subsequent revenue loss. In addition to this cost, there may be further disruption costs for channels that move, for example an increase in marketing costs to ensure that viewers know their new location.
- 5.32 Ofcom considers that securing greater prominence for Channel 4 in Wales would deliver the policy intent of the prominence regime and our other relevant broadcasting duties. Having had regard to the potential impacts of our proposal, we remain of the view that requiring Channel 4 to be listed on the first page of Wales EPGs would be appropriately prominent.

Q2) Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?

Other National PSB channels

- 5.33 The following sections outline our considerations and proposals for appropriate prominence for the other National designated channels: BBC Four, BBC News, BBC Parliament, CBBC and CBeebies.

Prominence for BBC Four

- 5.34 BBC Four is a channel which is broadcast across the UK. It has regulatory requirements⁶⁰ to provide arts and music programming and a minimum amount of original productions. It currently appears in the general entertainment section where it is generally located on the first or second page of the major platforms' EPGs, except for the Sky Q EPG, where it is located on page three.
- 5.35 We think that the current level of prominence is appropriate and so propose that BBC Four is guaranteed a slot within the first three pages of the general entertainment section, given

⁵⁷ Note, it would only be required to move up if there were six slots per page. In testing for the report, both Freeview boxes we tested had seven slots per page. However, some Freeview boxes do have six slots per page.

⁵⁸ The same point applies for S4C. See Annex 7 for further detail.

⁵⁹ See more detailed discussion in Annex 7.

⁶⁰ In the BBC's Operating Licence, set by Ofcom page 13 and 15:

https://www.ofcom.org.uk/data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf

the targeted nature of the channel. However, we note that the launch of BBC Scotland in February 2019 may mean that BBC Four moves down the EPG on platforms in Scotland.⁶¹ Our proposal would ensure that both BBC Scotland and BBC Four are afforded appropriate prominence under a revised Code.

- 5.36 We consider that our proposal is generally beneficial for consumers/citizens as it would ensure that BBC Four would remain easy to find within the general entertainment section of the EPG. The proposal would provide more regulatory certainty and maintain the public value created by the channel. Having had regard to the potential impacts of our proposal, we remain of the view that this would be the appropriate degree of prominence for a channel which is more targeted than the main five PSB channels.

Q3) Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?

Prominence for PSB News Channels

- 5.37 The BBC broadcasts two UK wide news channels, BBC News and BBC Parliament. The BBC's Royal Charter and Framework Agreement describes these channels⁶² as follows:
- "BBC News: a rolling news channel providing news, analysis and other informational programmes"; and
 - "BBC Parliament: a channel providing substantial live coverage of debates and committees of the UK's Parliaments and Assemblies, and other political coverage".
- 5.38 We propose that appropriate prominence for these genre specific channels should be considered within the appropriate genre section or grouping of genre channels within the general EPG, rather than their position overall. All EPGs provide either genre filters or areas within the general EPG that group genre channels such as news, and so we consider that our proposed approach would provide an appropriate degree of prominence, in terms of a generally held practice by EPG providers and therefore in line with audience expectations.
- 5.39 Currently, BBC News and BBC Parliament are located on the first page of genre sections on most EPGs. However, as outlined in our report, Freeview, Freeview Play and EE TV do not offer genre sections or filters so the channels appear further down (based on our testing, these channels were at pages 15, 16 and 11 respectively, but we note this will vary depending on the number of channels per page, and the channels available in different regions) but they do appear in the top positions of these platforms' grouping of news channels.

⁶¹ See BBC article *February 2019 date for new BBC Scotland television channel* dated 15 May 2018 (<https://www.bbc.co.uk/news/uk-scotland-44126219>): "It is proposed that the new channel will take the place currently occupied by BBC Four on electronic programme guides (EPG) in Scotland".

⁶² BBC Framework Agreement, page 49: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1_.pdf

- 5.40 We propose to guarantee slots on the first page of the news section or equivalent position in the grouping of the news channels. This approach would support current viewing levels and give some greater certainty about their treatment going forward. Retaining their positions on the first page of the genre should help ensure that viewing to these channels remains relatively stable. Therefore, current levels of personal value for viewers of these PSB news channels and the public value that the channels deliver to society more widely (e.g. due to greater knowledge of current affairs which may facilitate democratic debate, etc.) would be secured by our proposal.
- 5.41 Given our proposal is unlikely to result in any change to the slot positions of BBC News and BBC Parliament, Ofcom considers it unlikely that there will be any associated costs to this proposal as it is unlikely to have any material impact on the viewing of other news channels, or, if relevant, their advertising revenues.

Q4) Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?

Prominence for PSB Children's Channels

- 5.42 The designated children's channels entitled to prominence are the BBC's CBeebies and CBBC. Both channels are available UK wide and these channels deliver public value through providing a wide range of high-quality, original content to children, parents and carers. The BBC's Royal Charter and Framework Agreement describes these channels⁶³ as follows:
- "CBBC: a mixed-schedule channel for pre-teen children"; and
 - "CBeebies: a channel providing a range of programming to educate and entertain very young children".
- 5.43 Similar to our proposed approach for the designated news channels, we consider that appropriate prominence for these children's channels should be considered within the appropriate genre section or grouping of genre channels within the general EPG, rather than their position overall.
- 5.44 Currently, CBBC and CBeebies are in slots at or near the top of their genres on the Virgin Media, Freeview and Freesat EPGs. The exception is the Sky EPG, where the two channels are located on the second page of the children's genre.
- 5.45 We propose that CBBC and CBeebies are guaranteed slots on the first page of the Children's genre section or an equivalent area of the EPG where genre filters are not available. We think that securing this level of prominence for CBBC and CBeebies would

⁶³ BBC Framework Agreement, page 49:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1_.pdf

ensure they are easy to discover across different EPGs and platforms and provide greater regulatory certainty.

- 5.46 Our proposal should encourage greater viewing. However, the evidence for the scale of any increase is mixed. On the one hand, CBBC and CBeebies performance on Sky is generally the same or only slightly lower than its performance on Virgin Media and Freeview.⁶⁴ There may be a number of reasons for this, such as particularly strong brand affiliation. However, EMP's estimates support the view that higher slots in the children's genre section are more attractive, suggesting they are associated with greater viewing (see the EMP report⁶⁵).
- 5.47 Even a small rise in viewing of the two children's channels on the Sky platform (the only platform where these channels are currently located below the first page of the children's genre or area of the EPG), should have beneficial effects. It should lead to consequent rises in the wider public value intended by Parliament in establishing a prominence regime for designated channels.
- 5.48 Our proposals would likely involve costs to non-PSB broadcasters that move down the EPG, through loss of viewing and subsequent revenue loss. In addition to this cost, there may be further disruption costs for channels that move, for example an increase in marketing spend to ensure that viewers know their new location. Insofar as non-PSB children's channels lose viewers and revenues, this may also reduce their investment in content, including UK originated content.
- 5.49 Having had regard to the potential impacts of our proposal, we remain of the view that the degree of prominence it gives to these channels is appropriate.

Q5) Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?

Nation-specific channels and local TV

- 5.50 The nation and area specific channels comprise the indigenous language channels i.e. S4C and BBC Alba (which target the nations where these languages are primarily spoken i.e. Wales and Scotland respectively), the newly proposed BBC Scotland (an English-speaking channel aimed at Scottish audiences) and local TV services.⁶⁶
- 5.51 These channels are generally aimed at specific populations within certain areas of the UK and have an important role in facilitating national and local identity. We have focused on ensuring the appropriate level of prominence within the areas these services target e.g.

⁶⁴ Source: BARB, share of viewing, 2017.

⁶⁵ EMP report, Tables 5 and 6.

⁶⁶ There is currently no Ofcom licensed indigenous language channel in Northern Ireland; although TG4 is broadcast and available in Northern Ireland, it is not a designated public service channel under the Act and is regulated by the Broadcasting Authority of Ireland in the Republic of Ireland.

prominence of BBC Alba in Scotland. However, we recognise that this will mean more significant reorganisations for EPG providers that do not offer a regionalised service.

- 5.52 Local TV services are generally located on one single slot within a particular EPG⁶⁷ and each channel targets a specific, normally relatively small, geographic area e.g. London Live, That's Norfolk or Made in North Wales.
- 5.53 Our proposals for S4C on the Welsh specific EPGs were covered in paras 5.24 to 5.32 where this was discussed alongside the prominence of Channel 4 in Wales. The next section therefore only considers the appropriate prominence of S4C where it is broadcast on UK wide EPGs.

Nation-specific channels (S4C, BBC Alba, BBC Scotland) and Local TV on platforms with UK wide EPGs

- 5.54 The only major platform which currently operates a UK wide EPG is Virgin Media. As previously noted, the other EPGs are all regionalised/differ by individual UK nation or region. The area specific channels are currently located at the following positions on the Virgin Media EPG:
- a) S4C is located at slot 166 (page 10).
 - b) BBC Alba is located at slot 161 (page 9).
 - c) Local TV is at slot 159 (page 9).
 - d) BBC Scotland has not yet launched.
- 5.55 For the purposes of our consideration, we have assumed that when launched BBC Scotland would replace BBC Four in slot 107 of the Virgin Media EPG.⁶⁸
- 5.56 We propose to guarantee slots for BBC Alba, BBC Scotland, S4C and Local TV within the first three pages of UK wide EPGs. This proposal, if implemented, would mean that all of these PSB channels would become easier to find on the Virgin Media EPG which should increase their viewing, as well as increasing the personal and public value associated with this viewing.
- 5.57 On the other hand, we recognise that these proposed changes are likely to lead to a large number of channel moves away from the start of the Virgin Media EPG. Annex 8 outlines our calculations, based on a number of assumptions, about how the channel moves might be managed and the potential financial impact on commercial channels and Virgin Media. A number of commercial channels may be negatively affected – losing viewers and

⁶⁷ For instance, local TV is located at 117 on the Sky England and Northern Ireland EPGs. Therefore, a viewer in London who clicked on 117 would see the channel London Live, but a viewer in the Central Midlands would see the channel 'Made in Birmingham'.

⁶⁸ For modelling purposes, we have assumed that the ordering of S4C, BBC Alba and local TV on page 3, would follow its current ordering further down the EPG. We have assumed that BBC Scotland would replace BBC Four on EPGs in Scotland as set out in the BBC's Proposals for the launch of a new BBC Scotland TV channel: submission to Ofcom, page 26: http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf.

advertising revenues. Virgin Media may also suffer a loss in terms of its reduced ability to monetise its EPG slots.

- 5.58 Having had regard to the potential impacts of our proposal, we remain of the view that the degree of prominence it gives to these channels is appropriate. Our proposals would help secure or slightly increase the discoverability and viewing to these nation specific and Local TV channels, thereby supporting the personal and public value created for the relevant audiences and better secure the policy objective of the prominence regime and our broader broadcasting duties.

Q6) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?

Q7) Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?

Nation specific channels and local TV on Nation Specific EPGs

- 5.59 The current positions of BBC Alba and local TV channels on the Scottish specific EPGs are as follows:
- a) Sky Scotland EPG – BBC Alba is located in slot 141 (on page six); and local TV is located in slot 117 (on page three).⁶⁹
 - b) Freeview Scotland EPG – BBC Alba is located at slot 7 (page one/two) and local TV is in slot 8 (page two).⁷⁰
 - c) Freesat Scotland EPG – BBC Alba is located at slot 109 (page two). Note local TV is not broadcast on Freesat.
- 5.60 As already noted, BBC Scotland has not yet been launched – the BBC has announced that the new channel will start broadcasting in February 2019.⁷¹ For the purposes of our consideration we have assumed BBC Scotland would be placed at slot 116 on the Sky Scotland EPG, slot nine on the Freeview Scotland EPG and slot 110 on the Freesat Scotland EPG.⁷²
- 5.61 The current positions of the local TV channels on the other regionalised EPGs are as follows:
- a) Sky England and Northern Ireland – local TV at slot 117 (page three).⁷³

⁶⁹ Note that STV2 ceased broadcasting on 30 June 2018.

⁷⁰ Note, this varies depending on the number of slots per EPG page. For seven slots per page, BBC Alba would be on page 1, for six slots per page, it would be at the top of page 2. In testing for the report, both Freeview boxes we tested had seven slots per page. However, some Freeview boxes do have six slots per page.

⁷¹ <https://www.bbc.co.uk/news/uk-scotland-44126219>

⁷² We have assumed that BBC Scotland would replace BBC Four on EPGs in Scotland as set out in the BBC's Proposals for the launch of a new BBC Scotland TV channel: [submission to Ofcom](#), page 26.

⁷³ Note that local TV is not currently available on Sky in Northern Ireland

- b) Sky Wales – local TV at slot 134 (page five).
 - c) Freeview Wales – local TV at slot eight (page two).
 - d) Freeview England and Northern Ireland – local TV at slot seven/eight (page one/two).⁷⁴
- 5.62 Our detailed discussion of our proposal for securing appropriate prominence for these channels on nation-specific EPGs is set out in Annex 7. In that discussion, we consider first the position for Scotland EPGs separately from other nation specific EPGs. For the reasons set out in Annex 7, we consider that for all nation specific EPGs appropriate prominence for these channels would be secured by a position within the top three pages of the relevant EPGs. This would mean two significant changes:
- a) BBC Alba is currently located at slot 141 (on page six) of the Sky Scotland EPG. Our proposal would require this channel be moved at least to the bottom of page three of the Sky Scotland EPG.
 - b) Local TV would need to move up from slot 134 on page five to page three on the Sky Wales EPG.
- 5.63 The position of local TV on Freeview Wales, Freeview England and Northern Ireland and Sky England and Northern Ireland EPGs would already be compliant with the proposed revised Code.
- 5.64 These changes may lead to costs for commercial broadcasters that move down the Sky EPG in Wales and Scotland related to reduced viewing and loss of revenue.
- 5.65 Having had regard to the potential impacts of our proposal, we remain of the view the degree of prominence it gives to these channels is appropriate. Our proposal would help secure or slightly increase the discoverability and viewing to these nation specific and local TV channels, thereby supporting the personal and public value created for the relevant audiences and better secure the policy objective of the prominence regime and our other broadcasting duties.

Q8) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?

Q9) Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?

Summary of proposed changes

- 5.66 In practice, our proposed changes would mean that EPG providers would need to ensure they are complying with the following requirements for each designated channel:

⁷⁴ As above, this varies depending on the number of slots per EPG page. For seven slots per page, slot 7 (and 8, where slot 7 is not filled) would be on page 1, for six slots per page, it would be at the top of page 2. In testing for the report, both Freeview boxes we tested had seven slots per page. However, some Freeview boxes do have six slots per page.

Review of rules for prominence of public service broadcasters and local TV: Consultation on proposed changes to the linear EPG Code and future of the regime

Designated Channel	England	Wales	Scotland	Northern Ireland
Main five PSB channels				
BBC One	1, or 101 where EPG numbering begins at 100 or 101			
BBC Two	2, or 102 where EPG numbering begins at 100 or 101			
Channel 3 services	3, or 103 where EPG numbering begins at 100 or 101			
Channel 4	4, or 104 where EPG numbering begins at 100 or 101	Area-specific EPGs: First page UK-wide EPGs: 4 (or 104 where EPG numbering begins at 100 or 101)	4, or 104 where EPG numbering begins at 100 or 101	4, or 104 where EPG numbering begins at 100 or 101
Channel 5	5, or 105 where EPG numbering begins at 100 or 101			
Area-specific designated channels				
S4C	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	Area-specific EPGs: 4 (or 104 where EPG numbering begins at 100 or 101) UK-wide EPGs: First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages
BBC Alba	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages
BBC Scotland (due to launch in 2019)	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages	First three pages	Area-specific EPGs: No prominence requirements UK-wide EPGs: First three pages
Local TV channels	First three pages for the local digital television programme service that is broadcast within the relevant coverage area			
Other UK-wide PSB channels				
BBC News	First page of news genre/ section of the EPG			
BBC Parliament	First page of news genre/ section of the EPG			
CBeebies	First page of children or kids genre/ section of the EPG			
CBBC	First page of children or kids genre/ section of the EPG			
BBC4	First three pages			

Substitution of SD and HD channels under the Code

BBC channels

- 5.67 Both HD and SD versions of BBC channels are designated channels under the Act. This means both variants of a BBC channel are entitled to a level of prominence we consider appropriate under the regime.
- 5.68 We do not think that it would be appropriate to require that both SD and HD versions of a channel should be granted prominence given that most of the content will be duplicated. We think it would therefore be proportionate and in audiences' interests to require only one variant of a BBC channel to be granted prominence.

Other designated channels

- 5.69 HD versions of commercial PSB channels and local TV are not designated channels under the Act and the prominence regime does not apply to them. However, in some cases PSBs have wanted to allow their HD simulcasts to occupy the more prominent position that their SD channels are entitled to, and we have previously taken the view that we would not consider that, should a PSB wish to swap its more prominent slot for its HD rather than SD service, this would be in breach of the Code. This is because we believe that there can be benefits in promoting HD services where they are simulcasts of SD channels, even though HD services are not technically entitled to prominence under the Code.
- 5.70 We propose to expressly clarify in the Code guidance that these broadcasters may agree with EPG providers that they can swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to.

Q10) Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?

Q11) Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?

Transitional arrangements

- 5.71 We recognise the need to put in place a transition period, in order to allow licensed EPG providers time to update their policies and re-arrange their EPG lists where necessary. As well as updating their policies, licensed EPG providers are likely to consult broadcasters on their updated policies and will also want to provide a transition period for broadcasters before their policy comes into force. Given this, we would propose a transition period following the Code being finalised of 12 months.

Q12) Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?

6. The future of the prominence regime

- 6.1 This section reflects on the changing market and considers how the prominence regime might be adapted to protect the benefits to PSB into the future. Any changes to the regime would require legislative change, so stakeholder responses to issues and ideas raised in this section will therefore inform the public debate.
- 6.2 We consider the challenges of prominence in a digital era under five main themes:
- a) the discoverability of the linear EPG;
 - b) the prominence of the PSB broadcaster players ('the PSB players');
 - c) the prominence of PSB VoD content discovered by routes other than the EPG and PSB players, for example through recommendations and search;
 - d) the extension of the regime beyond licensed EPGs to other TV platforms and devices; and
 - e) prominence in a less TV centric world.
- 6.3 We have set out some possible principles and characteristics of prominence in an online world that any future prominence regime might need to take account of.
- 6.4 The current prominence regime covers both local TV and PSB channels. However, this chapter focuses on a potential future prominence regime for PSB players and content. This is because, to date, local TV broadcasters have not entered the VoD market. If this were to change consideration would need to be given as to whether a different approach was needed for these services.

Discoverability of the linear EPG

Live TV remains important and the linear EPG is a key route for audiences to find content

- 6.5 Live TV remains a central component of TV viewing. Of the 5 hours 11 minutes average video content that individuals watch, 71% originated from live TV and 58% was watched as live TV on the TV set.⁷⁵
- 6.6 Moreover, despite the multiple different routes of content discovery, the EPG still remains a key means of finding content that viewers want to watch. As set out earlier, BARB's Lifestyle Insights questionnaire shows that using the linear EPG is the most common answer to "how do you find out what's on TV?" for all age groups, with the exception of over 65s, who are more likely to say that they use newspaper supplements.⁷⁶

⁷⁵ Source: Ofcom/BARB/BARB TV Player (census data)/TouchPoints/ComScore

⁷⁶ Source: BARB Lifestyle Insights Questionnaire, January 2018

The linear EPG is easy to find across all platforms but this may change

- 6.7 Currently, the linear EPG is generally available as the first option on the opening screen of the main EPG providers or just one ‘click away’, and many platforms and TVs provide direct access to the EPG via a guide button. However, user interfaces have developed rapidly over recent years to provide access to VoD services and more personalised content, such as recommendations, alongside live and recorded TV. These developments are driven by a range of commercial incentives and have meant, that in some cases, the linear EPG is no longer as prominent to viewers.
- 6.8 Our current view is that the linear EPG is likely to remain a valuable route to find content for significant audience segments in the short to medium term and therefore we believe it remains important that this route for discovering content remains easily accessible. Furthermore, live TV is likely to remain an important route for PSB broadcasters to reach a range of audiences and therefore making one of the key routes for finding this TV content easily discoverable will remain important in maintaining the discoverability and reach of PSB content.
- 6.9 There is also a risk that without some surety on the position of the linear EPG within a user interface, the effect of our recommendations on securing prominence for PSB channels on linear may be reduced.
- 6.10 Given the above, we would welcome views on extending the prominence regime to include a requirement that the linear EPG itself is easily accessible and prominent on EPGs.

Q13) Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?

The prominence of PSB VoD content and considerations for a future regime

- 6.11 In Ofcom’s accompanying report on PSB prominence⁷⁷, we observed that time-shifted and VoD viewing is becoming increasingly popular, particularly amongst younger audiences. VoD viewing accounts for 9% of total time spent watching audiovisual content on any device, and this is higher among 16-34s, at 14%.
- 6.12 Given these changes in audience behaviour and market developments, it is becoming progressively more important for PSBs to supply content to audiences in a variety of different ways. However, the current prominence regime only applies to the designated channels listed within linear EPGs that are offered by licensed EPG providers and therefore does not capture the position of PSB VoD players or PSB content elsewhere within the user interface of different platforms and devices.

⁷⁷ EPG Prominence: A report on the discoverability of PSB and local TV services, 2018: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/epg-prominence>

- 6.13 As viewers engage with content in different ways, viewers are likely to move to accessing content in different means including:
- Accessing non-linear content on more traditional TV platforms via EPGs and PSB players;
 - Accessing PSB content outside of EPGs and PSB players e.g. via recommendations and search; and
 - Accessing PSB content on less TV-centric, online platforms.
- 6.14 This range of ways of accessing content creates a wider set of challenges for extending the prominence regime. Given the range of challenges a prominence regime might seek to address, we have set out the factors we think should be considered when designing a regime. We then discuss how these factors might apply to prominence for PSB players and for PSB content more widely and where such a regime might apply. We also consider prominence in a less TV centric world.

Factors that would need to be considered when designing a new regime to extend prominence to connected devices and online services

- 6.15 We have identified a range of factors that any future prominence regime would need to take into account. These include, but are not limited to:
- **What degree of prominence is desirable?** Any future regime would need to ensure that there are appropriate levels of prominence necessary to deliver the public purposes of the PSBs. However, how prescriptive a new regime might seek to be could vary. The current linear regime provides Ofcom with significant discretion in relation to the prominence that it grants the designated channels.
 - **What metrics should define prominence?** Historically, in the linear world, prominence has been measured in terms of how far up or down the linear EPG a service is placed. As new and innovative interfaces evolve, this language will not be sufficient. Going forward, it might be helpful to think in terms of the number of clicks or number of decisions it takes to reach PSB content. This has become an established currency in the online world (e.g. Amazon 'one-click' ordering). This metric works best when the user is given a finite number of options. Free text and voice search still presents challenges.
 - **What types of content should benefit from prominence?** The VoD propositions of PSB players include content from both PSB and non-PSB linear channels as well as a range of online-only content. Extending the prominence regime may require extending the scope of the content promoted beyond the content available in PSB linear channels.
 - **What platforms, services of devices should be captured?** As noted above a range of connected platforms and devices are used beyond EPG providers to access content. Extending the prominence regime to capture online content and services may require the inclusion of a bigger range of platforms and devices or even adopting a strategy where rules and protections for PSBs prominence are platform 'agnostic'.

- **What elements of navigation interfaces should be captured?** Consumers access content using a range of navigation mechanisms, from traditional linear EPGs to voice search. In many cases non-TV focussed platforms, such as social media may also provide a route to PSB content. As a result, a prominence regime would need to define what parts of navigation mechanisms are relevant.
- **What size and scale of platforms or services should be included?** There would need to be a consideration for any possible gating criteria or threshold i.e. whether a platform would need to achieve a certain scale before coming under the scope of regulation. This could take the form of the number of homes reached or the overall share of audio-visual viewing that a platform or service accounts for.

Principles for a future regime

- 6.16 In designing any future regime, we believe that there are three principles that should be upheld.
- a) **Personalisation should not be inhibited:** we believe that the ability for consumers to personalise user interfaces is a benefit to them, allowing them to create easier user journeys and in some cases improve accessibility. As such, personalisation of the user interface or functionality that allows audiences to promote or select certain apps, programmes or channels, should remain out of scope of prominence rules.
 - b) **Consumer choice and functionalities which they value should not be inhibited:** our initial view is that any future online PSB prominence regime should not inhibit any active consumer choice. So, for example, promotion of programmes based purely on personal preferences, should remain out of scope of prominence rules. Similarly, we believe that functionalities which consumers value, such as the ability to find recently watched series and resume viewing content, should also not be restrained.
 - c) **Search should be transparent:** transparency is fundamental to the value of search. Public service search results could be presented in a defined results box, making it clear to the user why these have been promoted.

Q14) Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?

Q15) Do you agree with the principles we have set out? Are there other principles that should be considered?

The prominence of the PSB players

Non-linear viewing is increasingly important to audiences

- 6.17 PSB players such as the BBC iPlayer, ITV Hub, All 4 and My5 currently provide a key access route for PSB VoD content and are available via pay for and free to air platforms, as well as

to download (or pre-loaded) on a range of devices including smart TVs, tablets, mobile phones, computers, streaming devices and games consoles.

Discoverability of PSB players

- 6.18 Our report findings on the discoverability of PSB players in many ways mirror those for PSB service channels, with the main PSB players generally securing prominence but smaller PSBs struggling.
- 6.19 The bigger PSB players (BBC iPlayer, ITV Hub, All 4 and My5) are widely available on platforms and devices and easily discoverable, generally appearing early in the user journey. Only two of the other PSBs provide players currently, STV (STV Player) and S4C (S4C content is also available on BBC iPlayer). STV Player is available on a range of streaming devices but does not always secure the same level of discoverability as the bigger PSB players. STV Player is not available on all platforms. The availability of the S4C player has historically been more limited, but it has recently launched apps for some smart TVs and Amazon Fire TV.
- 6.20 While the players of the main PSBs are currently easily discoverable on the main TV platforms there are concerns that this may change in a market that is evolving rapidly. International SVoD services are able to strike global deals with manufacturers of streamers and smart TVs to ensure their apps are pre-loaded onto the manufacturer's products and appear on the user interfaces. Given that there is a finite amount of space on the front pages of user interfaces, these deals may in future limit space available for more local providers, such as the PSB players.

Extension of prominence regime to VoD players

- 6.21 Parliament recognised the importance of guaranteeing the discoverability of broadcast PSB service channels to ensure greater viewing of the content they provide. Increasingly, audiences are choosing to access the content broadcast by these channels via VoD. In light of this, and given Parliament considered there was a need to ensure prominence of PSB channels within the linear EPG, Government may wish to extend this prominence regime to cover VoD content.
- 6.22 Similar to our proposals on securing prominence for the main linear PSB channels in a revised Code, this principle could be extended to PSB players, to ensure PSB content remains easily discoverable for audiences and create greater regulatory parity with the linear environment.
- 6.23 It is also worth noting that on-demand content is subject to a different regulatory framework beyond prominence. On demand content is subject to different rules in terms of standards, licensing, and must carry / must offer obligations. We know from our research that there is some confusion amongst audiences about how content providers are

regulated.⁷⁸ Giving equal prominence might diminish this understanding further. However, much of the content on PSB players meets the higher level linear TV broadcast standards.

Q16) Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?

PSB content discovered outside of the EPG and PSB players

- 6.24 User interfaces are becoming increasingly sophisticated and diverse, with lists of what's on and players available being supplemented by recommendations, predictive text search and voice search. This section focuses on recommendations, as these are likely to represent a key route for viewers browsing a user interface to find VD content. This change has meant TV platforms and other TV access devices such as streamers and smart TVs are increasingly offering a range of ways to access to individual programmes alongside access to channels and VoD or SVoD players.
- 6.25 There has been a growth in platform providers offering recommendations to viewers to help them surface content they might want to watch. Algorithms created to produce person specific recommendations either on the user interface or via a nonspecific voice search (for instance questions such as "find me a drama I would like?") often also use an element of 'commercial intent' i.e. the algorithm recommends on the basis of personal data but also on the basis of the selection of content the commercial entity wants a viewer to discover (for instance, for curatorial reasons and/or due to commercial arrangements with specific content providers). It is possible that these types of recommendations could be designed to favour of PSB content to some extent.
- 6.26 Alongside these person specific recommendations are generic recommendations that appear on user interfaces for all viewers or a significant segment of viewers using that platform or content provider. It is possible that within these types of recommendations, there could be a level of discrimination in favour of PSB content.
- 6.27 However, this segment of the market is still evolving, with different market entrants testing different technologies and strategies. Some in the market are seeking to keep their content within 'brand', to control content presentation and valuable viewer data. Others are seeking to maximise choice and aggregate a wide range of content, including their own, in one place. In either case, the use of recommendations is important to help viewers find content they want to watch in a world of increasing choice. What is not clear is how the algorithms that provide these recommendations will develop or how take up and usage by viewers may evolve.
- 6.28 Given this is a rapidly growing and changing market, it is more complex to ascertain how the prominence regime could or should be extended to ensure that PSB content remains easily discoverable.

⁷⁸Adults' media Use and Attitudes Report 2018, page 5
https://www.ofcom.org.uk/_data/assets/pdf_file/0011/113222/Adults-Media-Use-and-Attitudes-Report-2018.pdf

Q17) Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and / or search? If so, what key parameters would you set for this aspect of the regime?

The extension of the regime beyond licensed EPGs to other TV platforms and devices

Smart TVs and streaming sticks

- 6.29 As noted above, the current prominence legislation applies only to licensed EPG providers. The main EPG providers include Sky, Virgin Media, Digital UK (which provides the Freeview EPG), Youview, Freesat, TalkTalk and BT. While these represent the main platforms in the UK, we would welcome views on if and how regulations could be extended to capture other platforms that provide access to a range of PSB content, such as smart TVs and TV streamers (e.g. Amazon Fire TV, Roku).
- 6.30 In Ofcom's Media Nations report, we reported that growth in connected devices coupled with more people having access to faster broadband speeds has helped fuel the growth in VoD. Over three quarters of adults (78%) now have an internet-enabled smartphone, with most of these (85%) having a 4G service (up 9pp since H1 2017), whilst over half (58%) of households have a tablet device.⁷⁹
- 6.31 However, television sets have grown faster than any other device as a way of accessing VoD, with 67% of all VoD viewing in 2017 being via a TV set.⁸⁰ Among those with a TV in the household, 52% of TV households in H1 2018 had a smart TV or a TV connected to the internet via another device such as a set top box, games console or streaming media stick through which they can access video on demand services.⁸¹
- 6.32 Internet-connected dongles or boxes (such as the NOW TV set-top box, Roku, Google Chromecast, Amazon Fire TV stick, Amazon Fire TV, Apple TV) are also becoming increasingly popular, with around one on ten (11%) households using them to access VoD services (up from 5% in H1 2016).⁸²
- 6.33 If rules were extended to the prominence of the EPG, PSB players and PSB content within a user interface, it would also ensure rules and protections for PSBs prominence are platform 'agnostic'. However, it would need to be considered who is the responsible party for any new legislation, for example the TV manufacturer or platform provider. This in turn raises a number of questions on definition and how any extended regime could keep pace with a fast-evolving market. We would welcome views on defining an extended scope, and whether there should be any bar set on scale i.e. focus on platforms with a certain level of reach that enable TV viewing on a TV set.

⁷⁹ Ofcom Technology Tracker H1 2018

⁸⁰ Source: Ofcom/BARB/BARB TV Player (census data)/TouchPoints/ComScore

⁸¹ Ofcom Technology Tracker H1 2018

⁸² Ofcom Technology Tracker H1 2018

- 6.34 Widening the scope of the regime may however create an additional burden on manufacturers of smart TVs and streamers wanting to enter the UK market. For smaller manufacturers or new entrants to the market, additional regulatory burden may discourage them for entering the UK market. These effects may reduce competition, increase prices and/or affect consumer choice but we would welcome views on these potential detrimental effects as well as benefits for viewers and PSBs.

Q18) Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?

Prominence in a less TV centric world

- 6.35 For some audience groups, viewing time and content access is moving to online services and is not necessarily TV-centric. 69% of 16-24 year olds surveyed used Facebook or YouTube to watch TV programmes or film compared to 41% of all adults.⁸³ As viewers' behaviours change and they move to viewing more content online rather than through TV-centric platforms then online platforms will become increasingly important to content discovery and consumption for content providers such as PSBs.
- 6.36 The concept of prominence is fundamental in the online environment. In most current cases this has a commercial dimension, but there are cases linked to securing public benefits. Examples of prominence already working in an online environment include:
- **Facebook:** the social media platform has been traditionally using algorithms to prioritise pieces of content at users' news feeds. Many of these components are popularity-driven (Facebook likes) while others are using consumer research to identify and give more prominent place to 'reliable' news stories.
 - **Google search:** it returns two types of results, sponsored search results for which advertisers have paid for key search terms, and regular search results. The design of the interface makes it clear which results are sponsored.
 - **Netflix, Amazon Prime, NOW TV, YouTube:** all of these services have a 'front' page which showcases and promotes certain kinds of content. Browsing on these types of menus are fundamental to the ways in which these services work and the value they create for the consumer.
- 6.37 The above examples show that it is possible for connected device manufacturers and online platform and service providers to offer prominence of one sort or another to content providers or certain types of content offered on their services. Therefore, there are likely to be many ways in which PSB content could feasibly be made prominent on such devices and services as they become an increasingly important way through which television is viewed.

⁸³ Ofcom CMR 2017, Use of on-demand and streaming services CMR research 2017 – Populus p2, https://www.ofcom.org.uk/__data/assets/pdf_file/0017/105074/cmr-2017-uk.pdf

- 6.38 As with the other considerations of prominence above, if prominence were to be extended to online services, critical questions to address would include who gets captured and who benefits from prominence.

Q19) Do you think that the prominence regime should be extended to online services? If so, who should be captured?

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 5 October 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/epg-code-prominence-regime>. 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 epgprominence@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only and will not be valid after March 2019.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
Hazel Noton
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 if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation 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 the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Hazel Noton on 020 79814702, or by email to hazel.noton@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, 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 all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- 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 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 at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement early in 2019.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A1.18 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.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

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

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title: Review of rules for prominence of public service broadcasters and local TV on television guides: Consultation on proposed changes to the linear EPG Code and future of the regime

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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 there is no separate annex, which parts? _____

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)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation 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 seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

Q1) Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?

Q2) Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?

Q3) Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?

Q4) Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?

Q5) Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?

Q6) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?

Q7) Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?

Q8) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?

Q9) Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?

Q10) Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?

Q11) Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?

Q12) Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?

Q13) Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?

Q14) Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?

Q15) Do you agree with the principles we have set out? Are there other principles that should be considered?

Q16) Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?

Q17) Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and / or search? If so, what key parameters would you set for this aspect of the regime?

Q18) Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?

Q19) Do you think that the prominence regime should be extended to online services? If so, who should be captured?

A5. Equality Impact Assessment

Document published separately on [Ofcom website](#).

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A6. Code

Document published separately on [Ofcom website](#).

A7. Discussion of changes to the Code

Document published separately on [Ofcom website](#).

A8. EPG slot price modelling and interpretation

Document published separately on [Ofcom website](#).