

Review of rules for prominence of BBC Three

Consultation on proposed changes to the linear EPG
Code

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1. Overview

- 1.1 This document sets out proposed changes to our Electronic Programme Guide Code of Practice in light of our provisional decision to allow the BBC to proceed with its proposal to bring back BBC Three as a broadcast television channel. We are not consulting on revising the appropriate prominence provisions of the EPG Code more broadly.
- 1.2 Ofcom has a duty to draw up, review and revise a Code of Practice ([the EPG Code](#)) for licensed providers of on-screen television guides – known as ‘electronic programme guides’ (EPGs). This secures among other things, such a degree of prominence as Ofcom considers appropriate for the public service channels (the ‘designated’ channels) – including BBC Channels – to ensure they are easy to find and watch. Following a recent review, a new EPG Code came into effect in January 2021.
- 1.3 Ofcom is undertaking a [competition assessment](#) on the BBC’s proposals to re-launch BBC Three as a broadcast television channel, and we are simultaneously consulting on our provisional determination to approve its plans.
- 1.4 If BBC Three is, ultimately, re-launched, it will become a designated channel under the provisions of the Communications Act 2003. This means that we will need to ensure an appropriate level of prominence for the channel within the EPGs of all licensed providers.
- 1.5 To that end, we have reviewed the EPG Code to reach a view on the appropriate minimum level of prominence for BBC Three, and considered how long platforms should be given to implement any changes. We are now seeking stakeholders’ views on our proposals.

Our proposed conclusions

Our provisional conclusion is that BBC Three should appear within the first 24 slots of electronic programme guides. Our proposals reflect the fact that appropriate prominence is dependent on the designated channels’ character, content and target audience. In developing these proposals, we have considered the range of potential effects on audiences, EPG providers and other broadcasters.

We consider that EPG providers should have a maximum of 18 months to implement any necessary changes. We consider that a longer implementation period will mitigate some of the impacts of our decision by allowing the BBC, EPG providers and broadcasters sufficient time to plan for and implement the necessary changes to secure a smooth transition in the interests of audiences. A longer period may limit some of the public value of re-launching BBC Three, but 18 months is a maximum period and we expect that some EPG providers may be able to implement these changes sooner.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

2. Background

The Public Service Broadcasting system and rationale for prominence

- 2.1 Public service broadcasting was established by Parliament to ensure that 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 helps to ensure that certain types and genres of programmes – which may be less well provided if left to the market alone – get made, for example arts, religion and UK children’s content. Public service broadcasting is available to everyone and is free at the point of use.
- 2.2 The purposes of public service broadcasting are set out in the [Communications Act 2003](#) (‘the Act’)¹ and are to:
- a) provide television programmes that deal with a wide range of subjects;
 - b) cater for the widest possible range of audiences, across different times of day and through different types of programme; and
 - c) maintain high standards of programme-making.
- 2.3 Public service broadcasting is currently provided through a number of services: the BBC’s public services, the Channel 3 services (ITV and STV), Channel 4, S4C and Channel 5. These public service broadcasters (PSBs) are required collectively to deliver content that meets the public service purposes as well as fulfil particular broadcaster specific requirements, remits or duties.
- 2.4 The public service broadcasters 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.
- 2.5 Ofcom has a range of regulatory responsibilities to ensure public service broadcasting meets audiences’ needs and interests. However, it is not enough to simply make sure a range of quality programmes are made and available, they must also be easy to find, watched and enjoyed by viewers. The importance of ease of discovery is recognised by Parliament, and the aim of the prominence regime is to help ensure that channels which deliver valuable public service content are easy to find alongside supporting the sustainability of these services.²

¹ These purposes are set out in [sections 264\(4\) to \(6\) of the Communications Act 2003](#)

² Ofcom, [EPG Code, Prominence regime](#)

The prominence regime and the EPG Code

- 2.6 The Act gives Ofcom specific powers and duties in relation to the granting of prominence to ‘designated channels’ in EPGs.³ These include a duty to draw up and from time to time review and revise an [EPG Code](#) (‘The EPG Code’) giving guidance as to the practices to be followed in the provision of EPGs. The EPG Code must contain provisions requiring EPG providers to give designated channels such degree of prominence as Ofcom considers appropriate.
- 2.7 The designated channels entitled to prominence are also set out in legislation. These are: all BBC channels (including any newly launched channels); the Channel 3 services (including ITV and STV); Channel 4; Channel 5; S4C; and local TV channels.⁴ The prominence requirements currently apply only to linear broadcast channels, and not to content provided on demand (for example through the BBC iPlayer or ITV hub).
- 2.8 Licensed EPG providers must comply with the EPG Code and face penalties if they do not comply.⁵ The main EPG providers are Freesat, Freeview, Sky and Virgin. They all have published policies that set out their approach to allocating slots to designated channels.⁶

Our previous decisions and our approach to prominence

- 2.9 We last reviewed the EPG Code and the prominence of the designated channels across the various UK EPGs in 2018 and 2019.⁷ After consultation, we concluded that on several EPGs, some designated channels were not appropriately prominent.
- 2.10 We decided to safeguard the EPG positions of BBC One, BBC Two, Channel 3 licensees, Channel 4, Channel 5 and S4C. We also set minimum levels of prominence for other designated channels. Introducing minimum requirements gives designated channels certainty, while still allowing EPG providers some flexibility. Importantly, this approach guarantees appropriate prominence and supports the realisation of the associated societal benefits, as well as positive consumer choice benefits.
- 2.11 The below table sets out in detail the prominence obligations by channel. These rules came into force on 4 January 2021 after EPG providers were given a period of 18 months to make the necessary changes to implement them.

³ Set out in Sections 310 and 311 of the [Communications Act 2003](#)

⁴ 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)

⁵ 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.

⁶ [Freesat](#), [Freeview](#), [Sky](#), [Virgin](#).

⁷ Ofcom, July 2019, [Review of prominence for public service broadcasting](#)

Table 1: New prominence obligations by channel

Designated channel	New obligation
BBC One, BBC Two, Channel 3 licensees, Channel 4 and Channel 5 licence	Slot position 1-5
S4C and Channel 4 on EPGs specific to Wales	S4C in slot position 4 in Wales and Channel 4 within first 8 slots
BBC Scotland and BBC Alba in Scotland; BBC Four and S4C on UK-wide EPGs	Within first 24 slots
BBC Children’s channels – CBBC and CBeebies	Within first 8 slots of children’s section
BBC News & BBC Parliament	Within first 8 slots of news section
Local TV services	Within first 24 slots on digital terrestrial television only

The purposes of this consultation

2.12 The BBC is proposing to relaunch BBC Three as a linear television channel in January 2022. We are [consulting separately](#), as part of a competition assessment (‘BCA’), on our provisional determination that the BBC should be permitted to relaunch BBC Three as a broadcast channel. Given our provisional determination on the re-launch of the BBC Three, we are also consulting on the appropriate level of prominence for BBC Three, as it will be a designated channel entitled to prominence under the Act.⁸

The BBC’s final proposals for BBC Three

2.13 The BBC is proposing to relaunch BBC Three as a television channel to better meet the needs of 16-34 year old audiences who watch broadcast TV on a weekly basis but are light users of the BBC. The BBC considers that these viewers tend to be from C2DE socio-economic backgrounds, living outside London and the south-east as well as those less able to stream content.

2.14 As well as being a way of distributing scheduled programming to young people, the BBC believes it would give it a new lever to ‘build awareness and change perceptions of what BBC iPlayer (and the BBC) has to offer’.⁹

2.15 The BBC’s plan for the channel is:

- Broadcast hours from 7pm until 4am every day.

⁸ Section 310(4) of the [Communications Act 2003](#).

⁹ [A new BBC Three channel: Public Interest Test](#), p9

- An annual content budget of £72.5m. There is no additional budget for the proposed BBC Three broadcast channel.¹⁰
- A mix of genres, including factual entertainment, drama, UK and international current affairs, comedy, live sport, live music and films.
- A nightly news bulletin.

2.16 As part of the proposal, the BBC has also said that:

- BBC Three will broadcast pre-watershed programming that will appeal to both 13-15 year olds and 16-34 year olds.
- Going forward, two-thirds of BBC Three’s programme spend will be outside of London.

2.17 It proposes that the channel will be available on the main terrestrial, satellite and cable platforms in all nations across the UK. The BBC is planning to launch the channel in January 2022 in both SD and HD on Freeview, except in Scotland where the HD capacity is used for the BBC Scotland channel, and in Wales where the HD capacity is subject to discussion with S4C. On all other platforms, the channel would launch in SD and HD.

2.18 The BBC has proposed that the new BBC Three channel should appear within the top 24 slots of EPGs and that Ofcom should expediate this process and require EPG providers to implement this as soon as reasonably possible.¹¹ The BBC has also stated that, to help minimise disruption, where it can it will rationalise its existing slots to release slots for the new channel in the EPG. It explains that this can be achieved if the BBC successfully launches HD versions of all BBC One and BBC Two SD regional variants.¹² This would mean the BBC would no longer require prominent HD and SD listings for both BBC One and BBC Two in England/Northern Ireland on Sky and Virgin Media and across the UK on Freesat. The table below sets out the BBC’s expected EPG slots in light of the above.

Table 2: Assumed EPG positions for BBC Three by nation

EPG provider	Proposed new BBC3 slot (2022/23)
Sky	15 in Eng/Nl; 24 in Scot/Wales
Virgin	8 in Eng/Nl; 24 in Scot/Wales
Freeview	24
Freesat	10

Impact assessment

2.19 Impact assessments, as defined in section 7 of the Act, provide a valuable way of assessing different options for regulation and showing why the proposed option is preferred. The

¹⁰ In its previous annual plan in May 2020, the BBC set out that as part of its strategy to attract and retain younger audiences, it was going to ‘more than double’ investment in BBC Three content by 2022/23. In March 2021 it reconfirmed this in its 2021/22 annual plan.

¹¹ [A new BBC Three channel: Public Interest Test](#), p22

¹² [A new BBC Three channel: Public Interest Test](#), p108

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 EPG Code.

Equality impact assessment

- 2.20 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.
- 2.21 Annex 2 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 EPG 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. Market context

Audiences for broadcast television continue to decline

- 3.1 Since our review of the EPG Code in 2018/2019, the wider media landscape in which public service broadcasters operate has continued to evolve rapidly. Our recent review of Public Service Media noted that “technological developments, increasing competition from global players and an ongoing structural shift in audience behaviours were disrupting the UK content industry. The pace of change, in part exacerbated by the Covid-19 pandemic, shows no signs of slowing”.¹³
- 3.2 Audiences aged 16-34 still consume a significant amount of broadcast TV, but it now makes up only about a third of their overall viewing. Time spent watching YouTube and SVoD content for this group are each individually bigger than the time spent viewing live TV, although when time-shifted viewing (including BVoD) is added to live TV, broadcast content is still the largest single source.

But viewing of public service broadcaster’s content remains significant

- 3.3 Viewing of public service broadcasters content remains high. The share of broadcast TV viewing of the public service channels versus all other channels (multichannels) has remained broadly consistent over the years, and this remained the case overall in 2020, with the public service broadcasters’ share of viewing at 56% in 2020 compared to 55% in 2019.¹⁴ Audiences also continue to value public service broadcasting. Ofcom’s 2019 PSB Tracker research shows that 69% of regular or occasional viewers of public service channels rate them highly for delivering on the statement ‘it shows well-made, high-quality programmes’, 68% rate them highly for ‘programmes that help me understand what’s going on in the world today’ and 64% rate them highly for ‘it shows new programmes made in the UK’.¹⁵
- 3.4 Young people also continue to have significant engagement with broadcast TV. Over two thirds of 16-34s view broadcast TV on the TV set for at least 15 minutes each week, increasing to over four in five for all age groups.¹⁶
- 3.5 Furthermore, part of the BBC’s case for re-establishing BBC Three as a broadcast channel, as set out in the Public Interest Test (PIT), is that it considers that there remains a significant and relatively stable cohort of young people who maintain a strong broadcast TV habit but are very light users of BBC TV.¹⁷ It identifies that part of this cohort are those

¹³ Small Screen: Big Debate [Recommendations to Government on the future of Public Service Media](#), p10.

¹⁴ BARB.

¹⁵ Ofcom PSB Tracker 2019. Regular or occasional viewers of public service channels rating them 7-10 out of 10 for each statement.

¹⁶ BARB.

¹⁷ [A new BBC Three channel: Public Interest Test](#), p10.

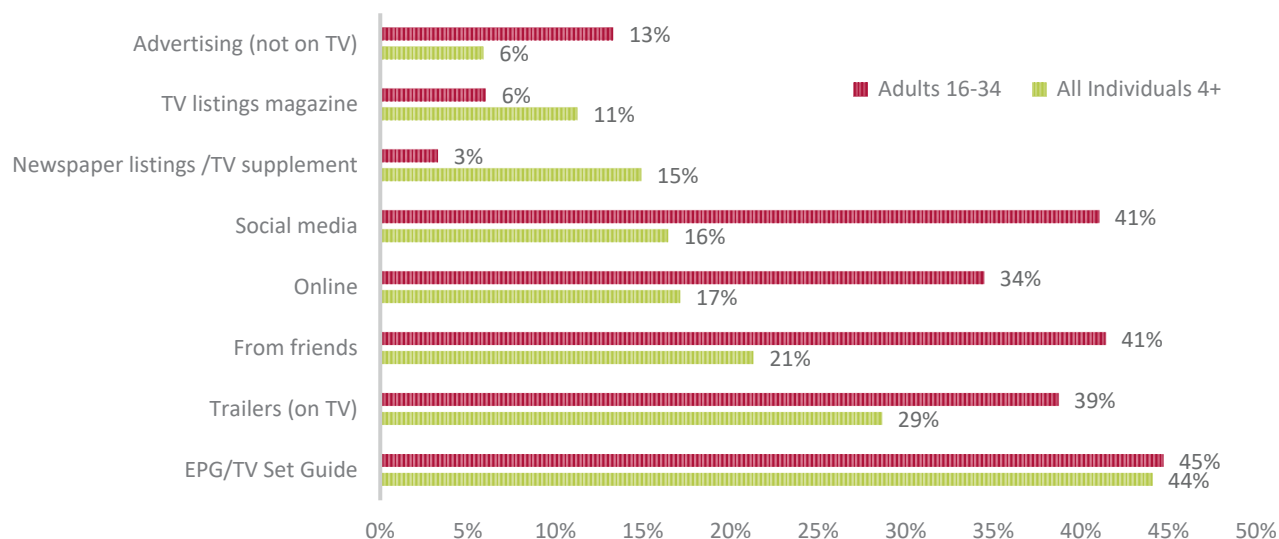
with less access to on-demand services. It considers that re-establishing BBC Three as a broadcast channel would offer a means of establishing a connection with this group.

The EPG remains the most popular way to find out what’s on TV

3.6 For those that watch broadcast TV, the EPG remains the most popular way of finding out what is on TV, both for all individuals and for 16-34s. In fact, the most recent data show that a similar percentage of 16-34s use the EPG compared to all individuals (45% vs 44%). This shows that the use of the EPG is still a key part of how people find out what’s on TV.

3.7 We note that there are differences regarding the usage of other methods of search, with young people more likely to use a wider variety of methods to find out what’s on TV than all individuals.

Figure 1: How people find out about what’s on TV (2020)



Source: BARB/Additional Panel Classifications (APCs), 2020. Participants of the survey answered the question “how do you find out about what is on TV?” and could select more than response.

Channels which move higher up EPGs tend to increase their viewing

3.8 In our 2019 analysis we found that, all else being equal, channels which are higher up EPGs have more prominence, and therefore will tend to attract more viewers than channels lower down.¹⁸ We still think that this is correct.¹⁹

¹⁸ Ofcom, July 2019, [Statement on changes to the EPG Code](#), p11

¹⁹ Clearly, EPG position is not the only factor which influences the size of the audience that a channel attracts.

4. Analytical framework

- 4.1 In this section we set out the approach that we have used to determine our proposals as to the minimum slot for BBC Three which would, in our view, give it appropriate prominence. We would expect to reflect this in a revised EPG Code. We then assess the impact of revising the Code to provide BBC Three with this minimum level of prominence.

Our approach

- 4.2 Determining appropriate prominence for public service channels requires a high degree of regulatory judgment. In our previous review in 2019, we assessed the appropriate prominence of a variety of designated channels on a variety of EPGs. In coming to our decision on the degree of prominence that is appropriate for each of the designated channels, we considered the role each channel plays in the public service broadcasting landscape and the public value they generate. We also took account of the impacts on different stakeholder groups that may arise as a result of our proposed changes. Our decision placed particular emphasis on the value public service broadcasting provides to society and individuals.

Our analytical framework

- 4.3 In our 2019 Review we developed an analytical framework, on which we consulted, in order to consider appropriate prominence for each designated channel.²⁰ We remain of the view that this analytical approach is still valid and have used this framework to consider the appropriate level of prominence for BBC Three.
- 4.4 Within this framework we take account of the impacts on different stakeholder groups that may arise as a result of our proposed changes. The impacts we consider within the framework are set out below. In doing so we recognise that some of these factors are interrelated.
- 4.5 As we set out in 2019, societal benefits of PSB are generally qualitative in nature and challenging to quantify in any meaningful or reliable way. We highlight below the key qualitative factors in our consideration as well as undertaking 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). Our assessment of financial impacts is, however, only a proxy for the likely impact on commercial channels' profitability and on relevant EPG providers as there are a number of other factors affecting costs, such as an individual broadcaster's financial position, that we cannot reasonably model.

²⁰ Ofcom, July 2019, [Review of prominence for public service broadcasting](#), p14

Audiences

- 4.6 As noted above, prominence is part of the broader framework that supports the provision of public service broadcasting and recognises its importance to the UK. Making a designated channel more prominent to citizens and consumers is likely to increase its viewing and therefore the “personal value” and “social value” it delivers.

Personal value

- 4.7 Audiences derive a range of personal benefits from watching content – these are benefits to an individual viewer from consuming the content. These can be affected by making a designated channel more prominent and consequentially other channels less prominent. Whilst viewers may derive greater personal benefits from viewing public service channels which are moved upwards, they may also face some negative individual impacts. For example, they may find it harder to find other content that they value because public service channels fill the upper part of the EPG or because their preferred channel has moved.

Social value

- 4.8 There are a range of wider social benefits, over and above the direct personal benefits an individual viewer gets from consuming certain content. For example, TV content can support social cohesion by giving viewers insight into others’ lives or allowing viewers to see their communities reflected on screen; and accurate, impartial news supports informed participation in society and the effective operation of local and national democracy. Making a designated channel more prominent will tend to increase viewing of that channel and, given the type of content they carry, can increase social value.

The designated channel

- 4.9 Making a designated channel more prominent will tend to increase viewing of that channel. In the case of commercial public service channels, this will tend to increase advertising/sponsorship revenue, which supports their ability to deliver high quality public service broadcaster services. In case of BBC it brings increased viewing to the BBC services which better enables them to meet their mission and public purposes. The designated channel may also incur one-off costs from moving to a new position, for example marketing the new slot number.

Other broadcasters

- 4.10 If a designated channel is moved higher and gains viewers, it may come at the expense of other channels. For commercial channels, lower viewing will tend to decrease their advertising/sponsorship revenue. This may negatively affect the sustainability and ability of these other broadcasters to invest, which is relevant to securing the availability of a wide range of quality television services. They may also incur one-off costs from moving to a new position, for example marketing the new slot number.

EPG providers

4.11 Reserving prominent positions for designated channels may limit the flexibility of EPG providers to arrange their EPG in the manner they consider most attractive for their customers and may also reduce EPG providers' ability to raise revenue from selling particular positions. They may also incur one-off costs of rearranging their EPG, for example administration and technical testing.

Our provisional view on appropriate prominence

4.12 When developing our approach in our previous review, we recognised that 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. With these factors in mind, in our 2019 review we grouped the designated channels into broad categories.

- the main five public service channels (BBC One, BBC Two, Channel 3 services, Channel 4 and Channel 5);
- other UK-wide public service channels (BBC Four, BBC News, BBC Parliament, CBeebies and CBBC); and
- nation and area specific channels (S4C, BBC Alba, local TV and now BBC Scotland).

4.13 In its PIT, the BBC proposes that BBC Three will be a UK wide channel targeted at younger audiences providing a range of content including factual, comedy and drama, as well as some news and current affairs and live sport and music. The proposed channel will sit in the general entertainment section of the EPG but will be focused on a more niche (in BBC Three's case, younger) audience than the main BBC channels e.g. BBC One and BBC Two. BBC Three will only broadcast in the evening (from 7pm to 4am).

4.14 We consider that our proposal for appropriate prominence for BBC Three should be consistent with the decisions we have taken previously on the level of prominence that is appropriate for the other designated channels. There are broad similarities between BBC Three and BBC Four: both are UK wide public service channels, which have a niche audience, only broadcast in the evenings and sit in the general entertainment section of the EPG. Our EPG Code provides a minimum level of prominence of slot 24 for BBC Four. We consider that it is appropriate to apply our analytical framework to consider the impacts of requiring minimum prominence of slot 24 for BBC Three.

4.15 Where there is not a slot available within the first 24 slots on an EPG, this will mean that EPG providers will need to rearrange their EPG to provide a slot for BBC Three. This will have impacts on the EPG providers themselves, commercial channels within the EPG and consumers using the EPG. Using our analytical framework, we assess the potential nature and extent of each of these effects alongside the potential impacts for BBC Three.

Changes required for appropriate prominence

- 4.16 In determining the impact of our proposal, we have assessed the changes that would be required to the main EPGs. We have based this assessment on the current slot allocations on EPGs, the existing requirements of the EPG Code, the EPG providers' published policies on slot allocation and on information set out by BBC in its PIT. We do not expect there to be slots available within the first 24 slots on the Freeview EPG across the UK, and on the Sky and Virgin EPGs in Scotland and Wales, so we have assumed that BBC Three will appear in slot 24 on those EPGs.
- 4.17 We expect that BBC Three would take higher slots on the Sky and Virgin EPGs in England and Northern Ireland, and on Freesat across the UK. This is because for these EPGs the BBC expects to accommodate BBC Three using the BBC's existing EPG slots. The BBC would do this by swapping out SD variants of BBC channels for HD variants, leaving the HD slots empty and freeing them up for BBC Three.²¹ For instance, currently on Sky's EPG in England, BBC One HD appears at slot 115, however since not all programmes on BBC One in England are available in HD, the SD version remains at slot 101. When the BBC moves to broadcasting all programmes in HD on BBC One HD in England then the BBC expect that the HD version can be moved to slot 101 and slot 115 can be used for BBC Three, meaning no non-BBC channels would need to be moved down the EPGs. Swapping the slot positions of BBC channels in this manner, would normally require the permission of EPG providers in accordance with their policies.
- 4.18 These assumed channel numbers (LCNs) for BBC Three are summarised in the following table:

Table 3: BBC Three's EPG positions by EPG and nation

	EPG	LCN
Other channels shifted down	Sky (Scotland and Wales)	124
	Virgin (Scotland and Wales)	124
	Freeview	24
HD-SD swap-out	Sky (England and NI)	115
	Virgin (England and NI)	108
	Freesat	110

Assessment of impacts

- 4.19 In this section we consider the impacts of our provisional view that BBC Three should have a minimum position at slot 24 on the groups identified in our analytical framework. The

²¹ [A new BBC Three channel: Public Interest Test](#), p.22

purpose of this assessment is to ensure that our provisional view does not have significant or disproportionate impacts on broadcasters or industry in general.

Provisional conclusion on impact of prominence on BBC Three

- 4.20 Requiring EPG providers to ensure a minimum level of prominence for the re-launched BBC Three channel implies that it will move to a more prominent slot on the EPGs than it may otherwise have been granted. This should result in higher viewing of BBC Three than it would have had without mandated prominence.
- 4.21 Our analysis suggests that granting BBC Three prominence within the first 24 slots would increase BBC Three's viewing share by 0.20 percentage points of total viewing,²² compared to the scenario in which BBC Three appears in the first available slot in the EPG.²³

Impact on consumers and citizens

- 4.22 Our BCA has identified that BBC Three has potential to contribute significant public value in some areas, notably personal and social value by, amongst other things, engaging younger viewers and harder to reach audiences. Providing BBC Three with our proposed level of prominence is likely to increase viewing to the channel compared to the slot it might obtain otherwise and therefore ensure the public value identified in our BCA is better realised.
- 4.23 Both the Ofcom and BBC models predict that re-launching BBC Three will increase the reach and consumption of BBC Three content,²⁴ both on linear TV and on BBC iPlayer – this therefore implies an increase in personal value to viewers. The rationale behind the BBC's proposals is to increase engagement and hence viewing, and thus personal value amongst groups that it is currently struggling to reach; namely younger audiences outside of London and the south-east, from lower socioeconomic groups, and with less access to on-demand services.²⁵ We set out our view in our [BCA document](#) that the proposals will increase personal value for those who will watch it, but note that the extent of the personal value delivered will depend on the quality and range of the content that the BBC commissions and makes available for the BBC Three channel.
- 4.24 BBC content also delivers social value through its contribution to the BBC's Mission and Public Purposes. As such, the likely increased reach and viewing of BBC Three content, both through the new broadcast channel and through any further increased viewing to BBC iPlayer has the potential to deliver social value. We also consider that the proposals could play an important part in contributing to the BBC's sustainability, and therefore its ability to deliver its Mission and Public Purposes in the future, to the extent that they increase positive awareness of the BBC brand amongst younger and harder to reach audiences.

²² Viewing share includes live, PVR and BVOD viewing.

²³ This is based on a re-run of the BBC's PIT model, dividing the viewing gained by BBC Three due to prominence by overall TV viewing.

²⁴ The BBC have undertaken a modelling exercise to understand the likely viewing to its proposed new service and Ofcom has produced a modified version of this model as part of our work on the [BBC Competition Assessment](#) (BCA).

²⁵ [A new BBC Three channel: Public Interest Test](#), p.10

Further, the proposed nightly news bulletin will bring news content to a younger audience which our annual reports have consistently found to be less likely than other adults to use BBC TV for news.²⁶

- 4.25 We have also taken into account that some non-designated channels are likely to move down the EPG because of the re-launch of BBC Three and this may cause audiences disruption, i.e. if channels they want to watch are no longer located where they expect to find them.
- 4.26 It is also possible that setting minimum appropriate prominence requirements for BBC Three will limit the flexibility of EPG providers to arrange the top 24 slots of their EPGs. This may affect viewers if it results in less choice or dampens innovation.²⁷

Provisional conclusion on impact on citizens and consumers

- 4.27 Our provisional view is that BBC Three has the potential to provide significant consumer and citizen benefits and, as set out above, we are attaching particular importance to these citizen and consumer effects. We have also taken into account the potential negative impacts on some consumers who may not be able to discover other channels as easily. However, these potential negative effects are likely to be modest under our proposals since we are only requiring one extra designated channel (BBC Three) to be within the top 24 slots. Further, our approach sets the lowest possible position retaining a reasonable level of discretion and flexibility for EPG providers to meet the needs of consumers.

Impact on other channels

- 4.28 We consider that other channels may face two types of costs as a result of granting prominence to BBC Three: ongoing costs and one-off costs. Ongoing costs are those which are incurred year on year (e.g. lost advertising revenues), while one-off costs are incurred once (e.g. promotional costs of marketing a new channel number).
- 4.29 The first sub-section below describes our modelling and assessment of likely ongoing costs to other broadcasters. The second section discusses the likely one-off costs, given the evidence we have received from broadcasters. Our estimates of these costs are only a proxy for the likely impact, as there are a number of other factors affecting an individual broadcaster's financial position that we cannot reasonably model. We have had to make a number of modelling assumptions, which we set out in detail in [Annex 1](#). Our estimates of costs are therefore only indicative in nature.

Ongoing costs

- 4.30 If commercial channels get lower viewing,²⁸ due to BBC Three being granted greater prominence, this could reduce their advertising revenues and hence their profitability. Lower profitability could negatively affect those broadcasters' ability and incentives to

²⁶ Please see the [BCA document](#) for our full review of the BBC's public value assessment.

²⁷ We discuss this impact in our section on the impact on EPG providers ([4.50] onwards).

²⁸ If any BBC channels were to get lower viewing, this may reduce its ability to meet its Mission and Public Purposes.

invest in attractive and/or UK originated content, with further knock-on effects on viewing and profitability.

- 4.31 In determining the ongoing costs to other channels of granting BBC Three prominence, we have taken the assumed EPG positions as set out above (4.18). The scenarios where BBC Three is accommodated in slots currently used by the BBC for HD variants implies no ongoing costs to other channels, as in these instances BBC Three's EPG position is not dependent on our minimum prominence requirement, and so we have not sought to model this.
- 4.32 As part of the 2019 review, we constructed models to estimate the ongoing costs to non-designated channels which would be shifted down EPGs due to our new prominence requirements for designated channels.²⁹ We have adapted these models to assess the potential ongoing costs to channels that would be moved down EPGs if BBC Three were granted minimum prominence at slot 24.
- 4.33 As part of the evidence for its PIT, the BBC has produced an economic model using survey data to estimate the viewing effects on other channels as a result of re-launching BBC Three. Given that there is uncertainty in modelling ongoing costs, and given the range of available evidence, we have also used this model and data to construct an approach to modelling the ongoing costs to other channels of granting BBC Three the proposed level of minimum prominence. We believe that considering two different modelling approaches, using two different sets of evidence, will help to provide a more complete understanding of the possible ongoing costs to channels. The sub-sections below discuss the two approaches and their results. They are explained in more detail in [Annex 1](#).

Modelling the impact using the 2019 approach

- 4.34 This approach considers the impact on individual channels which would lose prominence as a consequence of the BBC Three being granted minimum prominence of slot 24. This approach assumes that, where a slot is not available within the first 24 on an EPG, BBC Three would be introduced at slot 24. Any ongoing costs would be faced by those broadcasters whose channels are moved down the EPG in order to make space for BBC Three at slot 24. Two methods are used to estimate the impact on channels shifted down EPGs:
- The approach used for the Sky and Virgin EPGs: using evidence from Expert Media Partner's analysis of valuations of Sky slots, and on data about sales of slots on the Virgin EPG.
 - The approach used for the Freeview and Freesat EPGs, and as a cross-check for the Virgin EPG: based on information from Oliver and Ohlbaum's report for the Commercial Broadcasters Association (COBA) suggesting that a move up/down an EPG by one slot would increase/decrease viewing by 1.5%, and that this change in viewing would result in an equivalent percentage change in channel advertising revenues.³⁰

²⁹ Non-designated channels are those which are not granted prominence.

³⁰ O&O, Estimating the impact to commercial broadcasters of proposed changes to Ofcom's EPG prominence rules, A report for COBA by Oliver & Ohlbaum, September 2018.

4.35 Table 4 below summarises the results of our adapted versions of the 2019 models for the scenarios in which BBC Three moves into slot 24 and other channels are shifted down. It shows how many channels would have to move down each EPG, and the forecast aggregate ongoing costs per annum by EPG platform.³¹

Table 4: Adapted 2019 model estimates of the financial impact of our proposals by EPG

EPG	Number of channels shifted down the EPGs	Aggregate cost (£m pa)
Sky (Wales and Scotland)	71	0.2
Virgin (Wales and Scotland)	87	0.2
Freeview (UK)	74	5.2
Total		5.6

4.36 For the Virgin EPG, as discussed in [Annex 1](#), this cost to broadcasters will depend on the extent to which they are able to renegotiate lower carriage fees due to moving down to a lower slot. Therefore, we expect this £0.2m pa cost to be an upper bound, and that this cost will be shared between broadcasters and Virgin Media as an EPG provider. However, we do not have evidence to determine exactly how this cost will be shared.

4.37 The total cost to those channels which would have to move down the EPGs, is forecast to be around £5.6m pa. However, this estimate is an upper bound. For the approach taken for the Freeview EPG, while the model identifies that channels will lose viewing as they are moved down the EPG, it does not seek to identify where this viewing is redistributed to.³² It may be the case that some of this lost viewing identified in this model is redistributed amongst the channels that have been moved down the Freeview EPG, therefore some of this impact is likely to be mitigated through recaptured viewing. We would also note that costs are spread over a significant number of channels and, although the impacts are not evenly distributed, we do not consider that any one channel is disproportionately impacted.

Modelling the impact using information from the BBC Three BCA

4.38 In Ofcom’s BCA for BBC Three, Ofcom have assessed the impact of the BBC’s proposal to relaunch BBC Three on linear TV. Unlike the 2019 approach, whereby costs are imposed on those channels moving down the EPG, the BCA model focuses on ‘viewing diversion’.³³ This viewing diversion model estimates which channels will lose viewing (and by how much) because viewers switch away from them to watch BBC Three instead. It is based on the results of surveys conducted for the BBC, which asked potential viewers about their likely

³¹ How these per annum costs are estimated is discussed in [Annex 1](#).

³² We would assume that any lost viewing is redistributed to other channels to ensure that total TV remaining remains the same.

³³ Focusing on viewing diversion means that this approach models impacts on channels which do not necessarily move positions on EPGs but lose viewing due to competition from BBC Three.

viewing behaviour after BBC Three is relaunched as a broadcast channel. This viewing diversion was then translated into an advertising revenue impact on commercial channel portfolios.³⁴

- 4.39 We have adapted this model and used it to assess the potential ongoing costs to other channels of granting BBC Three minimum prominence. We estimated the difference in viewing share for BBC Three between being at its proposed prominent EPG position, compared to the scenario without our minimum proposed prominence requirement, and BBC Three is instead required to take the highest available LCN on each EPG. The table below details the difference in slot positions between these two scenarios:

Table 5: BBC Three’s assumed EPG positions with and without our proposed minimum level of prominence

With proposed minimum level of prominence (LCN 24)		Without proposed minimum level of prominence (highest available LCN)		Difference
EPG	EPG position	EPG	EPG position	
Sky (Scotland and Wales)	124	Sky (Scotland and Wales)	173	-49
Virgin (Scotland and Wales)	124	Virgin (Scotland and Wales)	144	-20
Freeview	24	Freeview	83	-59
Sky (England and NI)	115	Sky (England and NI)	115	0
Virgin (England and NI)	108	Virgin (England and NI)	108	0
Freesat	110	Freesat	110	0

- 4.40 The difference between these two scenarios gives the incremental gain in BBC Three’s viewing due to the degree of prominence we have proposed. We then used the viewing diversion ratios (based on the survey described at 4.38), to estimate how much viewing each channel portfolio loses due to our proposal for minimum prominence for BBC Three. We then translated this lost viewing for each channel portfolio into a financial revenue impact.

- 4.41 In Table 6 below, we present annual estimates from our model of costs to commercial broadcasters. These revenue impacts are presented for the low and high end of the range,³⁵ along with corresponding figures on the revenue impact as a proportion of total revenue. This range relates to the extent to which a decrease in viewing for commercial channels could result in a consequent loss in advertising revenues (see [Annex 1](#)):

³⁴ This translation of lost viewing to lost advertising revenues is based on assumptions around the sensitivity of changes in viewing to changes in advertising revenues – this is discussed in more detail in [Annex 1](#).

³⁵ The low end corresponds to the scenario where revenue falls by one-third of the decline in viewership, while the high end corresponds to the scenario where revenue falls by two-thirds of the corresponding fall in viewing.

Table 6: Adapted BCA model estimates of the financial impact of our proposals by channel portfolio

Channel portfolio	Revenue impact (£m pa) with high-low scenarios (impact as share of total revenue)	
	Low	High
ITV	2.0 (0.1%)	4.1 (0.2%)
Channel 4	1.2 (0.1%)	2.5 (0.2%)
Other commercial channels	0.7 (0.0%)	1.5 (0.1%)
Total	4.0 (0.1%)	8.1 (0.2%)

- 4.42 Based on the above range, we have estimated that the total decline in revenue for broadcasters could be between £4.0m and £8.1m per annum. This represents around 0.1% to 0.2% of total estimated TV advertising revenues in 2022. The largest absolute impact is for ITV and Channel 4, each of which might lose between 0.1% to 0.2% of their advertising revenues. The remaining revenue loss is split between other commercial broadcasters.³⁶ These impacts are also a subset of the revenue impacts estimated for the BCA (i.e. these are not additional revenue impacts over and above the impacts measured in the BCA) which we did not consider to be significant within the context of total TV advertising revenues.
- 4.43 The channel portfolios most significantly impacted, based on our model estimates, are ITV and Channel 4. Both ITV and Channel 4 are public service broadcasters which deliver a range of public value through investment in UK-originated content across a range of genres. We note that an adverse impact on these broadcasters could have an adverse impact on public value if fewer viewers are watching these channels and thus gaining value from them. However, our assessment suggests that the impact on both these broadcasters as a result of our proposed minimum prominence for BBC Three is unlikely to be significant, so we consider it is unlikely to alter their incentives to invest in content.

Provisional conclusion on ongoing costs

- 4.44 The two models assess the costs to other broadcasters if BBC Three gained a higher EPG slot because of our proposed minimum level of prominence.³⁷ The results imply that ongoing costs could be imposed on several channels, but the distribution of these costs varies by model. We consider that these differences in outcomes are to be expected, as the models are based on different evidence and approaches.

³⁶ As discussed above, we adopted conservative assumptions for our base case viewing estimations which are likely to overstate the impact on viewing. Therefore, we would consider these to be high end conservative estimates of the revenue impact.

³⁷ We do not consider there to be relevant costs where the BBC use their own existing slots for BBC Three through a swap-out of SD channels for HD variants (as discussed in [4.17]).

4.45 While both models have their advantages and disadvantages,³⁸ the use of two separate models provides a more complete measure of ongoing costs to channels, to ensure that our minimum prominence requirements for BBC Three are not disproportionate. We have considered both approaches carefully and while the results of both approaches differ in distributional effects, we do not consider that either suggests that the individual impact on any one broadcaster is likely to be disproportionate. Therefore, we consider that our proposal to designate BBC Three prominence within the top 24 slots of each EPG is unlikely to result in a disproportionate ongoing cost to broadcasters.

One-off costs

4.46 Channels moving down the EPG may incur additional marketing/promotional costs to advertise their new locations to viewers. Unlike costs related to lower viewing, these would be one-off in nature.

4.47 Various channels had to change their channel number as a result of our review of appropriate prominence in 2018/2019. Ofcom approached a number of channels which had been impacted by changes to the EPG following the EPG Code update, as well as the industry group COBA, to request evidence about the extent of one-off costs that had been incurred by broadcasters in that case. Two broadcasters who had experienced channel moves [X] responded to our request. In both cases the channel moves they had experienced had been minimal, and the broadcasters said that minimal or no one-off costs were incurred in that instance. However, [X] noted that this might not have been the case for other channels, particularly if their primary service were affected. Further, [X] stressed that more significant EPG changes could impose one-off costs and disruption, depending on the circumstances and particularly if this coincided with a time where significant viewing levels were expected.

Provisional conclusion on one-off costs

4.48 Ofcom attempted to estimate one-off costs during the 2019 review and for various reasons found these difficult to reliably estimate. We noted that these costs might be mitigated to a large extent by the 18-month implementation period.³⁹

4.49 As noted above, to inform our assessment we requested evidence from broadcasters about the one-off costs they faced due to the changes required by our 2019 review. However, we have seen little evidence to suggest that these costs were material. On this basis and on the basis that the changes in channel position for this change may be less significant than required as a result of our previous review, our provisional conclusion is that our proposed minimum appropriate prominence for BBC Three is unlikely to impose material one-off costs on other broadcasters. We also note that we are again proposing an 18 month implementation process which should mitigate some of these impacts.

³⁸ These advantages and disadvantages are discussed in more detail in [Annex 1](#).

³⁹ [Annex 3](#), Statement on Review of Prominence for Public Service Broadcasters, 2019.

Impact on the EPG providers

4.50 Ofcom considers that EPG providers may also face ongoing and one-off costs as a result of our proposed minimum prominence of BBC Three.

Ongoing costs

4.51 Ofcom has considered two types of ongoing costs. The first type relates to the reduction in EPG providers' flexibility to arrange their EPG how they wish. This reduction in flexibility could reduce their ability to design the EPG in the manner they consider most attractive for their customers or to innovate in the provision of their EPGs. Arguably, the higher the proportion of slots required for designated channels, the greater the limitations imposed on the EPG providers. Currently the percentage of public service broadcasters in the top 24 slots ranges between 37.5% on the Freeview EPG in Scotland, to 25% in England on non-Freeview EPGs. All EPGs will see further reduced flexibility within the top 24 slots if the proposed minimum level of prominence were awarded to BBC Three. However, any incremental reduction in flexibility for the EPG providers is unlikely to be material, as only one channel is involved in this case. For most EPGs around two thirds of the top 24 slots would remain available to allocate and manage as the EPG providers see fit. Our approach for BBC Three also sets a 'floor', and not a specific slot requirement as is the case with channels such as BBC One, this gives some discretion and flexibility for EPG providers within the top 24 slots.

4.52 The second type of ongoing costs relate specifically to Virgin Media, which monetises its EPG. Our proposal to grant a minimum level of prominence to BBC Three may lessen its opportunities to do so, leading to the potential for on-going loss of revenues.

4.53 [REDACTED]. As noted in (4.36), we have estimated a £0.2m pa loss on the Virgin EPG. To the extent that broadcasters attempt to negotiate lower carriage fees due to a lower slot, we consider that this represents an upper bound of the loss to Virgin Media as these costs will be shared between broadcasters and Virgin Media.

4.54 Under Virgin Media's EPG policy, they are able to auction empty slots. Virgin Media has indicated that if it were to have a vacant slot, a competing channel provider would be able to purchase this slot. This could be considered an opportunity cost for Virgin Media of providing a prominent slot for BBC Three. [REDACTED] While there is the potential for Virgin Media to sell vacant slots, it is uncertain that such an opportunity would arise were BBC Three not provided with minimum prominence.⁴⁰ However, even if the opportunity cost were to occur, [REDACTED]. Our valuations, based on EMP data, put the value of slot 8 in the Virgin Media EPG as £2.7m pa.⁴¹ [REDACTED]. We do not consider there have been any market changes that would mean that slot 108 would be worth significantly more than slot 106 was in 2017.

⁴⁰ There is the potential vacant slot in relation to slot 108 in England and Northern Ireland. However, this opportunity cost would only arise if a) the BBC went ahead with its plans to release the slot and b) it was not used for another BBC channel. It is not clear that there are any opportunity costs where Virgin Media moves channels down to make a slot available at slot 24 as there would be no vacant slots to sell.

⁴¹ [Revised economic model](#), 4 July 2019; annualised cost based on estimated cost spread over 5 years

4.55 There may be other potential ongoing costs for EPG providers outside the two described above. EPG providers generally charge an EPG fee to those listed on their EPG. However, some EPG platforms do not charge EPG fees to public service broadcasters. This means that those EPG platforms will not receive a fee in relation to BBC Three. This would be the case irrespective of our prominence proposals. [redacted]. Our understanding is that EPG fees are not generally based on the position of the slot provided to a channel. And our models do not indicate that EPG providers will need to remove a commercial channel in order to list BBC Three, so we do not expect the number of channels paying the fees to fall. Therefore, we do not think the level of EPG fees collected by EPG providers should be impacted.

One-off costs

4.56 The second way in which EPG providers may be affected by our requirements for minimum prominence for BBC Three, is if this results in costs of administering changes to their EPGs. These costs could include those related to; revising their EPG policies, drafting new guidance and managing any necessary channel moves on their EPGs. Such costs would be one-off in nature.

4.57 Ofcom asked Freesat, Digital UK, Virgin Media and Sky for information about the costs that they faced as a result of the re-organisation of their EPGs required as a result of the review of prominence in 2018/2019. [redacted].

4.58 [redacted].

4.59 [redacted].

4.60 [redacted].

4.61 [redacted].

4.62 [redacted].

4.63 The one-off costs identified by EPG providers in relation to the changes required by Ofcom's last review, relate to time spent on redesigning EPGs, consulting with broadcasters, communications with end customers and technical implementation. We note that some EPG providers considered the activities that they might need to undertake in relation to the re-launch and prominence of BBC Three would be resource intensive. However, from the evidence we have received, we do not think these costs are likely to be material.

4.64 Overall, while we note that changes to the EPG will lead to some disruption for EPG providers, we consider that any ongoing or one-off costs to EPG operators as a result of awarding our proposed minimum prominence to BBC Three would be unlikely to be significant.

Provisional conclusion on appropriate prominence for BBC Three

4.65 After considering the factors set out above, and having considered all of the evidence outlined above and in [Annex 1](#), our provisional conclusion is that an appropriate level of

minimum prominence for BBC Three is within the first 24 slots of the general entertainment section of EPGs. In coming to our view, as with our 2019 decisions, we have placed particular emphasis on the value public service broadcasting provides to society and individuals.

Question 1: Do you agree with our provisional view on appropriate prominence for BBC Three? Please provide evidence to support your views.

Question 2: Are there any material impacts that we have not considered and should be included in our analysis? Please provide details and evidence to support your answer.

Implementation period

How we consider the implementation period

- 4.66 In coming to a decision on the maximum period of time that we consider appropriate to give platforms to implement any changes as a result of our proposed decision (the implementation period), we have considered a number of factors. The implementation period must be long enough to allow EPG providers and broadcasters reasonable time to plan for and implement changes to secure a smooth transition in the interests of audiences, for example, by allowing for technical testing and, where appropriate, advertising changes to audiences.
- 4.67 We consider that there could be advantages to having a longer implementation period, in that it could mitigate some one-off costs. A longer implementation period may mitigate any one-off costs to commercial broadcasters caused by channel re-numbering by allowing them to factor in any changes to their channel number into upcoming marketing plans rather than needing to undertake a specific campaign about the number change. It might also mitigate one-off costs to EPG providers caused by the need to re-arrange their EPG by allowing them to include the changes in any planned updates to the EPG. It may also mitigate ongoing costs to commercial broadcasters as a longer implementation period may allow for a slot to become available for the designated channel, meaning that broadcasters do not need to move and the costs are mitigated.
- 4.68 On the other hand, a longer implementation period could mean that the realisation of the benefits for the designated channel of appearing in an appropriately prominent slot will occur more slowly. While the channel remains lower down the EPG, it is likely to generate less viewing, reducing the number of viewers who will benefit from the public value generated by the channel.

Our previous decisions

- 4.69 In our last review, we gave an implementation period of 18 months on the basis of feedback from respondents regarding the time needed to consult on changes to the EPG and the time needed to make technical changes.

Our proposed implementation period

- 4.70 In their Public Interest Test (PIT),⁴² the BBC have committed that where they can rationalise their EPG slots, to free up a slot, they will use this to accommodate BBC Three. The PIT says that this will be possible when the BBC take forward its existing plans to launch HD versions of all BBC One and BBC Two regional variants. This will free up slots on Freesat across the UK and on Sky and Virgin Media in England and Northern Ireland, as the BBC would no longer require prominent listing for both the SD and HD versions of these channels. The BBC does not believe it will be able to make these changes by the launch of the channel in January 2022 but believes that these changes could be achieved within 18 months of the launch.⁴³
- 4.71 If the BBC is able to make use of its existing EPG slots to accommodate BBC Three, this will significantly mitigate the potential impacts for commercial broadcasters on Sky, Virgin Media and Freesat EPGs which might otherwise be required to move down slots on the EPG. We consider that setting a longer implementation period to ensure that the BBC delivers what it has committed to is important for these impacts to be mitigated. We note that this will also mean that the BBC will get higher slots than it might otherwise have done which should deliver higher public value. This means channels will only be required to move down in Scotland and Wales on Sky and Virgin, as opposed to across the UK, limiting on-going costs to broadcasters on these platforms. However, there still will be potential one-off costs to broadcasters on these platforms and disruption to audiences using these platforms caused by re-numbering across the UK necessitated by creating vacant slots in Scotland and Wales, though we expect these costs to be small.
- 4.72 However, as described above, we acknowledge that setting a longer implementation period could mean that the benefits of prominence for BBC Three will not be achieved as quickly as if we were to set a shorter period. We have considered this impact carefully. We note that 18 months is a maximum period and we expect that some EPG providers may be able to implement the changes to the EPG Code more quickly than the period allowed for implementation.
- 4.73 Given the above, we are minded to put in place an implementation period of 18 months.

Question 3: Do you agree with our proposed implementation period of 18 months?

Proposed changes to the EPG Code

- 4.74 In order to implement our proposals we propose to amend paragraph 12 of the current [EPG Code](#) to insert reference to BBC Three as set out below (in underlined and highlighted text):

⁴² [A new BBC Three channel: Public Interest Test](#), p22

⁴³ [A new BBC Three channel: Public Interest Test](#), p22

- 4.75 “12. EPG providers must ensure that the other national channels (BBC3 and BBC4) ~~is~~ are listed in a slot that is no lower than the twenty fourth slot of the EPG.”

A1. Economic analysis

A1.1 This annex has been published separately on the [Ofcom website](#).

A2. Equality Impact Assessment

- A2.1 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation,⁴⁴ and, in Northern Ireland, political opinion and dependents. We refer to groups of people with these protected characteristics as ‘equality groups’.
- A2.2 We fulfil these obligations by carrying out an Equality Impact Assessment (‘EIA’), which examines the impact our policy is likely to have on people, depending on their personal circumstances. 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 and identity.
- A2.3 We have not considered it necessary to carry out separate EIAs in relation to race or sex equality or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because we anticipate that our proposed changes to the EPG Code will not have a differential impact on people of different sexes or ethnicities, consumers with protected characteristics in Northern Ireland⁴⁵ or disabled consumers compared to consumers in general.
- A2.4 Our proposed changes to the EPG Code aim to secure appropriate prominence for BBC Three on linear EPGs. In reaching our provisional view on appropriate prominence, we have set out the proposal that would deliver the degree of prominence that we consider appropriate for BBC Three using our analytical framework and evidence from stakeholders. We have also considered the impacts on different stakeholder groups that may arise as a result of changes to various channels’ existing positions under our proposals.
- A2.5 We have considered the impact our proposals would have on a range of stakeholders, including citizens and potential audiences. We consider that our proposed amendments to the EPG Code would have an over-arching positive impact on all consumers and citizens who use EPGs.
- A2.6 We consider that our proposed changes to the EPG Code would not have a detrimental impact on any defined equality group. Rather, we consider that our proposals would further the aim of advancing equality of opportunity between different groups in society by securing appropriate prominence for a public service broadcaster.
- A2.7 We recognise that some audiences could be negatively impacted by our proposed changes in the short-term, to the extent that they watch channels which could be moved to a different EPG position, as they would need to adjust to the new order of the channel list on their EPGs. However:

⁴⁴ As defined in the Equality Act 2010.

⁴⁵ In addition to the characteristics outlined in the Equality Act 2010, in Northern Ireland consumers who have dependents or hold a particular political opinion are also protected.

- a) we do not consider that our proposals would have any detrimental impact on any persons with protected characteristics, nor do we envisage that the impact of any outcome would be to the detriment of any group of society; and
- b) we consider that the overall positive benefits for all consumers and citizens arising out of securing appropriate prominence for the designated channels outweighs the potential short-term negative impact described above.

A3. Legislative framework

A3.1 This section sets out the legislative basis for EPG prominence.

The Communications Act 2003

A3.2 In considering the issues addressed in this consultation, we take account of our statutory duties, as set out in the Act.

A3.3 Ofcom's duties relating to the prominence of designated channels within EPGs are set out in section 310 of the Act. These duties are to draw up, and from time to time review and revise, an EPG Code giving guidance as to the practices to be followed in the provision of EPGs (section 310(1)).

A3.4 Section 310(2) of the Act provides that the practices to be required by the EPG Code must include the giving, in the manner provided for in the EPG 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
- c) the facilities, in the case of each such channel, for members of its intended audience to select or access the programmes included in it.

A3.5 The designated channels covered by the EPG 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)).⁴⁶

A3.6 Under section 311, Ofcom is to set such licence conditions on EPG providers as it considers appropriate to ensure that the EPG 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 EPG Code.

A3.7 A new provision was introduced to the Act 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
- d) the facilities provided by such guides for the selection of, and access to, such programmes.

⁴⁶ 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.

- A3.8 Sections 95(2) and 95(3) of the Digital Economy Act 2017 also require that after publishing the first report under section 311A of the Act, Ofcom must review and revise the EPG Code, and that the revision of the EPG Code must be completed before 1 December 2020.
- A3.9 We have also taken account of other relevant statutory duties in carrying out our review of the EPG Code and in developing our proposals for revising the EPG 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;⁴⁷
 - e) our duty to secure the availability throughout the UK of a wide range of high quality and diverse television and radio services;⁴⁸
 - f) our duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK;⁴⁹ and
 - g) our duty to have regard to the different interests of persons in different parts of the UK.⁵⁰

Ofcom's Code on Electronic Programme Guides

- A3.10 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 EPG Code](#) are observed in the provision of EPGs.
- A3.11 The EPG Code was adopted in 2004, amended in March 2005, and further amended in 2019. Paragraphs 2 to 15 of the EPG Code concern the requirements that EPG providers should meet in relation to the prominence of the designated channels.
- A3.12 Specifically, paragraphs 9 to 15 of [the EPG Code](#) set out the minimum prominence requirements for the designated channels.

⁴⁷ Section 3(1) of the [Communications Act 2003](#).

⁴⁸ Section 3(2)(c) of the [Communications Act 2003](#).

⁴⁹ Section 3(4)(a) of the [Communications Act 2003](#).

⁵⁰ Section 3(4)(l) of the [Communications Act 2003](#).

A4. Responding to this consultation

How to respond

- A4.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 14 October 2020.
- A4.2 You can [download a response form](#) from the Ofcom website. You can return this by email to the address provided in the response form.
- A4.3 If your response is a large file, or has supporting charts, tables or other data, please email it to BBCthree.assessment@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 30 April 2022.
- A4.4 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.
- A4.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A4.6 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.
- A4.7 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.
- A4.8 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 7. 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.
- A4.9 If you want to discuss the issues and questions raised in this consultation, please contact Hazel Noton on 020 7783 4702, or by email to hazel.noton@ofcom.org.uk.

Confidentiality

- A4.10 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 [the Ofcom website](#) as soon as we receive them.

- A4.11 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.
- A4.12 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.
- A4.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A4.14 Following this consultation period, Ofcom plans to publish a statement in December 2021.
- A4.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A4.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 5.
- A4.17 If you have any comments or suggestions on how we manage our consultations, please email us at <mailto: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.
- A4.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary (corporationsecretary@ofcom.org.uk)

A5. Ofcom's consultation principles

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

Before the consultation

- A5.1 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

- A5.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A5.3 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.
- A5.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A5.5 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.
- A5.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A5.7 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.

A6. Consultation coversheet

BASIC DETAILS

Consultation title:

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

A7. Consultation questions

Question 1: Do you agree with our provisional view on appropriate prominence for BBC Three? Please provide evidence to support your views.

Question 2: Are there any material impacts that we have not considered and should be included in our analysis? Please provide details and evidence to support your answer.

Question 3: Do you agree with our proposed implementation period of 18 months?