

## A1. Legislative framework

- A1.1 In reaching the decisions set out in this statement we have taken account of all of our relevant statutory duties, which include the following.
- A1.2 Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 (the Act), is to further the interests of:
- a) citizens in relation to communications matters; and
  - b) consumers in relevant markets, where appropriate by promoting competition.
- A1.3 In carrying out our statutory duties, we are required by section 3 of the Act to have regard in all cases to a number of factors, including:
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (section 3(3)(a)); and
  - b) any other principles appearing to us to represent the best regulatory practice (section 3(3)(b)).
- A1.4 In addition, section 3(2) of the Act requires Ofcom to secure certain things in carrying out our statutory functions, including the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c)).
- A1.5 In carrying out our duties, we must also have regard to certain matters listed in section 3(4) of the Act, as appear to us to be relevant in the circumstances. These matters include, in particular:
- a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK (section 3(4)(a));
  - b) the desirability of encouraging investment and innovation in relevant markets (section 3(4)(d));
  - c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas (section 3(4)(l)); and
  - d) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in sections 3 (1) and (2) of the Act is reasonably practicable.
- A1.6 In performing our duty to further the interests of consumers, we are also required to have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money (section 3(5)).

- A1.7 Ofcom's duties relating to the prominence of designated channels within EPGs<sup>1</sup> 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 (the EPG Code) (section 310(1)).
- A1.8 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
  - 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.
- A1.9 The designated public service channels for these purposes are all BBC television service, all Channel 3 services, Channel 4, Channel 5, S4C, **local digital television programme services and simulcast local services** (section 310(4)). The Secretary of State may add or delete channels from this list by order after consulting with Ofcom (section 310(5)).<sup>2</sup>
- A1.10 Under section 311, Ofcom is required to set such conditions in the broadcasting licences held by EPG providers as it considers appropriate to ensure that the EPG Code is observed. Ofcom is able to take enforcement action for breach of this licence condition in the event that an EPG provider does not comply with the obligations contained in the EPG Code.
- A1.11 Section 311A(1) of the Act<sup>3</sup> 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.
- A1.12 Section 95(2) and (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 EPG Code, and that the revision of the EPG Code must be completed before 1 December 2020.

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<sup>1</sup> EPGs (electronic programme guides) are defined in section 310(8) of the Act as a service which consists of: the listing or promotion, or both the listing and promotion, of some or all of the programmes included in any one or more programme services the providers of which are or included persons other than the provider of the guide; and a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

<sup>2</sup> The Secretary of State added **local digital television programme services and simulcast local services** to the list of public service channels under section 310(4) of the Act in 2011, under the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, SI 2011/3003, article 2.

<sup>3</sup> This provision was introduced by section 95 of the Digital Economy Act 2017.