

A6. Stakeholder responses

In this Annex we summarise comments made by stakeholders in their responses to the consultation that are not set out elsewhere in this document. In reaching our decisions we have carefully considered all the points made by all respondents. All the non-confidential responses to our consultation have been published on our website in full.

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COMMENT MADE	OFCOM RESPONSE
ENSURING THE PROMINENCE OF THE MAIN FIVE CHANNELS	
No additional comments	
ENSURING THE PROMINENCE OF CHANNEL 4 IN WALES	
BT explained that the proposal to move Channel 4 in Wales would mean moving ITV2 and this would have implications for their commercial relationship. ¹ BT were also concerned that moving ITV2 could cause confusion for viewers already familiar with its position in the EPG	We have taken account of the impacts on commercial channels and on viewers in reaching our decision (see paragraphs 4.32 – 4.35).
ITV were concerned that in making an exception for S4C in Wales, we were suggesting that there might be other cases where the first five slots are not granted to the main five channels. ²	We have decided that the first five slots should be granted to the main five PSB channels except for S4C in Wales (see paragraphs 4.3 - 4.19).
Name withheld 3 explained that the position of Channel 4 within an EPG depends on how a page is defined on each EPG and that these differ from platform to platform. ³	We have changed the approach we proposed in the consultation in light of responses so that we are no longer setting requirements by reference to page number (see paragraphs 3.13 – 3.18).

¹ BT, p5 https://www.ofcom.org.uk/_data/assets/pdf_file/0022/131179/BT.pdf

² ITV, p29 https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131186/ITV.pdf

³ Name Withheld 3, p1 https://www.ofcom.org.uk/_data/assets/pdf_file/0019/131194/Name-Withheld-3.pdf

ENSURING THE PROMINENCE OF BBC FOUR	
<p>ITV agreed ‘with the underlying principle behind the proposals, guaranteeing a degree of prominence for these services commensurate with the scale of their obligations and original UK content investment’ but highlighted the need to remain proportionate in light of BBC’s funding model and the potential impact on the broader market.⁴</p>	<p>Ofcom has considered the implications of our proposals and has taken account of these when coming to our decision. This is discussed in more detail in sections 3 to 4.</p>
<p>Tech UK did not think that the BBC should automatically have prominence while other content providers did not. It set out its view that ‘rather than subjectively choosing which services are considered to be “of general interest” it would be more appropriate to apply objective and measurable criteria, such as actual viewing figures, that represent whether the service is valued by the viewer or not (similar to the way in which Ofcom places captioning and subtitling requirements on broadcasters).’⁵</p>	<p>The channels afforded prominence under the regime are designated in legislation⁶ and can be amended by the Secretary of State. Ofcom has no role in selecting which channels are granted prominence under the regime.</p>
<p>BT questioned around what the process would be if a new PSB channel were to launch.⁷</p>	<p>If a new designated channel were to launch, then Ofcom would consider what appropriate prominence would be for this new channel.</p>

⁴ ITV, p30 https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131186/ITV.pdf

⁵ techUK, p3 https://www.ofcom.org.uk/_data/assets/pdf_file/0012/131205/techUK.pdf

⁶ Section 310 of the Communications Act 2003.

⁷ BT, p6 https://www.ofcom.org.uk/_data/assets/pdf_file/0022/131179/BT.pdf

ENSURING THE PROMINENCE OF THE BBC NEWS CHANNELS	
Some stakeholders, including the BBC, Voice of the Listener and Viewer and the International Broadcast Trust raised the issues of the positioning of news channels more widely within the EPG. Highlighting the importance of high-quality impartial news in ensuring citizens are ‘well-informed and can participate fully in the democratic process’ ⁸ and in countering fake news and disinformation ⁹ . They were concerned that the news grouping was often lower down in the EPG and therefore more difficult to find.	The statutory provisions for appropriate prominence apply only to the designated channels (in this case the BBC news channels). They do not apply to other news channels nor to the position of a grouping of news channels within an EPG.
Some stakeholders queried why the prominence requirements only applied to BBC News channels and not to other providers. ¹⁰	The channels afforded prominence under the regime are designated in legislation ¹¹ and can be amended by the Secretary of State. The only designated news channels are BBC News and BBC Parliament.
Name Withheld 3 noted that not all devices support channel genre selection. ¹² BT noted a similar point in respect of EE TV. ¹³	Some EPGs do not have genre based EPGs but instead list specialist channels, such as news, together within a section of the EPG. In these cases, we would expect them to be listed in accordance with our requirements within that section or grouping, and we have made this clear in the revised Code.

⁸ VLV p7 https://www.ofcom.org.uk/_data/assets/pdf_file/0009/131211/Voice-of-the-Listener-and-Viewer.pdf

⁹ BBC para 29 https://www.ofcom.org.uk/_data/assets/pdf_file/0021/131178/BBC.pdf

¹⁰ Name withheld 1, p2 https://www.ofcom.org.uk/_data/assets/pdf_file/0017/131192/Name-Withheld-1.pdf; techUK, p3 https://www.ofcom.org.uk/_data/assets/pdf_file/0012/131205/techUK.pdf

¹¹ Section 310 of the Communications Act 2003.

¹² Name Withheld 3, p1 https://www.ofcom.org.uk/_data/assets/pdf_file/0019/131194/Name-Withheld-3.pdf

¹³ BT, p6 https://www.ofcom.org.uk/_data/assets/pdf_file/0022/131179/BT.pdf

ENSURING THE PROMINENCE OF THE BBC CHILDREN’S CHANNELS	
COBA ¹⁴ and Name Withheld 2 ¹⁵ considered that Ofcom had not factored in the cross promotional ability of the BBC in our modelling.	We recognise that broadcasters have a range of means to promote their content including cross promotion for multichannel broadcasters. FEH notes that a range of factors impacts viewing (Annex 3) including aspects such as brand. However, data from a range of sources indicates that moving a channel up the EPG will generally increase discoverability and viewing (Annex 3).
TechUK supported ease of discovery for children’s channels within the relevant genre section of EPGs but believed that this should apply to all such channels and prominence should have a relevance to the share of viewing of channels, not just favour the BBC where other alternatives exist which command strong audience share. ¹⁶	The channels afforded prominence under the regime are designated in legislation ¹⁷ and can be amended by the Secretary of State. The only designated children’s channels are CBeebies and CBBC.
ENSURING THE PROMINENCE OF LOCAL TV	
Tech UK explained that due to constraints on bandwidth and multiplexes within the DTT environment it is not always be possible to provide the capacity for all local TV services though broadcast. Therefore, some of these services may be delivered via IP. TechUK believe that this introduces additional complexity relating to EPG prominence for local TV services and these factors need to be considered in detail before confirming that this can be delivered. ¹⁸	Ofcom’s approach is technology neutral. However, in relation to local TV we have set a minimum requirement for prominence only in relation to local TV services broadcast over DTT.

¹⁴ COBA para 20 https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131181/COBA.pdf

¹⁵ Name Withheld 2, p3 https://www.ofcom.org.uk/_data/assets/pdf_file/0018/131193/Name-Withheld-2.pdf

¹⁶ techUK, p3 https://www.ofcom.org.uk/_data/assets/pdf_file/0012/131205/techUK.pdf

¹⁷ Section 310 of the Communications Act 2003.

¹⁸ techUK, p4 https://www.ofcom.org.uk/_data/assets/pdf_file/0012/131205/techUK.pdf

<p>[X]</p>	<p>The grouping of channels that we set out in the consultation document was intended to aid readability. Our decisions on appropriate prominence for local TV and the factors that we have considered are set out in paragraphs 4.112 – 4.134.</p>
<p>ENSURING THE PROMINENCE OF THE NATION SPECIFIC CHANNELS</p>	
<p>YouView were not convinced that nation-specific providers should be guaranteed prominence on a UK-wide basis and considered that this should be a matter for the platform to decide. They noted that prominence should not be to the detriment of the current user experience.¹⁹</p>	<p>Ofcom considers it important for viewers in the nations to be able to discover nation-specific channels easily. In cases where an EPG provider does not provide regionalised EPGs then this will require making the nation-specific channels prominent within the EPG provider’s UK-wide EPG.</p>
<p>ITV did not entirely agree with our proposals on nation-specific channels and local TV and thought that Ofcom should consider in more detail whether the likely benefit of their approach is proportionate relative to the impact on others. They considered that the citizen benefit of such proposals is marginal but that proposals could negatively impact the commercial television sector, particularly for non-regionalised guides, where the proposals result in the first three pages being disproportionately full of content not of interest to most UK audiences. ITV suggests a slot floor below which a service may not be listed and gave an example of a cut of floor of 25 slots.²⁰</p>	<p>As noted above, Ofcom considers it important for viewers in the nations to be able to discover nation-specific channels easily and in some cases this will mean making them prominent within the EPG providers’ UK-wide EPGs. Our decisions on nation-specific channels, and local TV, and the factors we have considered, are set out at paragraphs 4.88 - 4.111 and 4.112 – 4.134 respectively.</p>

¹⁹ YouView, p2 https://www.ofcom.org.uk/data/assets/pdf_file/0012/131214/YouView-TV.pdf

²⁰ ITV, p30-31 https://www.ofcom.org.uk/data/assets/pdf_file/0020/131186/ITV.pdf

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<p>STV agreed but were concerned about the BBC having too much power over EPGs as the only provider of multiple PSB services. They said that incumbent PSB services should be protected from BBC services potentially moving up, and that guidelines should restrict the number of swaps/changes that can be made in a time period.²¹</p>	<p>The prominence of all designated channels, whether provided by the BBC or by other organisations, is protected by the new requirements that we are setting in the revised Code.</p>
<p>TG4 Ireland believed that the Irish language should not be treated in a different manner in the UK from Scots Gaelic and Welsh. TG4 should be guaranteed prominence within the first three pages of EPGs in Northern Ireland.²²</p>	<p>The channels afforded prominence under the regime are designated in legislation²³ and can be amended by the Secretary of State. TG4 is based in the Republic of Ireland and is not a designated channel.</p>
<p>RTE set out that RTE channels should have similar prominence in Northern Ireland as other nations' channels. RTE explained that currently there are no suitable parameters to ensure adequate prominence and discoverability of Irish PSBs in Northern Ireland.²⁴</p>	<p>The channels afforded prominence under the regime are designated in legislation²⁵ and can be amended by the Secretary of State. RTE is based in the Republic of Ireland and is not a designated channel.</p>
<p>S4C asked Ofcom to consider whether every television EPG provider should offer a Wales-specific EPG.²⁶</p>	<p>EPG providers make a range of commercial decisions on the functionality of their service, and prominence regulation is designed to deliver appropriate prominence for all designated channels. It is outside the scope of the regime to intervene in the commercial decision of whether to offer a regionalised EPG for Wales.</p>

²¹ STV, p3 https://www.ofcom.org.uk/data/assets/pdf_file/0011/131204/STV.pdf

²² TG4, p2 https://www.ofcom.org.uk/data/assets/pdf_file/0015/131208/TG4-Ireland.pdf

²³ Section 310 of the Communications Act 2003.

²⁴ RTÉ, p3 https://www.ofcom.org.uk/data/assets/pdf_file/0022/131197/RTE.pdf

²⁵ Section 310 of the Communications Act 2003.

²⁶ S4C, p4 https://www.ofcom.org.uk/data/assets/pdf_file/0023/131198/S4C-English.pdf

<p>Sky believed that it was unreasonable and discriminatory to require different approaches from EPG providers who have invested in regionalised EPGs.²⁷</p>	<p>It is for EPG providers to decide whether they wish to provide UK wide or regionalised EPGs. The only EPG provider who does not currently offer a regionalised EPG has indicated they will move to a regionalised EPG.²⁸</p>
<p>MG Alba did not consider that we had explained in our consultation why the two indigenous language channels would have different prominence requirements within their specific region (i.e. why S4C should be at slot 4 of Welsh EPGs but BBC Alba could be within the first three pages of the Scottish EPGs).²⁹</p>	<p>Our decisions on appropriate prominence for S4C and for BBC Alba, and the factors we considered, are set out at paragraphs 4.95 – 4.96 and 4.11 respectively.</p>
<p>THE TREATMENT OF HD AND SD CHANNELS</p>	
<p>PACT set out that PSB HD channels do not currently have PSB obligations attached to them and therefore it believed that they should not receive additional prominence. If eventually, HD slots replace SD slots as the primary means of accessing content, this should be reconsidered.³⁰</p>	<p>Our decision on prominence for HD or SD versions of designated channels is set out at paragraphs 4.138 – 4.153.</p>
<p>BT say that prominence should be for either SD or HD not both. However, guaranteeing prominence for both would mean BBC channels at the top of almost all genres resulting in disproportionate impact for commercial channels pushed down.³¹</p>	<p>Our decision on prominence for HD or SD versions of designated channels is set out at paragraphs 4.138 – 4.153.</p>

²⁷ Sky, p37 https://www.ofcom.org.uk/_data/assets/pdf_file/0010/131203/Sky.PDF

²⁸ Virgin Media, p 2 https://www.ofcom.org.uk/_data/assets/pdf_file/0008/131210/Virgin-Media.pdf

²⁹ MG Alba, p2 https://www.ofcom.org.uk/_data/assets/pdf_file/0016/131191/MG-Alba.pdf

³⁰ PACT, p7 https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131195/PACT.pdf

³¹ BT, p7 https://www.ofcom.org.uk/_data/assets/pdf_file/0022/131179/BT.pdf

THE TRANSITION PERIOD FOR IMPLEMENTING OUR PROPOSALS	
Name Withheld 3 agrees with the transition period but only if the changes to the code have implications for legacy devices. ³²	The Code will mean that EPGs will need to be updated and this may have impacts on legacy devices e.g. older TVs and set top boxes. This may mean additional testing of updates needs to be undertaken. This is one of the factors that we have considered in reaching our decision on date of implementation of the revisions to the Code (see paragraphs 4.153 – 4.160).
OTHER ISSUES: ALLOWING FOR INNOVATION	
Name Withheld 1 raised concerns that the proposals may conflict with accessibility requirements, as providers may magnify or reduce the rows per page of the EPG. ³³	We have changed the approach we proposed in the consultation in light of responses so that we are no longer setting requirements by reference to page number (see paragraphs 3.13 – 3.18). This will avoid conflict with accessibility requirements.
Relating to innovation, the BBC submitted that the Code should be technologically neutral in respect of the distribution network used for delivery, so that BBC One HD channels could benefit from prominence requirements whether they were delivered over the air or via IP – or a mix of the two. The BBC noted that IP delivery of regional HD variants would be much cheaper than delivery of these channel variants via satellite. BT also did not think any distinction should exist between channels delivered by DTT and IPTV and should be listed by genre. ³⁴	Ofcom’s EPG Code is technologically neutral in respect of the distribution network used for delivery of the designated channels.

³² Name Withheld 3, p3 https://www.ofcom.org.uk/data/assets/pdf_file/0019/131194/Name-Withheld-3.pdf

³³ Name Withheld 1, p2 https://www.ofcom.org.uk/data/assets/pdf_file/0017/131192/Name-Withheld-1.pdf

³⁴ BBC <https://www.ofcom.org.uk/resources/documents/consultations/category-1/116265-epg-code-and-prominence-regime/responses/bbc-response-additional-information.pdf>

OTHER ISSUES: INCREASED OBLIGATIONS	
<p>Some stakeholders (COBA, Pact and Virgin Media) responded about the current level of obligations for PSBs and local TV, commenting that, or questioning, whether further benefits (through increased prominence) should come with additional obligations.³⁵ COBA set out its view that Ofcom should consider the additional commercial benefit and factor this into discussions about the value of the PSB licence and the balance of duties and obligations.³⁶ PACT were unclear as to what additional obligations PSBs would undertake to do in return for greater prominence.³⁷ COBA also noted that Ofcom and the commercial PSBs recently agreed new public service licences after a detailed review of their conditions, which concluded that the balance between benefits and obligations was sustainable.³⁸</p>	<p>We do not consider that revising the Code confers additional benefits on these licensees. These services are designated for the purposes of appropriate prominence under the statutory provisions, and Ofcom is required to review and revise from time to time the provisions in the Code.</p>

³⁵ COBA, para 24, paragraph 2.6 , para 6.10 https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131181/COBA.pdf; Pact, paras 2.1, paras 3.2, paras 6.1 https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131195/PACT.pdf; Virgin Media, p3 https://www.ofcom.org.uk/_data/assets/pdf_file/0008/131210/Virgin-Media.pdf

³⁶ COBA, para 24 https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131181/COBA.pdf

³⁷ PACT p4 https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131195/PACT.pdf

³⁸ COBA, para 10 https://www.ofcom.org.uk/_data/assets/pdf_file/0015/131181/COBA.pdf