
Review of rules for prominence of BBC Three

Statement on changes to the linear EPG Code

[Review of rules for prominence of BBC Three](#) – Welsh overview

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STATEMENT:

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1. Overview

- 1.1 Today we have [approved the relaunch of BBC Three as a broadcast channel](#). This document sets out our decision that the BBC Three broadcast channel should be located within the first 24 slots of Electronic Programme Guides ('EPGs') including those on Sky, Virgin Media O2, Freeview and Freesat.
- 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 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 BBC Three will become a designated channel under the provisions of the Communications Act 2003 ('the Act'), and as such we must ensure an appropriate level of prominence for the channel within the EPGs of all licensed providers.
- 1.4 We published a [consultation](#) seeking stakeholders' views on our proposals in September 2021. We received six responses to the consultation: from COBA on behalf of commercial broadcasters; from EPG providers; and from other interested parties. We have carefully considered all the views and evidence provided in the consultation responses.

What we have decided – in brief

BBC Three should appear within the first 24 slots of electronic programme guides. In coming to this decision, we have considered the range of potential impacts on audiences, BBC Three, EPG providers and other broadcasters. We have placed significant emphasis on the public value for audiences that providing BBC Three with prominence would generate.

EPG providers should have a maximum of 18 months to implement any necessary changes. We consider that an 18-month implementation period will give EPG providers and broadcasters sufficient time to plan for and implement the necessary changes to secure a smooth transition in the interests of audiences. This length of implementation period may mean that the full benefits of relaunching the channel are not immediately realised, but 18 months is a maximum period, and we expect that some EPG providers may be able to implement these changes sooner.

- 1.5 The overview section in this document is a simplified high-level summary only. The decisions we have taken, and our reasoning, are set out in the full document.

2. Background

Purposes of 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 programmes; 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 PSBs also play an important role as commissioners of 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 that 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 to 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, 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 appropriate prominence are also set out in legislation. These are:
- a) all BBC channels (including any newly-launched channels);
 - b) the Channel 3 services (including ITV and STV);
 - c) Channel 4;
 - d) Channel 5;
 - e) S4C; and
 - f) local TV channels.⁴
- 2.8 Our current Code designates specific slots for certain designated channels and sets minimum levels of prominence for other designated channels.⁵
- 2.9 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). We have published recommendations for updated legislation to ensure that the PSBs’ on-demand services remain prominent and widely available for audiences on connected TV platforms.⁶
- 2.10 Licensed EPG providers must comply with the EPG Code and face penalties if they do not comply.⁷ The main EPG providers are Freesat, Freeview, Sky and Virgin Media O2. They all have published policies that set out their approach to allocating slots to designated channels.⁸

The purpose of this statement

- 2.11 BBC Three was launched as a linear channel in 2003 (and was a designated channel entitled to prominence). In 2016 the BBC closed BBC Three as a broadcast channel and moved to offering its content on demand, via BBC iPlayer.

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 Ofcom, [EPG Code](#).

⁶ Ofcom, 15 July 2021, *Small Screen: Big Debate - Recommendations to Government on the future of Public Service Media*.

⁷ 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.

⁸ [Freesat](#), [Freeview](#), [Sky](#), [Virgin Media O2](#).

- 2.12 The BBC proposed to relaunch BBC Three as a linear television channel in January 2022. We [consulted separately](#), as part of a competition assessment ('BCA'), on our provisional determination. We have confirmed our provisional decision that the BBC should be permitted to relaunch BBC Three as a broadcast TV channel. This document outlines our decisions to confirm our proposals to update the EPG Code to provide prominence to BBC Three within the first 24 slots, and to allow 18 months as a maximum implementation period for EPG providers to do so.

The BBC's final proposals for BBC Three

- 2.13 The BBC is proposing to relaunch BBC Three as a television channel on 1 February 2022 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, live outside London and the south-east and have less access to on-demand services.
- 2.14 As well as being a way of distributing scheduled programming to young people, the BBC believes that the channel would give them a new lever to "build awareness and change perceptions of what BBC iPlayer (and the BBC) has to offer" among harder to reach younger audiences.⁹
- 2.15 The BBC's plan for the channel is:
- i) Broadcast hours from 7pm until 4am every day.
 - ii) An annual content budget of £72.5m. There is no additional budget for the proposed BBC Three broadcast channel.¹⁰
 - iii) A mix of genres, including factual entertainment, drama, UK and international current affairs, comedy, live sport, live music and films.
 - iv) A news bulletin to be broadcast every weekday.
 - v) Original BBC productions (i.e. programmes commissioned by the BBC including first-run and repeats) to make up 70% of broadcast hours, with the rest being acquisitions.
- 2.16 As part of the proposal, the BBC has also said that:
- i) BBC Three will broadcast pre-watershed programming that will appeal to both 13-15 year olds and 16-34 year olds.
 - ii) Two-thirds of BBC Three's programme spend will be outside of London.
- 2.17 The BBC has proposed that the new BBC Three channel will be available on the main terrestrial, satellite and cable platforms in all the nations of the UK. The BBC is planning to launch the channel on 1 February 2022 in standard definition ('SD') and high definition

⁹ [A new BBC Three channel: Public Interest Test](#), 24 June 2021 (hereafter referred to as 'BBC PIT').

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 Annual Plan 2021/22.

(‘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 used by S4C. On all other platforms, the channel would launch in SD and HD.

- 2.18 To accommodate BBC Three within current distribution capacity, the BBC is proposing to reduce the operating hours of CBBC so that broadcast ends at 7pm instead of 9pm.
- 2.19 The BBC proposed that the new BBC Three channel should appear within the top 24 slots of EPGs and that Ofcom should expedite this process and require EPG providers to implement this as soon as reasonably possible. The BBC also stated that, to help minimise disruption, it would rationalise its existing slots to release slots for the new channel in the EPG where possible. It explained that this could be achieved if the BBC successfully launched HD versions of all BBC One and BBC Two SD regional variants. This would mean that the BBC would no longer require prominent HD and SD listings for both BBC One and BBC Two in England and Northern Ireland on Sky and Virgin Media O2, or across the UK on Freesat.¹¹ The table below sets out the BBC’s expected EPG slots when the BBC has rationalised its slots.

Table 1: 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 Media O2	8 in Eng/Nl; 24 in Scot/Wales
Freeview	24
Freesat	10

Impact assessment

- 2.20 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 analysis presented throughout the consultation document (including the annexes) provided our assessment of the impact of our proposals on stakeholders and constituted an impact assessment for our proposed changes to the EPG Code. In reaching our decisions we have considered representations made to us on the impact assessment and amended our analysis where appropriate.

Equality impact assessment

- 2.21 We assess the potential impact of all of our functions, policies, projects, and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and

¹¹ Currently the SD version of these channels appear in the slots designated for them (101 and 102) and the HD version appears lower down the EPG. This is because the HD versions are not full versions of the SD versions and regional programming (which is in SD) is not broadcast on these channels. When the HD versions become full versions of the SD channel then they can replace the SD versions in slots 101 and 102, freeing up the slots the HD versions occupied in the EPG. The SD versions will no longer be listed in prominent positions within the EPG.

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.

- 2.22 We included an EIA of our proposals in Annex 2 of our consultation document. We have considered the equality impacts of the decisions we are now taking, and we set out our assessment in Annex 3. 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. Analytical framework

- 3.1 In the [consultation](#), we set out the approach that we used to determine the minimum slot position on EPGs for BBC Three which would, in our view, give it appropriate prominence. Under this approach we considered the impacts that our proposal might have on different stakeholder groups.
- 3.2 We also consulted on our view that EPG providers should have 18 months to implement the proposed changes.
- 3.3 This section recaps the proposals on which we consulted, summarises stakeholder responses, and explains the final decisions that we have reached in the light of those responses.

Determining appropriate prominence

- 3.4 Under the provisions of the Act, as a new BBC service, we are required to give prominence to BBC Three. In our approach to considering appropriate prominence for BBC Three, we placed significant emphasis on the public value for society and individuals that providing BBC Three with prominence would generate.
- 3.5 We last reviewed the EPG Code and the prominence of the designated channels across the various UK EPGs in 2018 and 2019.¹² In our review in 2019 ('the 2019 Review'), in which we assessed the appropriate prominence of a variety of designated channels on a variety of EPGs, we developed an analytical framework, on which we consulted, in order to consider appropriate prominence for each designated channel.¹³

Our approach and analytical framework

- 3.6 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 that public service broadcasting provides to society and individuals.
- 3.7 In our 2019 Review we developed an analytical framework, on which we consulted, in order to consider appropriate prominence for each designated channel.¹⁴ Within this framework we take account of the impacts on different stakeholder groups that may arise

¹² Ofcom, July 2019, [Review of prominence for public service broadcasting](#).

¹³ Ofcom, 2018, [Review of rules for prominence of public service broadcasters and local TV](#), Consultation on proposed changes to the linear EPG Code and future of the regime.

¹⁴ Ofcom, July 2019, Review of prominence for public service broadcasting, p14.

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 inter-related.

- 3.8 As we set out in our 2019 Review, societal benefits of PSB are generally qualitative in nature and are 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.

Audiences

- 3.9 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

- 3.10 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. Although 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

- 3.11 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 by 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.

The designated channel

- 3.12 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 the channels' ability to deliver high quality public service broadcaster services. In the case of the BBC, it brings increased viewing to the BBC services, thereby better enabling the BBC to meet its Mission and Public Purposes. The designated channel may also incur one-off costs from moving to a new position, for example from marketing the new slot number.

Other broadcasters

- 3.13 If a designated channel is moved higher and gains viewers, this may be at the expense of other channels. For commercial channels, lower viewing hours 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 from marketing the new slot number.

EPG providers

- 3.14 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' abilities to raise revenue from selling particular positions. They may also incur one-off costs of rearranging their EPG; for example, from administration and technical testing.

Our view on appropriate prominence for BBC Three

- 3.15 The section below summarises and considers stakeholder responses regarding our overall approach to determining appropriate prominence for BBC Three. In the following sections we apply our analytical framework and set out our decision on appropriate prominence for BBC Three.

Summary of our provisional view

- 3.16 We were, and remain, of the view that our approach for determining appropriate prominence used in our 2019 Review is still valid. We therefore said in the consultation that we considered that our proposal for appropriate prominence for BBC Three should be consistent with decisions that we had taken previously on the level of prominence that is appropriate for the other designated channels. We explained that we considered there to be broad similarities between BBC Three and BBC Four: both are UK-wide public service channels, have a niche audience, broadcast only in the evenings, and sit in the 'general entertainment' section of EPGs. Our EPG Code provides a minimum level of prominence of slot 24 for BBC Four.
- 3.17 Given the above, our initial view was that a minimum level of prominence of slot 24 was appropriate for BBC Three. We therefore applied our analytical framework to consider the impacts of requiring minimum prominence of slot 24 for BBC Three.

Summary of stakeholder responses

- 3.18 The BBC supported our approach to determining prominence; it noted that this was consistent with our approach to other PSB channels, and that providing BBC Three with prominence within the first 24 slots was essential to realising the public value of the BBC's

proposals.¹⁵ Virgin Media O2 did not object “in principle” to Ofcom’s provisional view on the appropriate level of prominence for BBC Three.¹⁶

- 3.19 Organisation 1 [X] argued that as the BBC made the decision to move BBC Three online in 2016, the channel had forfeited its right to prominence and should not be granted a position in the top 24 slots.¹⁷
- 3.20 Sky thought that it would be inappropriate to require EPG providers to list BBC Three within the first 24 EPG slots, arguing that it would be “disproportionate and unjustified, particularly in light of the expected impact on EPG listings”.¹⁸
- 3.21 It argued that we should give EPG providers the flexibility in Scotland to move one of the BBC’s existing channels (such as BBC Alba) out of the first 24 slots, in order to be able to accommodate BBC Three. It also considered that in the light of the launch of the new channel, we should review the prominence afforded to BBC Four, BBC Scotland and BBC Alba in Scotland, given the number of channels which the BBC has in the first 24 EPG slots in this region, and the cumulative effect of channel changes.
- 3.22 Sky also argued that we had failed to take into account the fact that BBC Three will broadcast for only part of the day. Organisation 1 made a similar point: that due to the narrow target audience and fewer broadcasting hours, the channel is not entitled to prominence. This is discussed in more detail in paragraph 3.36.

Our view on stakeholder responses

- 3.23 As set out in our consultation, we consider that the approach to determining appropriate prominence that we adopted in 2019 remains valid, and we note that no stakeholder responses raised any issues with this framework. We are satisfied that our initial view that a minimum level of prominence of slot 24 was appropriate for BBC Three was the correct starting point.
- 3.24 Concerning the channel’s right to prominence, as explained in Annex 4, under the Act any television channel launched by the BBC is entitled to prominence within the EPG. Our role in this consultation is to determine the appropriate level of prominence afforded to BBC Three.
- 3.25 On Sky’s view that our provisional decision was “disproportionate and unjustified”, we set out below our assessment of the impacts under our analytical framework.
- 3.26 In response to Sky’s point that the relaunch of BBC Three should trigger a wider review of prominence, the purpose of this review is to consider what the appropriate level of prominence should be for BBC Three. In particular, we do not consider that there is currently any new evidence to suggest that other BBC channels (in particular BBC Four, BBC Scotland and BBC Alba) should have a lower degree of prominence than that which we determined in 2019.

¹⁵ [BBC response](#).

¹⁶ [Virgin Media O2 response](#).

¹⁷ [Organisation 1 response](#).

¹⁸ [Sky response](#).

Assessment of impacts

- 3.27 In this section for each impact we:
- a) summarise our provisional views of the impact as set out in the consultation document;
 - b) summarise and evaluate stakeholders' comments on our assessment of the impact; and
 - c) in the light of stakeholders' comments, set out our view on the impact and our final decision.

Impact on consumers and citizens

Summary of our provisional views

- 3.28 Making a designated channel more prominent to citizens and consumers increases the ease of discovery, and therefore encourages greater viewing. This greater viewing helps deliver personal value. There are also a range of wider societal benefits; for example, consumption of this content can support social cohesion by giving viewers insight into others' lives or by 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.
- 3.29 In our BCA we identified the potential for BBC Three to provide significant audience benefits. We considered that it had the potential to contribute significant public value in some areas, notably personal and social value, by, among other things, making it easier for younger viewers and underserved audiences to access BBC Three content, in particular those who do not watch content online. In our EPG consultation we said that providing BBC Three with our proposed level of prominence would be likely to increase viewing to the channel, and therefore ensure that the public value identified in our BCA was better realised.
- 3.30 In the consultation we also took into account the potential negative impacts on some audiences who may not be able to discover other channels as easily if these channels were required to move down the EPG. However, we considered that these potential negative effects were likely to be modest, since we were only requiring one extra designated channel (i.e. BBC Three) to be within the top 24 slots, and because the BBC plans, where possible, to use its existing slots to reduce the amount of channels that need to move. Furthermore, our approach set a *minimum* level of prominence, leaving a reasonable level of discretion and flexibility for EPG providers to meet the needs of consumers.

Summary of stakeholder responses

- 3.31 Sky explained that changing the EPG number of channels causes “disruption, confusion and inconvenience for viewers”.¹⁹ It noted this was especially true for viewers who are used to searching by channel number [3<].
- 3.32 It also noted that the relaunched channel will only broadcast for “part of the day”, which meant that placing it within the first 24 slots did not provide a good viewer experience outside the broadcast hours.

Our view on stakeholder responses

- 3.33 Our view remains that any potential negative impacts on audiences because of rearrangement of EPGs, resulting from granting BBC Three prominence within the top 24 slots, are likely to be modest. We also think that BBC Three has the potential to provide significant audience benefits and public value, and that providing BBC Three with prominence will help realise these benefits. In particular, we think it will provide both personal and social value by, among other things, engaging younger viewers and underserved audiences.
- 3.34 Our decision will necessitate some changes to channel numbering within EPGs and this could cause some disruption to audiences who navigate to channels via number entry. However, we note that channel numbers change for a range of reasons, including EPG providers making changes to their EPG, and broadcasters rearranging the ordering of channels. Audiences are used to these types of changes and any disruption will probably be temporary, as audiences become familiar with the new numbering. [3<] As we set out below, we consider that an 18-month implementation period will allow time for EPG providers and broadcasters to advertise changes to audiences.
- 3.35 We recognise that BBC Three’s specialist nature and its more limited transmission hours could mean that the demographic audience it is expected to reach is narrower than some other designated channels such as the main five PSBs. However, BBC Three will broadcast across conventional peak hours when its target audience is likely to be watching. It will provide at least 75% of UK-originated output across a range of genres, including news, current affairs, drama, comedy, and factual content, of which a proportion will be first-run programming. In our BCA we concluded that the BBC Three broadcast channel could provide significant public value to an audience group that is very important to the BBC’s future. If the BBC’s proposals are successful in widening access to BBC content to younger audiences, and in particular to the specific groups that the BBC has identified in its proposal,²⁰ this could create significant benefits.
- 3.36 We do not agree that having a channel that broadcasts for only part of the day within the first 24 slots of the EPG will have a material impact on viewer experience, as viewers would have access to many other channels at the top of the EPG at time when BBC Three was not broadcasting. As explained in para 3.33 and as identified in the [BCA](#), we consider that the

¹⁹ [Sky response](#).

²⁰ C2DE audiences, minority ethnic audiences, people outside metropolitan centres and people with less access to digital on-demand services.

BBC Three broadcast channel could provide significant public value to an audience group which is very important to the BBC's future.

Impact on BBC Three

Summary of our provisional views

- 3.37 We noted in the consultation that requiring EPG providers to ensure a minimum level of prominence within the first 24 slots for the relaunched BBC Three channel implied that BBC Three would gain a more prominent slot on the EPGs than it might otherwise have secured. We noted that this should result in higher viewing of BBC Three than it would have had without mandated prominence, and therefore deliver greater public value.
- 3.38 Our analysis suggested 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,²¹ compared to the scenario in which BBC Three appeared in the first available slot on each EPG.²²

Summary of stakeholder responses

- 3.39 The BBC noted that restoring BBC Three as a broadcast channel would help it reach and deliver value to younger audiences, particularly those who still watch linear TV.²³
- 3.40 No stakeholders disagreed with our view that providing BBC Three with prominence would increase viewing to the channel and that this would deliver greater public value. COBA and Organisation 1 both considered that any benefit might well be temporary, as younger audiences were moving online.²⁴ As such, COBA believed that the public value of the proposal would be at best marginal.
- 3.41 Sky stated that the BBC should be required to demonstrate that BBC Three had reached its target audience within two years and, if not, that the prominence requirement should be removed.²⁵

Our view on stakeholder responses

- 3.42 Overall, we remain of the view that providing prominence for BBC Three within the first 24 slots will be positive for, and therefore help to better realise, the public value of the channel.
- 3.43 We recognise that the public value of a BBC Three broadcast channel could diminish over time as audience habits change, as noted by COBA and Organisation 1. However, as noted in our consultation document, young people continue to have significant engagement with broadcast TV, and the EPG remains the most popular route for them to find out what is on

²¹ Viewing share includes live, PVR and BVoD viewing.

²² This is based on adapting the BBC Three BCA model, dividing the estimated viewing gained by BBC Three (due to our prominence requirement) by overall TV viewing. See Annex 2 for further detail.

²³ [BBC response](#).

²⁴ [COBA response](#) and [Organisation 1 response](#).

²⁵ [Sky response](#).

TV.²⁶ BBC Three is aimed at engaging young people who maintain a strong broadcast TV habit but are very light users of BBC TV. In our BCA, we set out that the new channel will offer increased choice for audiences on linear television, and provide access to a greater volume of BBC Three content. To that extent, we consider that the proposals have the potential to create significant personal value for the target audience in particular and that they form an important part of the BBC's overall strategy for attracting and retaining younger audiences.

- 3.44 While we agree with the concept of a future review of the performance of BBC Three, based on delivery against the BBC's stated objectives of the channel, we do not agree with Sky's suggestion that prominence should be removed if BBC Three does not reach its projected viewing figures. Our prominence regime is not the appropriate mechanism for ensuring compliance with PSB obligations, or for ensuring the delivery of public value by the BBC. As set out in the BCA, we are setting licence conditions and monitoring and reporting requirements to ensure the channel's contribution to the BBC's Mission and Public Purposes.

Impact on other broadcasters: ongoing costs

Summary of our provisional views

- 3.45 The consultation explained that we had used two separate models to analyse the impact on other channels of our proposed minimum prominence requirement for BBC Three:
- a) Adapted versions of the models that we had used as part of the 2019 review of prominence. The models used in 2019 estimated the ongoing costs to non-designated channels which would be shifted down EPGs due to our new prominence requirements.²⁷ We adapted these models to assess the potential ongoing costs to channels that would be moved down EPGs due to our proposed minimum prominence requirement for BBC Three.
 - b) A 'viewing diversion' model which relied upon the data and methodology of the economic model that Ofcom used as part of the BCA to assess the market impact of BBC Three's launch. The BCA model uses consumer survey data to estimate the viewing diversion effects on other channels as a result of relaunching BBC Three. Hence, to estimate the effects of our proposed minimum prominence requirement for BBC Three, we constructed an adjusted BCA model which first estimated the viewing gain by BBC Three due to our proposed minimum level of prominence. We then estimated where that viewing might have been diverted from, modelling the impact on channels which do not necessarily move positions on EPGs, but which would be likely to lose viewing due to increased competition from BBC Three.
- 3.46 We noted in the consultation that the 'viewing diversion' model was not available during the 2019 Review. Given the uncertainty of modelling the ongoing costs, we considered that, with the additional data and model available to us, using two separate approaches to

²⁶ Ofcom, 2021, [Review of rules for prominence of BBC Three: Consultation on proposed changes to the linear EPG Code](#), paragraphs 3.3 to 3.7.

²⁷ Non-designated channels are those which are not granted prominence.

model the impact, with two different sets of evidence, would help to provide a more complete understanding of the possible ongoing costs to channels.

- 3.47 The adapted 2019 models for assessing the impacts on the Sky and Virgin Media O2 EPGs used valuations from EMP of slots within these EPGs.²⁸ These valuations were provided to us in 2018 as part of work we commissioned for our 2019 review of the Code. We did not seek to update these valuations as:
- a) we considered it unlikely that there had been a sufficient number of sales of slots on the Sky or Virgin Media O2 EPGs since 2018 to merit updating the EMP report.
 - b) It was not clear that there had been significant changes in the market for EPG slots which could potentially invalidate the existing estimates of EPG slot sale prices.
- 3.48 In our modelling, we took into account the BBC's plans to use its existing slots where possible, and the effect of this on the impacts on EPG providers and other broadcasters. The BBC stated that, to help minimise disruption, where it can, it will rationalise the slots it currently holds to release slots for the new channel to the EPG. It explains that this can be achieved if the BBC successfully launches HD versions of all BBC One and BBC Two HD regional variants.²⁹ For the purposes of our modelling we assume that where free slots are available, EPG providers will use them for BBC Three as this approach limits impacts on both broadcasters and EPG providers. Our modelling of potential changes therefore assumed that the BBC would no longer need prominent HD and SD listings for both BBC One and BBC Two in England/Northern Ireland on Sky and Virgin Media O2, or across the UK on Freesat. BBC Three would then be placed in the slots that are made available (see table 1).
- 3.49 Using the adapted 2019 models, the total cost to those channels which would have to move down the Sky, Virgin Media O2 and Freeview EPGs as a result of BBC Three's prominent position, was forecast to be around £5.6m pa.³⁰ However, we noted that this estimate was likely to be an upper bound, and that some of the impact on channels on the Freeview EPG could be mitigated as viewing was redistributed among the channels that had been moved down.³¹ We also noted that on all platforms, costs were spread over a number of channels, and although the impacts would not be evenly distributed across channels, we did not consider that any one channel would be disproportionately affected.
- 3.50 Using the adapted 'viewing diversion' model, taking inputs from the BBC Three BCA model, we estimated that prominence for BBC Three could result in a total decline in revenue for broadcasters in a range between £3.9m and £7.8m pa.³² We noted that the largest absolute impact would be for ITV and Channel 4, each of which might lose between 0.1%

²⁸ EMP, July 2018, [Report on the UK Market in EPG Positions](#). For further detail, see Annex 2 of this statement.

²⁹ [A new BBC Three channel: Public Interest Test](#) p22.

³⁰ On the Freeview EPG, we assumed a 1.5% reduction in viewing, and therefore advertising revenues, per each slot move downwards. See Annex 2 for further detail.

³¹ This is not the case for the Sky and Virgin EPGs where we use slot values based on EMP data. As discussed in Annex 2, these slot values are generic, and net losses are equal to net gains in order to keep the value of the EPG constant, therefore there are no issues around redistribution.

³² In the consultation, we estimated these costs to be £4.0m-£8.1m, however we have adjusted the model due to a rounding error, which has reduced the modelled costs slightly. See Annex 2 for further detail.

to 0.2% of their advertising revenues. The remaining revenue loss would be split between other commercial broadcasters.³³ We note that these costs are a subset of the costs estimated for the BBC Three BCA.

- 3.51 Taken altogether, the results of the two separate models imply that ongoing costs could be imposed on several channels, but the distribution of these costs varied by model. Although the results of the two approaches showed different distributional effects, we said that we considered that these differences in outcomes were to be expected, as the models are based on different evidence and approaches.
- 3.52 We considered both approaches carefully, and although the results of the two approaches differed in their distributional effects, we did not consider that either approach suggested that the overall cost to broadcasters was disproportionate, or that the individual impact on any one broadcaster was likely to be disproportionate.³⁴ Therefore, we considered that our proposal to designate BBC Three prominence within the top 24 slots of each EPG was unlikely to result in a disproportionate ongoing cost to broadcasters.

Summary of stakeholder responses

- 3.53 Organisation 1 stated that it considered that the valuations for Sky slots used within our model were too high and that “the market for Sky slots had crashed since 2018”.³⁵ It noted that many smaller broadcasters had closed down and had been unable to sell their Sky EPG slots.
- 3.54 Organisation 1 also said that “a single LCN position move down a page on any of the platform EPG listings, especially for a more niche channel, could be devastating to their audience figures and advertising revenues”.³⁶ As a result of this, Organisation 1 believed that the changes should not go ahead.³⁷
- 3.55 COBA noted the importance to its members of a channel’s position in an EPG, and said that moving a channel to a different slot could result in loss of audience share (and therefore revenue) and might also have impacts on brand identity and marketing.³⁸ It explained that channel position impacted how much channels can invest in areas such as original UK content, staff, marketing and innovation. COBA considered that the impacts of the changes were disproportionate.
- 3.56 COBA and Organisation 1 also highlighted the disruption caused to both EPG providers and broadcasters by a change to the EPG Code that would require channels to be moved.³⁹ COBA noted that the EPG position was a factor in broadcasters’ long-term investment plans, and that changes to it were highly disruptive.⁴⁰ It explained that this comes at a time

³³ 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.

³⁴ See Annex 2 for a discussion on the average cost per channel.

³⁵ [Organisation 1 response](#).

³⁶ [Organisation 1 response](#).

³⁷ [Organisation 1 response](#).

³⁸ [COBA response](#).

³⁹ [Organisation 1 response](#), [COBA response](#).

⁴⁰ [COBA response](#).

when channels are facing challenges from declining linear audiences, as well as the impact of Covid-19 on advertising revenues (which it claims the BBC was insulated from).

- 3.57 Sky explained that Ofcom’s proposal could lead to about 50 channels being displaced, and that a number of these channels had “acquired their EPG slots on the open market in good faith for significant sums of money”.⁴¹
- 3.58 Sky also considered that we had underestimated the impact on channels on the Sky EPG. Sky stated that in the consultation we had identified that on the Sky EPG there were no vacant slots within the first 24 slots in Scotland, and therefore channels in Scotland would need to move to accommodate BBC Three within the first 24 slots. [3<]

Our view on stakeholder responses

- 3.59 We note Organisation 1’s view that slot values have fallen on the Sky EPG, but it has provided no evidence to quantify this. Sky’s SD launch queue remains closed,⁴² and therefore at the current time the only way to launch an SD channel is by acquiring a slot from an existing, exiting broadcaster.⁴³ For this reason, we consider that even those slots further down the EPG are likely to retain some value.
- 3.60 We note that even if there have been significant falls in the value of EPG slots on the Sky EPG, this implies that the model using EMP slot values would have overestimated, not underestimated, the potential negative impacts on other channels on Sky’s EPG. This is because if the slot values are lower, the difference in value between, say, slot X and slot X+1 would also be lower.
- 3.61 We accept that channel position is important to broadcasters and that moving down the EPG could have a negative impact on channels. Our analysis acknowledges that there is likely to be a negative impact on channels which are moved down the EPG, both in terms of loss of audiences, and ultimately, advertising revenue. However, both our models indicate that the impacts are spread across a number of broadcasters and that no one broadcaster is disproportionately impacted.
- 3.62 We are aware that this comes at a time when linear audiences are falling, and the sector is recovering from the impacts of Covid-19. However, as explained in more detail below in 3.95, having approved the relaunch of BBC Three, the channel is entitled to prominence under the Code and it is our role to decide what level of prominence is appropriate. We have considered the impact on broadcasters of our changes as part of our assessment.
- 3.63 We do not agree with Sky that we have underestimated the impact on channels on its platform. [3<]
- 3.64 Since we undertook our consultation, a slot has become available within the first 24 slots on Sky’s EPG in Wales (slot 117). Our model assumed that BBC Three would be placed in slot 124 within the Sky EPG in Wales. This was in line with our assumption that, where no

⁴¹ [Sky response](#).

⁴² The SD launch queue was the previous mechanism by which channels secured a new slot on the Sky EPG, this queue is now closed.

⁴³ For further detail please refer to Sky’s

slot is available, an EPG provider would place BBC Three at the minimum level of prominence required. As noted in 3.48, we assume that where there are slots available EPG providers will use these to minimise disruption. We have therefore also now modelled the scenario in which BBC Three takes slot position 117 on Sky's EPG in Wales, in order to consider this possibility. The increase in costs associated with this change are minimal and would not change our view on the cost of the impact.⁴⁴

- 3.65 No stakeholders raised issues with our methodology for estimating the impact on broadcasters or the costs we modelled, or provided any additional evidence on the quantum of the costs. For this reason, we have no basis to change our approach to estimating the impacts on broadcasters or to make significant changes to our estimated costs. We remain of the view that our models do not suggest that the overall ongoing costs are significant, or that the individual impact on any one broadcaster is likely to be disproportionate.⁴⁵

Impact on other broadcasters: one-off costs

Summary of our provisional views

- 3.66 Our consultation noted that channels moving down the EPG or changing number, as a result of our minimum proposed level of prominence for BBC Three, might also incur one-off costs, possibly due to the need to engage in additional marketing/promotional activities to advertise their new locations to viewers.
- 3.67 To inform our assessment, before our consultation we requested evidence from broadcasters about the one-off costs they had faced due to the changes required by our 2019 review. However, we saw little evidence to suggest that these costs were material. Two broadcasters who had experienced channel moves [3<] 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, [3<] noted that this might not have been the case for other channels, particularly if their primary service had been affected. On this basis, and since the changes in channel position might be less significant than required as a result of our previous review, our provisional conclusion was that our proposed minimum level of prominence for BBC Three was unlikely to impose material one-off costs on other broadcasters. We also noted that our proposed 18-month implementation process should mitigate some of these potential impacts.

Summary of stakeholder responses

- 3.68 We had limited responses to the consultation from stakeholders regarding broadcaster one-off costs, and we were not provided with any further new evidence.

⁴⁴ Our modelling suggests that if BBC Three were to take LCN 117 in Wales on Sky's EPG, it would lead to an additional ongoing cost of £30,000 pa, split between six channels. Further detail can be found in Annex 2.

⁴⁵ See Annex 2 for a discussion on the average cost per channel.

- 3.69 COBA noted that many channels will be moving for a second time (following our previous review), so they will incur one-off costs and longer-term revenue impacts for a second time.⁴⁶
- 3.70 Sky noted that a change of channel number could cause significant disruption and impose costs onto broadcasters, in terms of marketing the new channel. It considered these effects would be “felt particularly keenly by smaller, niche and new broadcasters”.⁴⁷ [X]

Our view on stakeholder responses

- 3.71 Although we continue to recognise that there will be one-off costs, our view remains that our proposed minimum prominence requirement for BBC Three is unlikely to impose material one-off costs on other broadcasters.
- 3.72 As set out above, we contacted a range of commercial broadcasters, whose channels had been impacted by the changes following our 2019 Review, and COBA, to ask for information about the one-off costs incurred. In the responses we received, we did not obtain any new evidence that the actual one-off costs imposed as a result of channel renumbering following the 2019 Review were material. The information we did receive, which informed our consultation, indicated that the costs incurred from the last EPG Code review were minimal. We further noted that since the changes in channel position might be less significant than were required as a result of the 2019 Review, our provisional conclusion was that our proposed minimum level of prominence for BBC Three was unlikely to impose material one-off costs on other broadcasters. We have not received any further evidence in response to this consultation that would change our view.
- 3.73 [X]
- 3.74 We also note that the 18-month implementation period should mitigate some of these impacts.

Overall impact on other broadcasters

- 3.75 Overall, in summary, our view is that we do not consider that either the one-off costs or the ongoing costs for other broadcasters are likely to be significant considered separately or taken together, or that the individual impact on any one broadcaster is likely to be disproportionate.

Impact on EPG providers: ongoing cost

Summary of our provisional views

- 3.76 We considered two types of ongoing costs in our assessment. The first type related to the potential reduction in EPG providers’ flexibility to arrange their EPG how they wish. We noted that a 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

⁴⁶ [COBA response](#).

⁴⁷ [Sky response](#).

of their EPGs. However, we considered that any incremental reduction in flexibility for the EPG providers was unlikely to be material, as only one channel was involved in this case.

- 3.77 The second type of ongoing cost related specifically to Virgin Media O2, which can monetise its EPG.⁴⁸ We acknowledged that our proposal to grant a minimum level of prominence to BBC Three could lessen Virgin Media O2's opportunities to monetise its slots, leading to a potential ongoing loss of revenues. We considered the potential for broadcasters to seek reductions in the costs of their carriage arrangements due to being moved down, and estimated a £0.2m pa loss for broadcasters on the Virgin Media O2 EPG.⁴⁹ We considered that this estimate represented an upper bound of any potential loss to Virgin Media O2.⁵⁰
- 3.78 The BBC proposals include using existing BBC slots within the Virgin Media O2 EPG in England and Wales once it has moved to full HD on BBC One and BBC Two. Virgin Media O2 also indicated that if it had a vacant slot, a competing channel provider could purchase it, which could be considered an opportunity cost of providing a prominent slot for BBC Three. We noted, however, that it was uncertain that such an opportunity to sell a vacant slot would arise in the absence of our minimum prominence requirement for BBC Three.⁵¹ [3<] Our EMP data on slot values puts the value of slot 8 on the Virgin Media O2 EPG at £2.7m pa.⁵²

Summary of stakeholder responses

- 3.79 Sky highlighted that our proposal failed to take into account the number of BBC channels that already appeared within the top 24 slots in Scotland. Sky noted the importance of Ofcom taking a holistic approach when assessing the appropriate level of prominence for a channel, and in particular, having regard to the cumulative effect of BBC channel changes. An individual also thought our view on appropriate prominence was incorrect as the BBC had already expanded into a large number of slots in prominent EPG positions.⁵³
- 3.80 In its response Sky highlighted that with the BBC's public service privileges enabling its main channels to appear at the top of the EPG, the BBC could use alternative means such as cross-promotion to direct viewers to the new channel.
- 3.81 Virgin Media O2 did not object to our provisional proposals for the appropriate level of prominence for BBC Three.⁵⁴ [3<] It said that it reviewed the availability of slots within its

⁴⁸ Under its EPG policy Virgin Media O2 can auction its EPG slots, and it considers that EPG slot can influence the outcome of wider carriage negotiations. In contrast, Sky slots are traded directly between broadcasters, and changes in value of slots impact the broadcasters.

⁴⁹ This cost is based on the modelling of ongoing costs on the Virgin Media O2 EPG based on EMP slot valuations. See Annex 2 for more detail.

⁵⁰ We would expect these costs to be shared between broadcasters and Virgin Media O2, based on the possibility that channels renegotiate carriage fees due to being moved to a lower slot. This is discussed in further detail in Annex 2.

⁵¹ We noted that there was 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.

⁵² [Revised economic model](#), 4 July 2019; annualised cost based on estimated cost spread over 5 years.

⁵³ [Ian Scott response](#).

⁵⁴ [Virgin Media O2 response](#).

EPG regularly and considered that there might be opportunities to make slots available in the future.⁵⁵ [X]

Our view on stakeholder responses

- 3.82 We have given consideration to the wider impact of this change on the EPG, taking a holistic view, and we are satisfied that sufficient flexibility remains for EPG providers. We accept that our changes could reduce EPG providers' flexibility to design their EPG as they see fit. However, we remain of the view that the 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, this will mean that around two-thirds of the top 24 slots remain available to allocate and manage as providers see fit.
- 3.83 We accept the fact that on the EPGs in Scotland, there are nine designated channels within the first 24 slots, which is higher than in other nations. This means there is less flexibility for all EPG providers, including Sky, within their EPGs in Scotland. This is because EPGs in Scotland have two nation-specific channels alongside the UK-wide PSBs (BBC Scotland and BBC Alba). These channels are entitled to prominence under the Act. Following our review in 2019, we considered that appropriate prominence for these channels was to be within the first 24 slots in EPGs in Scotland (but not in the other nations).
- 3.84 On Sky's comment regarding cross promotion, while cross-promotion is an additional means for the BBC to direct viewers to its services, it does not replace the role of prominence as set out in legislation.
- 3.85 [X]
- 3.86 [X]
- 3.87 We do not consider that the ongoing costs to EPG providers would have a significant impact or that the individual impact on any one EPG provider would be likely to be disproportionate. While we recognise that our changes could reduce flexibility for EPG providers, we still consider that there remains enough flexibility to allow them to design an EPG that meets their consumers' needs.

Impact on the EPG providers: one-off costs

Summary of our provisional views

- 3.88 Our consultation noted that the second way in which EPG providers might be affected by our requirements for minimum prominence for BBC Three would be, is if this resulted in one-off costs of making changes to their EPGs. Such costs might relate to revising their EPG policies, drafting new guidance or managing any necessary channel moves on their EPGs.
- 3.89 We noted that we had received information from Freesat, Digital UK, Virgin Media O2 and Sky about the costs they had faced as a result of the re-organisation of their EPGs required by the 2019 Review. The one-off costs identified by EPG providers in their responses related to time spent on redesigning EPGs, consulting with broadcasters, communications

⁵⁵ [Virgin Media O2 response](#).

with end customers and technical implementation.⁵⁶ We noted that some EPG providers considered that the activities they might need to undertake in relation to the relaunch and prominence of BBC Three would be resource intensive. But from the evidence we received, we concluded that these costs were unlikely to be significant.

Summary of stakeholder responses

- 3.90 Only Sky responded to this point.⁵⁷ [36] It stated that the reorganisation required to include BBC Three in its EPG would be more significant and therefore would require more time and resources to implement.⁵⁸

Our view on stakeholder responses

- 3.91 Following our consultation, we have not received any new evidence from EPG providers regarding the quantum of potential one-off costs. We are therefore satisfied that our provisional view should remain unchanged. We recognise that EPG providers will incur one-off costs as the changes will mean EPG providers undertaking additional work and as such this represents a cost to them. However, we continue to be of the view that from the evidence we have received from EPG providers, both in response to our information requests and in response to our consultation, shows that these costs are unlikely to be material to EPG providers. We note Sky's view that the changes are more substantive on this occasion than for our 2019 review, and therefore will require more work. However, we consider that the BBC's proposals to use its slots where available will limit the changes needed.

Overall impact on EPG providers

- 3.92 Overall, in summary, our view is that we do not consider that either the one-off costs or ongoing costs for EPG providers are likely to be significant considered separately or taken together, or that the individual impact on any one EPG provider is likely to be disproportionate.

Other issues

Summary of other issues raised by stakeholders

- 3.93 Virgin Media O2 noted that these proposed changes to the Code come after a recent review of the Code and its subsequent implementation.⁵⁹ [37]
- 3.94 Virgin Media O2 stated that these recent and planned changes "begin to point to a theme of relative fluidity in the placement of PSB channels". They acknowledged that these issues could not be considered in this consultation but stated that we should be mindful of potential future developments.⁶⁰

⁵⁶ See all responses [here](#).

⁵⁷ [Sky response](#).

⁵⁸ [Sky response](#).

⁵⁹ [Organisation 1 response](#), [COBA response](#), [Virgin Media O2 response](#).

⁶⁰ [Virgin Media O2 response](#).

Our view on stakeholder responses

- 3.95 We acknowledge that this change comes shortly after our last review of the Code. Whether and when to make a proposal to launch a new channel is a matter for the BBC. We carried out our last review of the Code based on the information available to us at the time. Having approved the relaunch of BBC Three, the channel is entitled to prominence under the legislation and it is our role to decide what degree of prominence is appropriate. However, we consider that our 18-month implementation period (discussed below) will allow both EPG providers and channels sufficient time to plan for the changes to mitigate any impacts. We also note that the BBC plans to use its own slots where possible in order to minimise disruption.

Decision on appropriate prominence for BBC Three

- 3.96 After considering all of the factors set out above, and having considered all the available evidence and responses to the consultation, our 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 Review, we have placed particular emphasis on the value that public service broadcasting provides to society and to individuals.

Implementation period

Summary of our proposed implementation period

- 3.97 In coming to a decision on the maximum period of time we considered appropriate to give platforms to implement changes as a result of our proposed decision (‘the implementation period’), we took into account the following factors:
- a) We thought that 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.
 - b) We balanced the fact that a longer implementation period may mitigate any one-off costs to commercial broadcasters and to EPG providers with the fact that a longer implementation period could delay the realisation of the benefits for the designated channel of appearing in an appropriately prominent slot.
- 3.98 We drew on the fact that in its PIT,⁶¹ the BBC had committed that where it could rationalise its EPG slots to free up a slot, it would use this to accommodate BBC Three. It said that this would be possible when the BBC takes forward its existing plans to launch HD versions of all the BBC One and BBC Two regional variants. The BBC does not believe it will be able to make these changes by the time of the channel’s launch, but believes that they could be achieved within 18 months of the launch.

⁶¹ [A new BBC Three channel: Public Interest Test](#), p22.

- 3.99 We noted that if the BBC were able to make use of its existing EPG slots to accommodate BBC Three, this would significantly mitigate the potential impacts for commercial broadcasters on the Sky, Virgin Media O2 and Freesat EPGs, which might otherwise be required to move down channels on these EPGs. We therefore considered it important to set a longer implementation period to give sufficient time for the BBC to deliver what it had committed to, as this would mean that channels were only required to move down in Scotland and Wales on Sky and Virgin Media O2, as opposed to across the UK, limiting ongoing costs to broadcasters on these platforms.
- 3.100 Given the above, we proposed that an implementation period of 18 months would be appropriate. We noted in our consultation that 18 months was the maximum period and that we expected that some EPG providers would be able to implement the changes to the EPG Code more quickly than the period allowed for implementation.

Summary of stakeholder responses on our proposed implementation period

- 3.101 The BBC thought that while it was consistent with previous Ofcom decisions, the proposed implementation period of 18 months in this instance was too long.⁶² It argued that it would have a negative impact on younger audiences on platforms that did not implement the prominence requirements until after the BBC's proposed launch, and who therefore might not receive the full benefits of the new BBC Three channel as quickly.
- 3.102 COBA thought that while an 18-month implementation period was sufficient and should be formalised, the BBC should vacate one of its existing slots to house BBC Three during this period, allowing the channel to launch swiftly, but not requiring other channels to relocate until the implementation period came to an end.⁶³
- 3.103 Virgin Media O2 agreed that 18 months was an appropriate period of time for the changes to be made.⁶⁴
- 3.104 Sky thought that since the BBC expects to launch all of its regional variants in HD within 18 months of the relaunch of BBC Three, the requirement to give BBC Three prominence across all nations should not become effective until the BBC had launched HD variants in all the nations and regions.⁶⁵

Our view on stakeholder responses and our decision

- 3.105 Most stakeholders agreed that 18 months was an appropriate amount of time to grant EPG platforms to implement the changes. We note the BBC's arguments on the length of time that we have proposed, but we continue to believe that 18 months is appropriate to allow EPG providers and broadcasters reasonable time to plan for and implement changes, and to secure a smooth transition for audiences; for example, by allowing for technical testing

⁶² [BBC response](#).

⁶³ [COBA response](#).

⁶⁴ [Virgin Media O2 response](#).

⁶⁵ [Sky response](#).

and, where appropriate, advertising changes to audiences. A longer implementation period may also mitigate some one-off costs to commercial broadcasters and EPG providers.

- 3.106 We note that 18 months is the maximum period and we expect that some EPG providers will be able to implement the changes to the EPG Code more quickly than the period allowed for implementation.
- 3.107 In addition, the BBC has stated that it will extend its coverage to regional versions of BBC One HD in England, launching on all platforms by the end of 2022.⁶⁶ The BBC's commitment to rationalise its EPG slots where possible through this HD roll-out of all BBC One and BBC Two regional variants will play an important role in limiting the impact on EPG providers and other broadcasters.⁶⁷ The BBC does not believe it will be able to make these changes by the time the channel is launched,⁶⁸ but believes that they could be achieved within 18 months of the launch. We consider that setting an 18-month implementation period will allow the BBC time to achieve these changes.
- 3.108 Taking the above into account, we are confirming our decision to put in place an implementation period of 18 months from the launch of BBC Three as a linear channel.

⁶⁶ BBC, October 2021, [Press release](#).

⁶⁷ As explained in our Annex, our modelling of the on-going costs on EPG providers and broadcasters is based on the BBC making these rationalisations.

⁶⁸ We understand that the BBC is planning to launch the channel on 1 February 2022.

A1. Changes to the EPG Code

What we have decided: Code update

- A1.1 In order to implement our proposals, we propose to amend paragraph 12 of the current EPG Code to insert a reference to BBC Three as set out below (in underlined and highlighted text) with effect from 31 July 2023:⁶⁹
- A1.2 “12. EPG providers must ensure that the other national channels s (BBC3 and BBC4) is are listed in a slot that is no lower than the twenty fourth slot of the EPG.”

⁶⁹ We have calculated the ‘coming into effect’ date based on the BBC’s proposed launch date of 1 February 2022. If the launch date for BBC Three changes we would change our implementation date accordingly.

A2. Economic analysis

A2.1 This annex has been published separately on the [Ofcom website](#).

A3. Equality impact assessment

- A3.1 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,⁷⁰ and, in Northern Ireland, political opinion and dependents. We refer to groups of people with these protected characteristics as ‘equality groups’.
- A3.2 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.
- A3.3 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 changes to the EPG Code will not have a differential impact on people of different sexes or ethnicities, consumers with protected characteristics in Northern Ireland⁷¹ or disabled consumers, compared to consumers in general.
- A3.4 Our changes to the EPG Code aim to secure appropriate prominence for BBC Three on linear EPGs. In reaching our decisions on appropriate prominence, we have set out the decision 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 decisions.
- A3.5 We have considered the impact that our decisions would have on a range of stakeholders, including citizens and potential audiences. We consider that our amendments to the EPG Code would have an over-arching positive impact on all consumers and citizens who use EPGs.
- A3.6 We consider that our changes to the EPG Code would not have a detrimental impact on any defined equality group. Rather, we consider that our decisions would further the aim of advancing equality of opportunity between different groups in society by securing appropriate prominence for a public service broadcaster.
- A3.7 We recognise that some audiences could be negatively impacted by our changes in the short-term, to the extent that they watch channels which could be moved to a different EPG position, because they would need to adjust to the new order of the channel list on their EPGs. However:

⁷⁰ As defined in the Equality Act 2010.

⁷¹ 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 decisions 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 BBC Three on linear EPGs outweighs the potential short-term negative impact described above.

A4. Legislative framework

- A4.1 In reaching the decision set out in this statement we have taken account of all of our relevant statutory duties, which include the following.
- A4.2 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.
- A4.3 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)).
- A4.4 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)).
- A4.5 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.
- A4.6 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)).
- A4.7 Ofcom's duties relating to the prominence of designated channels within EPGs are set out in section 310 of the Act. These are to draw up, and from time to time review and revise, a code giving guidance as to the practices to be followed in the provision of EPGs ('the EPG Code') (section 310(1)).

- A4.8 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.
- A4.9 The designated public service channels for these purposes are all BBC television services, 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)).⁷²
- A4.10 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.
- A4.11 Section 311A(1) of the Act provides that it is the duty of Ofcom from time to time to prepare and publish a report dealing with:
- a) the provision by EPGs of information about programmes included in public service channels, or provided by means of on-demand programme services by persons who also provide public service channels; and
 - b) the facilities provided by such guides for the selection of, and access to, such programmes.
- A4.12 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. Sections 95(2) and (3) do not affect Ofcom's duty under section 310 of the Act to review and revise the code from time to time.
- A4.13 We have also taken account of other relevant statutory duties in reaching our decisions 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;⁷³
 - b) our duty to secure the availability throughout the UK of a wide range of high quality and diverse television and radio services;⁷⁴

⁷² 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

⁷³ Section 3(1) of the [Communications Act 2003](#).

⁷⁴ Section 3(2)(c) of the [Communications Act 2003](#).

- c) our duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK;⁷⁵ and
- d) our duty to have regard to the different interests of persons in different parts of the UK.⁷⁶

Ofcom's Code on Electronic Programme Guides

- A4.14 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.
- A4.15 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.
- A4.16 Specifically, paragraphs 9 to 15 of [the EPG Code](#) set out the minimum prominence requirements for the designated channels.

⁷⁵ Section 3(4)(a) of the [Communications Act 2003](#).

⁷⁶ Section 3(4)(l) of the [Communications Act 2003](#).

A5. Stakeholder responses

A5.1 The responses to our consultation have been published separately on the [Ofcom website](#).