



Review of rules for prominence of BBC Three

Response to Ofcom's consultation on proposed changes
to the linear EPG Code

October 2021

Executive summary

In the event that Ofcom permits the BBC to relaunch BBC Three as a broadcast TV channel, it would be inappropriate to require EPG providers to list BBC Three within the first 24 EPG slots, and maintain the current prominence requirements for BBC Four, BBC Scotland and BBC Alba, as proposed by Ofcom. Sky considers that to require EPG providers to list BBC Three in the first 24 EPG slots would be disproportionate and unjustified on the basis that:

- The requirement will result in a large number of popular channels being displaced across a range of popular platforms - including up to around 50 channels on the Sky platform - which will adversely impact viewers, EPG providers and broadcasters (many of whom have bought prominent Sky EPG slots on the open market in good faith).
- The BBC is already gifted 4 channels in the first 24 EPG slots and this increases to 5 channels in Scotland.
- The relaunched channel will broadcast only part of the day; all channels in the first 24 EPG slots (other than BBC Four, BBC Alba and BBC Scotland) broadcast 24 hours a day and this is what viewers expect as this section of the EPG experiences high traffic throughout the day.
- The BBC is not reliant on a prominent EPG position to direct viewers to BBC Three; it can include cross-promotions and BBC Three content on BBC One and BBC Two at the top of the EPG.

If BBC Three is to relaunch within the first 24 EPG slots, then disruption to affected broadcasters, EPG providers and viewers must be kept to a minimum. This should include giving 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. 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 has launched HD variants in all nations and regions. Finally, Ofcom should use the launch of the new channel to 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, and the cumulative effect of channel changes.

Ofcom's prominence proposals will adversely impact broadcasters, EPG providers and viewers

As Sky noted in its response to the BBC's Public Interest Test consultation, if EPG providers are required to reorganise their EPGs in order to accommodate BBC Three within the first 24 slots, other channels are at risk of being displaced from their current EPG slots. Viewers and EPG providers also face significant disruption. It has been less than a year since EPG providers were required to accommodate the more prescriptive prominence requirements under Ofcom's revised EPG Code, which resulted in a number of channels being displaced across Sky, Virgin Media and Freeview.

Impact on broadcasters whose channel numbers change

As explained in further detail below, Ofcom's proposal would result in up to around 50 channels being displaced on the Sky EPG. A number of these channels will have acquired their EPG slots on the open market in good faith for significant sums of money. Sky set out in its response to Ofcom's request for information on costs of changes in channel number dated 27 February 2019 [REDACTED], a change of channel number can cause significant disruption and additional cost to broadcasters in marketing their new channel numbers, and the effects of this are felt particularly keenly by smaller, niche and new broadcasters.

Impact on viewers when channels move or channel numbers change

When channels change EPG number (even if relative slot positions remain the same), this causes disruption, confusion and inconvenience for viewers, especially for viewers who are used to searching by channel number [REDACTED]. If EPG providers are required to list BBC Three in the first 24 EPG slots, this will cause disruption to a large number of viewers across a number of popular TV platforms, including Sky, Freeview and Virgin Media.

Impact on EPG providers

In order to accommodate BBC Three within the first 24 EPG slots, EPG providers will have to spend time: (i) considering how to reorganise their EPGs; (ii) communicating any proposed changes to broadcasters; and (iii) implementing the changes, as discussed in more detail in Sky's response to Ofcom's request for information on the costs of changes in channel number dated 20 July 2021 [REDACTED]. Sky explained in that response how accommodating BBC Three would potentially result in a more significant reorganisation of the Sky EPG than the changes made in 2020 in order to comply with the revised EPG Code, and hence demand more time and resources for Sky to implement.

If the relaunch of BBC Three were to result in a significant reorganisation of the Sky EPG (which, as discussed below, is likely in Scotland, but potentially across all the nations), then we would need to consider different ways to communicate this to viewers in order to help mitigate viewer confusion.

¹ Based on Sky data.

Ofcom has underestimated the potential impact on the Sky EPG

We have included in Annex 1 to this response the current channel line-up in the Entertainment and Documentaries number range of the Sky EPG.

Ofcom has correctly identified that there are currently no vacant slots in the first 24 slots in Sky's EPG for Scotland. If Sky were required to list BBC Three in the first 24 slots, then a significant number channels from slot 124 onwards would need to move down by one slot.



Before taking a decision on this, Sky would need to consider what the best option would be from a platform, broadcaster and, most importantly, viewer perspective.



Impact in England and Northern Ireland

In England and Northern Ireland, slot 115 of the Sky EPG is currently occupied in certain regions by the HD version of BBC One. Slot 115 will not become available across England and Northern Ireland until the BBC has made all of its regional variants available in HD, at which point the HD version of BBC One will move up to slot 101 in all regions of England and Northern Ireland, and the SD version will move into the 800 number range, in accordance with Sky's Listing Methodology.²



² See sections 3.5 and 3.6 of Sky's Listing Methodology, available at https://static.skyassets.com/contentstack/assets/bltdc2476c7b6b194dd/bltae0213a4c6eaad3a/5f75d839be6df80f0910abbf/Method_for_Allocating_Listings_in_Sky%E2%80%99s_EPG_-_1_October_2020.pdf.

Ofcom's prominence proposals are disproportionate and unjustified

Prominence is a significant regulatory intervention and should be proportionate to the public value of the channel. [REDACTED]

[REDACTED] Accordingly, there must be a strong justification for gifting one of these slots to a new BBC channel, and for displacing existing channels from slots for which broadcasters may have paid significant sums.

Sky considers that Ofcom's proposal to require EPG providers to list BBC Three in the first 24 EPG slots, and maintain the current prominence requirements for BBC Four, BBC Scotland and BBC Alba, is disproportionate and unjustified, in particular in light of the expected impact on EPG listings (outlined above). The proposal fails to take into account the fact that BBC Three will broadcast only part of the day, as well as the number of BBC channels that already benefit from prominence in the first 24 slots, in particular in Scotland. Also, there are other ways that the BBC could direct viewers to the relaunched channel.

BBC Three will broadcast only part of the day

The proposal fails to take into consideration the fact that the BBC plans for BBC Three to broadcast daily between the hours of 7pm and 4am only. Giving BBC Three prominence in the first 24 EPG slots would not be an efficient use of a valuable EPG slot or provide a good viewer experience outside of these broadcast hours. Sky considers that this would be especially unjustified given that, in the first 24 EPG slots, the BBC already has BBC Four broadcasting only between the hours of 7pm and 4am. All other channels in the first 24 slots (and beyond) of the Sky EPG broadcast 24 hours per day.

It would be inappropriate to gift the BBC an additional prominent slot in Scotland

The proposal fails to take account of the number of BBC services which are already given such prominence in Scotland where the BBC has two additional channels (i.e., BBC Scotland and BBC Alba) in the first 24 slots of the Sky EPG. If Sky were also required to list BBC Three in the first 24 slots in Scotland, then this would mean that the BBC would occupy 6 of the first 24 slots in Scotland (and 9 of the first 24 slots taking into account W, Gold and Dave which are broadcast by the BBC's commercial arm). By contrast, each of ITV, Channel 4 and Channel 5 only have one gifted prominent slot in the first 24 EPG slots, all of which broadcast 24 hours per day.

The BBC could use its existing prominent channels to direct viewers to BBC Three

With its public service privileges (eg, BBC One and BBC Two at the top of the EPG), the BBC has other ways in which it could direct viewers to both the BBC Three linear channel and online content, such as via cross-promotion from BBC One and BBC Two. We also note that since the BBC closed BBC Three as a broadcast TV channel in February 2016, some BBC Three branded content has been broadcast on BBC One and BBC Two. As Channel 4 noted in its response to BBC's Public Interest Test consultation, as the biggest channel in the BBC's portfolio, BBC One in particular

*"offers the biggest opportunity to reach the 16-34 audience at scale with [BBC Three] content."*³ The BBC could also consider placing BBC Three content behind the red button on BBC One or BBC Two.

³ Page 8, available at <http://downloads.bbc.co.uk/aboutthebbc/reports/consultation/bbcthreepit/channel-4.pdf>.

Sky's proposal for a more proportionate approach

If BBC Three is to relaunch within the first 24 EPG slots, then the disruption to affected broadcasters, viewers and EPG providers must be kept to a minimum. Sky proposes the following measures to ensure a more proportionate outcome for stakeholders.

Prominence requirement should depend on BBC launching HD variants in all nations

In order to avoid a large number of channels having to change channel number in England and Northern Ireland, a requirement for EPG providers to list BBC Three within the first 24 slots should not come into force until the BBC has launched all of its regional variants in HD. Sky would then have the option of using slot 115 in England and Northern Ireland to avoid displacing other channels.

Ofcom should review the level of prominence afforded to BBC Four, BBC Scotland and BBC Alba

Sky considers that the BBC's proposal to relaunch BBC Three should trigger a review of the level of prominence afforded to BBC Four, BBC Scotland and BBC Alba in Scotland. The Communications Act 2003 requires Ofcom to review and revise the EPG Code from time to time,⁴ and whilst Ofcom undertook a review relatively recently (in 2018/2019), Sky submits the launch of an additional BBC channel should trigger a review of the level of prominence afforded across the BBC's portfolio, in particular in Scotland where the BBC is proposing to have 6 channels in the first 24 slots. The prominence decisions taken by Ofcom in 2019 were made on the basis of a different level of impact to that which prevails. Also, EPG prominence is a zero-sum game i.e., it is not possible to give one channel prominence without displacing others. It is therefore important that Ofcom takes a holistic approach to assessing the level of appropriate prominence given to any particular channel, having regard to the cumulative effect of BBC channel changes.

Sky also notes that the BBC is planning to evolve BBC Four into a channel dedicated to showing repeats from the BBC's archives. We assume that much of this content will also be available on the BBC iPlayer. Sky considers that this change to BBC Four should trigger a review of the level of prominence afforded to BBC Four across all nations.

Any requirement for EPG providers to allocate BBC Three a top 24 slot should not come into force until completion by Ofcom of its wider prominence review. Alternatively, Ofcom should allow EPG providers the flexibility to move one of the BBC's existing channels out of the first 24 slots until such time as a vacant slot becomes available in the first 24 slots, e.g., as a result of a closure of an existing BBC or third party channel. This would help ensure that the impact on EPG providers, other channels and, most importantly, viewers, could be kept to a minimum. Sky suggests that BBC Alba would be the most appropriate channel to move out of the first 24 slots, given its very low share of viewing and the fact that Sky would be able to list BBC Alba at slot 141 which is vacant only in Scotland, and which would continue to afford BBC Alba with a good level of prominence. Ultimately, however, this would be a decision for Ofcom and/or the BBC.

⁴ Section 310 of the Communications Act 2003.

A review mechanism to ensure the relaunched channel reaches its target audience

Consistent with Ofcom's outcomes-based proposals for PSBs more broadly, the BBC should be required to demonstrate that the relaunched channel has reached its target audience within a specific time period (e.g., 2 years following the relaunch). If the relaunched channel does not reach its target audience within that period, then the prominence requirement should be removed. Sky considers that Ofcom should pre-emptively commit to initiate such a review.

The BBC should also be as transparent as possible on its plans for BBC Four (or indeed any of its other linear channels). If the BBC is contemplating closing this channel at any point prior to the implementation of new prominence requirements for BBC Three, then the BBC should make this known as soon as possible, in order to avoid any unnecessary disruption to EPGs.

Sky

October 2021

Annex – Current channel line-up in Entertainment and Documentaries number range

| | England (London) | Scotland | Wales (Cardiff) | NI |
|------------|-----------------------------|------------------|----------------------------|------------------|
| 101 | BBC One SD | BBC One HD | BBC One HD | BBC One HD |
| 102 | BBC Two HD | BBC Two HD | BBC Two HD | BBC Two NI HD |
| 103 | ITV HD | STV HD | ITV HD | UTV HD |
| 104 | Channel 4 HD | Channel 4 HD | S4C HD | Channel 4 HD |
| 105 | Channel 5 HD | Channel 5 HD | Channel 5 HD | Channel 5 HD |
| 106 | Sky Showcase HD | Sky Showcase HD | Sky Showcase HD | Sky Showcase HD |
| 107 | Sky Witness HD | Sky Witness HD | Sky Witness HD | Sky Witness HD |
| 108 | Sky Atlantic HD | Sky Atlantic HD | Channel 4 | Sky Atlantic HD |
| 109 | W HD | W HD | Sky Atlantic | W HD |
| 110 | GOLD HD | GOLD HD | W HD | GOLD HD |
| 111 | Dave HD | Dave HD | GOLD HD | Dave HD |
| 112 | ComedyCentral HD | ComedyCentral HD | Dave HD | ComedyCentral HD |
| 113 | Sky Max HD | Sky Max HD | ComedyCentral HD | Sky Max HD |
| 114 | Sky Comedy HD | Sky Comedy HD | Sky Max HD | Sky Comedy HD |
| 115 | BBC One HD | BBC Scotland | Sky Comedy HD | BBC Two HD |
| 116 | BBC Four HD | BBC Four HD | BBC Four HD* | BBC Four HD |
| 117 | London Live | BBC ALBA | | |
| 118 | ITV2 HD | ITV2 HD | ITV2 HD | ITV2 HD |
| 119 | ITV3 HD | ITV3 HD | ITV3 HD | ITV3 HD |
| 120 | ITV4 HD | ITV4 HD | ITV4 HD | ITV4 HD |
| 121 | Sky Docs HD | Sky Docs HD | Sky Docs HD | Sky Docs HD |
| 122 | Sky Crime HD | Sky Crime HD | Sky Crime HD | Sky Crime HD |
| 123 | Sky History HD | Sky History HD | Sky History HD | Sky History HD |
| 124 | Sky Nature HD | Sky Nature HD | Sky Nature HD | Sky Nature HD |
| 125 | Discovery HD | Discovery HD | Discovery HD | Discovery HD |
| 126 | MTV HD | MTV HD | MTV HD | MTV HD |
| 127 | ComedyXtra | ComedyXtra | ComedyXtra | ComedyXtra |
| 128 | 5STAR | 5STAR | 5STAR | 5STAR |
| 129 | Nat Geo HD | Nat Geo HD | Nat Geo HD | Nat Geo HD |
| 130 | Sky Arts HD | Sky Arts HD | Sky Arts HD | Sky Arts HD |
| 131 | ITVBe | ITVBe | ITVBe | ITVBe |
| 132 | alibi HD | alibi HD | alibi HD | alibi HD |
| 133 | TLC HD | TLC HD | TLC HD | TLC HD |
| 134 | S4C HD | S4C HD | Made in Cardiff | S4C HD |
| 135 | E4 HD | E4 HD | E4 HD | E4 HD |
| 136 | More4 HD | More4 HD | More4 HD | More4 HD |
| 137 | 4seven | 4seven | 4seven | 4seven |
| 138 | Channel 4 HD* | Channel 4 HD* | Channel 4 HD* | Channel 4 HD* |
| 139 | 4Music | 4Music | 4Music | 4Music |
| 140 | Food Network | Food Network | Food Network | Food Network |
| 141 | 5USA | | 5USA | 5USA |
| 142 | Really | Really | Really | Really |
| 143 | Drama | Drama | Drama | Drama |
| 144 | QUEST HD | QUEST HD | QUEST HD | QUEST HD |
| 145 | Sky Replay | Sky Replay | Sky Replay | Sky Replay |
| 146 | CBS Reality | CBS Reality | CBS Reality | CBS Reality |
| 147 | CBS Drama | CBS Drama | CBS Drama | CBS Drama |
| 148 | CBS Justice | CBS Justice | CBS Justice | CBS Justice |
| 149 | Quest Red | Quest Red | Quest Red | Quest Red |
| 150 | Paramount | Paramount | Paramount | Paramount |

| | England (London) | Scotland | Wales (Cardiff) | NI |
|-----|-----------------------------|-----------------|----------------------------|-----------------|
| 151 | E! HD | E! HD | E! HD | E! HD |
| 152 | SYFY HD | SYFY HD | SYFY HD | SYFY HD |
| 153 | 5SELECT | 5SELECT | 5SELECT | 5SELECT |
| 154 | ID | ID | ID | ID |
| 155 | YESTERDAY | YESTERDAY | YESTERDAY | YESTERDAY |
| 156 | Crime+Inv HD | Crime+Inv HD | Crime+Inv HD | Crime+Inv HD |
| 157 | GREAT! tv | GREAT! tv | GREAT! tv | GREAT! tv |
| 158 | HGTV | HGTV | HGTV | HGTV |
| 159 | Pick SD | Pick SD | Pick SD | Pick SD |
| 160 | Challenge | Challenge | Challenge | Challenge |
| 161 | Disc.Turbo | Disc.Turbo | Disc.Turbo | RTÉ One |
| 162 | AnimalPlnt SD | AnimalPlnt SD | AnimalPlnt SD | RTÉ Two HD |
| 163 | Sky History2 HD | Sky History2 HD | Sky History2 | TG4 |
| 164 | Blaze | Blaze | Blaze | Blaze |
| 165 | Nat Geo Wild HD | Nat Geo Wild HD | Nat Geo Wild HD | Nat Geo Wild HD |
| 166 | Eden | Eden | Eden | Eden |
| 167 | Disc. Science | Disc. Science | Disc. Science | Disc. Science |
| 168 | - | - | - | Sky History2 HD |
| 169 | BBC ALBA | 5USA | BBC ALBA | BBC Alba |
| 170 | Together | Together | Together | Together |
| 171 | Smithsonian | Smithsonian | Smithsonian | Smithsonian |
| 172 | DMAX | DMAX | DMAX | DMAX |
| 173 | | | | |
| 174 | PBS America | PBS America | PBS America | PBS America |
| 175 | Live 360 | Live 360 | Live 360 | Live 360 |
| 176 | ITV HD | - | - | - |
| 177 | Disc.History | Disc.History | Disc.History | Disc.History |
| 178 | - | - | - | Animal Planet |
| 179 | Court TV | Court TV | Court TV | Court TV |
| 180 | | | | |
| 181 | Forces TV | Forces TV | Forces TV | Forces TV |
| 182 | Channel 7 | Channel 7 | Channel 7 | Channel 7 |
| 183 | | | | |
| 184 | Hi-Impact TV | Hi-Impact TV | Hi-Impact TV | Hi-Impact TV |
| 185 | Travel XP | Travel XP | Travel XP | Travel XP |
| 186 | | | | |
| 187 | That's TV Gold | That's TV Gold | That's TV Gold | That's TV Gold |
| 188 | - | - | - | Disc.Turbo |
| 189 | | | | |
| 190 | NTD | NTD | NTD | NTD |
| 191 | Showcase | Showcase | Showcase | Showcase |
| 192 | | | | |
| 193 | Vox Africa | Vox Africa | Vox Africa | Vox Africa |
| 194 | BBC Scotland | | BBC Scotland | BBC Scotland |
| 195 | Local TV | Local TV | Local TV | Local TV |