



## **Response to DCMS consultation on Decriminalising TV Licence Fee Evasion**

**March 2020**

### **Introduction**

1. TAC (Teledwyr Annibynnol Cymru) is the membership association of independent television production companies in Wales. There are around 50 companies in the sector, ranging from sole traders to some of the leading players in the UK television production industry. They produce content for the BBC, ITV, Channel 4, Channel 5 and Sky as well as other cable and satellite channels. They are also involved in numerous international co-productions. They produce almost all of the original TV and online media content for the Welsh-language broadcaster S4C, and a variety of radio productions for UK-wide networks.

### **The TVLF and its importance to PSB and the TV production sector in Wales**

2. Production companies in Wales have a longstanding passion and commitment to public service broadcasting. TAC welcomes the investment in public service broadcasting in the UK, provided via the TV Licence Fee (TVLF) and which funds a wide variety of high-quality public service programming for viewers around the UK in the nations and regions.
3. TVLF funding either wholly or partly funds two services, the BBC and S4C. The contributions of the BBC and S4C to British cultural life and to the economy cannot be overstated. At the launch of this consultation, then DCMS Secretary of State Baroness Morgan stated that:

“Globally, the BBC is seen as a beacon of British values. It is one of the most recognised and trusted brands, reaching over 400 million people around the world every week. And at home, the BBC can take risks that may not be possible for other, more commercial broadcasters. In doing so, it can support the commercial sector with a pipeline of new talent and creativity, and open our eyes to issues and experiences we may not otherwise see.”<sup>1</sup>

4. And in its response to the Independent Review of S4C in 2018, the DCMS stated that:

“S4C is the world’s only Welsh-language broadcaster. In fulfilling this role, and fulfilling it well, S4C has a unique cultural and social value, as well as making a vital economic impact.”<sup>2</sup>

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<sup>1</sup> Baroness Morgan, Secretary of State for Digital, Culture, Media and Sport speech at Policy Exchange on the future of UK media and broadcasting, 5 Feb 2020

<sup>2</sup> Introduction by Rt Hon Matt Hancock MP, Secretary of State for Digital, Culture, Media & Sport, to Government response to the S4C independent review: 'Building an S4C for the future'. DCMS, March 2018, p1

5. As the DCMS decriminalisation of Licence Fee evasion consultation document (henceforth referred to as 'the consultation document') points out, the Perry Review calculated the cost of decriminalisation to be £156m due to evasion, plus the additional administration cost of around £45m. Therefore, decriminalising the TVLF could divert around £200m of Licence Fee payers' money away from public service content. This would have a significant impact on the amount of PSB produced whilst not constituting any kind of saving for the Licence Fee payer.
6. It would also have a significant effect on the TV production sector. Production companies are particularly involved in producing TVLF-funded content, for BBC Wales, BBC Radio Cymru and BBC UK-wide TV networks.
7. TAC members also make the vast majority of commissioned content for S4C, which since 2010 has received most of its funding from the TVLF, and will receive all its public funding from that source from 2022 onwards. TAC notes that the estimated £200m cost of decriminalisation represents a sum over three times that of S4C's annual spend on programmes, which in 2018-19 was £63.47m.<sup>3</sup>
8. Following government public spending changes made in 2010, the TVLF has provided c£75m annually to S4C, constituting the majority of its public funding. From 2022 onwards, all of S4C's public funding will come from the TVLF, with the current c£6.7m grant from DCMS coming to an end. At the appropriate time, TAC will be arguing that if the Government-supported recommendations of the 2018 Review of S4C are to be effectively carried out, S4C's overall level of public funding will need to be maintained at its current level at the very least, and tied to inflation. This will inevitably mean a greater contribution from the TVLF.
9. The continued funding of services such as Radio Cymru (see 11) and S4C is especially important given the need to meet the Welsh Government's target of one million Welsh speakers by 2050, and to encourage and increase the renewed interest in diverse languages and cultures in the UK.
10. While the media landscape is changing with the increasing prevalence of SVOD and other TV services, we believe there is still a place for UK publicly-funded content. Many production companies in Wales are still mainly commissioned by S4C and the BBC, whilst continuing to look to grow commissions with other broadcasters. The c. £1.6bn of TVLF money which is invested in original production would not, we believe, be replaced by commissioning investment from elsewhere. The commercial TV services greatly welcome the UK's public investment in PSBs and cite it as a major reason for engaging with the UK's production sector, as demonstrated by comments made by a Netflix executive at a conference on UK broadcasting in November last year:

"... we are still just a small part of a much bigger ecosystem. UK production sector revenues rose to just over £3bn in 2018, up 10% on the previous year. On-demand services only account for 14% of that primary commissioning income, and the largest contribution continues to be from the PSBs who, over the past decade, have consistently accounted for more than 80% of all primary UK commissioning spend. As well as being global leaders in a wide range of programming areas, the PSBs continue to play a vital role in maintaining and growing the creatively and commercially

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<sup>3</sup> S4C Annual Report 2018-19, p119

dynamic production landscape here, one of the many reasons we've chosen to make the UK our home."<sup>4</sup>

11. The BBC does not just fund television content, of course. It also provides PSB radio services (for some of which our members make programmes), trains journalists and funds orchestras among many other activities which strengthen and grow cultural life. This includes support for the Welsh language in the shape of ten hours per week of content for S4C, Radio Cymru and Radio Cymru 2, the Welsh-language stations, and a news and magazine online service, Cymru Fyw.
12. The importance of a well-funded, comprehensive news service across all platforms has come to the fore in recent weeks, with the BBC at the forefront of providing information, advice and comfort to the public during the coronavirus Covid-19 outbreak. We note that the public's trust in the BBC has increased in this period, with *Campaign* magazine reporting on research showing that "the BBC has become the most trusted news brand on coronavirus, with 64% of respondents selecting it as a reliable source of information from a list of media brands."<sup>5</sup> The article also states that in contrast, only 29% said Sky was their most trusted news source.
13. TAC notes that the Voice of the Listener & Viewer has recently produced figures which it says show a significant fall in real terms of income for PSB from the TVLF:

"Once inflation is taken into account, 2019/20 net public funding is equivalent to £2.48bn in 2010 money – just 70% of the 2010/11 budget during a time when production and distribution costs have risen considerably."<sup>6</sup>
14. We note that in its recently published five-year review of PSB in the UK, Ofcom states clearly that UK PSB remains important:

"Our research shows that the purposes and objectives of PSB have remained important to audiences. Viewers and listeners value programmes that inform our understanding of the world and that show different aspects of UK life and culture. The PSB channels are still distinctive in the amount and range of first-run, original UK programmes they broadcast. Collectively, they provide audiences with approximately 32,000 hours of new UK content in a wide range of subjects, including news, current affairs, drama and children's programmes. This far outweighs what is available on other commercial broadcast channels and the global streaming services. In addition to being valued by audiences, new UK programmes are also vital in supporting a thriving UK media industry."<sup>7</sup>
15. Our interest in this consultation is therefore from the perspective of examining what perceived gains there are to decriminalising TVLF evasion as opposed to the potential loss of important PSB funding.

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<sup>4</sup> Benjamin King, Director, Public Policy, UK and Ireland, Netflix, speaking at Westminster Media Forum policy conference: 'The future of UK broadcasting - content production, market dynamics, and priorities for policy and regulation', 26 November 2019. Official transcript, p23

<sup>5</sup> BBC, Sky and Guardian most-trusted news brands, thanks to coronavirus coverage. Campaign, 20 Mar 2020. <https://www.campaignlive.co.uk/article/bbc-sky-guardian-most-trusted-news-brands-thanks-coronavirus-coverage/1677837>. Accessed 23 March 2020

<sup>6</sup> Briefing Note. VLV, March 2020, p1

<sup>7</sup> Small Screen: Big Debate – a five-year review of Public Service Broadcasting (2014-18). Ofcom, Feb 2020, p5

16. Our position overall is that the correct time to look at how and to what degree the BBC is funded should be a question for its next Charter Review, which will take place in the middle of this decade. In the meantime, given the large amount of responsibilities placed on the BBC under its public purposes, it does not seem sensible to take any action which may reduce the funding available for it to carry out those purposes and responsibilities which were agreed at the time of the last Charter Review.

### Responses to consultation questions

#### **1. Should TV licence evasion (the use or installation of a television receiver without a TV licence) no longer be a criminal offence?**

- We do not consider that TVLF evasion should cease to be a criminal offence.

#### **2. If, alternatively, you consider that TV licence evasion should remain a criminal offence, why is this the case?**

- As stated in our introduction, the TV production sector in Wales would, along with the UK's other creative industries, stand to lose important public investment if there was, as predicted, a c. £200m cost to decriminalisation.
- TAC's members are creative content producers whose passion is engaging with people in our society and bringing their talents, stories and perspectives to a wider audience. Our members do not therefore have a desire to see people go to prison. However, they also recognise the rule of law and the need for that law to be enforced. In that context, we note the consultation document's statement that imprisonment only occurs "if a person wilfully refuses to pay the fine despite repeated warnings" and "is only pursued as a matter of last resort". We therefore believe the current regime is proportionate.
- We believe the current system remains acceptable given the judgement of the comprehensive Perry Review of 2015, which looked into this issue and concluded the following: "On the basis of the evidence available to the Review, it is concluded that many of the concerns expressed in relation to the criminal offence provide no compelling basis for change."<sup>8</sup>
- We acknowledge that part of the stated rationale for reviewing this issue is that, under the BBC's current plans, some over-75s will no longer be in receipt of a free TV Licence, and will therefore potentially be vulnerable to prosecution. TAC would argue that given that the BBC is basing its policy on the ability to pay, by tying it to the Government's own Pension credit, our expectation is that the cost would be able to be met by those over 75 who did not qualify for the Pension Credit.
- In terms of other potentially vulnerable groups, the consultation states that "The Perry Review also noted that the criminal sanction *was seen as* particularly disproportionate for some social groups, including women and those on low incomes." (Our emphasis added). TAC notes that while it acknowledged these perceptions, the Perry Review nevertheless stated that "we have

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<sup>8</sup> David Perry QC. TV Licence Fee Enforcement Review. DCMS, July 2015, p6

found no evidence to suggest that enforcement activity is unfairly and intentionally targeted at women, or any other group”<sup>9</sup>, and it ventured to suggest that this may be, among other possible factors, a result of the fact that women are more likely to take responsibility for the payment of bills in many households.

- Under the current system, imprisonment of non-TVLF payers is a consequence of persistent non-payment of the fine imposed for non-payment of the TVLF. Decriminalising the TVLF in itself would not prevent anyone from going to prison as an indirect result of non-payment. Council Tax has been cited as an example of a non-payment offence which is counted as a civil offence. Since its inception, many people have gone to prison as a consequence of having not paid Council Tax.
- The alternative does not seem to be any more proportionate, and in fact, potentially less so. As the consultation document states, “the BBC would need to set the financial penalty for evasion at a level of £500; significantly higher than the current average fine given for the offence”, and in addition that “depending on the type of civil enforcement scheme used, the unpaid debt may be entered onto the Register of Fines, Orders and Judgements, which could have an impact on an individual's ability to obtain credit. It is also likely to lead to the use of enforcement agents (bailiffs) to enforce the debt, which may cause additional anxiety for individuals who may already be vulnerable.”
- We note the consultation document’s statement that only five people went to prison for non-payment of TVLF-related fines in 2018 and furthermore that “it is possible that these five cases would have involved other criminal offences that were dealt with at the same time.”
- Furthermore, given the Perry Review’s statement that court cases related to TVLF non-payment “are dealt with efficiently and take up only 0.3% of court time”,<sup>10</sup> it is also not clear how decriminalisation would save a significant amount of court time.
- We do accept that work may need to be done to improve the way TV Licensing communicates with non-payers, and clearly this is something the BBC needs to review. However, we are not clear as to how decriminalisation of TVLF evasion would address this issue. This equally applies to the point raised in the document regarding confusion around the circumstances under which a TV Licence is required for viewing TV services.

**3. If you have a view, what alternative enforcement scheme models do you consider to be most appropriate? Why?**

- We do not have a view regarding this question.

**4. What steps could the Government take to mitigate any impacts that may result from decriminalisation of TV licence evasion?**

- The consultation document notes that: “Moving from a criminal to a civil system of enforcement could create an impression that non-payment of the licence fee is now regarded as less

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<sup>9</sup> David Perry QC. TV Licence Fee Enforcement Review. DCMS, July 2015, p38

<sup>10</sup> David Perry QC. TV Licence Fee Enforcement Review. DCMS, July 2015, p84

important.” We would entirely concur with this statement, not least as some sections of the print media are already portraying the issue in these terms.

- We believe the BBC is correct to assert that decriminalisation could well lead to a significant increase in non-payment, and ultimately to lost income for the BBC to spend on its PSB services, which are of benefit to the whole of the British public, not least during the coronavirus outbreak. In the longer term the BBC has a highly significant role to play in portraying a positive image of the UK to the world, which will be particularly important for the foreseeable future.
- Therefore, if the TVLF was decriminalised, we would like to see the UK Government commit to provide a top-up by directly public funding the amount equivalent to the additional cost of TVLF evasion, for example the estimated £200m.

**5. Please provide any evidence you consider appropriate in answering these questions and any other information that you believe the Government should consider, especially where there is an impact on those with protected characteristics or the most vulnerable.**

- In TAC’s opinion, the Perry Review represents a thorough examination of the issues and evidence concerning this question, and we would cite it as the definitive work on this subject in terms of the substantial evidence it provides and resulting conclusions drawn.