



Response to Ofcom consultation on BBC Operating Licence

September 2022

About TAC

1. TAC (Teledwyr Annibynnol Cymru) represents the independent television production sector in Wales. Our sector is a substantial component of the creative industries, in Wales and in the UK overall, with Cardiff alone having the third largest film and TV cluster in the UK¹. This provides economic, social and cultural benefits through supplying creative content. There are around 50 companies in the sector, ranging from sole traders to some of the leading players in the UK production industry. They produce content for the BBC, ITV, Channel 4, Channel 5 and Sky as well as other commercial broadcasters and platforms. Our member companies produce almost all the original television and online media content for Welsh-language broadcaster S4C, and a variety of radio productions for the BBC.
2. We recently welcomed the opportunity to provide some thoughts on the BBC's governance and regulation at the mid-term point of the current Charter period. Where relevant we have included some of our thoughts within this response also.
3. Wales as a nation is becoming increasingly involved with discussions over broadcasting regulation, and the Welsh Government - as set out in the Co-operation Agreement between the Welsh Government and Plaid Cymru - is in the process of setting up a Shadow Broadcasting and Communications Authority for Wales. This authority, while not having any statutory powers, will nevertheless become a new player in the landscape in terms of engagement with broadcasters and regulators. TAC will be engaged in discussions in this area and the importance of PSB's in Wales. We were also pleased to see the announcement in September 2021 of a Memorandum of Understanding between the Welsh Government agency Creative Wales and the BBC, with a firm commitment to a number of commissions in several genres to be commissioned annually over the period 2022-24².

¹ <https://www.cardiff.ac.uk/news/view/2510538-cardiff-has-third-largest-film-and-tv-cluster-in-uk,-study-shows>

² <https://www.bbc.co.uk/mediacentre/2021/bbc-creative-wales-partnership>. Accessed 9 September 2021.

Question 1: What are stakeholder views on how Ofcom should assess and measure BBC performance?

4. We agree with Ofcom that the BBC's online services should be incorporated within the Operating Licence. However it is important to ensure that in the process the degree of flexibility added to the Operating Licence is not reducing the BBC's effectiveness in terms of remaining sufficiently distinctive from other media services.

Question 2: Do you agree with the proposals for Public Purpose 1? If not, please explain why.

5. Our sector is precluded from producing news content for the BBC and therefore we do not offer views on these proposals.

Question 3: Do you agree with the proposals for Public Purpose 2? If not, please explain why.

6. We note Ofcom's proposal to move requirements in respect of genres, documentaries, and BBC Radio 3 music content from Public Purpose 2 into Public Purpose 3. We have no objection to this per se, however as we set out below, there needs to be a retention of quota requirements around certain genres.

Question 4: Do you agree with the proposals for Public Purpose 3? If not, please explain why.

7. In general we would like to see Ofcom retain and where necessary reinstate requirements for production in specific genres. For example we recently responded to the consultation on hours of original children's TV production and while we were disappointed that Ofcom approved the BBC's proposal, we do think it points to the usefulness of having specific quotas for key genres. This helps maintain the BBC's distinctiveness and provides firm quantifiable metrics against which to measure the BBC's performance.
8. While we recognise that Ofcom wishes to move towards a system whereby the BBC sets out more of its own targets, our concern is that these can be steadily reduced over time without necessarily triggering action from Ofcom.

Question 5: Do you agree with our preliminary view on the BBC's request to change Operating Licence conditions 2.21 and 2.32 for BBC Four, including our proposal to remove BBC Four's peak original productions quota and set the 'all hours' quota at 65% instead of 60% as requested by the BBC? If not, please explain why.

9. While we do welcome that Ofcom's new proposed lower level is at 65% rather than the 60% as requested by the BBC, we are overall concerned at the proposal for

reducing original hours on BBC Four. BBC Four remains a service which provides distinctive content which is hard to find elsewhere and is therefore very much a public service. It provides an alternative proposition for producers pitching ideas regarding relatively niche subjects which nevertheless, for some Licence Fee Payers, will hold deep interest. Such interest may not always be best served by the type of “new arts and music series of scale”³ which Ofcom refers to in terms of the BBC’s strategy for arts and music on BBC Two.

Question 6: Do you agree with the proposals for Public Purpose 4? If not, please explain why.

10. Representation of the UK nations is of course an important part of the BBC’s fourth public purpose:

“To reflect, represent and serve the diverse communities of all of the United Kingdom’s nations and regions and, in doing so, support the creative economy across the United Kingdom:...

“...ensure that it provides output and services that meet the needs of the United Kingdom’s nations, regions and communities ...”

“In commissioning and delivering output the BBC should invest in the creative economies of each of the nations and contribute to their development.”⁴

11. There are also of course specific additional requirements on diversity introduced into the Agreement in May this year. We believe they are not necessarily being applied to Ofcom’s thinking on its proposed changes to the BBC Operating Licence, as we discuss below.
12. We agree with Ofcom that the scope of the Operating Licence needs to be expanded to encompass iPlayer and BBC Sounds. These services are increasingly central to the BBC’s content commissioning and distribution strategy and therefore need to have specific oversight involving dedicated requirements and measures.
13. Returning to the BBC’s need to meet its fourth public purpose, while we do not think it is a substitute for a strong quota regime, we do agree with Ofcom that the BBC’s Annual Plan should be more metrics-based and more clearly laid out, with more specific commitments and reporting on how the BBC is delivering against them, as the consultation suggests.

³ [Modernising the BBC’s Operating Licence – consultation. Ofcom, July 2022, p60](#)

⁴ [Broadcasting: Copy of Royal Charter for the continuance of the British Broadcasting Corporation. DCMS Dec 2016, 6\(4\)](#)

Quotas for opt-out services in Wales

14. There is concern amongst our membership at the fact that Ofcom is proposing removing some programme quotas, allowing the BBC to set more of its own commitments in some key areas. TAC members have particular concerns regarding Ofcom's proposal to drop the quotas for a specified minimum amount of hours of non-news content on the BBC's nations opt-out TV services.
15. Currently the Operating Licence requires that in every financial year, BBC One Wales is required to broadcast 65 hours of non-news content specific to Wales, also that BBC Two Wales broadcast 175 hours of non-news content specific to Wales⁵. Ofcom is now proposing to remove these quotas in favour of a very broad requirement that BBC One Wales and BBC Two Wales each:

*"provides programmes other than news and current affairs including some First-Run UK Originations."*⁶

16. In tandem with this, Ofcom plans to reduce the amount of hours required to be produced 'of national or regional interest' for BBC One and Two taken together, from the current requirement of 6,300 hours⁷ to 5,909 hours⁸.
17. Given that the removal of a quota would normally be expected to result in a fall, rather than a rise, in the amount of any specified programming, it is reasonable to assume that this change would reduce the amount of programmes reflecting Welsh life and culture. We have, for example, already seen coverage of the Royal Welsh Show mainly being covered as news rather than receive the level of coverage it did previously.
18. Failing to adequately cover one of the most important annual events in the Welsh calendar is in our view contradictory to ensuring that the BBC adheres fully to its fourth public purpose in terms of reflecting the UK's diverse communities. We would argue that removing the opt-out non-news quotas can only lead to more reduction in such programming.
19. Ofcom's proposals to relaxing quotas are therefore leading to concerns at the implications for ensuring the BBC's purposes are met and the core area of diversity in programmes and programme-making is addressed.

⁵ [Operating Licence for the BBC's UK Public Services. Ofcom, October 2017, p31, para 2.85.2 and 2.87](#)

⁶ [Operating Licence for the BBC's UK Public Services: Draft for consultation. Ofcom, July 2022, p27 para 4.55.2 and para 4.56](#)

⁷ [Operating Licence for the BBC's UK Public Services. Ofcom, October 2017, p31, para 2.67.1](#)

⁸ [Operating Licence for the BBC's UK Public Services: Draft for consultation. Ofcom, July 2022, p27 para 4.31.1](#)

20. Ofcom’s last Annual report on the BBC stated that the BBC’s approval rating in Wales had grown, with its approval rating now standing at 57% in Wales⁹, but noted that:

*“Previously we have highlighted that positive perceptions of the range of BBC content representing Wales were significantly below the UK average. This year, we found that all representation and portrayal metrics for Wales are in line with the UK averages. This is something we will keep under review to understand whether it reflects a longer-term improvement.”*¹⁰

21. Ofcom is correct not to assume that this upward trend in audience approval in Wales will be sustained. In that context, and given 57% is not an overwhelmingly significant endorsement of the BBC’s current performance in this area, our view is that relaxing rules on the non-news hours on the opt-out services ought not to be pursued by Ofcom, at least not until such time as several years’ data has been gathered which shows this improved performance is sustained. Even then, this improved performance could in theory be attributed at least in part to the provision of content on the opt-out services and this ought to be measured if possible.
22. While we accept that Ofcom is retaining quotas to feature content of national and regional interest across the BBC’s UK-wide networks, albeit at a reduced level, we question whether the content made for the UK-wide networks can address more localised issues and topics in a way that will sufficiently cater for audiences in the nations. Such content would in some cases not be seen suitable for the audiences of UK-wide BBC networks, whereas it would work for audiences of the opt-out services.
23. The BBC Director General has previously spoken of wanting to make fewer documentaries¹¹ and the BBC’s recently announced ‘Digital First’¹² strategy raises concerns about whether the BBC will veer towards more programming of longer-term relevance to audiences. This may on the surface seem like a plus, meaning BBC shows have larger audiences over time. However this would mean that programming on important matters of the day may be eschewed by commissioners, as inevitably these will have a shorter iPlayer shelf-life and are therefore less likely to be commissioned, despite such content’s importance to the BBC’s overall public service output.
24. We understand that Ofcom will expect the BBC to explain any significant falls in content provision where quotas have been relaxed, nevertheless the lack of any specified level of reduction at which Ofcom would automatically step in effectively

⁹ [Annual report on the BBC 2020–21 Ofcom, November 2021, p54](#)

¹⁰ [Annual report on the BBC 2020–21 Ofcom, November 2021, p55](#)

¹¹ <https://www.bbc.co.uk/mediacentre/speeches/2020/tim-davie-intro-speech>

¹² <https://www.bbc.co.uk/mediacentre/speeches/2022/digital-first-bbc-director-general-tim-davie>

makes such matters a judgement call by Ofcom, which arguably complicates rather than simplifies the regulatory process. The more subjective a decision appears to be, the more it leaves the way open to a greater degree of questioning and potential criticism from stakeholders.

Implications for the TV production sector in Wales

25. Removing these opt-out non-news quotas would also reduce the opportunities for Welsh independent producers in the nation. Our sector is already facing the intended change of ownership of Channel 4 which will, as currently outlined by the UK Government, result in the removal of its publisher-broadcaster model, resulting in as much as a 75% reduction in the amount of programmes which Channel 4 commissions from the independent sector. In addition the Channel 4 privatisation will in all likelihood lead to a reduction in Channel 4's voluntary commitments to 50% production spend outside London, potentially affecting its '4All the UK' strategy which has increased commissioning in the Nations and Regions and set up several hubs in centres including Bristol and Leeds. These latter two hubs, especially Bristol, have been of benefit in increasing interaction between Channel 4 commissioning executives and producers in Wales.
26. Elsewhere, S4C, which sources nearly all of its commissioned content from the independent production sector, continues to face challenges as it deals with the impact of a 36% real-terms cut in public funding since 2010. While S4C was awarded increased Licence Fee funding in the most recent TV Licence Fee negotiations, this money is earmarked for purposes other than increasing the overall content budget for its linear TV service – the additional funding is instead being used to increase S4C's presence across all platforms and creative additional digital content outside of commissioning the independent sector. Therefore BBC commissioning remains extremely important in ensuring that a significant amount of UK-originated programmes continue to be made in Wales across all genres.
27. In conclusion, to remove the quotas for non-news programmes for the opt-out services would add to the above reductions in opportunities for producers in Wales as well as reducing the amount of content portraying the people of Wales, its communities and culture. We therefore believe these quota requirements should be retained, which would require the Mid-Term Review to ensure Ofcom took a different approach to the use of quotas in key genres going forward.

Question 7: Taken together, do you agree with the proposals for a new Operating Licence? If not, please explain why.

28. In our view Ofcom's general move to relax some of its content quotas (in addition to some of its role in market impact and competition matters) does not appear to be in line with the expectations of the architects of the new regulatory system, or of the stakeholders which supported it, in terms of Ofcom being a 'strong' regulator. During

the debate prior to the establishment of the current Charter, TAC supported the proposal for the BBC to be regulated by Ofcom rather than the BBC Trust.

29. It was clear, both from the Clementi Review of BBC governance and regulation and subsequent adoption of its key recommendations in the BBC Charter White Paper, that Ofcom was seen as a strong regulator which would not be seen to be compromised by the wider role of the BBC Trust. The intention of moving to Ofcom regulation was for the BBC to be held to its mission and public purposes, with the Clementi Review anticipating that Ofcom would hold the BBC to more quantitative measures than had been the case in the past, for example by having a series of Operating Licences which:

“would need to include the statutory quotas the BBC must meet, and would be expected to include other metrics about the BBC’s output that are based around the key objectives set in the Charter and Agreement.”¹³

30. We believe that Ofcom should review its approach to regulating the nature of the BBC’s output, including the extent to which it has successfully built in suitable safeguards in its Operating Licence.

¹³ [Clementi, Sir David. A Review of the Governance and Regulation of the BBC. March 2016, para 44, p53](#)