

## **Ofcom draft Annual Plan 2019-20– response from the Welsh Government**

The Welsh Government welcomes this opportunity to comment on Ofcom's draft Annual Plan for 2019-20. We will provide comments below on the areas of Ofcom's proposed priorities and work plan which are of importance to the Welsh Government.

### **Ofcom's role in a devolved Wales**

The Welsh Government is pleased that the Memorandum of Understanding (MoU) which outlines the relationship between the UK Government, the Welsh Government, the National Assembly for Wales and Ofcom was agreed and is now operational. The MoU commits Ofcom to consulting the Welsh Government and appropriate committees of the National Assembly for Wales on its draft annual plan and sets out the process for Welsh Ministers to appoint a member for Wales to the Ofcom Board. Interviews have recently been conducted in relation to this appointment, which we hope to confirm in the near future. The MoU also reinforces Ofcom's accountability to the National Assembly for Wales. With this in mind, we suggest the section on Wales (page 20), should be amended for the final version of the Annual plan, to additionally include an initial sentence similar in scope to the first sentence of section 5.10 for Scotland (i.e.; to also acknowledge the role of the National Assembly for Wales).

Over the last few years, in our responses to Ofcom consultations about previous draft Annual Plans, we have referred to Ofcom's intention to increase its visibility and presence in Scotland and asked whether there was any intention for a comparable expansion in the other devolved nations, including Wales, to ensure parity. We have also noted that an increasing number of posts advertised by Ofcom are specified as being located in either London or Edinburgh.

We note Ofcom's response to this as part of the 2018-19 Annual Plan but we urge Ofcom to keep account of our comments in relation to this issue.

In the context of Ofcom's additional regulatory responsibilities following the BBC Charter Review, we remain concerned as to whether Ofcom, at a UK level and in Wales, has the sufficient capacity to undertake these additional responsibilities.

We note that Ofcom has moved away from its previous approach of defining a greater number of inter-relating strategic priorities, instead focussing on a much smaller number of long-term strategic goals. We have no issue with this in principle, but we note that in doing so Ofcom no longer specifies in its Annual Plan that it has a duty to "*Contribute to and implement public policy defined by Parliament, and where appropriate by devolved administrations*". It may be the case that Ofcom considers this public policy duty is delivered for the nations via the MoUs now in place. We would agree that the MoUs do provide a mechanism for delivering this, but we would urge Ofcom to reaffirm that it considers this duty to be ongoing by including it explicitly in the final Annual Plan.

## **Broadcasting**

It is disappointing that there is no mention of broadcasting issues in the section on Wales in the draft Annual Plan. We acknowledge that references to broadcasting issues throughout the Plan are relevant to Wales in the same way as other parts of the UK. However, we would expect specific references to broadcasting issues in the section on Wales. For example, the section in the draft Annual Plan for Scotland states that Ofcom will deliver upon its responsibility for reviewing the BBC's performance and ensuring that it meets the requirements of the BBC Operating Licence in Scotland. This is linked in the text to the creation of the new BBC Scotland channel, but should be noted that the BBC is also undertaking a significant amount of new activity in Wales. The presence or otherwise of a new channel is irrelevant in terms of whether this activity should be monitored by Ofcom, and we would urge Ofcom to confirm that it does intend to monitor the BBC's delivery in Wales by including in the final Annual Plan a comparable statement about the BBC Operating Licence in Wales.

It is vital that Ofcom continues to fulfil its obligations in relation to public service broadcasting in Wales, including those related to ITV Cymru Wales, S4C and Channel 4. It is notable that there is no mention of S4C in the draft Annual Plan, despite the outcomes from the UK Government's recent review of the channel, We do not intend to repeat what we have said previously to Ofcom in relation to public service broadcasting, including the substantive points made in our response to Ofcom's third review of public service broadcasting, which is available on Ofcom's website<sup>1</sup>.

### **Ofcom's role as external regulator of the BBC**

The Welsh Government provided a detailed response in July 2017 to Ofcom's consultation on its first Operating Licence for the BBC<sup>2</sup>.

In our consultation response, we raised a number of serious concerns about the draft Licence, which we strongly urged you to address to create a final Licence that was fit for purpose. It was disappointing that the Licence was not amended to reflect a number of important improvements which were suggested and explained in detail by the Welsh Government in its response to the consultation.

The comments provided as part of the consultation response are still relevant. We have previously welcomed Ofcom's assurance that the Operating Licence and performance measures will evolve over time. We welcome Ofcom's intention to publish its Annual Report on the BBC in Q3 2019/20 and note its intention to report on how Ofcom has carried out its duties and to provide a measure of the BBC's performance against its mission and public purposes. We agree with these aims, but additionally Ofcom should routinely consider, as part of this Annual Report, whether the Operating Licence is fit for purpose, setting out any amendments required. In the

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<sup>1</sup>[http://stakeholders.ofcom.org.uk/binaries/consultations/psb-review-3/responses/Welsh\\_Government.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/psb-review-3/responses/Welsh_Government.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/105361/Welsh-Government.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/105361/Welsh-Government.pdf)

first instance we would urge Ofcom to review the shortcomings we have previously identified.

### **Review of BBC's news and current affairs output**

We welcome Ofcom's intention to undertake a review of the BBC's news and current affairs output. The Welsh Government provided a detailed response in February 2016 to the BBC's own review of its news services in the nations. It is vital that the review undertaken by the BBC in 2016 is fully considered in the context of Ofcom's forthcoming review. We are not aware that the BBC has publicly responded following that consultation or published its findings.

Effective democracy relies on informed decisions by citizens. Wales has limited news coverage and too few voices, leaving most people dependent on UK news outlets that lack coverage of Wales. We recognise the key role played by the BBC as a provider of news coverage, about Wales and for the people of Wales. We acknowledge that the BBC has been the main driver of the improvements in coverage of devolved political issues in Wales. However, Wales continues to be under-represented, even when stories are relevant across the UK. Unfortunately there continues to be examples of poor and inadequate reporting. Although there is evidence that there have been improvements in the coverage of devolved political issues in Wales since the King Report, there is still room for improvement. The news media provide insufficient or inadequate coverage of Welsh issues and events. Most Welsh people have no easy access to the information and context needed to evaluate the success or otherwise of Wales' institutions.

We would therefore suggest that this review should consider whether there may be opportunities for the BBC - and the other Public Service Broadcasters - to enable increased plurality of provision in news and current affairs and to further improve reporting of the changing nature of the UK and decisions made by devolved governments.

The Welsh Government is happy to assist Ofcom in any way in relation to this review.

### **Review of BBC Studios**

We welcome Ofcom's intention to consult on the activities of BBC Studios in Q2/2019. It is vital to understand the effectiveness of the BBC's voluntary commitments in relation to the merger of BBC Worldwide and BBC Studios, and also to better understand the impact of the BBC's commercial activities on the independent production sector, including in the nations and regions.

### **Review of EPG Code and the Future of PSB Prominence**

We welcome Ofcom's intention to publish its conclusions following the consultation. The Welsh Government would not wish to see any change in the position of the main PSB channels in the first five slots in Wales - BBC One Wales; BBC Two Wales; ITV Cymru Wales; S4C; Channel 4; and Channel 5. We fully support the views of the

broadcasters in Wales on this issue and the detrimental impact any change would have on those broadcasters if any changes were introduced.

## **Review the guidance to public service broadcasters for production outside London**

We welcome Ofcom's intention to review the guidance to PSBs in meeting their licence conditions for programmes made outside London and in the nations, and to consider if this remains fit for purpose in supporting and strengthening production across the UK's nations and regions. The Welsh Government plans to feed into this consultation and we looking forward to discussing our response with Ofcom in due course.

## **Licences**

We reiterate what we have previously said to Ofcom; that when television and radio licenses for stations in Wales are awarded or reviewed, due consideration should be given to the bilingual nature of Wales and the importance of the Welsh language in the context of the Welsh Government's aim of having one million Welsh speakers by 2050, by specifying in the contract that a set number of hours be broadcast in Welsh along with a statement about Welsh-language web content such as text, streams and clips.

## **Radio**

The Welsh Government's position on a number of issues in relation to radio including digital radio switchover has not changed recently. These were reflected in the Welsh Government's written evidence to the National Assembly for Wales' Committee's inquiry into radio in Wales<sup>3</sup> and during the oral evidence session when the Minister for Culture, Sport and Tourism gave evidence on 26 April 2018<sup>4</sup>. The Committee has published its report following the inquiry<sup>5</sup>. The Welsh Government's response to the review will be published in due course and we will share this with Ofcom. We urge Ofcom to take note of the Welsh Government's evidence and response to the Committee report.

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<sup>3</sup> <http://senedd.assembly.wales/documents/s74510/Paper%205%20-%20Ministerial%20Paper.pdf>

<sup>4</sup> <http://record.assembly.wales/Meeting/4729>

<sup>5</sup> <http://www.assembly.wales/laid%20documents/cr-ld11993/cr-ld11993-e.pdf>

## **Telecoms**

### **Mobile Roaming**

Ofcom's advice to Government contained in 'Further options for improving mobile coverage' sets out rural roaming or rural wholesale access as one of four key options to improving mobile coverage. The paper suggests a coverage uplift of 5 to 10 per cent for the lagging operator. The Welsh Government supports the introduction of roaming in rural and very rural areas. Its introduction would undoubtedly, quickly, and significantly improve both indoor and outdoor coverage from all four operators. It would also help to close the coverage gap between Wales and the other home nations. However, there is no mention of this work in the proposed annual plan.

We would like to see further work included in the Annual Plan for Ofcom to develop and consult on firm proposals for delivering regional roaming consulting with devolved administrations.

### **Geographically differentiated regulation**

It is important to recognise the impact of geography on digital infrastructure. Population density and spread, and topography are key considerations in determining where broadband and mobile network operators invest. These differ across the UK and across smaller geographies and can be seen as a spectrum ranging from significant competition and commercially driven investment in large cities to no competition, no appetite for commercial investment and no coverage in rural and very rural areas. It would seem sensible to have differing regulatory regimes that reflect the differing nature of the market rather than a one size fits all approach.

Ofcom are considering how to deliver a geographically regulated approach through their consultation 'Promoting investment and competition in fibre networks Approach to geographic markets' and also highlighted in their Business Markets Communication Review.

The approach advocated in the Ofcom consultations focuses on regulation to remedy competition issues and to reflect that BT has significant market power i.e. regulating prices for products, such as leased lines, in rural areas where BT do not face competition. Whilst this approach may provide a remedy to high prices resulting from a lack competition it does not necessarily provide incentives for investment by other digital infrastructure providers. Ofcom needs to consider how their regulatory powers can be used to encourage investment in areas where there is little or no broadband and mobile coverage.

There needs to be a commitment in the annual plan to build on the approach set out in 'Promoting investment and competition in fibre networks Approach to geographic markets' and develop proposals on geographically differentiated regulation that aims to encourage investment in underserved areas. There also needs to be a commitment to work with the Welsh Government to ensure that any new approach to regulation reflects the needs of Wales.

## **Infrastructure sharing**

Sharing mobile infrastructure has a number of advantages particularly in relation to rural areas. From an economic standpoint it can improve the business case for new infrastructure as operators can share costs. Mast sharing can also help operators cover areas not covered by their existing network. In addition, one of the key planning considerations for masts is visual amenity, this is particularly important in Wales where around a quarter of land is in a national park or AONB. Mast sharing can mean fewer masts and less of an impact on the landscape.

Mast sharing was raised as one of four main options for improving coverage further in Ofcom's advice to Government contained in 'Further options for improving mobile coverage'. The document indicated that Ofcom are considering ways in which it can facilitate sharing and investigating whether more could be done to encourage passive sharing i.e. reform of planning regulations or spectrum licensing.

The annual plan needs to build on the consideration and investigations outlined in 'Further options for improving mobile coverage' and outline what work it expects to undertake and the associated timelines.

## **Improvements in mobile coverage (3.4 p8 and 5.6 p18)**

We welcome the commitment to explore a range of technologies and policy options that could help improve mobile coverage in rural areas and look forward to the proposed statement in Q2 on potential spectrum based solutions. It would be helpful, as Wales has particular issues relating to topography and population density, if the Welsh Government was involved in those discussions and to work with the Welsh Government to explore options for using regulation to improve coverage in Wales. This commitment to engagement should be specifically reflected in the annual plan.

## **Supporting improvements in the quality of mobile services (3.6 p8)**

We will respond substantively on this issue to the consultation on the 'Award of the 700 MHz and 3.6-3.8 GHz spectrum bands' however it is important to re-iterate that the proposed geographic coverage obligations for Wales, set at a lower level than those of England and Northern Ireland, are inequitable and unacceptable.

## **Monitoring quality of wholesale telecoms services (4.20 p13)**

We welcome the focus on monitoring the provision and repair of copper and fibre based wholesale telecommunications services.

## **Protecting consumers from harm (p14)**

We welcome the measures outlined to protect consumers from harm.

## **Effective Openreach reform (4.31 p15)**

It is essential that the outcomes from the legal separation of Openreach from BT are closely monitored to ensure that it is delivering for consumers and businesses.

## **Broadband Universal Service Obligation (5.6 p18)**

Our concerns over the ability of the USO to deliver a sustainable fast and reliable broadband connection in very rural parts of Wales remain. A download speed of 10Mbps is simply not sufficient and the cost threshold of £3400 will mean that a fast and reliable service will be denied to those hardest to reach premises the USO is designed to connect where the costs of providing fibre is likely to cost significantly more. We would welcome a commitment in the annual plan to engage with the Welsh Government to discuss in detail the delivery of the USO in very rural areas.

## **Spectrum sharing (p31)**

We welcome the commitment to explore opportunities to maximise the efficient use of the spectrum. We would like to see a focus on how spectrum sharing could encourage new players to use shared spectrum to provide mobile services in areas of Wales where there is little or no coverage. We would also like the exploration to concentrate on how shared spectrum could benefit academic and business research and support new applications in rural areas such as internet of things systems.