

# **OFCOM CONSULTATION ON MODERNISING THE BBC'S OPERATING LICENCE**

## **RESPONSE FROM THE SCOTTISH GOVERNMENT – SEPTEMBER 2022**

The Scottish Government welcomes the opportunity to respond to Ofcom's consultation on modernising the BBC's Operating Licence. We have a strong interest in ensuring that the BBC is able to deliver its vital public service remit and that the BBC is held to account on its responsibilities to ensure it provides a service that meets the requirements of audiences in Scotland and across the whole of the UK.

We have opted to provide an overall response to this consultation, rather than responding to individual questions, and have included below some general comments, as well as responses to the sections detailed in the consultation.

### **General comments – measuring BBC performance**

We understand that the BBC's Operating Licence can be improved so that it can more effectively reflect how media is delivered and consumed today. While we welcome benefits to audiences and broadcasters, any changes which provide greater flexibility to the BBC would need to be transparently monitored to ensure that audiences and the creative industries in Scotland are not adversely impacted by changes.

The Scottish Government is clear about the need to protect essential public services such as fact-based news programming, and maximise the benefit of investment in high-quality, original and authentic content for audiences. It is crucial that the value of public service broadcasting and the benefits that the BBC brings as part of this system are preserved and enhanced as a result of any changes to its Operating Licence.

The Scottish Government supports Ofcom's proposed changes to set new requirements on the BBC's online services, requiring them to make important content, including content for the nations and regions and at-risk programming (arts, children's, comedy, music, religion, and specialist factual), available for online audiences, and make such content easily discoverable. We also support Ofcom's proposal to introduce a new licence objective which will require the BBC to report on its representation and portrayal obligations publicly, rather than to Ofcom only. An outcomes focused approach could help stimulate innovation and creativity, and increase quality to ensure more genuine and authentic services for audiences in the nations.

### **Quotas, flexibility and transparency**

We understand the BBC's ongoing focus on modernising, remaining relevant to audiences and improving transparency. We also recognise the priority for the BBC to continue to develop its online services while maintaining the delivery of distinctive and original UK content that reaches and remains relevant to viewers and listeners across the UK. The Scottish Government agrees that regulation must not create a barrier to the BBC transforming and modernising its services to adapt to changing audience behaviour across the UK.

It is important that any changes are appropriately monitored so that there is no detrimental impact to audiences that rely on broadcast services. People in Scotland watched the most broadcast TV in the UK in 2021 and this was particularly driven by older viewers.<sup>1</sup> The Scottish Government believes that broadcasting must deliver for all audiences, including the many that are still reliant on broadcast services, such as older people and those in rural areas with limited access to online media.

It should be recognised that across the UK there are some differences in audience need and expectations. There are also some factors that are particularly important in different nations and regions, for example local news and minority language content.

### News and current affairs

The provision of impartial news to the highest editorial standards, including dedicated minority language, local, regional, national and international news reporting, is essential. Levels of interest in news about respondent's own nations remain high in Scotland, with 90% of respondents to Ofcom's 2022 news consumption report saying that they are interested in news about their nation.<sup>2</sup> The Scottish Government supports Ofcom's proposed changes to retain quotas for news and current affairs across TV and radio services and set new requirements on the BBC's online services, requiring them to make important content, including news and current affairs available for online audiences, and make such content easily discoverable. We also support the introduction of transparency requirements for the BBC to set out its plans to provide such services and the transparent reporting of outcomes.

However, we note that the consultation document proposes the removal of the condition on the BBC News channel to provide more international news and more local/regional news than other main continuous news channels in the UK, and we believe that this condition should be retained, and indeed strengthened, to ensure coverage of news relevant to the nations and regions is increased rather than reduced. The BBC, unlike the other main continuous news channels, receives licence fee funding to provide services for all of the UK that would not otherwise be provided. Other commercial operators are not providing comprehensive coverage of all nations of the UK and therefore it is incumbent that the BBC, which is funded by the licence fee, delivers this service.

### Supporting learning

The value of the BBC was demonstrated during the pandemic, when broadcasters filled the gap left by the closure of schools with education programming to support home-schooling. The Scottish Government supports Ofcom's proposed changes to retain requirements related to the delivery of content which supports children and learning, and for the BBC to provide informal learning content for adults and children of all ages across its services, and make such content easily discoverable. We also support the introduction of transparency requirements for the BBC to set out its plans to provide such services and the transparent reporting of outcomes.

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<sup>1</sup> Ofcom, 2022. [Media Nations 2022: Scotland \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/mednations/mednations2022/scotland/scotland.pdf)

<sup>2</sup> Ofcom, 2022. [Media Nations 2022: Scotland \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/mednations/mednations2022/scotland/scotland.pdf)

This should apply evenly across the UK so that learning outcomes are tailored where relevant so that, for example, conditions related to Gaelic-language learning are retained and the same improvements for online and transparency apply.

### UK-original content

Investment in new original UK content is central to the BBC's ability to deliver distinctiveness and its Mission and Public Purposes, and the Scottish Government agrees that those outputs must be safeguarded.

While quotas should not negatively impact audience experience, the Scottish Government is clear that quotas remain important in many areas and we consider them necessary to ensure that the BBC is delivering its public purposes, and in particular that it remains distinctive, supports content made by and for the regions and nations, supports learning, and provides essential news and current affairs content. Quotas are important to measure compliance and we continue to believe that change should avoid any negative shift in the structural imbalance between Scotland and London, so that locally-based companies throughout the nations and regions can thrive and improve the offer to audiences. Without quotas, it may be more challenging to hold the BBC to account, particularly in relation to its nations and regions commitments, and therefore any flexibility would need to be closely monitored and transparently reported. It is important that the BBC clearly sets out its plans for content in the nations and regions and that this is laid out in its Annual Plan.

We agree with stakeholder comments in the consultation document that without quotas, the availability of content that is less commercially viable, but valued by audiences, may decline and that audiences, as well as producers and writers who rely on the BBC to commission this type of content, could lose out.

### Reflecting, representing and serving the diverse communities of all of the UK's nations and regions

Content spending from the BBC continues to be a vital source of investment in the nations. While that is the case, the BBC's investment in Scotland continues to fall short of achieving a proportionate share. The BBC's most recently published Annual Report shows total BBC spend in Scotland was £241m, still only 77.5% of the licence fee raised in Scotland.<sup>3</sup> The money contributed in licence fees continues to be unequal across the nations and the BBC should be doing more for Scottish audiences, and to deliver jobs and opportunities here in Scotland for those involved in our creative industries.

The BBC's Operating Licence should strengthen equity across the nations so that we see more network productions devised and produced in Scotland to support the creative economy and to authentically reflect Scotland's diverse communities. Ofcom is proposing to introduce a new licence objective to expand the network TV production quotas for the nations and regions, specifying how much of the BBC programming should be new, as opposed to repeats. Ofcom is also proposing to include first-run

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<sup>3</sup> BBC, 2022. [BBC Group Annual Report and Accounts 2021/22](#)

programming in the requirements. We support these measures to improve network spend in Scotland.

We believe strengthening investment and ensuring network productions are devised and produced in Scotland will ultimately lead to content which audiences recognise as more authentic and representative. We know that some viewers and listeners in Scotland continue to feel less positive about representation and authenticity of BBC programmes than other UK audiences. Evidence suggests that people in Scotland rate the BBC below the UK average in relation to reflecting the life and culture of communities throughout the UK and 28% of people in Scotland gave a negative rating on the BBC reflecting the lives of people like them (UK average 23%).<sup>4</sup> The Operating Licence should ensure that the BBC is delivering a service that meets the requirements of audiences in Scotland and drives improvements in underperforming areas.

### **BBC ALBA, Gaelic Broadcasting**

The BBC's requirement to support the regional and minority languages of the UK through its output and services and through partnerships with other organisations is important, and MG ALBA makes a valuable contribution to the lives and wellbeing of Gaelic speakers across Scotland, the UK, and beyond. As we have stated previously, it is vital that support for the regional and minority languages through BBC output and services, and in particular in driving growth in rural communities and minority language communities, is strengthened.

We recognise that this exercise is focused on holding the BBC to account and, in particular, looking at how Ofcom regulates the BBC. We note the proposals in the consultation to move away from quotas and ask the BBC to report on its plans. Ofcom will ask the BBC to publish the steps it will take for each public purpose in its annual plan. The consultation paper says that in areas where Ofcom considers there to be particular benefit in increasing transparency, Ofcom will be more 'granular about what the BBC must include in reporting'. Ofcom will retain quotas where it believes specific safeguards are necessary.

The Scottish Government believes that Gaelic, being an indigenous minority language for Scotland, requires safeguarding. Gaelic broadcasting is also an area that would benefit from increasing transparency. We are of the opinion that the proposals to improve safeguarding and transparency could go further. This could be by means of agreed quotas and BBC commitments, planning and reporting. The consultation paper contains a reference to Gaelic learning and the requirement on the BBC to set out its plans to provide programming aimed at the learning of the Gaelic language for BBC ALBA and BBC iPlayer. The Scottish Government is concerned that this requirement does not provide sufficient safeguards for Gaelic content.

There is an obligation on the BBC to provide indigenous content. Minority and vulnerable issues such as Gaelic need special attention and quotas provide an important way of safeguarding that content. Clear commitments and transparency are required and this should not be limited to news and Gaelic learning, but should extend

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<sup>4</sup> Ofcom, 2021. [Ofcom Annual Report on the BBC 2020-21](#)

to other content for Gaelic speaking audiences with set quotas to achieve broader commitments to the outputs for audiences to enjoy.

This could be supported by a commitment for the BBC to set out how, in consultation with MG Alba, a Gaelic public service broadcasting service can be delivered. This would be in line with the Framework Agreement which requires the BBC to provide a television service, enabling MG ALBA to fulfil its remit for a 'wide and diverse range of programmes in Gaelic'.