



BBC submission to Ofcom consultation: *‘Holding the BBC to account for the delivery of its mission and public purposes’*

July 2017

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I. Executive Summary

1.1 This document sets out the BBC's response to Ofcom's draft Operating Licence and performance framework. It should be read in conjunction with the BBC's interim Annual Plan, which sets out our creative plans to deliver the BBC's mission and public purposes. One of the objectives of the interim Annual Plan is to set strategic and editorial commitments that demonstrate how each UK public service will contribute to the delivery of distinctive output and services; these commitments complement and build on the regulatory conditions set by Ofcom in the draft Operating Licence.

1.2 Our response is framed by reference to the respective responsibilities of the BBC Board and Ofcom in this area:

- The BBC Board's responsibility to ensure the BBC fulfils its mission and promotes the public purposes by setting the BBC's strategy and its creative direction.
- Ofcom's responsibility to set an Operating Licence which contains the regulatory conditions they consider appropriate for requiring the BBC to: fulfil its mission and promote the public purposes; secure distinctive output and services; and serve UK audiences.

1.3 It is important that the Operating Licence is clear and proportionate, that regulatory conditions are imposed only where necessary and that they should be achievable without unduly restricting the Board's ability to set the BBC's strategy and prioritise resources accordingly. The Licence must also be capable of future evolution to reflect changes in audience behaviour, market conditions and the BBC's strategy and performance.

1.4 Our overall view is that the draft Licence is a balanced but stretching document which reflects the clearer system of governance and regulation enshrined by the new Charter and Agreement. While each proposed condition should be examined on its merits, it is also important to consider the cumulative effects of the conditions taken together. The BBC's content commissioning choices are shaped by the interplay of a complex range of factors, including available funding, editorial strategy and creative decisions about what programmes to commission, re-commission or de-commission each year. The imposition of a multi-layered system of quotas risks creating incentives to commission for volume rather than quality, and to allocate resources to meet quotas rather than to build sustainable production bases. The unintended consequence could be to constrain the BBC's flexibility to deliver the mission and purposes in a cost effective manner.

1.5 The draft Licence raises a number of immediate and longer-term issues that we address in this response.

1.6 First, in terms of the specific conditions in the draft Licence, we believe there is a strong rationale for Ofcom to re-consider the following:

- Out of London quotas for supply of network TV
- The definition of new music
- Level of original productions on BBC Two in peak; and
- Out of London quota for radio supply

1.7 In addition to these areas, we have identified a number of points that require clarification in the final Licence.

1.8 Second, we welcome Ofcom's recognition that the first Licence is not set in stone and may well need to evolve to reflect changes in audience behaviour, market developments and the BBC's performance and strategy. In many areas Ofcom has decided to increase the level of existing quotas (to be closer to actual performance) and it is also proposing a number of new quotas. While most of these should be deliverable in 2018, some may need to be revised in subsequent years as circumstances change.

1.9 The final part of our response reiterates the argument that, in the longer-term, the BBC's performance should be judged more on assessing audience outcomes and impacts than on prescribing inputs and outputs. Over time, we would hope that quotas are used more selectively and are targeted at where they genuinely enhance distinctiveness without stifling creativity and innovation.

2. Introduction

2.1 The BBC welcomes the opportunity to respond to Ofcom's draft Operating Licence and performance framework. Our response should be read in conjunction with our interim Annual Plan, which sets out how the BBC will deliver the mission and public purposes. One of the objectives of our interim Annual Plan is to set strategic and editorial commitments that demonstrate how each UK public service will contribute to the delivery of distinctive output and services; these commitments complement and build on the regulatory conditions set by Ofcom in the draft Operating Licence.

2.2 This document is structured as follows:

- Our overall assessment of the draft Licence;
- The draft conditions that we are asking Ofcom to re-consider;
- Other draft objectives and conditions which require clarification in the final Licence;
- Longer-term issues concerning the evolution of the Licence; and
- Answers to Ofcom's consultation questions.

3. Overall assessment of the draft Operating Licence

3.1 Ofcom's draft Operating Licence replaces the previous system where each BBC UK public service was subject to a separate Service Licence set by the BBC Trust. The Operating Licence is a key part of the new system of governance and regulation, and should underpin the distinction between the BBC Board, which must ensure that the BBC's mission and public purposes are delivered to audiences, and Ofcom which must set a regulatory framework and hold the BBC to account for delivery against that.

3.2 To this end, we believe that a single document that puts all the BBC's regulatory conditions in one place, rather than across 26 Service Licences (totalling more than 300 pages), will provide a more proportionate regulatory system, with greater accountability and clarity. We welcome Ofcom's decision to remove many of the qualitative requirements that were a feature of the previous Service Licence regime. This reflects that the Operating Licence is intended to be a tool of regulation rather than, as under the previous regime, a combination of regulation and strategic and editorial considerations.

3.3 We recognise that in drafting this first Licence Ofcom was required to take particular account of Schedule 2 of the Framework Agreement. Ofcom's interpretation of Schedule 2 appears reasonable and proportionate overall; we welcome the decision not to introduce prescriptive quotas in strategic and editorial areas that should be the preserve of the BBC Board, including:

- the balance of unique titles and long-running series both in peak viewing time and other times;
- clearer average age targets for the mainstream radio services; and
- ensuring adequate links to material provided by third parties from BBC Online.

3.4 The Licence must be considered *as a whole*. While each condition should be judged on its merits, it is also essential that Ofcom considers the cumulative impact of *all* the conditions taken together. The BBC's content commissioning choices are subject to a complex set of factors, including:

- The funding available for the BBC's programming budgets and the commissioning slate for each genre;
- The BBC's editorial strategy to deliver the mission and public purposes by securing the best ideas;
- The creative decisions made by BBC commissioners about what programme titles to commission, re-commission or decommission each year. Given the commissioning cycle, TV channel schedules for the next year are already largely fixed and many programmes that are currently being commissioned will not be aired until one, two or several years hence;
- In addition, commissioning choices are framed by a comprehensive and detailed set of regulatory conditions governing the BBC's supply of content, including those in Ofcom's draft Licence and others such as the TV independent production quota. On top of these output and

production quotas, the BBC is also required to deliver contestability across TV, radio and online supply, which presents its own strategic and operational challenges.

3.5 The interplay of these factors means that content commissioning involves complex matrix management and a degree of uncertainty. There is an inevitable trade-off between maximising the space for creativity, innovation and risk-taking and fulfilling pre-determined targets.

3.6 We understand the basis for Ofcom's approach in the draft Licence and believe that, overall, it is a balanced document in the circumstances. There should be no doubt, however, that the draft Licence is stretching. It retains the majority of quotas from the previous regime, the majority of those retained have been increased and it introduces some new requirements. We would, therefore, be extremely concerned if the final Licence introduced further complexity and constraints that affected the BBC's ability to deliver its mission and public purposes in a cost effective manner.

3.7 As it is, the draft Licence raises a number of immediate and longer-term issues which we cover in the remainder of this document.

3.8 First, there are a number of draft conditions that, in our view, Ofcom should consider changing because:

- they are likely to have a negative impact on the BBC's ability to deliver its mission and public purposes in a cost effective manner;
- the approach Ofcom has taken in calculating a quota level is inconsistent; or
- they are unclear and need clarification in the final Licence.

3.9 Second, the Licence is stretching in many places where Ofcom has decided to increase the level of existing quotas (to be closer to actual performance levels). While most of these should be deliverable in 2018, they may not be in subsequent years. We, therefore, welcome Ofcom's recognition that the first Licence is not set in stone and may need to evolve over time to reflect changes in audience behaviour, developments in broadcasting markets and changes to the BBC's financial means and performance.

3.10 Finally, our view is that, in the longer-term, the BBC's performance should be judged more on assessing audience outcomes and impacts than on prescribing inputs and outputs. Quotas should be used selectively and targeted at where they can genuinely enhance distinctiveness without risking stifling creativity and innovation.

4. Draft conditions to be re-considered in the final Operating Licence

4.1 We have identified a small number of draft conditions that need to be re-considered in the final Licence, namely:

- Out of London supply for network TV (hours quotas and English regions spend)
- The definition of new music
- Level of original productions on BBC Two in peak; and
- Out of London quota for radio production

Out of London supply for network TV

Context

4.2 The draft Licence proposes quotas for both expenditure and hours of network TV programmes for outside the M25 (both 50%), English regions (both 34%), Scotland (both 8%), Northern Ireland (both 3%) and Wales (both 5%). The proposal is for these quotas to apply from January 2018.

4.3 In the previous Charter period, the BBC had Ofcom quotas for network TV spend (30%) and hours (25%) outside London. In addition, the BBC Trust set a quota for 50% spend out of London and 17% collectively across the three devolved nations, with an internal BBC commitment for network TV spend in each nation (to be roughly in line with respective populations).

4.4 Ofcom's draft Licence sets objectives in this area for the BBC that include to 'accurately represent and authentically portray audiences from the nations and regions' and 'distribute its production resources across the United Kingdom ensuring that it supports the creative industries in the nations and regions. This should also include production across the regions of England and build sustainable growth for the creative industries across the United Kingdom.'¹

4.5 We agree with these objectives and can demonstrate strong performance against them. The BBC makes more programmes outside London than any other broadcaster, accounts for more than 80% of network TV spend in the devolved nations, and broadcasts significantly more local and Nations output than any other broadcaster. Over the last Charter period, we achieved a significant increase in out of London spend from 32.6% in 2007 to 50.6% in 2016, and 6.4% to 19.2% in Scotland, Wales and Northern Ireland, as set out in Figure 1 below. We have also become the anchor tenant for one of the largest media clusters in Europe at *MediaCity* in Salford.

4.6 This progress has been achieved by setting a strategy based on *value* not hours and meeting targets through high impact, high value output like drama and comedy. This strategy has delivered economic benefits for the creative economies in the nations and regions, through the creation of sustainable production bases. A focus on these genres also brings disproportionate benefits in terms of the portrayal and representation of each nation, with programmes such as *Mrs Brown's Boys*, *The Fall*, *Shetland*, *Peaky Blinders* and *Poldark*.

¹Draft Operating Licence 1.31.2, page 7

Figure 1: BBC network TV spend by area, 2007 to 2016

Area	2007 %	2016 %
Scotland	3.3	10.3
Wales	2.6	5.8
Northern Ireland	0.4	3.1
Nations	6.4	19.2
English regions	26.2	31.4
Out of London	32.6	50.6

* English regions includes multi-region

4.7 We have recently announced new investment plans for the BBC in Scotland, Northern Ireland and Wales, including a Scottish TV channel, significant extra investment in English Language programming for Wales and more than £11 million investment in Northern Ireland. In the English regions, the establishment of BBC Studios will help us to get even more out of our production bases and expertise in Salford, Birmingham and Bristol.

4.8 This coming year will see the BBC continue to improve how we reflect and represent the whole of the UK. We have a creative commitment to telling the story of the whole of the UK and our refreshed strategy will help us achieve that ambition (see Annual Plan for further details). We will ensure that programmes better reflect the diversity of the UK, including through new on-screen portrayal objectives for all TV commissioners, and BBC Writers Rooms and drama commissioning editors for each Nation.

4.9 The remainder of this section sets out:

- Current and forecast performance against the proposed quotas; and
- The impact of the proposed quotas

Current and forecast performance against the proposed quotas

4.10 Given the complexity of the commissioning process, managing to fixed quotas is challenging and carries risks as the margin of error for actual versus forecast is reasonably high, even within year.

4.11 There are a number of causes of this uncertainty, some of which can be mitigated and some of which are outside the BBC's control:

- Delivery risk – productions often come in later than expected or desired for a range of reasons including key talent availability;
- Compliance risk – productions that were expected to qualify in one region actually qualify in a different region once the compliance sheets are returned;
- Transmission risk – once delivered programmes can be re-scheduled, sometimes from one year to the next for scheduling reasons and/or to balance the delivery of various commitments;

- Events – value and hours (e.g. English regions) are impacted by low and high sports years. Also, sometimes major events are unplanned and can add significant amounts of expenditure – for instance, this year’s general election combined with special concerts and services has added to the BBC’s anticipated London production spend² and displaced other programmes from the schedule; and
- Commissioning decisions – in managing against quotas we have to make assumptions about whether, for example, series 3 of a programme will be re-commissioned before series 2 has aired. If a decision is taken to de-commission or talent is unavailable it can leave a significant planning gap which is not always possible to fill to an equivalent level in time to comply with a fixed annual quota. In some production bases, a small number of commissioning factors can determine whether quotas are met or not.

4.12 Our latest outturn and forecast (Figure 2) shows that the BBC would not meet the proposed new quotas for English regions spend and hours in Wales and Northern Ireland, in 2016 or 2017.

Figure 2: BBC performance against the proposed production quotas

		2016 actual		2017 forecast	
	Proposed quota	Spend	Hours	Spend	Hours
Scotland	8	10.3	16.6	10.1	15.3
Wales	5	5.8	4.3	6.5	4.7
NI	3	3.1	2.1	3.0	2.2
Nations TOTAL	-	19.2	23.0	19.6	22.2
English regions (includes 'multi-region')	34	31.4	39.2	30.4	36.7
Out of London TOTAL	50	50.6	62.2	50.0	58.9

4.13 Forecasting exact outturn beyond 2017 is difficult to do with precision, for the reasons set out above. However, we will definitely not meet the proposed new quotas in these areas in our future planning horizon, namely 2018 or 2019.

4.14 The commissioning cycle creates limited room for manoeuvre to meet additional quotas in the short-term. We estimate that over 80% of the 2018 slate (by spend) is already commissioned or committed, and around 67% is commissioned or committed for 2019.

The impact of the proposed new quotas

4.15 Given the BBC’s constrained content budgets, production quotas are a zero-sum game, with finite resources being allocated to one area at the expense of others. The imposition of the proposed new quotas would provide less flexibility to balance production across our bases and have the unintended effect that we are unable to commission the best ideas or deliver best value

² Election costs in this context cover special current affairs and live debate output, in scope of the production quotas, but exclude news programmes which are out of scope of the quota.

for money. The introduction of hours quotas, on top of expenditure, is unnecessary and will prove counter-productive in terms of the BBC's ability to support sustainable growth for the creative industries across the UK.

4.16 The setting of the supply quotas should, in our view, be guided by the following key principles:

- A focus on *value* (not hours) as the best way of securing investment in the creative economies of Scotland, Wales and Northern Ireland, as well as audience portrayal;
- Support the organic growth of sustainable production bases, rather than require the 'lift and shift' of existing programmes, which involves significant disruption to suppliers and non-content transition costs that are taken away from UK content investment; and
- Reward creative success in bases not penalise it because of the need to move programmes to another area to meet different quotas – this requires the ability to flex within the overall framework to be able to commission the best ideas.

4.17 Using the 2017 forecast as a baseline, we have assessed the likely impact of having to meet the proposed quotas. For background, the amount of expenditure to which the quotas apply is c.£850 million.³

Hours Quotas

4.18 In order to understand our concerns about the hours quotas it is necessary to reflect, briefly, on the BBC's approach to network TV supply. Our strategy has been designed to develop sustainable production bases in different parts of the UK and improve audience representation, while ensuring other objectives such as value for money are delivered – and that sustainability and quality are not threatened in our London production base. We have consciously not adopted a 'one size fits all' production strategy that tries to do 'a bit of everything, everywhere'.

4.19 Our approach was informed by an understanding of the production sector across the UK and that trying to develop the critical mass needed to support production across all genres in all locations does not make strategic or economic sense. Our experience shows that individual production ecologies need to be of a certain scale to attract and retain the quality of talent needed for network TV programmes. With constrained content budgets, spreading production thinly across the UK would prove counter-productive.

4.20 We have made strategic choices as to which bases can achieve sustainability in which genres - and developed a 'Centre of Excellence' strategy to enable sustainability and quality in each location. We have drawn on the local creative ecologies (e.g. between network, local and other

³ This expenditure covers all originated programming spend on the BBC's network channels – BBC One, BBC Two, BBC Four, CBBC, CBeebies, BBC News Channel, BBC Parliament and BBC Alba – excluding network news, repeats, acquisitions, sports rights, regional opt-out programming and foreign productions (e.g. drama and BBC invested films produced outside the UK.)

broadcasters, TV and radio, in-house and independents) to develop different genre specialisms in different nations. In Wales and Northern Ireland, for example, this has meant pursuing a higher-value, lower-volume genre strategy – that has helped to develop sustainable production centres and world-class drama (e.g. *Sherlock*, *Torchwood*, *Dr Who*, *Line of Duty*, *The Fall*). Drama is also the key genre at delivering portrayal benefits.

4.21 Reflecting this approach, Figure 3 shows that in 2016 drama made up 76% of spend in Wales but only 20% of hours, and 47% of spend in NI but only 13% of hours. In Scotland where there is greater scale and a more established production base, we have been more able to adopt a multi-genre strategy.

Figure 3: Network TV genre spend and hours by Nation, 2016

Genre	Scotland		Wales		Northern Ireland	
	Spend%	Hours%	Spend%	Hours%	Spend%	Hours%
Drama	16	2	76	20	47	13
Comedy	9	1	3	1	0	0
Entertainment	13	3	2	5	14	12
Factual	23	18	10	16	22	41
Daytime	19	31	8	33	6	25
Children's	13	6	0	0	11	9
Sport	6	38	1	26	0	0
Total	100	100	100	100	100	100

4.22 Historically, BBC regulation has focused primarily on value rather than hours targets – for the economic benefits that spend brings, and to avoid incentives to move higher volume but lower cost programming to another area. Overlaying hours quotas on top of spend quotas adds significant planning complexity. The link between expenditure and hours is not as straightforward as 1:1- and depends on a range of factors including genre mix, cost per hour and production capacity.

4.23 Based on our 2017 forecast for hours in Northern Ireland and Wales, we estimate that we would need to increase hours in Wales by c.50 and Northern Ireland by c.60, to meet the proposed new quotas. These are significant numbers in the context of these production bases. While we could potentially meet some of the proposed shortfall through organic growth in these Nations, there are limits to this, and so to meet the additional hours would also involve 'lifting and shifting' programmes – with the attendant significant non-content transition costs.

4.24 Our overarching concern is that imposing these new hours quotas would destabilise the production bases we have developed that focus on higher value, lower hours genres, particularly in Northern Ireland and Wales. Running hours quotas in tandem with equivalent spend quotas would incentivise a move to the same average cost per hour approach in every area – rather than sustaining genre specialisms in specific areas. In particular, it would make less sense strategically to

take creative risks on new drama in Northern Ireland and in Wales. First, drama does not contribute much towards the proposed hours commitments; second, it has a much higher risk of failure so is less likely to produce returning series.

4.25 Finally, hours quotas are a blunt instrument for addressing audience portrayal concerns. As outlined above, the BBC has a creative commitment to telling the story of the whole of the UK and our refreshed strategy will help us achieve that ambition. The BBC should be judged against the impact of this strategy. For these reasons, we would ask Ofcom to re-consider the introduction of the proposed hours quotas.

English regions spend quota

4.26 To meet the new English regions spend quota, we estimate it would require us to move c.£35 million of content spend from areas of 'over-delivery' – London, Scotland and potentially Wales. By way of context, over the past Charter period we increased spend in the English regions by c.£45 million. It would not be possible to make changes of this scale in an organic, sustainable way within the timeframes suggested. It would necessarily involve a 'lift and shift' model for existing programmes, incurring significant additional non-content transition costs of c.£20 million. The impact would also likely be to penalise creative success and put a cap on growth in particular areas (e.g. Wales) because of the need to move programmes to another area to meet different annual quotas.

4.27 Because TV commissioning by nature happens over the medium to long-term, it would be extremely disruptive and costly to move around such a significant amount of money in such a short timeframe.

4.28 Looking at our pot of *uncommitted* spend for 2018, c.60% is already planned as out of London, leaving a relatively small amount of uncommitted spend – c.£24 million - planned for London that we would need to consider moving to hit the new quota. Of this, the majority is in music, arts and current affairs, and significant parts are inherently London based.

4.29 We would, therefore, like Ofcom to consider an alternative approach to achieving its objectives. Ofcom should look at setting the English regions spend quota at 30% for the next three years and then review it; this would be a sustainable level (taking account of the impact of high and low sports years) that would avoid costly 'lift and shifts.' It would also provide the necessary flexibility within the overall framework to commission the best ideas wherever they come from, while managing the various different quotas in a sustainable way. Such an approach would benefit both licence fee payers but also the BBC's programme supply chain. The BBC has an ambition to grow production in the English regions organically over the Charter period and the level of the quota should work in tandem with that sustainable growth.

4.30 We also want to highlight two further points with regards to the spend quotas:

- We understand that Ofcom is planning to undertake a broader review of definitions for out of London production across the PSBs later this year. The conclusions of this review may impact the future deliverability of some or all of the spend quotas if the way productions currently qualify is changed. The BBC will respond to any Ofcom consultation on definitions in due course; we will include in our response the impact of any proposed changes and would expect these to flow through into the Operating Licence at that point.
- Our calculations above assume the current category of network expenditure which Ofcom classifies as 'multi-region' and accounts for c.£20million spend (not nations, not London, not any particular macro region) will continue to qualify under the new English regions quota; if Ofcom decides otherwise, we will require further discussion about the level and timing of the English regions quota.

New music

4.31 The BBC's contribution to the UK music sector, through broadcasting on TV, radio and online and broader activities such as live events and talent initiatives, is huge. The BBC's music radio stations lie at the heart of this contribution, particularly Radio 1 and Radio 2 which offer significant exposure to artists due to their reach and position as trusted guides for audiences.

4.32 This support for the music industry has been codified in a wide range of regulatory quotas since 2007, covering, for example, volumes of new music, UK music, live sessions and specialist music. For Radio 1 and Radio 2 Ofcom is proposing to retain the majority of these quotas, increasing their levels to closer to current outturn in most cases.

4.33 The draft Licence proposes quotas for new music in daytime on Radio 1 (50% - up from 45%) and Radio 2 (20% - no change). The Licence also changes the way new music is defined from 'either unreleased or less than one month since release date (physical release, not download release)' to 'music which has never been released, either by physical release or by download release; (b) music which has been released within the previous month, either by physical release or by download release or by both. In cases where the date of physical release is different from the date of download release, the earlier date shall be deemed to be the date of release.'

4.34 The key change is that Ofcom has added music available for downloading to its definition of new music. We support the rationale for changing the definition to take account of digital music release. However, the proposed change inadvertently narrows the range of new music available for Radio 1 and Radio 2 to play, because of the way most music is now released and would necessitate significant changes in the music policy for these stations which we believe would have a negative impact on the UK music industry.

4.35 For example, we estimate that Radio 1 outturn would fall from 60% to 17% under this new definition. We assume this is unintended given Ofcom does not set out any supporting rationale for such a change. There are two key ways in which the proposed definition impacts this quota.

4.36 First, the window for new tracks would be reduced from 8 to 10 weeks down to just 4:

- The old definition was predicated on the physical release of singles, and with the pre-release period and one month from physical release effectively allowing between 8 and 10 weeks for any single to qualify as new.
- All music is now released digitally (download and streaming), but physical release is very uncommon. In most cases with digital release there is no pre-release period. This means that the previous window of 8-10 weeks is reduced to just 4 weeks for the vast majority of songs.

4.37 Second, in most cases, entire albums are now released at the same time as singles:

- Record companies used to phase physical release over 6 months or so – typically single 1, then single 2, then single 3, then the whole album. Under the old definition, each single would count as new for 8-10 weeks and the BBC could support artists accordingly.
- Now, in many cases, entire albums are digitally released at similar times to single 1 or 2, meaning further singles being promoted by the record label would no longer qualify as new.
- This means we will be able to play them much less frequently than currently.

4.38 The impact of these two factors would be that Radio 1 (in particular) would have much less scope to build audience familiarity with new artists and tracks, and be much less able to build the airtime and exposure required to support a broad range of artists to help them break through. The BBC's scope to take on artists as 'projects' and support them over the time period required would be reduced, and the BBC's contribution to supporting the music industry would diminish significantly. The change would therefore impact most on new and emerging artists.

4.39 In recognition that the old definition solely tied to physical release was not fit for the digital age, we consulted the music industry in 2015 to try and develop consensus around a new definition.

4.40 As part of these discussions, we suggested one potential way forward would be to define new music as follows: *"a track remains new for either 12 months from initial release to radio, digital download or streaming services, or until X weeks after it enters the Top Y of the UK's Official Singles Chart - whichever is sooner."*

4.41 There was a general agreement that a definition formed in this way was a reasonable solution, although there was no clear consensus on the levels X and Y should be set at (responses varied between 4 weeks and 8 weeks, and top 10 to top 40). There was also general agreement that, with albums generally promoted for between 12 and 18 months, a 12 month window for album tracks to be considered 'new' was reasonable.

4.42 Accordingly we are proposing a new definition for new music as: *'a track remains new for either 12 months from initial release to radio, digital download or streaming services, or for 6 weeks after entering the Top 20 of the UK's Official Singles Chart, whichever is sooner'.*

4.43 It is our view that 6 weeks, taken together with the chart entry element, comes closest to replicating the current window during which a track is considered new (8-10 weeks for all tracks,

irrespective of chart entry). Tracks which fail to reach a high-chart ranking will remain ‘new’ for longer (up to a year); however, the most popular tracks, which now generally go on sale on the same day they are promoted to radio, and which can chart almost immediately, will have a smaller window.

4.44 We also consider that setting the chart entry level as Top 20 is a good indicator of when a track is starting to impact on a wider, more mainstream audience, beyond an artist’s initial fan-base support. In terms of sales numbers, we estimate a song needs around 75% more sales to break into the Top 20 compared with the Top 40; and a further 60%-100% boost to make the Top 10.

4.45 In summary, our proposed definition would allow more time than currently for unfamiliar artists to qualify as ‘new’, allowing these stations to provide more support, but less time than currently for the more popular music to qualify (6 weeks rather than 8 to 10).

4.46 Our analysis of sample periods on Radio 1 and Radio 2 from October 2016 indicates this definition would lead to very little change in music policy or our new music outturn level – Radio 1’s new music was 61% under our proposed definition against 60 per cent using the old one, and Radio 2 was 26 per cent against both.

Levels of original production on BBC Two in peak

4.47 These are long-standing quotas which reflect the importance that UK originated content makes to the distinctiveness of BBC TV channels. The draft Licence proposes to increase quotas where historic performance shows significant headroom; for BBC Two in peak the quota increases from 80% to 90%.

4.48 We accept that type of quota is reasonable but believe the methodology used to calculate the new quota levels should be applied more consistently in the final Licence. In particular, the proposed new levels don’t leave an equivalent flexibility on BBC Two peak as elsewhere against actual output – just 5.7% per cent, compared with 9.7% on BBC One in peak, as set out in Figure

Figure 4: Original production by BBC channel

Channel	Existing quota	Proposed quota	Actual output (2016)	Difference(proposed vs actual)
BBC One	70	75	85.9	10.9
BBC One (peak)	90	90	99.7	9.7
BBC Two	70	75	89.3	14.3
BBC Two (peak)	80	90	95.7	5.7
BBC Four	70	75	88.1	13.1
BBC Four (peak)	50	60	84.8	24.8

4.49 The new proposed levels would also put the original productions quota on BBC One and BBC Two in peak at the same level at 90% (whereas previously BBC One was 90% and BBC Two

was 80%). We don't believe that the origination levels on these channels should be regulated to the same level. While both have original UK content at their core, BBC One has much higher funding than BBC Two and while the BBC's spend on acquired programming has fallen over recent years, acquisitions remain a small, but important part of the way of keeping a 'fresh' feel to BBC Two and appealing to particular demographics.

4.50 We therefore propose that similar headroom is applied to this quota for BBC Two peak as for BBC One peak, which would place a BBC Two peak quota around 86%, still a significant increase on the current quota level, but one which provides the BBC the right flexibility to manage its strategy and resources appropriately.

Out of London quota for radio

4.51 The draft Licence proposes a quota for one third of BBC radio expenditure to be made outside the M25 area, with Radio 1, 2, 3, 4 and 5 Live each making a contribution.

4.52 We accept it is appropriate for BBC radio to have a quota of this sort. However, the quota is defined in the draft Licence as covering network, nations and local radio stations but excluding all expenditure on news and sport content. This makes the quota very complicated to measure and excludes the BBC's investment in 5 Live, as well as most of the expenditure the BBC makes on local and nations radio services (which is largely directed at extensive news and sport coverage).

4.53 We would like to discuss the options for a more appropriate definition; one which properly reflects the BBC's investment out of London and the differences in news operations that exist between BBC Television and BBC Radio. So whether the quota applies to network radio or to network plus local and nations radio, it should include news expenditure. We would also argue that expenditure on sports coverage should be included. The quota level should then be set according to whichever definition is chosen.

5. Draft conditions to be clarified in the final Operating Licence

5.1 This section sets out a number of material issues which require clarification in the final Licence.

5.2 First, we believe there are three drafting inconsistencies in the Licence between the main document and the summary table of conditions. Ofcom is clear that the text in the main document is the correct, intended wording, but, for the avoidance of doubt, we ask that the summary table is clarified in the following ways:

- That Radio 1's quota for news applies to weekdays rather than daily (i.e. not including weekends)
- That Radio 1's quota for first-run documentaries is 40 in number rather than 40 hours; and
- That BBC One's quota for arts and music must include some output in peak rather than all be in peak.

5.3 Second, there are also a number of areas where the final Licence could be clearer than the draft, to help avoid any potential misunderstandings in implementation:

- The first of these is regarding flexibility around the news conditions for the network music radio stations. This affects news quotas on Radio 1, 2, 6 Music, 1 Xtra and the Asian Network. Because these quotas are expressed as daily conditions (rather than the annual quotas imposed on TV channels), there will be a small number of occasions throughout the year where stations operate a different schedule, for example around special events like music festivals and Radio 1's Big Weekend, bank holidays and the Christmas period. The previous service Licence system made special allowances in this regard with the wording 'with flexibility for holiday periods and occasional special schedule changes', and we propose the same or similar form of wording should be added to the final Licence.
- That Radio 1 and 1 Xtra are allowed to simulcast news aside from weekday breakfast. The previous service Licence for 1 Xtra explicitly allowed such simulcasting, and it may be helpful to make this explicit in the final Licence.
- We suggest that the final Licence redefines 'daytime' for radio as 06:00 to 19:00 every day rather than the current 06:00 to 19:00 on Mondays to Fridays and 08:00 to 14:00 on Saturdays and Sundays. This would not materially affect any of the regulatory conditions but would simplify measurement and make any comparisons with commercial radio that Ofcom requires more straightforward.
- We propose that Radio 1's quota for live sessions is based on recordings in the last three months rather than the previous one month, as this would allow us more flexibility to include sessions recorded from non-UK artists whilst they are in the UK, which are often played out at a later date; or record bands in advance to cover times when engineers are required to work at major festivals.
- Finally, we note that BBC One and BBC Two's shared quota for current affairs does not specify that it excludes sign-zone repeats, which was a caveat in the previous service Licence system. We also note that this quota has historically included first run

commissions, acquisitions and repeats and would expect the final Licence to note this definition.

5.4 Third, we have some questions over the way some of the TV quota levels have been set, and propose that:

- The hours contributed by a BBC Two daytime programme (which was c.420 hours in 2016 and equals 19% of BBC Two's outturn against this quota) simulcast with the News Channel should be excluded from the baseline calculations for BBC Two's first run UK originations quota (as per the BBC One news quota which excludes overnight simulcasts with the News Channel from its original production quota). This would require the quota for BBC Two to be changed from 2,200hrs to 1,780hrs
- Ofcom should calculate the first run UK quota for BBC One, BBC Two, CBBC and CBeebies based on actual hours (58 minutes) rather than slot hours (60 minutes) – our understanding is that the draft quota is calculated based on slot data, but we measure and report against this and other quotas on actuals. This would mean changing the quota for BBC One from 4,000 to 3,880, BBC Two from 1,780 to 1,727 (assume above programme, already excluded otherwise BBC Two from 2,200 to 2,134), CBBC from 400 to 388 and CBeebies from 100 to 97
- The final Licence reverts the quota for BBC One and BBC Two current affairs in peak from 106 to 105 hours. From 2013 to 2016 the BBC's performance against this quota was 109, 106, 107, 108 (hours). This shows we have very minimal headroom against this quota and we therefore do not believe there is a reasonable rationale for increasing this quota by 1 hour.
- The final Licence reverts the quota for BBC One to broadcast 2,200 hours of news of national or regional interest in peak to the current level of 2010 hours. We understand that Ofcom has based its proposal to increase this quota on historic performance data, where it looks as if there is ample headroom against this quota (e.g. 2295 hours in 2014/15). However the figures Ofcom has used pre-date the change made by the BBC, in January 2016, to extend the network 10pm news by ten minutes four nights a week. This change had a knock-on effect that the national and regional news programmes which follow the 10pm news now usually start just after 10:30pm, instead of just before, and therefore these programmes now technically fall outside of peak. Our outturn in 2016 was c.2150 hours and the 2017 forecast is very similar, therefore we would not be able to meet the proposed quota increase and suggest the current level is retained to reflect our actual output.

5.5 Finally, we have two comments about the wording of the high-level objectives in the Licence that Ofcom is proposing:

- The draft Licence sets an objective for the BBC to... *'accurately represent and authentically portray all audience groups from the nations and regions across its output, services and genres'*. We agree with this objective. However the draft Licence sets out, in a footnote, Ofcom's expectation that *'for representation to be accurate we expect the number of people appearing in BBC programmes to broadly reflect the populations of the United Kingdom.'* We do not agree

that accuracy of representation can be measured in this mechanistic way, do not believe it is a realistic expectation, and if we were to try to achieve representation in line with the population, our output would almost certainly become less relevant and authentic. We suggest this part of the footnote is not carried into the final Licence.

- The draft Licence sets an objective for the BBC to... ‘*continue to take risks in terms of the output it commissions, the range of organisations it commissions from and look to reduce the number of long-running series over time..*’. We do not believe that the final part of the objective is either a desirable or appropriate for Ofcom to set. First, it is not a meaningful measure of distinctiveness. Some of the BBC’s longest-running titles deliver some of the BBC’s most distinctive, high-quality content to a wide range of audiences. Second, decisions about when to de-commission a long-running series – or indeed, to maintain and creatively refresh such a series (e.g. *Countryfile*) – should be editorial decisions for the BBC to make. Third, many of our longest-running series provide good value for money in that they are relatively low cost per viewer hour. Finally, long-running programming provides a bedrock for creative sustainability out of London (e.g. *Casualty*). We suggest that ‘to reduce’ is replaced by ‘to secure an appropriate balance of unique titles and long-running series’ in the final Licence.

6. Longer-term issues concerning the evolution of the Licence

6.1 This section sets our thinking about how the Licence might evolve in the longer-term.

6.2 As stated earlier, we believe Ofcom's methodological approach to setting the first Operating Licence is reasonable in the circumstances. Where the BBC has historically exceeded its existing set of quota levels, Ofcom has decided to increase their level by around 10 per cent to be closer to actual performance levels. We have assessed our expected future outturn against the proposed new levels and believe that, subject to the areas outlined in Sections 4 and 5, we should be able to deliver against each quota in 2018, the first year in which the Licence is operational.

6.3 However, it is critical to the success of the new arrangements for governance and regulation that the BBC Board is able to undertake its strategic and operational functions effectively. In particular, the Board may want to re-prioritise funding and shift the BBC's creative strategy to reflect changing audience and market circumstances. We, therefore, welcome Ofcom's recognition that the first Licence is not set in stone and may need to evolve over time to reflect changes in audience behaviour, developments in broadcasting markets and changes to the BBC's financial means and performance.

6.4 In terms of future evolution of the Licence, it is important to note that the BBC is facing a real-terms reduction in its licence fee funding over the next 5 years, and although we will continue to make further efficiency savings, the funding position will impact on content choices. With constrained resources, there will need to be trade-offs between quality (cost per hour) and quantity (volume of hours), and this will be judgements for the BBC Board to make in determining the BBC's future strategy and allocating resources accordingly to meet audience needs.

6.5 The proposed quotas for the volume of first-run originations on BBC One, BBC Two and children's channels are a case in point. The draft Licence proposes quotas for first-run UK originations across daytime and peak on BBC One (4,000 hours), BBC Two (2,200 hours), CBBC (400 hours) and CBeebies (100 hours). These are new quotas which are, in effect, designed to limit repeat rates, and Ofcom justifies them by reference to its audience research that new originated content is very important for UK audiences.

6.6 We do not disagree with this – and the BBC will continue to put the vast majority of its content spend into original UK content. However, our work in this area shows that high-quality UK programming is the most important thing that audiences want and it is clear that these kinds of volume quotas are only helpful regulatory interventions up to a point. They are clearly sensitive to levels of funding and to strategic choices about the right genre mix and cost per hour of output required to meet audience reach, quality and impact targets. While they guarantee that a particular channel broadcasts a specified volume of new UK programming, they do not guarantee or incentivise the quality or impact of that programming. And, at worst, there is a risk that quotas of this nature incentivise the wrong kind of behaviour.

6.7 Furthermore, our creative and strategic approach to deliver the BBC's mission and purposes is shifting to the delivery of public service genres across all platforms, so that we can maximise their impact, often in partnership with external providers. Ever more, or increased, genre quotas on

our TV and radio channels will make that harder, and risk preserving the BBC 'as it is' rather than 'where it needs to be' in future.

6.8 Therefore, it is our hope that future iterations of the Licence will do more to encourage creativity and innovation – maintaining quotas only in places deemed absolutely essential to secure the BBC's mission and purposes. In such a scenario, volume quotas would be used more selectively and targeted only at where they can genuinely enhance distinctiveness without stifling creativity and innovation. Accordingly, over time, BBC performance should be judged more on assessing audience outcomes and impacts than on prescribing inputs and outputs. Ofcom should judge the BBC on results - whether we have increased the consumption of, say, impartial news among younger audiences rather than on how many hours of news Radio 1 broadcasts.

6.9 Finally, it might be helpful to set out, for noting at this stage, the expected impact of the BBC's proposed new TV channel in Scotland. The BBC is currently consulting on this proposal and we expect Ofcom to undertake its own regulatory processes in due course. If approved, and assuming the channel is classified as a network service and opt-outs on BBC Two Scotland are removed, we will need to re-visit the following quotas:

- All out of London network supply quotas
- BBC Two's Original Production quota
- Regional (opt-out) programming
 - Total hours
 - Hours of non-news programming in Peak
 - Hours of non-news programming immediately preceding or following Peak, and
 - BBC Two Scotland regional non-news programming

6.10 The planned timetable suggests that these quotas may need to be adjusted during 2018 to account for the impact of the new channel.

7. Summary response to Ofcom's consultation questions

7.1 This section sets out the 9 consultation questions Ofcom raises and identifies the sections of our response relevant to each question.

Q.1 Do you agree with our overall approach to setting the operating Licence?

Q.2 Do you agree with the approach we have proposed for public purpose 1, including the high-level objectives and regulatory conditions we are proposing?

Q.3 Do you agree with the approach we have proposed for public purpose 2, including the high-level objectives and regulatory conditions we are proposing?

Q.4 Do you agree with the approach we have proposed for public purpose 3, including the high-level objectives and regulatory conditions we are proposing?

Q.5 Do you agree with the approach we have proposed for public purpose 4, including the high-level objectives and regulatory conditions we are proposing?

7.2 As set out in the earlier sections of this response, we believe that Ofcom's draft Operating Licence is a balanced but stretching document. Sections 4 and 5 of this response suggest a number of changes to the draft regulatory conditions and objectives that, in our view, are necessary to avoid negative impacts, clarify differences in definition, capture the most up-to-date BBC performance, and reflect achievability over the longer term.

Q.6 Do you agree with Ofcom's approach to how we will set and amend the operating Licence, as set out in Annex 5?

7.3 The draft specifies that Ofcom may make changes at its own initiative as well as at the BBC's request and that before amending the Licence, Ofcom will consult with the BBC and any other person it considers appropriate. We agree with this approach – it is critical that the first Licence is not set in stone and must be able to adapt quickly to changes in audience behaviour and in the BBC's circumstances. We set out in Section 6, our view of how the Licence as a whole should evolve over the longer-term.

Q.7 Do you agree with our proposed overall approach to performance measurement? Q.8 Do you agree with the proposed framework of: availability; consumption; impact; contextual factors? Q.9 Do you agree with Ofcom's approach to how we will set and amend the performance measures?

7.4 We note Ofcom's proposals regarding performance measurement. While we are unable to comment with any degree of granularity given that Ofcom's proposed framework and measures are illustrative rather than actual, we have one overarching observation.

7.5 The Agreement (Clause 14) is clear that the BBC is required to determine performance measures (and targets where appropriate) and to collect such information as is necessary to assess the performance of the UK Public Services in fulfilling the Mission and promoting the Public Purposes. The Agreement also states that Ofcom may determine performance measures they consider appropriate to assess the performance of the BBC further to those determined by the BBC.

7.6 We set out in our interim Annual Plan the ways we intend to measure the BBC's performance against the purposes and remit, and report on this. While we recognise that Ofcom needs to consider, in some areas, the merits of having its own measures and data to assess BBC

performance, it is clear that there is likely to be some degree of overlap between the areas we are measuring and the areas Ofcom proposes to measure. We, therefore, remain open to discussions with Ofcom to find ways to help avoid unnecessary duplication of measurement and resources.