

The new BBC Scotland Channel

Proposed variation to Ofcom's Operating Licence for
the BBC's public services

CONSULTATION:

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About this document

This consultation seeks views on our proposals to vary the terms of the BBC's Operating Licence to take account of the BBC's provision of a new BBC Scotland Channel ("BBC SC"). The deadline for responses is Wednesday 10 October at 5pm.

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1. Introduction

- 1.1 Ofcom holds the BBC to account for delivering its mission¹ and promoting its public purposes², as set out in its Charter³. One of the ways we do so is by setting an Operating Licence (“the Licence”) containing a set of regulatory conditions with which the BBC must comply. Ofcom issued the first Licence in October 2017⁴.
- 1.2 In November 2017, the BBC published proposals for a BBC Scotland television channel (“BBC SC”). Ofcom undertook a BBC competition assessment – referred to here as the “BCA” – to examine whether the public value offered by the new channel would justify any potential adverse effects on fair and effective competition. On 26 June 2018 we published our decision⁵ that the BBC could proceed with the launch of the new channel.
- 1.3 Ofcom may amend the Licence but must consult the BBC and any person we consider appropriate⁶. The Licence includes quotas for programmes of interest to viewers in Scotland which need to be changed in light of the launch of the new channel, scheduled for February 2019.
- 1.4 We are seeking stakeholders’ views on our proposals to update the terms of the Licence to take account of BBC SC and how we will measure the performance of the channel.

Background

The BBC Scotland Channel

- 1.5 On 30 November 2017 the BBC published its proposals for the BBC SC in its own Public Interest Test, which were as follows:
 - a) The BBC stated the new channel would be broadcast from 7pm to midnight every evening. In addition, the channel would broadcast BBC Two simulcast from 12 noon to 7pm interspersed with ad hoc events such as live political daytime coverage (particularly First Minister’s Questions) and live sport. This daytime coverage would amount to no more than 150 hours per year.

¹ The BBC’s Mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain (article 5 of the Charter).

² The Public Purposes are (1) To provide impartial news and information to help people understand and engage with the world around them; (2) To support learning for people of all ages; (3) To show the most creative, highest quality and distinctive output and services; (4) 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; and (5) To reflect the United Kingdom, its culture and values to the world (article 6 of the Charter).

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577829/57964_CM_9365_Charter_Accessible.pdf

⁴ Consolidated licence (March, 2018) – https://www.ofcom.org.uk/data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0016/115270/BBC-scotland-statement.pdf

⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0025/107089/procedures-bbc-operating-licence.pdf

- b) BBC Two Scotland opt-out programming would be discontinued as it would instead be broadcast on the new channel. BBC Two would be broadcast in Scotland without the opt-outs at position number two on the Freeview EPG.
 - c) On the basis of these plans, during the core hours of 7pm till midnight, 50% of hours would be first-run originations and acquisitions and 50% would be repeats.
 - d) The channel's programme budget would be just over £32 million per full year, although the exact channel expenditure would depend upon the timing of commissioning and scheduling decisions.
 - e) The channel would work in collaboration with other BBC television channels, particularly to enable it to premiere some drama and comedy, rights allowing. This would enable the channel to meet its ambition to schedule a wide range of programmes in the interests of audiences in Scotland.
 - f) The news provision on the channel, and online, would aim to be distinctive, innovative and fresh, appealing to those audiences identified by the BBC as underserved, including younger viewers. It would be different from that offered by the commercial sector. There would be a one-hour, integrated news programme broadcast each weekday night at 9pm, featuring international, UK and national stories, told from a Scottish perspective.
 - g) Following its Public Interest Test, the BBC updated its proposal to include an HD simulcast of the service.
- 1.6 In its response⁷ to Ofcom's consultation as part of the BCA process, the BBC shared an illustrative scheduling plan for the BBC SC:
- 7pm to 8pm – Quiz, lifestyle features and repeats.
 - 8pm to 9pm – Pre-watershed documentaries, factual programming.
 - 9pm to 10pm – Nine O'clock News.
 - 10pm to 11pm – Drama, factual, comedy, acquisitions.
 - 11pm to Midnight – Content aimed at younger audiences.
- 1.7 On 26 June 2018 Ofcom published its decision ("the BCA Decision")⁸ to allow the BBC to proceed with the new channel as described above. In the BCA Decision, Ofcom stated that we expected the BBC SC to have some impact on the market, and in particular on other broadcast channels in Scotland. However, we believed that any adverse impact on fair and effective competition would be justified by the public value delivered by the proposal.
- 1.8 Ofcom's BCA Decision for the new channel was based on the characteristics of BBC SC as set out above. As BBC Scotland is a new service, Ofcom must amend the Licence to incorporate the new service. The changes that we are proposing to the Licence go no

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0018/114381/BBC.pdf

⁸ See footnote 5.

further than the scope of our BCA Decision (i.e. we want to ensure that the Licence reflects the characteristics of the proposal considered in the BCA).

The BBC Charter and Agreement

- 1.9 The BBC Framework Agreement (“the Agreement”)⁹ creates obligations on Ofcom to set certain licence conditions for the BBC, and confers a wide discretion for us to impose such further regulatory conditions as we consider appropriate for requiring the BBC, in carrying out the UK Public Services, to fulfil the Mission and promote the Public Purposes, and to secure that the audiences in the UK’s nations are well served¹⁰.
- 1.10 It defines two types of programmes in relation to which Ofcom must set conditions: “network programmes” and “programme[s] of national or regional interest”¹¹.
- 1.11 “Network programmes” are programmes made for viewing on any of the UK Public Television Services, but exclude programmes made for viewing only on a variation of one of those services that relates to one of the nations or any region of England.
- 1.12 “Programmes of national or regional interest” are programmes made for viewing on variations of these services that relate to the UK nations or English regions – for example, the six¹² regional opt-outs for BBC One and Two in Scotland, Wales and Northern Ireland – and are of particular interest to those living in that nation or region.
- 1.13 There is currently no provision in the Agreement for nation-specific television services that are not variations of other network services. Under the Agreement, all programmes on BBC SC are, by definition, “network programmes”, as the service is not a variation of a UK Public Television service¹³.
- 1.14 The Agreement contains specific requirements for each kind of programming.
- 1.15 Network services attract certain requirements including some quotas. Ofcom must set the requirements we consider to be “appropriate” to secure that:
- a) a “suitable proportion” of all network programmes are made outside the M25 area;
 - b) a suitable proportion of all network programmes are programmes made in Scotland, Wales and Northern Ireland;
 - c) the network programmes made outside the M25 area (taken together) constitute a suitable range of programmes;

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1_.pdf.

¹⁰ Agreement Clause 13.

¹¹ See Agreement Schedule 2, paragraphs 6 and 7.

¹² i.e. BBC One Scotland, BBC Two Scotland, BBC One Wales, BBC Two Wales, BBC One Northern Ireland, and BBC Two Northern Ireland.

¹³ This reasoning applies equally to BBC Alba.

- d) a suitable proportion of the expenditure of the BBC on network programmes is referable to programme production at different production centres outside the M25 area;
- e) a suitable proportion of the expenditure of the BBC on network programmes is referable to programme production at different production centres in each of (i) Scotland, (ii) Wales, (iii) Northern Ireland and (iv) England (outside the M25 area); and
- f) the different programme production centres constitute what appears to Ofcom to be a suitable range of such production centres¹⁴.

1.16 Ofcom must also impose obligations on the BBC to ensure:

- a) sufficient time being given in the programmes included in the UK Public Services to a suitable range of programmes (including news programmes) which are of national or regional interest;
- b) regional programmes being of high quality;
- c) regional programmes being made in the relevant area;
- d) regional news programmes being broadcast at intervals and in peak viewing times; and
- e) a suitable proportion of other regional programmes being broadcast at peak viewing time and in the shoulder¹⁵.

1.17 The Agreement requires that in setting regulatory conditions Ofcom must have particular regard to the need for the BBC to secure the provision of distinctive output and services, and that one factor in considering distinctiveness is the amount of original output produced in the UK.

The current Licence

1.18 Under the current Licence, quotas apply to BBC One Scotland and BBC Two Scotland networked programmes and programmes of national and regional interest. In the second category, in respect of BBC One and BBC Two taken together, condition 2.67 of the Licence states the BBC must ensure that in each Calendar Year:

- a) at least 6,300 hours are allocated to programmes which are of national or regional interest;
- b) those programmes include a suitable range of programmes (including regional news programmes);

¹⁴ Agreement Schedule 2, paragraph 7.

¹⁵ Agreement Schedule 2, paragraph 6.

- c) at least 95% of those programmes consist of programmes made in the nation or region in relation to which those programmes are to be of national or regional interest;
 - d) at least 700 hours of those programmes consist of non-news programming in Peak Viewing Time¹⁶; and
 - e) at least 280 hours of those programmes consist of non-news programming at times immediately preceding or following Peak Viewing Time.
- 1.19 In addition, in respect of BBC One Scotland and BBC Two Scotland taken together, condition 2.79 of the Licence states that the BBC must ensure that it provides a range of genres in its programming that reflects Scotland's culture.
- 1.20 In respect of BBC Two Scotland, condition 2.80 of the Licence states the BBC must ensure that in each Financial Year at least 200 hours are allocated to non-news programmes, including Gaelic language output. For the purpose of this requirement, "non-news programmes" includes repeats and acquisitions, and does not include current affairs programmes.
- 1.21 Condition 2.32 of the Operating Licence sets out the minimum proportion of original productions that must be included within UK Public Television Services expressed as a percentage of the hours of all programming. For example, the minimum proportion for BBC One, BBC Two and BBC Alba is 75% (rising to 90% as a percentage of the hours of all programming in Peak Viewing Time on BBC One and BBC Two).
- 1.22 Conditions 2.33 to 2.36 set quotas for some BBC channels for first-run UK originations.

Our proposed amendments to the BBC Operating Licence

- 1.23 We propose to amend the Licence in five ways:
- a) set out how BBC SC and BBC Alba programming¹⁷ should be treated in relation to requirements for programme making in the nations and regions;
 - b) set out how programming which has been co-commissioned by different BBC services should be considered for the purpose of considering certain quotas;
 - c) remove all references to the BBC Two Scotland opt-out service from the Licence;
 - d) where appropriate retain some of the BBC Two Scotland opt-out service obligations but applied to the BBC SC; and
 - e) impose an additional Licence requirement on the BBC SC in the form of a requirement to carry news during Peak Viewing Time.

We have described our proposed amendments to the Licence in paragraphs 2.3 to 2.33.

¹⁶ Peak viewing time is defined in the Operating Licence as Peak Viewing Time" as:
(a) 18:00 to 22:30 in relation to all UK Public Television Services except for BBC Four; and
(b) 19:00 to 24:00 in relation to BBC Four.

¹⁷ See footnote 13.

- 1.24 In Section two we also deal with two other related matters. Specifically, we:
- a) explain what performance measures Ofcom will use to assess the performance of the BBC SC; and
 - b) set out how we will assess BBC Two Scotland's performance against the Licence to take account of the fact it will be switched off during the performance year.

Next Steps

- 1.25 This consultation will close on 10 October 2018. We intend to publish a statement with our final decision on the options above by the beginning of 2019 before the planned launch of the new BBC channel in February 2019.
- 1.26 We will treat all comments as non-confidential and may refer to them in the work we publish, unless respondents state otherwise. Respondents should place any confidential parts of their response in a separate annex, explaining why they consider them to be confidential. Please see Annex Three for further information about responding to this consultation.

2. Our proposals

- 2.1 In this section we set out:
- a) how we propose to amend the licence to specify how BBC SC and BBC Alba programming should be treated in relation to requirements for programme making in the nations and regions;
 - b) how we propose to amend the licence to deal with programming which has been co-commissioned by different BBC services;
 - c) which existing BBC Two Scotland Licence conditions we believe should be retained for the BBC Scotland Channel (“BBC SC”) and which should be removed from the Licence, when the new channel goes on air;
 - d) whether any additional Licence conditions should be imposed on the BBC SC; and
 - e) our approach to two other related matters: firstly, which performance measures Ofcom will use to assess the performance of the BBC SC; and how we will assess BBC Two Scotland’s performance against the Licence to take account of the fact it will be switched off during the performance year.
- 2.2 We have included as Annex One to this document the Licence marked to show the changes we are proposing to make, (including consequential changes on which we are not required to consult)¹⁸. To implement the changes, we would issue a Notice of Variation to the BBC.

How BBC SC and BBC Alba programming should be treated in relation to requirements for programme making in the nations and regions

- 2.3 Unless Ofcom changes the Licence, programmes on BBC SC (and BBC Alba) would count towards the requirement in the Licence condition 2.56 that 8% of network hours/expenditure must be attributable to Scotland. This may reduce the amount of programming from Scotland appearing on the network for the rest of the UK and adversely affect the Charter and Agreement’s creative economy objectives in this respect.
- 2.4 BBC SC and BBC Alba content would also contribute towards the total amount of network programmes, affecting the proportions of content required to be made outside the M25 area in the UK as a whole and in each of England, Northern Ireland and Wales.
- 2.5 In our view, the most appropriate solution for dealing with this issue would be to amend the programme definitions in the Agreement to place BBC Alba as well as BBC SC outside

¹⁸ We have also marked some changes to Schedule 3, on the assumption that the BBC will update its list of UK Public Services

the scope of the made outside the M25 area quotas. However, the Agreement is between the BBC and Government, and Ofcom has no power to do this.

- 2.6 Given this, our preferred approach is to use the discretion afforded to us under the BBC Agreement in determining what proportion of content is “suitable”. As such, in determining the suitable proportion of network content for the purposes of calculating the BBC’s compliance with the outside the M25 quotas for network programming we intend to amend the Licence so as to assign a zero-weight to BBC SC and BBC Alba programming. In other words, programming on the two channels would not count towards these quotas. We would take the same approach in considering whether the range of network programmes taken together is suitable. In term of BBC Alba, our proposals are designed to reflect existing practice more accurately and to ensure consistency. We are not proposing any material changes to the way in which BBC Alba has been treated to date.
- 2.7 Our proposed change to the wording of the Licence to achieve this is in paragraph 2.52A of the proposed amended Licence in Annex One.

Treatment of programming which has been co-commissioned by different BBC services

- 2.8 The BBC offered Ofcom some proposals for how the BBC would report co-commissioned programming against certain quotas set out in Licence (i.e programming co-commissioned between the BBC SC and any of BBC One/BBC Two/BBC Four). The quotas to which the BBC referred were:
- the First-run UK originations quotas set out in conditions 2.33 to 2.36 of the Licence; and
 - the quotas relating to programme-making for network services in the nations and regions set out in conditions 2.53 to 2.60 of the Licence.
- 2.9 Having carefully considered these, we took the view that an amendment to the Licence would also be required to make the position clear on co-commissions.
- 2.10 In this regard, it is important to distinguish between co-commissions, which are essentially BBC internal budgeting arrangements for programme making, and co-productions, which occur when two different legal entities collaborate to make a programme. This consultation only deals with co-commissions.
- 2.11 The BBC has, historically, considered the different financial contributions made by different services to a co-commissioned programme separately for the purposes of various quotas, for example quotas applicable only to network programmes. This will continue to be the case when reporting against, for example, Licence condition 2.56.2 (that 8% of network *expenditure* must be attributable to Scotland).
- 2.12 However, Licence conditions setting *hours* quotas for network productions in the nations are new requirements introduced by Ofcom when we set the current Licence. The BBC has argued that the historical approach does not work for reporting against for example,

Licence condition 2.56.1 (that 8% of network *hours* must be made in Scotland). Its position is that all programme hours generated by co-commissions should count against: condition 2.56.1 (that 8% of network hours must be made in Scotland); condition 2.53.1 (that at least 50% of network hours be made outside the M25); and condition 2.33/2.34 (that at least 4,000 hours on BBC One (and 2,200 hours on BBC Two) must be first-run UK originations. For example, the BBC could count the hours of a BBC One/BBC SC co-commission against the first-run UK origination quota in condition 2.33, even if the programme premiered on BBC SC before being shown on BBC One.

- 2.13 The BBC's rationale for such an approach is that it would encourage collaboration and co-commissioning between the BBC SC and BBC One, BBC Two and/or BBC Four. It added that these existing network channels would be reluctant to co-commission content with the BBC SC if the programming hours did not contribute to the quotas mentioned above.
- 2.14 We have carefully considered the BBC's arguments on this issue. We are minded to amend the Licence to clarify how the BBC should report against the various expenditure and hours quotas in the Licence when dealing with co-commissions. We consider that the historical approach to reporting expenditure remains appropriate and should be formalised in the drafting of the Licence.
- 2.15 We were not persuaded, however, by the BBC's suggestion that the Licence be amended to allow the BBC to attribute all co-commissioned hours (between the BBC SC and BBC One, BBC Two and/or BBC Four) to, for example, the first-run UK origination hours quotas for BBC One and BBC Two in conditions 2.33/2.34, or the made outside of the M25 and made in Scotland quotas in conditions 2.53.1 and 2.56.1, even if the programme was shown on the BBC SC first. In our view, this challenges the commonly understood definition – and intention – of 'first run' (and would weaken the existing requirements upon the BBC to ensure that a substantial amount of first-run originations, including content made outside the M25 and in the nations, are shown first on its leading television network services).
- 2.16 We propose to amend the Licence to make it clear that, in the case of co-commissions between different BBC network services:
- in relation to reporting expenditure for the relevant quotas, the BBC should, as at present, apportion its expenditure based on the financial contribution made by each of the different BBC services;
 - in relation to reporting hours for the quotas set out in conditions 2.33 to 2.36 and 2.53 to 2.60, the BBC should attribute all the hours for the programme to the service that broadcast the programme first.
- 2.17 Our proposed changes to the wording of the Licence to achieve this are in new paragraphs 3.7 and 3.8 of the proposed amended Licence in Annex One. We note that our proposed clarification of this point will affect channels other than BBC Scotland.

Our approach to amending the existing Operating Licence conditions relating to BBC Two Scotland

- 2.18 With the launch of BBC SC, BBC Two Scotland will be discontinued. As set out above, the Licence currently contains a number of requirements on BBC Two's Scotland opt-out programming and we therefore propose to remove references to it from the Licence.
- 2.19 Condition 2.67 of the Licence sets an annual quota of 6,300 hours to be allocated to programmes which are of national or regional interest on the six BBC One and BBC Two opt-out channels in Scotland, Wales and Northern Ireland. In addition, condition 2.67 requires that:
- at least 700 hours of those programmes consist of non-news programming in Peak Viewing Time; and
 - at least 280 hours of those programmes consist of non-news programming at times immediately preceding or following Peak Viewing Time.
- 2.20 With the launch of the BBC SC, there will only be five such channels without BBC Two Scotland. Based on our programme data from 2013 to 2017: this would mean reductions in the three hours quotas set out in paragraph 2.19 to take account of the average contribution between 2013 to 2017 of BBC Two Scotland to the hours of programmes which are of national or regional interest on the BBC One and BBC Two opt-out channels. In summary, the reductions would be as follows:
- All hours (condition 2.67.1): There would be a reduction from 6,300 hours to 5,909 hours;
 - Non-news programming hours in Peak Viewing Time (condition 2.67.4): There would be a reduction from 700 hours to 557 hours; and
 - Non-news programming at times immediately preceding or following Peak Viewing Time (condition 2.67.5): There would be a reduction from 280 hours to 179 hours
- 2.21 We are therefore proposing amendments to the annual quota set out in conditions 2.67.1, 2.67.4 and 2.67.5 in respect of programmes which are of national or regional interest shown on the BBC One and BBC Two opt-out channels which will continue to exist in Scotland, Wales and Northern Ireland. We are proposing setting separate quotas for 2019 to reflect the fact that BBC Two Scotland is expected to continue broadcasting until February of that year until the launch of the BBC SC. We will revise these figures accordingly when the BBC confirms the date of closure for this service. We therefore propose the following quotas¹⁹:

¹⁹ We have arrived at these figure by taking the average quantity of BBC Two's Scotland opt-out programming over the past five calendar years. We have taken account of the fact that BBC Two Scotland will cease broadcasting after the first two months of 2019, before the launch of the BBC SC. Using the 2013 to 2017 average of BBC Two's Scotland opt-out programming, we have therefore calculated a pro-rata requirement for each of the three quotas (All hours; Peak Viewing Time ("PVT"); and Programmes immediately preceding or following PVT) in respect of the 10 months of 2019 that BBC Two Scotland will not be broadcasting. We have then subtracted these figures from the respective existing hours quotas 2.67.1, 2.67.4 and 2.67.5 referred to in paragraph 2.20 above.

- in the Calendar Year 2019, at least 5,974 hours are allocated to programmes which are of national or regional interest;
 - in each Calendar Year after 2019, at least 5,909 hours are allocated to programmes which are of national or regional interest.
 - in the Calendar Year 2019, at least 581 hours of those programmes consist of non-news programming in Peak Viewing Time;
 - in each Calendar Year after 2019, at least at least 557 hours of those programmes consist of non-news programming in Peak Viewing Time
 - in the Calendar Year 2019, at least 196 hours of those programmes consist of non-news programming at times immediately preceding or following Peak Viewing Time; and
 - in each Calendar Year after 2019, at least 179 hours of those programmes consist of non-news programming at times immediately preceding or following Peak Viewing Time.
- 2.22 Our proposed changes in this respect are set out in condition 2.67 of the proposed amended Licence in Annex One.
- 2.23 In the BCA Decision, we stated that the proposed channel would broaden the options available to viewers in Scotland, provide a greater Scottish focus in its news coverage and deliver more content designed to reflect the lives of people in Scotland. We propose retaining some BBC Two Scotland conditions on the new BBC SC. We propose applying the following conditions which currently apply to BBC Two Scotland (as set out in conditions 2.67 and 2.79 of the Licence) on the BBC SC:
- The BBC SC should provide a suitable range of programmes (including regional news programmes).
 - The BBC SC should provide a range of genres in its programming that reflects Scotland's culture.
 - At least 95% of the BBC SC's output would consist of programmes made in Scotland.
- 2.24 Licence condition 2.80 currently requires that, in respect of BBC Two Scotland, in each Financial Year at least 200 hours are allocated to non-news programmes, including Gaelic language output. The BBC has indicated that the BBC SC will not include Gaelic programming. We therefore do not propose setting any licence conditions relating to Gaelic programming on the BBC SC.
- 2.25 The Agreement requires Ofcom to impose conditions setting out the level of original productions on each of the UK Public Television Services. As part of our BCA work, we found that BBC SC is a new UK Public Service²⁰. Consistent with the approach we have previously taken with respect to BBC Alba and BBC Two Scotland, we propose that at least 75% of the BBC SC's output must consist of original productions.
- 2.26 Our proposed changes are in Conditions 2.32, 2.79 and 2.80 of the proposed amended Licence in Annex One.

²⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0027/109395/Letter-concluding-initial-assessment.pdf

Should any additional Licence conditions be imposed?

- 2.27 Ofcom has considered whether it would be appropriate to impose any further conditions on the BBC SC, in order to secure that the BBC fulfils its Mission and promotes the Public Purposes and that audiences including in Scotland are well-served.
- 2.28 Generally speaking, we consider that the obligations which already existed, and which we propose to revise as set out above, strike an appropriate balance between holding the BBC to account and leaving it sufficient freedom to fulfil its mission and public purposes in the most appropriate way.
- 2.29 We have noted the weight placed by the BBC, in its public interest test, and others on the proposed weekday news programme for the BBC SC. In our BCA, we considered that the BBC had provided evidence that the proposal will contribute to the delivery of public value, including through its increased news provision and greater Scottish-focus in its news coverage.
- 2.30 Having regard in particular to the Public Purposes of providing impartial news and information to help people understand and engage with the world around them; and to reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions, we propose to include in the Licence a condition requiring the BBC SC to provide the volume of hours that the BBC has proposed²¹. We are therefore proposing that in each Calendar Year the BBC SC should provide at least 250 hours of news content in Peak Viewing Time.
- 2.31 We are proposing setting a separate pro-rata quota for 2019 to reflect the fact that BBC Two Scotland is expected to continue broadcasting until February of that year until the launch of the BBC SC. We therefore propose the following quotas in relation to news on the BBC SC, although we would revise the precise numbers when the BBC confirms the date of closure for the BBC Two Scotland:
- in the calendar year 2019, at least 208 hours are allocated to news programmes in Peak Viewing Time²²; and
 - in each calendar year after 2019, at least 250 hours are allocated to news programmes in Peak Viewing Time.
- 2.32 We have also considered imposing an additional licence condition on the BBC SC to reflect the fact that the BBC has committed to ensuring that repeats will make up no more than 50% of the new channel's output. However, mindful of how other television services are treated under the Licence, we consider it would not be appropriate to set such a condition at this time. However, as we made clear in the BCA Decision, Ofcom's BBC monitoring programme will capture the BBC's activities in Scotland. Should we be concerned by any aspect of the BBC SC's on-going performance, including the level of

²¹ See paragraph 1.5(f) above.

²² The 208 hours takes into account the information currently available that the BBC SC should be broadcast for 10 months of 2019 but can be amended when the launch date is confirmed..

repeats, we do not rule out imposing additional licence conditions on the new channel in future, if we consider it is appropriate to do so.

- 2.33 Our proposed additions are in condition 2.80 of the proposed amended Licence.

Other matters

- 2.34 In our view the performance measures for the BBC we introduced in 2017²³ will be effective for measuring the performance of the BBC SC. We introduced four performance measures and a set of principles to which we have regard in applying the performance measures. We have also determined a minimum set of data metrics and sources that we will use as evidence of the BBC's performance against the measures we have specified. The four performance measures are: availability; consumption; impact; and contextual factors. Measures in this final category will be determined on an ad-hoc basis, according to the contextual factors that are relevant in a given year to the delivery of one or more the public purposes. Examples of the type of evidence that we might seek to collect in this regard include content analysis, in-depth audience analysis and qualitative audience research. We may also look at additional evidence from the BBC, from the BBC's partners, or opinions from industry stakeholders where appropriate.
- 2.35 Stakeholders are invited to provide their views on the proposals laid out in this document.

Do you agree with Ofcom's proposed approach to amending the Licence set out in this consultation and the proposed amendments to the Licence set out in paragraphs 2.3 to 2.33. Please provide reasons for your views.

²³ https://www.ofcom.org.uk/_data/assets/pdf_file/0016/107071/bbc-performance-measures.pdf

A1. Proposed amended Operating Licence for the BBC's UK Public Services

Document published separately:

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/119205/BBC-Operating-Licence.pdf

A2. Impact assessment and equality impact assessment

Impact Assessment

- A2.1 Ofcom is required under the Charter and Agreement to put in place a Licence, and to do so in accordance with the provisions contained in those documents. Ofcom also has a legal duty to carry out impact assessments where our policy decisions are likely to have a significant effect on businesses or the public, or when there is a major change in Ofcom's activities²⁴.
- A2.2 In reaching our view on the appropriate amendments to the BBC Operating Licence to encompass the BBC Scotland channel, we have considered the impact on the BBC, other broadcasters in Scotland, the Scottish production sector and viewers. The analysis set out in this document includes such an impact assessment for the purposes of the relevant duties imposed on Ofcom.

Equality Impact Assessment

- A2.3 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on people with any of the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation²⁵. We refer to groups of people with these protected characteristics as 'equality groups'.
- A2.4 We fulfil these obligations by carrying out an EIA, which examines the potential impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identify.
- A2.5 In setting our first Licence for the BBC Ofcom conducted an EIA considering the effects of our proposed approach for holding the BBC to account for the delivery of its mission and public purposes²⁶. We concluded that securing delivery of the BBC's mission and public purposes through this regulatory regime will bring benefits to all consumers of BBC output including equality groups.
- A2.6 We do not consider the proposed changes to have any additional positive or adverse impact on equality groups.

²⁴ Section 7 of the Communications Act 2003.

²⁵ As defined in the Equality Act 2010.

²⁶ See https://www.ofcom.org.uk/data/assets/pdf_file/0015/107070/bbc-performance-statement-annexes.pdf, October 2017, paragraphs A6.11 to A6.25.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Wednesday, 10 October 2018.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/variation-operating-licence-bbc-public-services>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to BBCScotland.Licence@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after 28 February, 2019.
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Glenn Preston
Ofcom
4th Floor, 125 Princes Street
Edinburgh EH2 4AD
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include a response to the question asked at 2.31 in the consultation document. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A3.10 If you want to discuss the issues and questions raised in this consultation, please contact Glenn Preston on 0131 220 7301, or by email to glenn.preston@ofcom.org.uk.

Confidentiality

- A3.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A3.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A3.15 Following this consultation period, Ofcom plans to publish a statement by the beginning of 2019.
- A3.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex Four.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

The new BBC Scotland Channel

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

BASIC DETAILS

Consultation title: organisation realise

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A6. Consultation Question

Do you agree with Ofcom's proposed approach to amending the Licence set out in this consultation and the proposed amendments to the Licence set out in paragraphs 2.3 to 2.33. Please provide reasons for your views.