



The new BBC Scotland Channel: Proposed variation to Ofcom's Operating Licence for the BBC's public services

BBC Response

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Contents

Contents	1
Introduction.....	2
Background.....	2
Ofcom’s consultation on the Operating Licence.....	2
The BBC’s response	3
1. Proposed changes to the Operating Licence conditions	4
1.1 Amendments to accommodate the closure of BBC Two Scotland.....	4
1.2 Original productions.....	4
1.3 Requirement to provide a range of programmes.....	4
1.4 Made in Scotland requirements	5
1.5 Additional licence conditions for news coverage	6
2. Treatment of the BBC Scotland channel’s output.....	7
2.1 Treatment of BBC Scotland and BBC Alba programming in relation to requirements for programme making in the nations and regions	7
2.2 Reporting of programming that have been co-commissioned/premiered by different BBC services.....	8
3. The list of UK Public Services	12

Introduction

The BBC welcomes the opportunity to comment on Ofcom's proposed variations to the Operating Licence related to the new BBC Scotland channel.

Background

On 22 February 2017, the Director-General Tony Hall announced the BBC's biggest single investment in broadcast content in Scotland in over 20 years and the launch of a new TV channel for Scotland – BBC Scotland. In June 2017, we carried out a consultation setting out our proposals for launching the new channel and closing the BBC Two Scotland opts. In October 2017 the BBC Board decided that the proposal for the BBC Scotland channel passed the Public Interest Test. In November 2017, we published the results of the Public Interest Test and submitted it to Ofcom for its approval.

We also set out the vision for the new channel:

“This will be a channel for modern Scotland, a home for compelling, quality content that appeals to and reflects the diversity of Scottish audiences today. It will provide an ambitious and innovative destination for those seeking to see more of their lives, stories and interests on screen.”¹

Following its decision that the BBC's proposal was a material change² and a consultation³ on its provisional determination³, on 26 June 2018 Ofcom decided “that the BBC may carry out the proposed change to the service as notified” and stated that it did “not believe it is necessary to require the BBC to amend the service proposition”.⁴

This new channel will start broadcasting in February 2019.

Ofcom's consultation on the Operating Licence

On 29 August 2018 Ofcom published a consultation paper setting out its proposed amendments to the Operating Licence following its approval of the BBC's plans for a

¹ Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, p.2

² Conclusion of initial assessment of proposed BBC Scotland television channel, https://www.ofcom.org.uk/_data/assets/pdf_file/0027/109395/Letter-concluding-initial-assessment.pdf

³ BBC Scotland Competition Assessment: Consultation of Ofcom's provisional determination, https://www.ofcom.org.uk/_data/assets/pdf_file/0018/113184/consultation-bbc-scotland-provisional-determination.pdf

⁴ BBC Scotland Competition Assessment: Final determination https://www.ofcom.org.uk/_data/assets/pdf_file/0016/115270/BBC-scotland-statement.pdf

new BBC Scotland channel. In its consultation document Ofcom set out a number of proposals including:

- How it proposes to amend the Operating Licence to specify how BBC Scotland and BBC Alba programming⁵ should be treated in relation to the requirements for programme making in the nations and regions;
- How it proposes to amend the Operating Licence to deal with programmes which have been co-commissioned by different BBC services;
- Proposed changes to the Operating Licence relating to BBC Two Scotland; and
- Further changes to the Operating Licence to reflect commitments to carry news in peak viewing time.

The BBC's response

The BBC fully supports Ofcom's proposed changes where they are consistent with the BBC's proposals for the new channel, as approved by the BBC Board and Ofcom. As such the BBC supports Ofcom's proposals to amend the Operating Licence to:

- Reflect the closure of BBC Two Scotland;
- Set an original production quota of 75%;
- Require the new channel to provide a range of programmes; and
- Set a quota for news provision in peak viewing time.

There are three areas where Ofcom's proposed changes are inconsistent with the new channel plans that were approved by the BBC Board and Ofcom, i.e. the proposal that 95% of programmes be made in Scotland, the requirement to offer regional news programmes, and the treatment of network / Scotland co-commissions and premieres for Made out of London and first-run origination quotas. We set out our reasons below.

In addition, our response considers Ofcom's proposed changes to the BBC's list of UK Public Services.

⁵ The new BBC Scotland Channel - Proposed variation to Ofcom's Operating Licence for the BBC's public services, https://www.ofcom.org.uk/_data/assets/pdf_file/0015/119211/BBC-Scotland-operating-licence-consultation.pdf

1. Proposed changes to the Operating Licence conditions

1.1 Amendments to accommodate the closure of BBC Two Scotland

To reflect the closure of BBC Two Scotland, Ofcom is proposing to reduce conditions 2.67.1, 2.67.4 and 2.67.5 by the average contribution between 2013 and 2017 of BBC Two Scotland opts to the hours which are of national or regional interest on the BBC One and BBC Two opt-out channels.

We agree with this approach and the proposed changes to the hours' commitments in these conditions that will apply in 2019 and subsequent years.

1.2 Original productions

In paragraph 2.23 Ofcom proposes to require that 75% of the programmes shown on the new BBC Scotland channel should be original productions. This is equivalent to 1,481 hours per year.

It was always the BBC's intention that as a distinctive BBC television channel, the BBC Scotland channel would have a high proportion of original productions. Therefore, the BBC fully supports this proposal.

1.3 Requirement to provide a range of programmes

Ofcom proposes to require that the BBC Scotland channel should provide a range of genres in its programming that reflects Scotland's culture.

In our November Public Interest Test submission we said that the BBC Scotland channel would include "high quality drama, comedy, factual, sport and entertainment programmes that will seek to inform, to educate and to entertain. The channel will offer the space for the creative sector to try new things, bringing new voices, new genres and new perspectives to broadcasting in Scotland."⁶ Therefore, we are fully supportive of Ofcom's proposal that the Operating Licence should underscore this commitment.

However, in importing the language of the Operating Licence conditions related to the opts programming, Ofcom is proposing to require the new BBC Scotland channel to include "regional news programmes" within the suitable range of programmes. News will be a vitally important part of the new channel, with a one-hour news programme every week night at 9pm and a daily 15 minute bulletin at the weekends. However, this will not be "regional news" in the sense of the news programmes

⁶ Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, p. 22

provided on BBC One and Two opts, i.e. separate news programmes for different regions in Scotland. The Scottish news hour will feature international, UK and national stories, told from a Scottish perspective, as set out in our November submission and approved by Ofcom.

We therefore suggest that the condition 2.80.2 should simply state that:

“In each Calendar Year it should provide a suitable range of programmes”.

1.4 Made in Scotland requirements

Ofcom has proposed that 95% of the new channel’s output should consist of programmes made in Scotland. This repeats the obligation that applies to the opts programming on BBC One and BBC Two. This obligation would require all but 15 minutes a day to be made in Scotland, whether repeats, acquisitions or first-run originations.

The BBC is fully committed to increasing investment in Scotland. The programme budget for the channel is £32 million per year, of which the substantial majority relates to first-run originations. We have committed that:

“The additional investment is an opportunity for the sector to grow and flourish, helping to develop a sustainable training and production base for the industry in Scotland.”⁷

However, it was never the BBC’s intention that the new channel would merely be a scaling up of the Scottish opts. It will include some programmes that are made in Scotland and are currently broadcast on BBC Two Scotland, but the new channel will be much broader in its outlook than the current BBC Two Scotland opt.

In our submission to Ofcom in November 2017 we were clear that the new channel “will be a channel for modern Scotland, a home for compelling, quality content that appeals to and reflects the diversity of Scottish audiences today.” We also stated that the new channel “will be outward-looking, co-producing or acquiring great content from around the world for Scottish audiences.”⁸

The channel will include repeats of programmes from other BBC channels and archive programmes where that content resonates with audiences in Scotland. For

⁷ Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, p.21

⁸ Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, p. 3 and 22

example, network programmes such as *The Thick of It* (Peter Capaldi/Armando Iannucci) and *Extras* (Ashley Jensen) are of value to audiences in Scotland in showcasing Scottish talent, on and off-screen. It is also easy to envisage an overseas production on a Scottish subject that would resonate with audiences but not count as made in Scotland under the Made out of London criteria.

If implemented as proposed, this obligation would prevent the BBC from fulfilling the proposal assessed in the Public Interest Test and approved by the BBC Board and Ofcom.

However, given that it is fully the BBC's intention that the vast majority of programming would be made in Scotland, we would be happy to commit to the requirement that 90% of first-run original programmes commissioned for the channel will be made in Scotland. This level would give BBC Scotland the opportunity to invest in large co-productions which wouldn't be classed as being made in Scotland, but would still be of interest to audiences in Scotland.

Given our clear commitments in this area we do not think it would be necessary for this to form part of the Operating Licence. However, if Ofcom consider that this requires an addition to the Operating Licence, given the complexity of these interrelated quotas, we would like to engage further on drafting to ensure that it achieves the intended result.

1.5 Additional licence conditions for news coverage

Ofcom proposes that in the 2019 calendar year 208 hours, and in each calendar year after 2019 at least 250 hours, on the BBC Scotland channel are allocated to news programmes in Peak Viewing Time.

The BBC has always been clear that:

“News and current affairs will be at the heart of the schedule, with a one hour, integrated news programme broadcast each week-night at 9pm, featuring international, UK and national stories, told from a Scottish perspective.”

As such the BBC fully supports the introduction of these quotas.

2. Treatment of the BBC Scotland channel's output

2.1 Treatment of BBC Scotland and BBC Alba programming in relation to requirements for programme making in the nations and regions

The 2016 Agreement requires Ofcom to place obligations on the BBC to ensure that “a suitable proportion of all the network programmes made in the United Kingdom are programmes made in Scotland, Wales and Northern Ireland”. The definition of network programmes excludes programmes made only for viewing on regional and national opts.⁹ However, under the definitions in the Agreement, the new BBC Scotland channel is a UK Public Television Service¹⁰, which means that its programmes are “network programmes”. As such programmes on the new BBC Scotland channel would count towards the 8% of network television hours and expenditure attributable to Scotland under the Made out of London regime. The same issue applies to BBC Alba.

This poses two problems. First, it may reduce the amount of programming from Scotland appearing on the BBC's network channels for the rest of the UK. Second, programmes shown on the BBC Scotland channel and BBC Alba would contribute towards the total amount of network programmes, affecting the proportions of content required to be made outside of the M25 area in the UK as a whole and in each of England, Northern Ireland and Wales.

To address these problems Ofcom has proposed to ‘zero-weight’ BBC Scotland and BBC Alba programming for the purposes of calculating the BBC's compliance with the Made out of London quotas for network programming, as reflected in the proposed wording of para 2.52A of the Operating Licence. In effect, Ofcom is creating a new category of UK Public Television Service, which has the status of national or regional opts rather than a network channel.

The BBC agrees with this approach, though for the purposes of clarity we recommend an alternative form of wording to make clear that zero-weighting applies to both hours and expenditure. We therefore recommend that 2.52A states:

⁹ “network programmes” means programmes made for viewing on any of the UK Public Television Services, other than programmes made for viewing only on a variation of such a service that relates to one of the following- (a) Northern Ireland, (b) Scotland, (c) Wales, (d) any region of England.” (2016 Agreement, section 7(3)).

¹⁰ “the UK Public Television Services” means those UK Public Services which consist of television programme services. (2016 Agreement, section 75).

“For the purposes of conditions 2.53 to 2.63, the hours of and **expenditure on**¹¹ Network Programmes made only for BBC Alba and BBC Scotland shall be zero-weighted.”

2.2 Reporting of programming co-commissioned/premiered by different BBC services

The BBC’s proposal for the new channel stated that:

“The channel will work in collaboration with other BBC television channels, particularly to enable the channel to premiere some drama and comedy, rights allowing. This will enable the channel to meet its ambition to schedule a wide range of programmes in the interests of audiences in Scotland.”¹²

This collaboration could take two forms. First, the BBC Scotland channel and BBC network channels could co-commission (i.e. jointly invest in) programmes that premiere on the BBC Scotland channel and are then shown on a BBC network channel. Second, the BBC Scotland channel may, on occasion, premiere programmes that have been fully funded by BBC network channels if they are likely to resonate with audiences in Scotland; for example programmes like *Shetland*, *The Replacement* or *Trust Me*.¹³

When the BBC consulted on its initial proposals for a new BBC Scotland channel, some stakeholders questioned whether the channel’s budget would be large enough to deliver the ambitions set out for the channel, especially with regard to high-quality drama. The commitment to work in collaboration with other BBC channels addressed this concern, as showing programmes funded (either partly or wholly) by BBC network channels on the new BBC Scotland channel will help to broaden the volume and range of shows included in its schedule. This element of the Scotland channel proposals contributes to the public value of the channel and is consistent with the final version of the proposals that the BBC Board approved in the context of the Public Interest Test.¹⁴

¹¹ Bold type is for emphasis only.

¹² Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, p.28

¹³ We have adopted approach in the past. When BBC Three launched in 2003 (previously the channel had been branded as BBC Choice), BBC One viewers of Eastenders were able to see the next episode twenty-four hours in advance by switching over to BBC Three.

¹⁴ Proposals for the launch of a new BBC Scotland TV channel: Submission to Ofcom, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf, paragraphs 53-56

Such collaborations, however, raise a number of questions about the reporting of the hours and expenditure of such co-commissions and premieres against several quotas in the Operating Licence, i.e. first run originations (2.33 to 2.36) and programme making for network services in the nations and regions (2.53 to 2.60).

2.2.1 First-run UK originations

The BBC considers that there would be considerable public value in premiering certain programmes that will resonate with Scottish audiences on the new BBC Scotland channel, whether these are co-commissions with network channels or fully funded by network channels. The BBC had proposed to Ofcom that such premieres on BBC Scotland should not stop them contributing to the requirement that 4,000 hours / year on BBC One and 2,200 hours / year on BBC Two are first-run UK originations.

In its consultation, Ofcom disagreed with this approach, stating that it:

“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).”¹⁵

Whilst we recognise that Ofcom is keen to uphold the requirement that a substantial amount of first-run originations are shown first on BBC One and BBC Two, we do not consider that the BBC’s proposal would undermine that requirement in any material sense. The BBC Scotland channel is intended to appeal to audiences in Scotland. It is explicitly not intended to be a channel with mass appeal across the UK or to be one of the BBC’s main channels. Indeed in its analysis of the likely impact of the new channel, Ofcom estimated that BBC Scotland’s share of Scottish viewing would be 2.42% , which equates to approximately 0.2% of UK wide viewing.

Furthermore, if BBC One and BBC Two were unable to count co-commissions against the relevant Operating Licence quotas for first-run UK originations (i.e. 2.33 and 2.34), they would face very clear disincentives to allow premieres on the new BBC Scotland channel.¹⁶ This will impact on audiences by diminishing the prospects of high quality BBC content on the new channel, produced via collaboration and co-commissioning. While the BBC is currently on track to comfortably meet its first-run

¹⁵ The new BBC Scotland Channel – Proposed variation to Ofcom’s Operating Licence for the BBC’s public services, https://www.ofcom.org.uk/_data/assets/pdf_file/0015/119211/BBC-Scotland-operating-licence-consultation.pdf

¹⁶ Network channels may also be deterred from collaborating with BBC Northern Ireland and BBC Wales.

UK origination quotas, given the increasing financial pressures on the BBC it cannot be presumed that this will continue to be the case.¹⁷

Therefore, given the public value that will be generated in Scotland by encouraging such premieres of programmes that resonate with Scottish audiences, the very limited impact on the BBC's leading network television services, and the potential disincentives to co-operation between network channels and regional or national services, we recommend that Ofcom amends its definition of first-run originations, as defined in paragraph 2.37.1 of the Operating Licence, to:

““first-run originations” means programmes which are commissioned by or for a UK Public Television Service and have not been shown on a ~~television~~ service aimed at UK-wide audiences in the United Kingdom.”

2.2.2 Programme making for network services in the nations and regions

In its consultation document, Ofcom proposed to formalise the historic treatment of allocating expenditure on co-commissions across different services in line with their relative financial contributions, as reflected in the proposed change set out in paragraph 3.7 of [Annex 1](#) to the consultation document.

In terms of reporting of hours of co-commissioned programmes for the quotas set out in conditions 2.53 to 2.60, Ofcom has proposed that the BBC should attribute all the hours for the programme to the service that broadcasts the programme first, to allow the BBC to count hours of co-commissioned programmes to the major channel (i.e. BBC One or BBC Two) to avoid challenging the understood definition of ‘first run’. If implemented this proposal would further reinforce the disincentives for the BBC network and national / regional services to collaborate on productions to the benefit of audiences.

In relation to programme making in the nations and regions, clause 7(3) of Schedule 2 of the Agreement defines “network programmes” as:

“programmes made for viewing on any of the UK Public Television Services, other than programmes made for viewing only on a variation of such a service that relates to one of the following- (a) Northern Ireland, (b) Scotland, (c) Wales, (d) any region of England.”

¹⁷ In announcing the results of the BBC's efficiency review, Deputy Director General Anne Bulford said: “Simply put, we cannot reduce our cost base by a fifth and not see impact in our content”. https://www.bbc.co.uk/mediacentre/latestnews/2018/efficiency-review?ns_campaign=bbc_press_office&ns_linkname=corporate&ns_source=twitter&ns_mchannel=social

As is clear from the definition above, a programme made for viewing only on national / regional opts is not a “network programme”. However, it is also clear that a programme that is made for viewing on a UK Public Television Service and national / regional opts is a “network programme” for the purposes of programme making in the nations and regions.

The only mention of “first run” in the regulatory framework in relation to national and regional production is in Ofcom’s *Regional production and regional programme definitions*.¹⁸ However, Ofcom does not define “first-run” in this document. The intention appears to be to prevent double counting of “Made out of London” hours on network channels. Given the definition of “network programmes” in the Agreement, it is clear that in this context “first run” should be interpreted as in relation to the same or other network channels, not in relation to having been shown on opts.

Given that Ofcom is proposing to zero weight the programmes shown only on BBC Scotland for the purposes of the national and regional production quotas, it is in effect treating the new BBC Scotland channel’s programmes as equivalent to opts. As seen above the Agreement anticipates that a programme shown on both opts and network should count as a network programme for the purposes of national and regional production.

In light of the above, the BBC urges Ofcom to reconsider its position. The BBC proposes that consistent with the intention of the Agreement any programme that is broadcast on both BBC Scotland (as in zero weighting it’s programming, Ofcom is effectively treating its output as opts) and on a network channel should count fully towards the relevant regional and national production quotas if those criteria are met, irrespective of which channel the programme premieres on. In addition to reflecting the Agreement’s intention, such an approach would be simpler and, therefore, more efficient to administer; does not penalise collaboration between different parts of the BBC; would encourage further investment in the nations and regions; and improve the prospects of high quality BBC content on the new channel. Such an approach would also be consistent with the BBC’s proposal in the Public Interest Test and approved by the BBC Board and Ofcom.

¹⁸ *Regional production and regional programme definitions*, https://www.ofcom.org.uk/_data/assets/pdf_file/0019/87040/Regional-production-and-regional-programme-definitions.pdf

3. The list of UK Public Services

Under the 2016 Agreement the BBC is required to maintain and publish a list of its public services¹⁹. The BBC Agreement also states that a material change to the list of Public Services may require the list to be amended.

We note that Ofcom is consulting on an updated version of Schedule 3: The UK Public Services in the current Operating Licence, which references the new BBC Scotland channel. The Agreement is clear that it is the BBC's responsibility to amend and update the list, rather than Ofcom's. We will publish an up-to-date list of UK Public Services on the day that the new channel launches. This will include the following description:

'BBC Scotland: a mixed genre television channel that appeals to and reflects the diversity of Scotland'.

It will also amend the description of BBC Two to remove the reference to the version for Scotland.

¹⁹ See Schedule 1, Part 1, clause 1 of the BBC Agreement (2016)