

BBC Scotland channel: variation to  
Ofcom's Operating Licence for the BBC's  
public services

**pact.**

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## Introduction

- 1) Pact is the trade association that represents the commercial interests of the independent production sector across the UK. Pact has 500 members including around 40 companies, largely small and medium sized businesses, based in Scotland across TV, film, digital, animation and children's production.
- 2) The UK independent television sector is the second largest in the world, with revenues growing over the last ten years to around £2.7 billion in 2017 with international revenues largely driving growth.<sup>1</sup>
- 3) UK TV exports are also a success story with international revenues from the sale of UK TV programmes and associated activities at £900m in 2016/17<sup>2</sup>.
- 4) In 2015, the Scottish original production market was worth approximately £190 million, and has grown by 9% per annum since 2009 (rising from a low base following the introduction of network quotas for the UK Nations by the BBC and, later, Channel 4).<sup>3</sup> Scotland now has an increasing number of producers that are competing nationally and internationally across a number of genres. Pact modelled that the production market in Scotland could rise to £250m by 2020 if the recommendations in the Pact report '*Building a sustainable independent sector in Scotland*' are implemented.
- 5) Pact is pleased that the BBC has committed to both more investment in Scotland and to ensure that proportionately more of the licence fee raised in Scotland is spent on dedicated services in Scotland (currently 69% according to the latest BBC Annual Report, a slight fall from the previous year<sup>4</sup>).
- 6) The BBC has a Public Purpose to support the creative economy across the UK and overall the new channel should be a positive catalyst for the creative industries in Scotland including independent production. Investment in the local production sector will bring a diverse range of quality content to audiences in Scotland, the UK and internationally.

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<sup>1</sup> Pact Census Independent Production Sector Financial Census and Survey 2018, by Oliver & Ohlbaum Associates Limited

<sup>2</sup> UK TV Exports – a global view in 2016/17 (BBC Studios, ITV Studios, Pact, Ipsos)

<sup>3</sup> Building a Sustainable Independent Production Sector in Scotland, Pact (Nov 2015)

<sup>4</sup> BBC Annual Report and Accounts 2017/18

<http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/ara>

## Overall approach

- As we expressed in our original submission, Pact is pleased that the BBC has committed to more investment in Scotland through the new BBC Scotland channel. We welcome increased funding for production which we believe overall will benefit Scotland's production sector and the creative economy as a whole.
- The overall focus of Pact's response to this consultation is to agree with Ofcom's approach with regard to zero weighting the new channel content against the network quotas. However, with regard co-commissioned content, we believe that further consultation and consideration is needed to ensure that we continue to incentivise co-commissioning in the future and that no disincentives are created.

## 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.**

### *BBC Scotland channel and nations and regions programming requirements*

- 1.1 Pact supports Ofcom's arguments and approach in this section which propose amending the BBC Operating Licence in order to assign a zero-weight to BBC Scotland Channel and to BBC Alba programming, so that programming on the two channels would not count towards the network quotas.
- 1.2 Taking an alternative approach would have had negative repercussions for both network investment in Scotland but also the wider Out of London quotas.
- 1.3 Pact's understanding has always been, and from when the new channel was first announced, that it should be allocated as a local service in addition to the existing opt out budget and current 8% BBC network spend in Scotland, as outlined in the recently agreed BBC service licence.
- 1.4 We appreciate, as Ofcom points out, that as the regulator it does not have the powers to amend the relevant programme definitions in the BBC Charter and Agreement, this being a matter for the BBC and Government. Pact expects that this issue should be ironed out when the next BBC Charter is negotiated and agreed.
- 1.5 We confirm that we agree with the proposed change to the wording of the licence as set out in paragraph 2.52A.

### *Treatment of programming co-commissioned by different BBC services*

- 2.1 In the case of co-commissioned content, Pact considers it is appropriate that the financial contributions made by the different services i.e. new channel (local) vs network,

should continue to be allocated in proportion with the actual expenditure (e.g. 8% of network expenditure attributable to Scotland).

2.2 Pact recognises that licence conditions setting hours quotas for network productions in the nations are new requirements introduced by Ofcom. We have some sympathy with the BBC's proposal to allocate all programme hours generated by co-commissions against the quotas i.e. 8% of network hours in Scotland and 50% of network hours outside the M25.

2.3 However, we believe that a more appropriate option would be to allocate hours in proportion with expenditure i.e. If BBC network invested 70% expenditure and BBC Scotland new channel 30% in a programme, then the hours would be allocated pro-rata on that basis.

2.4 That said, we also appreciate that it is important to protect the Out of London targets and 8% network quota so that this is genuinely capturing network spend. We are open to further consultations and discussions with Ofcom to reach an appropriate outcome. One solution might be to only allocate the network side of the equation on the basis that BBC Scotland will be using all or most of their available tariff. We also recognise that any solution could evolve over time and that Ofcom have the opportunity to amend and update the BBC service licence in the future on an ongoing basis.

#### *Importance of co-commissioning*

2.5 Pact has long advocated the importance of co-commissioning of content from the nations. This brings in important investment, encourages the commissioning of local content to be seen on network and promotes joint working and discussion between BBC local and network services. BBC local services are an important conduit for indies to help support and promote their relationships and content with BBC network services. Pact has called before for the broadcaster's network commissioners to be more active in developing relationships with indies in the nations and regions.

2.6 Pact would be wary of any policy that resulted in eroding co-commissioning and collaboration which is valuable to the independent sector. This bridge between local and network helps indies develop content of interest to network and sustainable businesses at the same time. Pact wants to ensure that under the revised service licence that incentives remain (and indeed that there are no disincentives) for the new channel to invest in co-commissioned content in the future. There are a small number of co-commissions every year at the moment but we understand that the BBC would like to build on this and Pact supports this ambition.

2.7 Pact is aligned with the BBC in not wanting to undermine opportunities for co-commissioning in the future. We are open to a discussion on this issue and exploring further options with the BBC and Ofcom.

2.8 We call on the BBC to clarify in their *Proposals for the launch of the new Scotland channel November 2017* (page 19) that they mean to refer to 'network' programme tariffs as agreed in the codes of practice with Pact, i.e.:

*'When co-commissioning programmes, the established programme tariffs would apply regardless of the order in which the transmissions were used'.*

Should read: *'When co-commissioning programmes, the established network programme tariffs would apply regardless of the order in which the transmissions were used'.*

2.9 Pact would also welcome further clarity from both the BBC and further analysis from Ofcom as to the intention of the following statement in the BBC's original proposal (again page 19) and the possible impact on the channel budget:

*'Secondly, co-commissioning programmes jointly with other BBC services may also affect the programme budget for the channel'.*

2.10 Producers report that there have been instances in the past under the existing system where network have reduced the tariff knowing that it would be topped up by local services. It would be useful for 'normal' tariffs for both local and network to be published for the purposes of transparency.

#### *First run origination quotas*

2.11 With regard to first run origination quotas, we do have some sympathy with Ofcom's approach, in that it is not appropriate for all co-commissioned hours to be attributed to the first run origination quotas as outlined, even if the programme was shown on the Scotland Channel first. We agree that the commonly understood definition and intention of 'first run' is for content to be shown first on its leading TV network services and that these existing requirements should not be weakened.

2.12 However, we are wary of any disincentives to co-commissioning and would propose that first run hours are, in a similar way to the allocation of network hours, are allocated on a pro-rata basis in proportion to the expenditure of that programme i.e. First run hours would be allocated 60% to network, 40% to local services if that reflecting the proportionate investment in the programme.

2.13 Pact agrees to the proposed changes to the Licence at 2.16 in the case of co-commissions of different network services:

- that the BBC should 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 on a pro-rata basis to the service that broadcast the programme first.

However, as previously stated, we are open to a conversation about exactly how this can be achieved.

#### *Conditions relating to BBC Two Scotland*

3.1 In light of the fact that BBC Two Scotland will be discontinued when the new channel launches, we accept that references to the service in the licence will be removed. We also accept the amendments to the hours as set out and appreciate that these may be revised when the exact date of the closure of the service is known.

3.2 Pact supports at para 2.23 the intention to apply current BBC Two Scotland conditions on the BBC Scotland channel i.e. including a suitable range of programmes (including regional news programmes), a range of genres reflecting Scotland's culture and at least 95% of output consisting of programmes made in Scotland.

3.3 We accept that BBC Scotland Channel will not include Gaelic programming and that there will be no licence conditions for this.

3.4 We welcome Ofcom's decision to propose that 75% of the new Scotland Channel's output must consist of original productions, which is in line with BBC Alba and BBC Two Scotland so therefore is appropriate.

#### Any additional licence conditions

4.1 We agree with Ofcom in the aim of achieving a balance between holding the BBC to account and leaving it sufficient freedom to fulfil its mission and public purposes in an appropriate way.

4.2 We agree that it is appropriate for the BBC Scotland Channel to provide at least 250 hours of news content in Peak Viewing Time and agree with the licence amendments as proposed, taking into account a pro rata approach.

4.3 We support Ofcom's intention to review the new channel's performance over time and reserve the right to impose alternative or additional licence conditions on the new channel in the future with regard to repeats, if it is appropriate to do so.

#### Other matters

5.1 We note that the four performance measures will be availability, consumption, impact and contextual factors, as set out.

#### *Stakeholder consultation*

5.2 BBC will seek a range of analysis to inform their work including content analysis, in-depth audience analysis and qualitative audience research 'evidence...or opinions from industry stakeholders where appropriate'. We believe that this is appropriate.

5.3 Pact would welcome being consulted on an annual basis with our feedback on the new channel given that it is a new service. However, we obviously would not get involved in discussions around editorial decisions or scheduling. We call on Ofcom to ensure that the

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BBC's Annual Plan and Annual Statement (on quotas etc) takes into account reporting and transparency of the new channel.

*New channel budget*

5.4 As previously expressed in submissions to Ofcom, Pact is concerned about the cost per hour model envisaged for the channel and the risk that companies in Scotland will be forced to deficit finance or that only larger companies will be able to absorb additional costs for the budgets envisaged.

5.5 Pact would welcome active monitoring by Ofcom into the future, particularly after the channel has been in operation for 1-2 years with regard to the impact on the market. Ofcom could provide further comment and analysis if it is clear that suppliers to the new BBC Scotland channel are dominated by a small number of large companies including BBC Studios. We would want to avoid a situation where programme budgets are artificially low which would benefit BBC Studios as only larger companies could produce at that rate.

5.6 Ofcom has a duty to maintain competition in the media market across the UK. In the first instance, Ofcom should require the BBC to highlight how it is meeting its quotas and requirements of hours and spend on the channel via the BBC Annual Report including how co-commissioning effects the spend.

5.7 Finally, we welcome Ofcom's previous call for the BBC to be 'more transparent' in the future around the operation of the new channel.