



THE NEW BBC SCOTLAND CHANNEL
Proposed variation to Ofcom's Operating
Licence for the BBC's public services

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CONTENTS

- Executive Summary
- Q/A

Executive Summary

STV is pleased to take this opportunity to respond to Ofcom's consultation on the proposed variation to Ofcom's Operating Licence for the BBC's public services which received regulatory approval in June 2018.¹ Changes to the Operating Licence need to facilitate and enable the new channel, as well as ensuring that its character and nature do not diverge from the service outlined in the BBC's proposals which met the public interest criteria of the BBC Board, and upon which detail Ofcom made its positive determination. It was Ofcom's view in its final determination that "*any adverse impact on fair and effective competition would be justified by the public value delivered by the proposal*" (paragraph 1.6).²

STV is concerned that the BBC is already straying beyond the scope of its own proposals in preparing for the launch of this new service.

Ofcom has invited comment on its proposed approach to variation, pointing out it does not rule out imposing additional conditions on the new channel in future "*if we consider it appropriate to do so*".³ (Consultation Document, paragraph 2.32)

Below, we cite three areas where the approach of the BBC requires careful monitoring and potentially, regulatory intervention in order to ensure that this new channel BBC Scotland remains consistent with the Corporation's original proposals and associated public interest test, which were subjected to scrutiny through the Competition Assessment process.

1. Programming

STV has previously stated the need for transparency over programme budgets and the need to ensure that scheduling and content investment decisions regarding the new service do not result in a public value diminution on other BBC public services.

The BBC's final proposals (including its submission for satisfying the public interest test)⁴ proposed a budget for BBC Scotland of c£32m pa, including £18m of new investment and £12m that previously funded opt out programming on BBC Two Scotland, which would no longer be broadcast (paragraphs 48 – 53).

Those proposals further stated (paragraph 68):

"The new channel could include some existing BBC Scotland programmes, including titles that are currently broadcast on BBC Two Scotland (e.g. Sportscene) and either simulcasts or repeats of programmes shown on BBC One Scotland (e.g. River City)".

Within its Consultation Document on proposed Licence variations⁵, Ofcom's proposed approach to co-commissioned programming broadcast by more than one BBC service (paragraph 2.16) is that the expenditure be apportioned based on the financial contribution made by each service, and that the transmitted hours are credited to the service that runs the programme for the first time.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0016/115270/BBC-scotland-statement.pdf Dated 26 June 2018

² Footnote 1

³ https://www.ofcom.org.uk/data/assets/pdf_file/0015/119211/BBC-Scotland-operating-licence-consultation.pdf dated 28 August 2018

In coming to this view, Ofcom notes (paragraph 2.15) that allowing the BBC to attribute all co-commissioned hours to the first-run UK origination hours quotas for BBC One and BBC Two would:

“weaken the existing requirements upon the BBC to ensure that a substantial amount of first-run originations [...] shown first on its leading television network services”.

Details of the schedule announced to date, including the transfer of the highest profile peak-time opt out programme on BBC One Scotland would breach these commitments.

2. Recruitment of staff

In its final proposals, the BBC identified that it would be creating 80 new journalist roles to staff the new channel (paragraph 80). Ofcom, in its final determination (A3.171) noted the following commitment from the BBC to mitigate the impact on the wider sector:

“The BBC also noted that it has committed to launch a journalism trainee scheme to try to ensure that the recruitment of additional journalists by the BBC does not bid up the wages of journalists”.

Early indications are that there has been greater focus on seeking to attract talent from others operating in the sector than on supporting new entrants who will undertake these roles. We do not see that salary inflation caused by the application of public money is legitimate, working against the competitive health of the sector.

3. Online provision

One of areas of greatest concern to STV is online, where the BBC already dominates the provision of news and information content on a free-to-view basis. However, it is an area which is subject to only light touch regulation in comparison to television channels and, in the case of Ofcom’s proposed Licence changes to accommodate BBC Scotland remains unchanged and unfettered.

In November 2017, the BBC Board concluded that the proposals for *“the launch of a new BBC Scotland **TV channel**”*⁶ (emphasis added) satisfied the public interest criteria, and the BBC referred its updated proposals⁷ (to take account of PIT submission responses) to Ofcom later that month for approval.

The BBC’s original service proposals contained no reference to any online or digital content being created as part of the new service. In its updated proposals for approval following, the BBC asserted (paragraphs 322 and 323) that:-

“...any additional content available on BBC Online News Scotland due to, for example, re-versioning of footage made for the hour long bulletin, would be unlikely to have an adverse impact on fair and effective competition. This was because:

⁶https://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/scotland_tv
⁷http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf
http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/bbc_public_interest_test_submission.pdf

- *The BBC Scotland investment will not lead to a change in the current regional news model and therefore BBC Online News Scotland is unlikely to crowd out other news providers.*

- *Any additional content available online on the BBC News website is likely to be more focussed on longer investigative pieces. This should lead to further differentiation between the content available on bbc.co.uk/news/scotland and other Scottish news sites. This should help to minimise the impact on other providers.”*

In STV’s view, other Scottish news sites may not remain static and, therefore, to differentiate only with reference to a moment in time is misleading.

Ofcom, in its Final Determination⁸, placed the onus on the BBC Board to “*monitor that the proposal is implemented as it was set out in the public interest test and consider closely the wider effects on other BBC services and third parties of any further expansion to the proposal, for example in relation to the BBC’s online activities*” (paragraph 1.7) The regulator also set out the need to undertake a further public interest test if it makes “*material changes*” and said that Ofcom itself will keep the BBC’s activities under review.

This reliance on the BBC to self declare material change in the first instance does not feel like effective regulation. In STV’s view, the process around future change needs to be much more tightly drawn, making it clear that permission and scrutiny are required prospectively rather than as a result of change having been made.

In summary, STV is concerned that the BBC has already moved beyond the scope of the new Scotland TV channel that was presented to Ofcom for approval. We believe that transparency and clarity are vital in all aspects of the regulatory framework for this new service. It is against this background that we include our comments on the specific proposed changes below.

End of Executive Summary

⁸ https://www.ofcom.org.uk/_data/assets/pdf_file/0016/115270/BBC-scotland-statement.pdf

Question/Answer

Q1 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.

We have read the proposals, and comment on the following specific points with reference to identified paragraphs in Ofcom's Consultation Document:-

Repeats:

2.31 and 2.32 – Ofcom's notes the BBC commitment to ensure that repeats make up no more than 50% of the new channel's output, but considers it is inappropriate to set a licence condition at this time as "mindful of how other television services are treated under the Licence". We note Ofcom's will monitor.

In our view, this should be a commitment transposed into the licence. Local television services had to have repeat quotas from the outset, and yet a new BBC Channel is to operate on intentions. This is a key point around public value - "no more than 50%" is still questionable public value.

The adverse impact on competition that this Channel represents is only being justified because of public value contribution. Repeats have limited public value.

Co-commissioning:-

2.16 We agree that

- in respect of reporting expenditure, the BBC should apportion based on the financial contribution made by each of the different services.
- in respect of reporting hours, the BBC should attribute all the hours for the programme to the service that broadcast the programme first.

However, we question how this addresses the BBC's announcement that ***River City*** will premiere on the new channel. From a transparency point of view, we are no clearer if this step has augmented the channel budget by circa £8m, or contradicts an earlier BBC position that the £30m will be made up of "*£18m new money and approximately £12m from programmes made by BBC Scotland which are currently broadcast on BBC Two*".⁹

How new BBC Scotland channel should be treated in relation to requirements for programme making in the nations and regions:-

We agree with the proposal to assign a zero-weight to BBC Scotland channel programming.

We would strongly object to any other outcome whereby the amount of programming from Scotland appearing on the network for the rest of the UK was reduced. That would diminish opportunity to Scottish programme makers, and would impact on the purpose to "**aiding understanding of the UK as a whole, including its nations and regions where appropriate**" – public purpose "**to reflect the United Kingdom, its culture and values to the world**".

⁹ see footnote 8 reference

Zero weighting to BBC Scotland channel should apply to both outside M25 and 8% quota. It is very important to make that clear in final statement. At paragraph 3.6 of Ofcom document, there is only express reference to the zero weighting applying “for the purposes of calculating the BBC’s compliance with the outside the M25 quotas for network programming”. There is no express reference to the 8% quota.

The opt out Channels:-

They have annual quotas that will be reduced, as there is a loss of one opt out channel previously contributing to meeting those quotes (namely BBC Two Scotland). Our concern is with the flagship BBC One Scotland channel.

Currently - at least 155 hours are allocated to non news programming. For purposes of this requirement “non news programmes” includes repeats and acquisitions. There should be some benchmarking of what is a very permissive repeats regime. The channel cannot in future introduce more repeats than currently, as that will represent a diminution of public value in the Scottish opt outs. The level of original programming must be maintained.

end