Thank you for your letter of 15 November 2011 in reply to mine of 14 September.

That letter, and your reply, principally concerned our suggested amendments to the Scotland Bill and you included an annex posing a further series of fourteen questions.

You may not be aware but the issue of powers has been the continuing subject of a great deal of correspondence over the last year between the UK and Scottish Governments. Our preference remains, as it always has been, to take forward discussion through substantive detailed negotiations on this and the range of other outstanding issues on the Scotland Bill – that makes sense both in terms of process and in terms of timing, given where the Bill has now reached in its Parliamentary progress.

I attach, nevertheless, an annex responding to the questions asked in yours. I hope that having done so, we can now jointly charge our officials to get down to negotiation with a view to achieving our shared aim of improving the Scotland Bill so that both our Parliaments are able to approve it.

I am making this letter available to the Scotland Bill Committee of the Scottish Parliament, as I believe you have made yours, and I am copying it to the Secretary of State for Scotland.
Scotland Bill: Broadcasting – Response to the Annex to the Letter from the Rt Hon Jeremy Hunt MP, Secretary of State for Culture, Olympics Media, & Sport to Fiona Hyslop MSP, Cabinet Secretary for Culture & External Affairs, of 15 November 2011

To have the right to establish public service broadcasting institutions

As there is no licence fee or UK Government funding available, how do you envisage that such institutions would be funded? Are they to be funded by the Scottish Government?

The Scottish Government, has been clear that license fee funding would be the optimal funding arrangement for a Scottish Digital Network – and £95 million of support has been identified for the Welsh-language channel S4C from 2013 – but that if the current licence fee settlement, which runs until 2016-17, could not be reopened, an appropriate interim funding mechanism might be a ring- fenced allocation of revenue from the UK-wide auction of spectrum which will follow the completion of digital television switchover in 2012.

What would these proposed institutions offer that existing public service broadcasting institutions, particularly BBC Scotland and BBC Alba, do not already offer? How would the proposed institutions fit with existing institutions?

On the case for a Scottish Digital Network, the following paragraphs from the Executive Summary the Scottish Broadcasting Commission’s final report Platform for Success, published in September 2008, set that out succinctly:

The crucial goal is to have a secure and sustainable source of competition for the BBC in high-quality public service content produced for Scottish audiences. The importance of plurality in key broadcasting genres is widely understood, as is the danger of monopoly. Audiences also support the concept of choice and competition, and have made it clear to us that they wish to be provided with a greater volume and range of Scottish content.

There are many positive reasons for a Scottish Network, which together not only make the case but begin to shape an emerging remit for a new network designed for the digital age:

• providing audiences in Scotland (and elsewhere) with a greater volume of high-quality Scottish programming
• development of opportunities for emerging talent on and off screen
• the chance to take risks and innovate in programme content and style
• contributing a significant role in supporting the economic growth of the sector, and providing in broadcast and online form the secure base of our pyramid of creative content production
• the potential to link to work on creativity and technology in our higher and further education sectors and to the innovation we wish to encourage in society at large
• connecting with the Scottish diaspora as a natural wider audience for Scottish material, and giving Scottish producers and their content access to the UK and global markets
• establishing a trusted brand for Scottish content at home and abroad as choice expands and audiences fragment in broadcasting and broadband.
The Scottish Government would add that it sees ample scope for increased Scottish content on public service broadcasting, complementing rather than competing with existing provision.

To set that in context, the overall volume of nations/regions programmes (opt-outs) on BBC Scotland is currently 807 hours, comprising 515 hours on BBC1 and 292 hours on BBC2. This is down from 959 hours in 2004 and 869 hours in 2008.

The Channel 3 licence structure means that STV can broadcast opt-out programming and news to most viewers in Scotland, although viewers in the south of Scotland, who belong to the ITV Border region, receive ITV programming with minimal opt-outs. Viewers in the south of Scotland do not receive a national Scottish news bulletin on Channel 3, and instead receive regional news which is transmitted from Gateshead, with a minimum requirement of a 6 minute opt-out for specifically Scottish news (against a background where Ofcom’s 2011 Communications Market report showed that 62 per cent of adults in Scotland have television as their main source of local news, compared to a UK average of 52 per cent). Programming produced in Scotland on Channels 4 and 5 is still less.
What assessment has been made of audience demand for additional Scottish channels?

Against the background set out above, with content made in Scotland reducing for reasons of financial and other convenience rather than in response to falling demand, the demand for restoring and increasing such content is clear.

Even when such content was at higher levels, however, the Scottish Broadcasting Commission in the work it undertook in the run-up to its final report Platform for Success, published in September 2008, identified a clear demand for additional public service Scottish broadcasting, which led to their key recommendation of establishing a Scottish Digital Network. The evidence base established by the Commission included gathering views and comments from those in the industry and the general public; a series of public events at 11 locations around Scotland; a workshop on diversity interests; consulting young people for their views via the Children’s Parliament and the Scottish Youth Parliament; as well as commissioned research into international approaches in supporting broadcasting; and into audiences’ views on the service they receive in Scotland. All evidence is published on the Scottish Broadcasting Commission website: www.scottishbroadcastingcommission.gov.uk

It is perhaps worth particularly mentioning the survey of public attitudes to broadcasting in Scotland that the Commission had carried out and where the Scottish Government carried out a repeat survey, which we published in 2010. That showed that three-quarters of viewers see it as important to have a choice of channels on which to receive Scottish news. Almost seven in 10 respondents (68 per cent) are interested in a new Scottish news programme on another channel and 76 per cent of viewers are interested in a news Scottish digital television channel. The full results of the survey may be found at http://scotland.gov.uk/Publications/2010/01/21104933/0.

It was in the light of such evidence that members from all parties in the Scottish Parliament supported the establishment of a Scottish Digital Network.

Given the pace of change in the broadcasting and communications sectors, what consideration has been given to the future relevance of such institutions? Is this the right time to be creating such a traditional model?

The Scottish Government’s key proposal is to create a Scottish Digital Network as a public service broadcasting institution. That would include a broadcasting channel, broadcast, of course, by digital rather than analogue means (and given the resources devoted to digital switchover, we presume that the UK Government see digital broadcasting as of continuing future relevance) but would extend beyond that to operate on a variety of platforms from the outset. So the vision is not just of a conventional TV channel but of a network, in the sense that the channel would be accompanied by online supplementary content, on demand services and so on.
To be involved in future licence fee setting arrangements

What would be the benefit to licence fee payers across the UK?

It would be difficult to contest the fact that the most recent licence fee negotiation was unsatisfactory both in process and result. The aim should be to conduct a process that is fair and transparent and leads to satisfactory results across the UK. Proper involvement of devolved administrations is one way to achieve this.

It should also ensure Scotland receives its fair share of the £315 million generated each year by licence fee payers north of the border. The need for this is shown by the recent licence fee agreement, which left Scotland short changed. It was negotiated in secret over 48 hours, with no input from a Scottish perspective, and closed off a potential source of funding for the proposed Scottish Digital Network, while providing a top slicing of £95 million of support annually to the Welsh-language channel S4C from 2013. The equivalent spend on BBC ALBA is just £8 million per year.

What particular Scottish interest do you feel is not covered in the current settlement (given that DCMS Ministers have ruled out licence fee funding for a Scottish digital channel)?

See immediately above for deficiencies that we identify in the current settlement. As further above we still believe that the Scottish Digital Network should be publicly-funded, with the television licence fee the best possible source of funding, but with use of revenue from auction of the spectrum as a possible interim solution. Please note that the proposed amendments to the Scotland Bill do not dictate or commit any particular source or level of funding from the UK Government, so this issue therefore cannot be a barrier to supporting the legislative proposals.

What would you like to see the BBC provide that is not already provided by BBC Scotland, BBC Alba or the BBC generally?

See above for our concerns about reducing content of Scottish origin on the BBC, which current cuts look likely to exacerbate; and whilst we applaud moves by the BBC to be less London-centric, moving functions to Salford is unlikely directly to benefit Scotland. More broadly, however, this question equates the license fee with the BBC in a way that we would challenge. As rightly noted in one of the earlier questions, the sector is changing apace and we do not believe that it is right to chain the licence fee in this way – first class public service broadcasting should be the end, and the BBC a very important, but not the only, means – hence our emphasis on licence fee resources in the context of the Scottish Digital Network.
To have responsibility for approving licensing decisions made by the UK Government for local television which will broadcast within Scotland

_Are Scottish Ministers wanting to take decisions on processes normally carried out by independent non-political bodies (i.e. the regulator)?_

Scottish Ministers fully acknowledge the importance of independent regulation but such regulation should be carried out against a policy background set by the Scottish Parliament, in relation to local television services which will broadcast in Scotland.

_What is the power you are seeking? Is it to have influence over who is selected to broadcast local TV services or over the regulatory approval process itself?_

In broad terms, in relation to these services, Scottish Ministers should have powers analogous to those currently exercised by DCMS Ministers. As above, we see acknowledge the role of the regulator but that role should be carried out against a policy background set by the Scottish Parliament. The illustrative amendment included within the Scottish Government's June 2011 paper makes clear the power that the Scottish Government is seeking.

_Ministers take decisions based on the interests of all parts of the UK. What evidence is there that this would be better taken by handing responsibility from one of Scotland's governments to the other?_

The Scottish Government has consistently been supportive of local television and believes that the Scottish Digital Network is the best way to support local television services in Scotland. So this responsibility should logically accompany that for the Scottish Digital Network as a whole.

The way in which viewers in the South of Scotland get their Channel 3 service from Gateshead, rather than through STV as for the rest of Scotland, shows the unhappy results that can occur from London-centric licensing decisions.

The possible impact of local television on other media organisations in Scotland – such as the local press – further strengthens the argument for decisions being taken, after due process, by the Government best placed to take account of all the factors – the Scottish Government.
To have the ability to intervene in local cross-media mergers that affect Scotland

At present, decisions on the media public interest test are taken solely by the Secretary of State for Culture, Olympics, Media and Sport acting in a quasi-judicial capacity. He therefore cannot at present consult the devolved institutions or even cabinet colleagues. It would be helpful to know what changes Scottish Government Ministers propose to the nature of the decision making process where media public interest tests are concerned. If it is no longer to be a quasi-judicial decision for the Secretary of State, what type of decision making process is the Scottish government proposing?

The background to this question is that, although rules limiting local cross-media mergers have been removed under the current UK Government, UK Ministers still have the power to intervene if they believe that a public interest consideration means that the merger requires further investigation. In 2009 Ofcom's Advisory Committee for Scotland expressed concern that “Inappropriately, under current legislation, if a public interest test were to be applied to growing concentration (of media ownership) in Scotland, this would (be) in the hands of a London-based government minister and a London-based regulator”, and stated that “the formal involvement of the devolved institutions is required for decision-making sensitive to the political diversity of the UK.” The Scottish Government agrees with this statement, which takes proper account of the importance of a healthy media scene to democracy within Scotland.

More specifically, that formal involvement could be secured by:

- imposing a statutory duty on the Secretary of State to seek views from the relevant devolved administration(s), when he or she is considering whether or not to intervene in a local cross-media merger affecting that (or those) administration(s);
- where he or she has taken such a decision to intervene, imposing a statutory duty on the Secretary of State to seek the views of devolved administrations on the substance of the issue, whilst respecting that the quasi-judicial nature of the process means that the final decision will be taken by him or her alone, after reflecting on all the evidence in the case; and, potentially,
- legislating to allow Ministers from a devolved administration to assume the powers of intervention currently exercised by DCMS Ministers, in cross-media mergers wholly or mainly affecting their particular territory.
To have the power to add or remove events from the list of those that must be shown live on free-to-air television

On which specific events has there been demonstrable public dissatisfaction at the failure to broadcast, and by what measure was that dissatisfaction assessed?

The previous UK Government instigated a review by David Davies of this list, which recommended some changes but which the current UK Government decided not to consider until after the switchover to digital television is completed in 2012. Thus this issue will shortly become 'live' again next year.

As an example of a potential change in Scotland, this might mean granting protected status to qualifying matches for major international tournaments played by the Scottish men's national football team. According to research conducted in Autumn 2009, 81% of people in Scotland support such a move. Six other countries grant similar status to qualifying matches played by their respective national teams.

An event does not have to be of importance to the whole of the UK to be considered for listing. It is sufficient that it is of major importance to one of the nations and current legislation allows for events to be listed on a national basis, for example the Scottish FA Cup Final. On what basis do you need to change this?

We are of course aware of the current legal position. The point is to confer the responsibility for taking such a decision in the most appropriate way. We believe that conferring responsibility for these decisions on the devolved administrations would ensure that those decisions were taken by the Governments best placed to take account of views and feelings within their respective nations.

Have Ministers engaged in any discussion with rights holders about potential changes in Scotland? Could extending the list in Scotland have a significant negative impact on the funding and support available to Scottish football, for example?

We readily acknowledge that Ministers from devolved administrations under our proposals, just as DCMS Ministers under current arrangements, would have to carefully balance the interests of the viewing public, the rights holders and others. We simply believe that our proposals would create a decision making process that would improve the likelihood of getting such difficult decisions right.