SUBMISSION FROM OFCOM

Introduction

We welcome the invitation to submit evidence to the Scottish Parliament Scotland Bill Committee.

We note the key question posed by the Committee in our area of interest:

- What is your view on the Scottish Government’s call for more influence in the regulation of the reserved matter of broadcasting? How might such increased influence advantage or disadvantage Scotland (a) culturally and (b) economically?

Our view is that this is not a question for an independent regulatory authority to answer. It is more properly addressed by the UK and Scottish Governments and Parliaments and other stakeholders. Our evidence below therefore addresses how broadcasting and related regulation is applied in Scotland, with reference to how Scottish cultural and economic interests are factored into our activities and processes.

We trust this will provide the Committee with useful background information that is relevant to its consideration of the question it has posed.

Our General Role

Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television and radio, fixed-line and mobile telecommunications, plus the airwaves over which wireless devices operate. Everything we do flows from the primary duty set for us by the UK Parliament in the Communications Act 2003 to further the interests of citizens and consumers.

- We have a role in securing outcomes that are desired by society and which markets alone would not deliver. Our role in relation to citizens is reflected in a large number of specific duties, including promoting the fulfilment of the purposes of public service television broadcasting in the UK.

- We promote competition and innovation in telecoms and broadcasting markets. Given the increasing convergence of communications services, our ability to regulate across sectors has been advantageous to citizens and consumers.

- As a competition authority, we have powers to prevent and deter anti-competitive behaviour.

- And we have a role in enforcing standards and consumer law, protecting the public against mis-selling and other harmful conduct.
We have an important role in liaising with stakeholders, providing a service to some 2,500 stakeholders on an average day. This work involves dealing with enquiries and complaints from citizens and consumers about telecoms, TV and radio, and use of the radio spectrum. During 2010/11, we reached decisions on 24,462 complaints about broadcasting standards or licence conditions.

From next month, we will assume responsibility for postal-services regulation in accordance with the provisions of the Postal Services Act 2011.

**Accountability**

Ofcom is a statutory corporation independent of the Government. We encourage a consistent, evidence-based approach to regulation and to give our stakeholders the certainty to make long-term investment decisions. Good governance also means being accountable to our stakeholders, particularly to the public. We have, therefore, a strong commitment to market research and the involvement of stakeholders in our decisions. Our decisions are also informed by input from our advisory bodies, such as our independent Communications Consumer Panel, which, as a critical friend, provides valuable input to our decisions. Fiona Ballantyne is the representative for Scotland on the Panel. Our views are also informed by the work of our national advisory committees, including the Advisory Committee for Scotland, chaired by Philip Schlesinger, and by our Content Board, on which Iseabail Mactaggart represents Scottish interests.

**Citizen/Consumer Benefits**

In the nine years since Ofcom was established, competition has delivered substantial benefits for consumers:

- 510 TV channels broadcast 2.8 million hours of output in the UK 2010.
- Commercial multichannel broadcasters spent £2.3bn on their programming in 2010 (an 11% year on year increase).

Our role is complicated by the fact that the communications sector does not have the characteristics of a traditional utility sector. Communications markets are converging, the take-up of new digital services is increasing and new technologies are emerging. Against this backdrop, we must help to foster the conditions for innovation and efficient investment. We have a bias against intervention but with a willingness to intervene effectively when required. Where we do intervene, for example in the pay TV market, the end result is greater choice for consumers throughout the UK.

**Our Cultural and Economic Impact**

Our legal duties include securing the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety range of tastes and interests. We also have a duty to
secure the maintenance of a sufficient plurality of providers of different television and radio services.

Our Content Board oversees the regulation of public service broadcasters, including in relation to quotas for independent television production, regional production and original EU/UK production.

The Communications Act requires us to review at least every five years the extent to which the public service broadcasters have provided relevant television services which (taking them all together over the period as whole) fulfil the purposes of public service television broadcasting in the UK with a view to maintaining and strengthening the quality of its provision.

We conducted our first Public Service Broadcasting (PSB) Review in three phases during 2004-05. The third phase was published on 8 February 2005, followed by a final statement on programming for the nations and regions, published on 9 June 2005. We concluded that there was continued demand for PSB but that the existing model of ensuring it was provided by commercially funded channels would not survive the transition to a wholly multichannel world unchanged. The review concluded that there was a continued requirement for programming that reflected the distinct identities, cultures, histories and interests of Scotland, Wales and Northern Ireland. It was noted that this requirement was not likely to be met by UK-wide programming alone, nor by reducing minimum requirements on regional programming in the nations in line with our decisions for the English regions.

Following our first PSB Review, the UK's media landscape evolved rapidly and continues to do so:

- viewer adoption of digital technology has grown significantly;
- multichannel television has reduced audience sizes for all broadcasters; and
- there has been a corresponding fall in television advertising expenditure as advertisers have looked elsewhere to make an impact with their target consumers.

We announced in May 2007 that we would bring forward our second PSB Review based on this and other evidence, which highlighted the considerable uncertainties for commercial public service broadcasters more generally. The first phase was published on 10 April 2008, followed by the second phase on 25 September the same year. A final statement was published on 21 January 2009.

In this second Review we looked at the Scottish Government’s proposed Scottish Digital Network. The Scottish Broadcasting Commission had put the estimated annual cost at £75 million. A separate analysis that we commissioned forecast the costs at a similar level. We recognised that difficult choices had to be made about the use of scarce resources. We stated at the time of the Review our belief that there was an alternative model for a Scottish Digital Network that should be considered by the UK and Scottish Parliaments. This alternative would be for the network to be a competitive fund which
would support a series of interconnected initiatives in Scotland-wide television, local television, online and radio. We did not take a view as to which model should be recommended and noted that it was for the UK and Scottish Governments to consider this and the associated issues of funding in order to decide what was best for Scottish viewers and citizens.

It should be noted that the UK Department for Culture, Media and Sport has proposed amending or removing several of our duties, following enactment of the Public Bodies Bill currently being considered by the UK Parliament, to return the policy-setting role to the Secretary of State, reduce unnecessary expenditure and avoid duplication. These include amending our duty to review public service broadcasting every five years so that a review will only be conducted at the discretion of the Secretary of State. The Secretary of State will also determine the scope of the review.

**Ofcom in Scotland**

The Communications Act requires us to establish and maintain separate offices in each of the four nations of the UK. In addition to the legislative requirement to have a Communications Consumer Panel, a Content Board and national advisory committees, we also have a Nations Committee which agrees the profile and role for our national advisory committees.

The Advisory Committee for Scotland represents the interests of people in Scotland in communications issues and comprises five members, from across Scotland, with experience and interests across the full range of our activities including public service broadcasting. They meet regularly to provide input to our decision making activity and consultation documents.

Our office in Glasgow provides a base for colleagues whose main duties include engagement with political stakeholders in Scotland about our regulatory responsibilities. While we are not accountable in law to the Scottish Parliament, it is clear that our activities impact on areas which are devolved, such as culture and digital inclusion. In April 2004, we agreed a protocol for engagement with the Scotland Office and the Scottish Government which sets out the agreed position on process and procedure for meetings at Ministerial and civil service level and consultation on appointments to our Content Board, the Communications Consumer Panel, the Advisory Committee for Scotland and MG ALBA (see below).

Since we were established, we have engaged actively with the Scottish Government and Parliament on key broadcasting and related issues, and we have found discussions with ministers, civil servants and MSPs to be helpful and constructive. Specific engagement has included:

- briefing the Cross Party Group on the Music Industry on our role in regulating radio in 2005,
- Attendance at the Enterprise and Culture Committee on our first PSB Review in June 2006,

- Briefing the Cross Party Group on Culture and the Media on our Digital Dividend Review in 2007,

- Attendance at the Education, Lifelong Learning and Culture Committee on our second PSB Review in June 2008, and

- Giving evidence to the Education, Lifelong Learning and Culture Committee in 2010 during its deliberations on the Scottish local newspaper industry.

In 2009, we were one of the founding partners of the Scottish Parliament Cross Party Group on Digital Participation, for which we now provide secretariat support. Its main aim is to provide a platform for MSPs to engage with a range of organisations on issues relating to digital participation. It provides an opportunity to consider how best Scotland can maximise the social and economic benefits of digital technology.

Our Board, Content Board and Communications Consumer Panel have held meetings in Scotland, giving them an opportunity to engage directly with stakeholders. The Content Board held a conference on PSB in Edinburgh in November 2007.

Our research programme provides granular information for Scotland, where appropriate. For the last six years, we have published Communications Market Reports for the nations which provide detailed information on availability, access to and usage of the main communications platforms. We report on the expenditure and volume both for TV programmes specifically made for Scottish viewers and for networked shows made in Scotland. We also monitor the performance of public service broadcasters against their out of London quotas. These annual reports are an important tool for policy makers and other stakeholders in Scotland, enabling them to track broadcasting trends and the impact of broadcasters on the cultural landscape via their expenditure on content and the consumption of their programming.

The Communications Market Report for Scotland for 2011 can be seen at: [http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr11/scotland/](http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr11/scotland/). The key points for broadcasting were:

- Spend on qualifying first-run commissioned content in 2010 by PSB channels in Scotland accounted for 4.6 per cent of UK expenditure, up from 3.6 per cent of total expenditure in 2009.

- In terms of volume of network TV programming, producers in Scotland delivered 4.6 per cent of all first-run hours during 2010, up from 3.3 per cent twelve months earlier (and up from 1.6 per cent in 2006).
- Year-on-year spend by public service broadcasters on first-run original programming for viewers in Scotland also experienced a slight, one per cent increase to reach £52m in 2010.

- Watching TV over the internet increased by 7 per cent to 35 per cent in 2011 while digital TV take-up now stands at 97 per cent of TV homes in 2011 - up six percentage points since last year.

- TV viewing remains high in Scotland, at an average of 4.5 viewing hours per day in 2010, compared to a UK average of 4 hours.

As the licensing authority for broadcasting in the UK we hold television and radio stations in Scotland to their licence obligations. We also license new entrants to the broadcasting scene. Later this year we plan on inviting applications for a further round of community radio stations in Scotland.

**MG ALBA**

Our office in Scotland takes the lead on regulatory obligations with respect to MG ALBA. We have a protocol which outlines how we liaise with both the Scottish Government and the Scotland Office over making appointments to the MG ALBA board. These are a matter for us, currently subject to the approval of the Secretary of State for Scotland with consultation with the Scottish Government built into the process. In addition, MG ALBA has to submit to us a statement on how it is proposing to carry out its functions during its next financial year. We review and approve this Operational Plan.

**The Scottish Government’s Key Broadcasting Issues**

We note the Scottish Government has called for improvements to the Scotland Bill in respect of broadcasting. We summarise below the current arrangements for each of the five key issues it has identified.

- To have the right to establish public service broadcasting institutions.
  *The Communications Act places a duty on Ofcom to assess the designated public service broadcasters, taken together, in terms of the delivery of public service purposes set out in the Act. The Act specifies which services are public service channels, defines a public service remit for those channels and the licence obligations we can impose on them.*

- To be involved in future licence fee setting arrangements.
  *The UK Government sets the level of the BBC licence fee.*

- To have responsibility for approving licensing decisions made by the UK Government for local television stations which will broadcast within Scotland.
  *The current UK Government’s policy is to introduce local TV stations into different areas of the UK including parts of Scotland. Ofcom has been providing technical
guidance for the Government’s work. Following implementation of the relevant legislation it is envisaged Ofcom would independently award the local TV licences through a competitive selection process.

- To have the ability to intervene in local cross-media mergers that affect Scotland. The Media Ownership (Radio and Cross Media) Order 2011, which removed all local cross-media ownership rules, came into effect on 15 June 2011. In its submission to our Media Ownership Rules Review consultation in 2009, the Advisory Committee for Scotland expressed concern about allowing media owners to become too dominant in any significant market place. It stated that at the pan-Scottish and local and regional levels in Scotland, dominance was both a possibility and a concern. The full submission is at: http://stakeholders.ofcom.org.uk/binaries/consultations/morr/responses/oacs.pdf

- To have the power to add or remove events from the list of those that must be shown live on free-to-air television. The Broadcasting Act 1996 gives the Secretary of State the power to designate key sporting and other events as “listed”. Ofcom is required to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture Media and Sport. The UK Government has deferred its decision to review the Fee to Air list of sports events until the end of the digital switchover process. Therefore the list drawn up in 1998 remains in force.

Conclusion

In line with our statutory obligations, we will continue to fulfil the regulatory obligations referred to above which are relevant to broadcasting in Scotland. While we would suggest the key questions posed by the Committee are principally for consideration by others, we would stress our commitment to continue to engage in the future with the Scottish Government and Parliament and other stakeholders over any of our activities which impact on the broadcasting landscape in Scotland.

Ofcom
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