Introduction

Ofcom is the communications regulator in the UK. We regulate the TV, radio and video-on-demand sectors, fixed-line telecoms (phones), mobiles and postal services, plus the airwaves over which wireless devices operate. Our main duties include ensuring that the UK has a wide range of electronic communications services, including high-speed services such as broadband.

The scope of the Committee’s inquiry extends beyond the regulatory remit of Ofcom however we are pleased to offer the Committee this short submission in response to areas of the inquiry which are relevant to Ofcom’s role.

How can Ofcom work to support the sector in its new role as regulator?

Ofcom has taken on new responsibilities as the BBC’s first independent, external regulator and we have published a statement on how we will regulate its performance. This was following public consultation and bespoke research into audience opinions and expectations of the BBC including qualitative and quantitative research in Scotland.

The statement sets out Ofcom’s first operating licence for the BBC, and a performance framework, together with the processes for setting and amending these in the future. These are designed to deliver fully the intent of the new Charter and Agreement¹ by leaving creative decisions to the BBC, but stretching and challenging it to deliver for all its audiences. The new licence will require the BBC to broadcast more original programmes, and to offer high-quality, distinctive programmes for its entire audience.

Under our performance measurement framework, we will publish an annual research report that will look at how the BBC has been delivering the mission and public purposes through the UK public services. The evidence base gathered through these reports will ensure any future changes to the licence are fully informed. Our Performance Statement can be found here² and the Operating Licence can be accessed here³.

The BBC has a responsibility to deliver content that meets the needs of all audiences across the UK. Two principal areas of public purpose are for the BBC to provide “output and services that meet the needs of the United Kingdom’s nations, regions and communities” and to “invest in the creative economies of each of the nations and contribute to their development”.

We have set objectives for the BBC in relation to the nations and regions. It must accurately represent and authentically portray all audience groups. It must also distribute its production resources and support creative industries across the UK.

Our approach is to provide a greater focus on production in each nation of the UK, and on guaranteed levels of programmes for the nations and regions. We expect the BBC to build on what it already does, and make more programmes outside of London. It should reflect life and attitudes in all parts of the UK, and contribute towards sustainable creative economies beyond London.

We have set minimum levels for spending on qualifying network production in each nation at 28% for England outside the M25 (moving to 30% from 2020), 8% for Scotland, 5% for Wales and 3% for Northern Ireland. In terms of programmes specifically for viewers in Scotland, the BBC must provide a minimum of 290 hours of news and current affairs (the previous requirement was 265 hours).

The Committee can find all the regulatory conditions applying to Scotland in the document, *The BBC’s services: audiences in Scotland*.

**Out of London Production Guidance**

The Communications Act 2003 requires Ofcom to set regional production obligations for Channels 3, 4 and 5, and regional programming obligations for Channel 3. We have established guidance to set out key definitions and our approach in interpreting the statutory provisions and in monitoring compliance with the associated licence conditions. In the light of Ofcom’s new duties to regulate the BBC, and recent developments in the broader UK production landscape, we decided it was appropriate to review the current Guidance.

We are currently scoping this project and have held useful discussions with stakeholders in Scotland about the topic. We will offer further opportunities to input into our review process as we are planning to publish a call for evidence in the first quarter of next year.

**Diversity**

The Inquiry’s remit asks if there is a lack of diversity amongst employees in the screen industry and if so, why might this be and what can be done to promote diversity. Ofcom expects the BBC, as the national broadcaster, to lead the way in addressing under-representation. The new Operating Licence we have set includes a range of requirements to ensure, for the first time, the BBC is publicly accountable for achieving its workforce diversity targets. These include 15% of staff to be from ethnic minority groups, and 50% of all staff and leadership roles to be held by women by 2020.

We are requiring the BBC to report in detail to Ofcom each year on progress towards achieving these targets because high levels of transparency and accountability support positive change. The BBC must report data for its UK public services, (which will exclude the World Service) and its commercial services.

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Under the licence, the BBC must also measure and report annually on its on-screen and on-air diversity. We will scrutinise the BBC’s performance to assess whether it is making sufficient progress in serving the UK’s diverse communities, and whether audiences are satisfied. And if audiences are dissatisfied, the BBC must explain itself and put in place measures on how it will improve.

The BBC will also be required to implement a new Ofcom-approved Commissioning Code of Practice for diversity, covering on and off-screen portrayal and casting. This will make diversity an explicit part of the BBC’s production and commissioning decisions. The Code will apply to all commissions – whether produced by the BBC in-house or externally, including BBC Studios.

Separately, Ofcom will carry out an in-depth review to understand how well different audiences are represented and portrayed on the BBC. As part of our analysis, we plan to examine on-screen diversity and portrayal in the BBC’s programmes, including in its popular peak time shows. The review will ask what viewers and listeners expect from the BBC and whether it adequately reflects the lives of all people across the whole of the UK, ranging from younger and older audiences to diverse communities.

Proposed BBC Scotland Channel

Earlier this year, the BBC announced its plan to launch a new digital television channel for Scotland in Autumn 2018. Ofcom has a legal duty to review the BBC’s public interest test and carry out own assessment to decide if the BBC’s proposal should be allowed to proceed in the form which the BBC has proposed.

The question which Ofcom must consider is whether ‘the public value of the BBC’s proposal justifies any adverse impact on fair and effective competition’. Ofcom’s processes will include public consultation featuring engagement with stakeholders in Scotland.

We will conduct our assessment in two phases. In the first phase, which we must complete within six weeks, we will decide if we agree with the BBC’s view that its proposal represents a ‘material’ change to its public services. There are two types of assessment we could undertake in phase two. The first type is called a BBC Competition Assessment or BCA. We will complete a BCA, which can take up to six months, if we decide the BBC’s proposal raises large, complex or particularly contentious issues. The second type is called a Shorter Assessment. We will generally conduct a Shorter Assessment if we think the BBC’s proposal involves a more targeted set of issues, which we would expect to resolve in a shorter time period.

Broadband

The Inquiry’s call for evidence asks how Scotland can maximise the opportunities associated with the proposed roll out of superfast broadband. The Committee may be interested to know that Ofcom will shortly publish its Connected Nations Report 2017 both for the UK as a whole and for Scotland as a nation. The reports chart the progress of our evolving communications infrastructure, taking into account availability of superfast broadband and mobile coverage.