

Ofcom draft Annual Plan 2013-14 – response from the Welsh Government

This response has been cleared by the Rt. Hon Carwyn Jones AM, the First Minister of Wales.

The Welsh Government welcomes this opportunity to comment on Ofcom's Draft Annual Plan for 2013/14.

In general we are broadly supportive of the approach to ICT infrastructure issues suggested by Ofcom in this Annual Plan and look forward to working with Ofcom on the proposed consultations and projects for the forthcoming year. We do however have a number of concerns related to proposed priorities and actions as they relate to broadcasting, plus a fundamental concern about the fitness for purpose of Ofcom's underlying strategic purpose to contribute to and implement public policy defined by Parliament. These are expanded upon below.

Consultation Questions

Q1. What are your views of Ofcom's proposed priorities 2013/14?

- The priorities described in the Draft Annual Plan for telecommunications are broadly in line with the policy direction of the Welsh Government. The proposed priorities for timely spectrum clearance and securing optimal use of spectrum, supporting the release of 2.3MHz and 3.4MHz bands, ensuring effective competition in fixed broadband, NGA regulation and mobile regulation are of particular relevance to Wales.

Strategic purpose 1 – Promote effective communication and informed choice

- **Develop and implement policies that will improve ease of switching between communications providers**

The Welsh Government welcomes Ofcom's priority to develop policies to promote the effectiveness of general switching procedures and we would press for recommendations to be taken forward swiftly once Ofcom's review of switching processes for electronic communications services has concluded.

Strategic purpose 2 – Secure optimal use of spectrum

- **Clearance and interference mitigation activities to enable full use of the 800MHz and the 2.6GHz spectrum.**

The Welsh Government thanks Ofcom for its guiding role to industry to accelerate the roll-out of competitive 4G services and in particular the establishment of Digital Mobile Spectrum Ltd to provide support to consumers. We would now encourage Ofcom to drive and monitor closely the work of this group to ensure that it is quickly operational, widely publicised and that customers are fully aware of the interference mitigation activities and support available.

- **Plans by the Ministry of Defence (MoD) to release around 200 MHz of spectrum in the 2.3 GHz and 3.4 GHz spectrum bands will make a significant contribution to future spectrum availability.**

The Welsh Government would urge Ofcom to define minimum population coverage targets at a regional level for any future release of spectrum in the 2.3MHz and 3.4GHz spectrum bands, in order to guarantee mobile services across the nation. In addition, Ofcom may wish to consider imposing geographical coverage and rural network roaming obligations.

Strategic purpose 3 – Promote opportunities to participate

- **Work in collaboration with Government and industry to promote the widespread availability of superfast broadband.**

The Welsh Government welcomes Ofcom's commitment to promote the widespread availability of superfast broadband.

However, we think that there should be an additional priority around supporting the wider spread of availability of more affordable symmetric business class fixed services, and competition in the market to provide these services in areas with low population densities. This would encourage business investment in areas poorly served by current infrastructure, and is in recognition that superfast broadband will not be the complete answer to the needs of larger businesses, nor those with a need to upload significant amounts of data.

Strategic purpose 5 – Maintain audience confidence in broadcast content

- **Relicensing of Channels 3, 4 & 5.**

The Welsh Government has made clear the importance it attaches to appropriate coverage of Wales on the main television networks. We expect the BBC Trust and Audience Council for Wales to continue to implement the recommendations of the King report. The recommendations of the King report are also relevant to ITV news and Channel 4 news and it is vital that these channels appropriately reflect the devolved nations in their news and non-news provision. We urge Ofcom to reflect this in their analysis of PSB and in the context of the relicensing of Channels 3, 4 and also 5.

We would also reiterate our view that if it is to be in receipt of public funding then Channel 4 should be required to produce at least a population share of network commissions in the nations and regions. We believe that this is fully in conformity with Channel 4's role in developing new talent throughout the UK.

Licensees are most accountable to government at the time of licence renewal. In our view financial considerations overrode the needs of the Welsh people when the 1990 licence award for channel 3 was made. This, combined with subsequent relaxation of licence conditions has allowed the service in Wales to diminish, economically and in terms of Welsh content.

Wales needs a strong independent voice in broadcasting to provide a counterbalance to the provision of BBC Wales and ITV Wales continues to have a vital role to play. The Welsh Government is fully aware of the importance of ensuring plurality of English language television in Wales in news and also general programming aimed at Welsh viewers on channel 3. The channel 3 news service should not be viewed as a 'regional news' service, but as an essential democratic national news service for the people of Wales. As reflected in the Welsh Government's Programme for Government we wish to maintain the existing provision by ITV of just under 4 hours of news a week, plus an hour and a half of other material, including current affairs and political coverage. This should be a minimum condition for any new ITV licence in Wales.

As current channel 3 licences expire at the end of 2014 Ofcom has an opportunity to remedy this situation and protect the PSB requirements of Wales. Following Ofcom's report to the Secretary of State for Culture, Media and Sport on the Licensing of Channel 3 and Channel 5 - which stated that it would now be correct to formally separate Wales from the regional licence for the West of England - the Secretary of State instructed Ofcom to look at a new ITV franchise for Wales. We are pleased that on 21 February 2013 Ofcom launched the consultation "Renewal of Channel 3 licences: proposed changes to licensed area for Wales and West of England Licence and South West of England Licence". This proposes the separation of the constituent regions of the Wales and West of England licence, creating a single licence for Wales and a larger West and South-West of England licence. It also states that ITV has indicated its consent. The Welsh Government supports this change in principle and we will study the detail in this consultation and respond separately to it in due course. It is our view that the Welsh Government should have an active role in discussions to develop the single licence for Wales.

The closing date for the above consultation is 2 May 2013, however the draft Annual Plan confirms a shorter deadline for licence renewal applications (15 March), with an intention to complete the renewal process by the summer. We would ask Ofcom to confirm in the final Annual Plan that the 15 March deadline does not apply to Wales and the West of England and will not impact on Ofcom's ability to lead the development and implementation of a single licence for Wales.

Strategic purpose 6 – Contribute to and implement public policy defined by Parliament

- **Conduct and publish public service broadcasting review.**

Broadcasting is not a devolved issue and, as we made clear in our written evidence to the Commission on Devolution in Wales (the Silk Commission), the Welsh Government does not agree with those who argue that Broadcasting should now be devolved. The vital role that broadcasting institutions play in creating a common cultural citizenship for people across the UK would not be strengthened by any attempt to divide responsibility for broadcasting institutions among its constituent parts.

However there has been an unprecedented attack on public service broadcasting in Wales during recent years. The public service broadcasters in Wales have a crucial role in the civic life of Wales not least in the context of a press that is weak in terms of its national reach. Wales, of course, is in a unique situation, as a low percentage of the population read newspapers specifically about Wales. Unfortunately the UK print media does not provide a good service to Welsh citizens.

We therefore urge Ofcom to fulfil its obligations in relation to public service broadcasting. The broadcasting industry in Wales is facing a very uncertain future and the Welsh Government is very concerned about these developments. S4C is continuing to deal with the impact of significant reductions to its budget by the UK Government as well as changes to its governance arrangements. BBC Wales has had to deal with a significant reduction in its budget as part of the Delivering Quality First proposals. We want to see a clear commitment by the BBC to safeguard and strengthen the core services in Welsh and English which are specifically aimed at Welsh viewers and listeners. At the moment we are also far from clear about the long term pattern of ITV services in Wales.

It is our view that all Public Service Broadcasters should make an explicit commitment to defining their responsibilities and commitments to Wales. It is therefore timely that Ofcom's review of public service broadcasting will be undertaken during 2013-14. The Welsh Government expects to play a full role in this review and will engage as necessary as it develops. We take the view that PSB commitments should be developed through an open and public discussion of the issues involved. The result of such a review could then inform both UK Government and Welsh Government policy on public service broadcasting.

In the meantime, as we have said to the Silk Commission, we believe that the broadcasters' vital UK role should be reinforced by measures aimed at strengthening the particular contribution which they make in each of the UK's constituent parts. It is essential to improve the accountability of UK broadcasting institutions to the National Assembly and to Welsh viewers and listeners. This improved accountability can best be delivered by strengthening the position of Welsh Ministers with regard to appointments made to the regulatory bodies governing broadcasting in Wales.

There are responsibilities in respect of certain public appointments which should now be devolved. Given the important role played by Ofcom in the regulation of broadcasting we believe it is essential that the Ofcom Board should feature one member specifically charged with representing the views of Welsh citizens. This member should also be appointed with the agreement of Welsh Ministers. This is also reflected in the Welsh Government's Programme for Government. The appointment of the Welsh member of the BBC Trust, and also the Chair and members of the S4C Authority, should also be made only with the agreement of the Welsh Ministers.

- **General comments on Ofcom's strategic purpose to support public policy as defined by Parliament**

In our view Ofcom must operate in a manner consistent with the reality of devolved government in the United Kingdom. The current lack of direct accountability to Wales in relation to Public Service Broadcasting is no longer appropriate - the Welsh Government is responsible for a number of inter-related functions at the heart of public service television, including Culture, Education and training, Social welfare, Sport and recreation, the Welsh language and Economic Development (especially as the Creative Industries, including our broadcasters, are one of the key economic sectors in Wales).

The common interests of the Welsh Government, the National Assembly, the broadcasters and the Welsh audience require better, more formalised engagement. The draft plan restates Ofcom's remit to support public policy, but only as defined by Parliament and the UK Government - despite the fact that public policy in many areas affected by Ofcom's work is now made in Wales, not Westminster (this is also true with regard to network infrastructure).

Although Ofcom has committed to specific engagements with the nations - on individual issues and on a case by case basis – this does not go far enough. We believe Ofcom's duty to support public policy must reflect the reality of devolved government if it is to be fit for purpose. We urge Ofcom to build a review of the scope of this strategic purpose into the annual plan for 2013/14. The Welsh Government stands ready to engage in dialogue with Ofcom, the UK Government, the other devolved administrations and other key stakeholders on this matter.

Q2. What are your views on Ofcom's proposed work areas for 2013/14?

Strategic purpose 2 – Secure optimal use of spectrum

- **Develop a forward-looking spectrum of work programme**

5.22 'Our objective will be to set out a longer-term road map for the provision of spectrum for mobile data to meet the growing demand for wireless services by consumers'.

The Welsh Government would be grateful for the opportunity to feed into the development of this road-map, in particular to identify priority areas of economic importance such as Enterprise Zones and Local Growth Zones.

Strategic purpose 3 – Promote opportunities to participate

- **Continue to promote investment that would address mobile phone not-spots**

5.53 '... our work supporting the Government to deliver the Mobile Infrastructure Project'

The Welsh Government has welcomed Ofcom's updates to date on the development on the UK Government's Mobile Infrastructure Project. However, we would be grateful for more detailed regular transparent communication on the

Mobile Infrastructure Project. In particular, we seek access to detailed mapping in relation to the not-spot areas in Wales to be served under the project.

5.53 ‘... will require one of the 800 MHz licensees to deliver at least 98% indoor coverage across the UK (at least 95% in each nation) by the end of 2017.

The Welsh Government is grateful to Ofcom for their work in ensuring the coverage obligation for 95% of the Welsh population by 2017 from one of the 800MHz licensees in the 4G spectrum auction.

We would urge Ofcom to now work with the mobile operators to complete the auction process as quickly as possible in order to increase mobile coverage across Wales. We want to ensure that the 95% coverage in Wales is reached at a regional level as quickly as possible through the roll-out, and would be grateful for the opportunity to work closely alongside Ofcom to monitor the successful operators to ensure that their commitment are met in a timely manner.

The Welsh Government would also like to work with Ofcom to ensure operators accelerate the deployment of the roll-out in Wales to prioritised areas as far as is possible.

5.53 ‘... further research into consumer and small business perceptions of mobile reception and will continue to do so’

We welcome the proposed research into consumer and small business perceptions of mobile reception. We urge Ofcom to ensure granularity in its research to ensure we can map issues at a national, and ideally regional, level in order to facilitate policy making by the Welsh Government.

In particular, we would be interested in developing research into consumer and small business perceptions of mobile reception in under-served areas, for example Anglesey, to enable better understanding of communications needs and infrastructure for service delivery.

- **Undertake further research into the effect of communications infrastructure availability on geographic areas**

5.57 ‘In 2013/14 we will undertake further research into the effect of communications infrastructure availability on geographic areas’.
‘... our follow-up work will complement this by focusing on higher-density areas, including cities and towns’

The Welsh Government would welcome the opportunity to provide suggestions to Ofcom and suitable options of areas to undertake further research either for tracking and monitoring of broadband uptake, mobile coverage or potential case studies.

- **Engaging with the nations**

6.6 'provide appropriate regulatory and technical advice to the Welsh Government in support of its Digital Wales policy commitments, in particular the Broadband Support Scheme and Next Generation Broadband for Wales Project'

The Welsh Government welcome the regulatory and technical advice provided by Ofcom in support of its Digital Wales and Programme for Government policy commitments. In particular, we are currently scoping a new scheme to supersede the Broadband Support Scheme which closes in its current format in March 2013. A new scheme will seek to provide an uplifted performance to some of the hardest to reach premises which will not be covered under the Next Generation Broadband for Wales programme. In addition, other interventions to support the hardest to reach premises will be taken forward under the umbrella Next Generation Broadband programme.

The Welsh Government would also welcome the support of Ofcom in our current scoping work of potential mobile broadband interventions to improve coverage both of basic and 4G mobile broadband in Wales.

Strategic purpose 5 – Maintain audience confidence in broadcast content

- **Licence television and radio services in the UK including a further round of community radio licensing and a continued focus on effective enforcement**

Under the existing legislation commercial radio stations are not obliged in their output to reflect the language of local communities unless such a condition is included in the licences. In the Welsh Government's response (September 2012) to the UK Government's Communications Review seminar *Supporting growth in the radio (audio) sector* we indicated that we would not wish to see further relaxation or removal of the current localness rules. We also noted that it was vital that there was an appropriate level of localness provision in particular local news.

We believe that it is desirable to include express statutory provision to impose upon Ofcom a duty to take account of Welsh language issues as it exercises its licensing functions in relation to Wales. Ofcom has indicated that they are supportive in principle of introducing a provision in the new legislation to modify Ofcom's powers. We therefore urge Ofcom to raise this issue with the UK Government in the context of the Communications Review.

In this context it is worth noting that there is a commitment in the Welsh Government's Welsh Language Strategy to:

Investigate with others the possibility of increasing the provision of Welsh-language programming on commercial radio stations operating in Wales (page 52)

<http://cymru.gov.uk/topics/welshlanguage/publications/wlstrategy2012/?lang=en>

In addition, recommendation 16 of the Assembly's Communities, Equality and Local Government Task and Finish Group Report on the Future Outlook for the Media in Wales published in May 2012 was that the Welsh Government should

make representations to the UK Government to include specific Welsh language duties for Ofcom in the Communications Bill. The Welsh Government accepted this recommendation.

<http://cymru.gov.uk/topics/cultureandsport/mediapublishing/publications/responsemediawales/?lang=en>

The Welsh Government established a five-year Community Radio Fund to recognise the contribution community radio stations make to their communities. This Fund has now been extended for a further year. We will continue to engage closely with Ofcom in relation to this Fund and also how we can further develop and support this sector.

- **Licence new local TV services**

We have already explained our concerns about current news provision in Wales. We are concerned that Wales should not lose out in this regard as the UK Government considers investing in Wales-based local TV services. The Welsh Government must be given an early opportunity to be involved in discussions about licences that may be considered in Wales in the coming year.

Strategic purpose 6 – Contribute to and implement public policy defined by Parliament

- **Support the Government’s digital radio programme**

The Welsh Government would not be in favour of digital switchover for radio until there was a guarantee of at least 97% coverage for DAB throughout Wales – our position on this as a Government has been consistent for a number of years.

The challenge of providing sustainable and successful radio services in both English and Welsh is made more complex by the need to also ensure the completion of a transmitter network that guarantees that those services are available throughout the whole of Wales.

The ongoing problems regarding receiving FM radio signals is naturally making us apprehensive as a Government about the implications of the intention to change to digital radio. It is vital that listeners in Wales are not treated differently from other areas of the United Kingdom.

The Welsh Government strongly believes that the content and coverage of the DAB service in Wales is no worse than Welsh AM/FM radio coverage at present and available in areas where the national radio stations (Radio Wales and Radio Cymru) can only be transmitted on the AM spectrum. The new DAB service needs to provide an enhanced service if listeners in all parts of the UK are to be persuaded of the merits of that service.

Almost 40% of Welsh listeners cannot receive Radio Wales on FM and this is unacceptable. We have raised this issue regularly with the BBC, Ofcom and also with Digital Radio UK. The Welsh Government urges Ofcom to continue to liaise with the BBC and other stakeholders in order to attain the best service for

consumers throughout Wales. In the same way we ask Ofcom to continue to try to resolve the ongoing problems in some areas of Wales, especially north east Wales where viewers have experienced problems in receiving Welsh television channels.

The Welsh Government has a positive working relationship with Ofcom and we look forward to that continuing. The constructive suggestions provided in this response, along with our requests that urgent attention be given to specific issues, simply reflect our firm view that the nature of our relationship does now need to change, in order to reflect the reality of devolved government and to best protect and promote the interests of citizens and businesses in Wales. We look forward to discussing these points with Ofcom during the coming year.