

# Operating Framework: setting and amending performance measures

## Procedures and considerations for setting and amending the performance measures

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### Introduction

- 1.1 Under the Royal Charter<sup>1</sup> and the agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the “**Agreement**”) published by Government on 15 December 2016, Ofcom may determine measures (further to those determined by the BBC) that Ofcom considers appropriate to assess the BBC’s success in fulfilling the Mission and promoting the Public Purposes<sup>2</sup> as set out in the Royal Charter<sup>3</sup> and the agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the “**Agreement**”) published by Government on 15 December 2016.<sup>4</sup>
- 1.2 This document forms part of the BBC’s Operating Framework. It sets out how Ofcom will set and amend performance measures and the procedures to be followed.<sup>5</sup>

### How Ofcom will set and amend performance measures

- 1.3 When setting and amending performance measures, Ofcom will apply the relevant legal framework.
- 1.4 Ofcom is a statutory corporation created by the Office of Communications Act 2002.
- 1.5 Ofcom’s power to regulate the BBC is derived from the Communications Act 2003, which sets out that for the purposes of the carrying out regulation of the BBC we will have such powers and duties as may be conferred on us by or under the Charter and Agreement.<sup>6</sup> Our general duties under section 3 of the Communications Act 2003 apply to the exercise of our functions in relation to the BBC.<sup>7</sup> Ofcom’s section 3 duties include its principal duty to further the interests of citizens in relation to communications matters, and to further the interests of consumers in relevant markets, where appropriate by promoting competition.<sup>8</sup>
- 1.6 Ofcom’s section 3 duties also include a requirement on Ofcom to have regard, in all case, to the principles under which regulatory activities should be transparent, accountable,

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<sup>1</sup> [The Royal Charter for the continuance of the British Broadcasting Corporation](#) (the “**Charter**”)

<sup>2</sup> Article 46(4) of the Charter; and Clause 14(1) of the Agreement.

<sup>3</sup> [The Royal Charter for the continuance of the British Broadcasting Corporation](#) (the “**Charter**”)

<sup>4</sup> Article 20(3)(d) of the Charter.

<sup>5</sup> As required by Clause 15(3) of the Agreement

<sup>6</sup> Section 198 of the Communications Act 2003.

<sup>7</sup> Article 45(1) of the Charter.

<sup>8</sup> Section 3(1) of the Communications Act 2003.

proportionate, consistent and targeted only at cases in which action is needed and any other principles appearing to Ofcom to represent the best regulatory practice.<sup>9</sup>

- 1.7 Article 45(2) of the Charter provides that Ofcom must have regard, in carrying out its functions, to such of the following as appear to us to be relevant in the circumstances:
- the object of the BBC to fulfil its Mission and to promote the Public Purposes;
  - the desirability of protecting fair and effective competition in the United Kingdom;
  - the requirement for the BBC to comply with its duties under the Charter, including its general duties.
- 1.8 Article 46 of the Charter (Principal functions of Ofcom) sets out that Ofcom may determine measures (further to those determined by the BBC under article 20(3)(d) (principal functions of the Board)) that Ofcom considers appropriate to assess the performance of the UK Public Services in fulfilling the Mission and promoting the Public Purposes.<sup>10</sup>
- 1.9 Article 20(3)(d) of the Charter provides that the BBC Board must ensure that the BBC fulfils its Mission and promotes the Public Purposes by, in particular, setting a framework to assess the performance of the BBC in delivering its strategies and creative remit, and obligations under the Charter and the Agreement, including performance measures (and targets for those measures where appropriate) to assess the performance of the UK Public Services in fulfilling the mission and promoting the Public Purposes).
- 1.10 In determining performance measures further to those determined by the BBC, Ofcom will have regard to the performance measures determined by the BBC.

## Procedure

- 1.11 Before determining performance measures, the BBC and Ofcom respectively must consult each other and any person they consider appropriate.<sup>11</sup>
- 1.12 Before determining performance measures, the BBC and Ofcom respectively must consult each other and any person they consider appropriate.<sup>12</sup> In particular, Ofcom will be clear about whom it is consulting, why, on what questions and for how long.
- 1.13 Ofcom will give a reasonable period of time for responses to a consultation to be submitted. Ofcom will assess what is reasonable in light of the nature and significance of the proposal, having regard to its Consultation Principles.
- 1.14 If Ofcom considers that it needs further information before setting or amending performance measures, whether from the BBC or from another person, Ofcom will seek that information before taking a decision. The Charter gives Ofcom information-gathering powers in relation to its functions under the Charter and Agreement.<sup>13</sup>
- 1.15 Ofcom will determine performance measures having taken account of all the views and information supplied. Ofcom will publish the performance measures on its website.

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<sup>9</sup> Section 3(3) of the Communications Act 2003.

<sup>10</sup> Article 46(4) of the Charter.

<sup>11</sup> Clause 14(3) of the Agreement.

<sup>12</sup> Clause 14(3) of the Agreement.

<sup>13</sup> Article 47 of the Charter.

- 1.16 Ofcom may require the BBC to collect such information as Ofcom consider necessary for the performance measures.<sup>14</sup>
- 1.17 The BBC and Ofcom must publish at least annually the performance measures and evidence about performance against those measures.<sup>15</sup> Ofcom will publish this information on its website.

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<sup>14</sup> Clause 14(4) of the Agreement.

<sup>15</sup> Clause 14(5) of the Agreement.