
Holding the BBC to account for delivering for audiences

Procedures for setting and amending the operating
licence

1. Procedures and considerations for setting and amending the operating licence

Introduction

- 1.1 Under the Royal Charter¹ 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 is required to set an operating licence for the BBC’s UK Public Services (a “**Licence**”).² Ofcom must set a Licence in accordance with the provisions that Ofcom has set out in the BBC’s Operating Framework.³
- 1.2 This document forms part of the BBC’s Operating Framework. It sets out how Ofcom will set and administer the operating licence regime and the procedures to be followed. In particular, it sets out: (a) the procedure for setting and amending regulatory conditions in a Licence; and (b) the considerations Ofcom will have regard to in setting or amending those conditions.⁴

Procedure

- 1.3 The Agreement provides that before setting a Licence, Ofcom must consult the BBC and any person Ofcom considers appropriate.⁵ Further, the Agreement provides that the requirement that Ofcom consult the BBC and any person Ofcom considers appropriate also applies where Ofcom is amending a Licence.⁶ The procedural requirements set out below apply to setting or amending a regulatory condition in a Licence. Any part of a Licence that is not a regulatory condition (that is, it does not impose enforceable obligations on the BBC) can be amended by Ofcom without consultation.
- 1.4 When Ofcom consults on setting a regulatory condition in a Licence or amending a regulatory condition in a Licence, Ofcom will do so in compliance with its consultation principles.⁷ In particular, Ofcom will be clear about whom it is consulting, why, on what questions and for how long.
- 1.5 Where Ofcom is considering setting a new Licence, including replacing an existing Licence, Ofcom would generally expect that it would be appropriate to consult publicly on its proposals. Where Ofcom is considering an amendment to a Licence, Ofcom will consult the BBC, and Ofcom will decide on a case by case basis which other persons (if any) it is appropriate to consult, having regard to the nature and significance of the proposed

¹ The Royal Charter for the continuance of the British Broadcasting Corporation (the “**Charter**”), available at <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

² Article 46(3) of the Charter.

³ Article 46(3) of the Charter.

⁴ Clause 15(2) of the Agreement.

⁵ Clause 13(5) of the Agreement

⁶ Clause 80 of the Agreement.

⁷ <https://www.ofcom.org.uk/consultations-and-statements/how-will-ofcom-consult>

amendment. For example, a proposal to make a minor amendment may not require a public consultation.

- 1.6 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.
- 1.7 If Ofcom considers that it needs further information before deciding whether to set a Licence or amend a Licence, 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.⁸
- 1.8 Ofcom will set a Licence, or make an amendment to a Licence, having taken account of all the views and information supplied. Ofcom will send a hard copy of the Licence or amendment to the BBC and publish the Licence or amendment on Ofcom's website.
- 1.9 Ofcom may propose setting a new Licence or amending an existing Licence on its own initiative (for example, if Ofcom considers it appropriate to do so in light of evidence about the BBC's performance). It is also possible that such a proposal may come from the BBC. Where the BBC wishes to make such a request to Ofcom, it should do so in writing, setting out the reasons for its request.
- 1.10 Potential changes to UK Public Services could be the subject of assessments by the BBC and/or Ofcom under clauses 7 to 12 of the Agreement. Where a change is likely to require an amendment to the Licence, Ofcom will consider the appropriate timing for its assessment of the Licence change so that separate processes can be avoided where possible.

Considerations

- 1.11 When setting or amending a Licence, Ofcom will apply the relevant legal framework.
- 1.12 Ofcom is a statutory corporation created by the Office of Communications Act 2002.
- 1.13 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.⁹ Our general duties under section 3 of the Communications Act 2003 apply to the exercise of our functions in relation to the BBC.¹⁰ 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.¹¹
- 1.14 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,

⁸ Article 47 of the Charter.

⁹ Section 198 of the Communications Act 2003.

¹⁰ Article 45(1) of the Charter.

¹¹ 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.¹²

- 1.15 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:
- a) the object of the BBC to fulfil its Mission and to promote the Public Purposes;
 - b) the desirability of protecting fair and effective competition in the United Kingdom;
 - c) the requirement for the BBC to comply with its duties under the Charter, including its general duties.
- 1.16 Article 46 of the Charter (Principal functions of Ofcom) sets out that Ofcom must set a Licence for the UK Public Services, in accordance with the Operating Framework, which must contain regulatory conditions we consider appropriate for requiring the BBC to:
- a) fulfil its Mission and promote the Public Purposes;
 - b) secure the provision of distinctive output and services; and
 - c) secure that audiences in England, Scotland, Wales and Northern Ireland are well served.¹³
- 1.17 The provisions of the Agreement which are most relevant to the setting or amending of a Licence are clause 13 and Schedule 2.
- 1.18 Clause 13 of the Agreement requires Ofcom to set and publish one or more operating licences for the UK Public Services. It provides that Ofcom:
- a) must impose the regulatory conditions set out in, and in accordance with, Schedule 2 (operating licence regulatory conditions);
 - b) may impose such further regulatory conditions we consider appropriate for requiring the BBC, in carrying out the UK Public Services, to fulfil the Mission and promote the Public Purposes;
 - c) may impose such further regulatory conditions we consider appropriate for requiring the BBC to secure that the audiences in England, Scotland, Wales and Northern Ireland are well served.
- 1.19 Schedule 2 to the Agreement requires Ofcom to do the following:
- a) to have particular regard, in imposing the regulatory conditions, to the need for the BBC to secure the provision of distinctive output and services;
 - b) in imposing the regulatory conditions in the first operating licence, to seek to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services. The Agreement sets out specific areas to which Ofcom

¹² Section 3(3) of the Communications Act 2003.

¹³ Article 46(3) of the Charter

must have particular regard in carrying out this requirement (paragraph 2(2) to (5) of Schedule 2);

- c) to impose on the BBC the requirements Ofcom consider appropriate for ensuring adequate links to material provided by third parties from BBC Online;
- d) to impose specified requirements for the UK Public Television Services relating to the provision of news programmes and current affairs programmes;
- e) to impose, in relation to each of the UK Public Television Services, specified requirements relating to the broadcasting of original productions;
- f) to impose specified requirements for the UK Public Television Services in relation to programming for the nations and regions; and
- g) to impose specified requirements for the UK Public Television Services in relation to programme making in the nations and regions.

1.20 In setting a new regulatory condition in a Licence, or amending an existing regulatory condition, Ofcom will have regard to the enforceable nature of operating licence conditions and the desirability of ensuring that regulatory conditions are clear and capable of enforcement in the event of non-compliance.