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# **Ofcom's Annual Report on the BBC: 2018/19**

Annex 1: Compliance with regulatory requirements

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## Introduction

- A1.1 This annex sets out our assessment of the BBC's compliance with the specified requirements set out in the BBC Agreement.<sup>1</sup>
- A1.2 The specified requirements include the conditions that we imposed on the BBC in the Operating Licence in October 2017, and requirements imposed on the BBC in Schedule 3 of the Agreement. Schedule 3 includes obligations relating to the BBC's commissioning activity, as well as other matters.
- A1.3 The requirements also include obligations that we have placed on the BBC under the Operating Framework. We cover these, as well as other matters not picked up elsewhere in the annual report, at the end of this annex.

## Our assessment

- A1.4 In making our assessment of the requirements, we have considered the BBC's report of its compliance in its Annual Report.<sup>2</sup> To provide an independent assessment, we have also served the BBC with an information notice requiring it to provide us with evidence of its compliance with the conditions and requirements,<sup>3</sup> and we have considered that evidence carefully.
- A1.5 In addition, we have also taken account of complaints and representations made to us, and, where other data and reports are relevant to our assessment, we have drawn on them too.
- A1.6 Where the conditions impose requirements, such as hours quotas, we make a quantitative assessment of the BBC's performance drawing on data provided by the BBC. In other cases, where the condition requires a qualitative judgment, or where particular cases may require more detailed investigation, we have assessed the BBC's performance on the basis of the evidence we have gathered.
- A1.7 Our overall assessment, based on the evidence, is that the BBC complied with all but two Operating Licence requirements, which we outline the details of and our response below.
- A1.8 This was the first year that the conditions introduced in the Operating Licence on diversity, audience portrayal, and representation were assessed. Diversity is critically important for the success of the PSB system and the BBC has a duty to be at the forefront of progress, so that it serves all of the communities of the UK. We acknowledge that the BBC leads the way in collecting diversity workforce data and has many initiatives in place to improve diversity. Whilst we are satisfied that it has complied with the diversity conditions, as we set out in the main report, we think it could go further and provide more detail in how it is delivering and reporting against these conditions. We set out these concerns in more detail

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<sup>1</sup> Clause 59 of the [Agreement](#).

<sup>2</sup> [BBC Annual Report and Accounts 2018/19](#).

<sup>3</sup> Under Article 47 of the [Charter](#).

in our [BBC Annual Report](#) (pages 14-20) and below in A1.15. The BBC needs a robust plan in place to deliver improvements in diversity and we have written to the Director General asking him to explain how the BBC will address our concerns.

## Operating Licence conditions

- A1.9 As required by the Charter,<sup>4</sup> the Operating Licence includes conditions we consider appropriate for requiring the BBC, in providing the UK public services, to:
- fulfill its missions and promote the public purposes;
  - secure the provision of distinctive output and services; and
  - secure that audiences in England, Scotland, Wales and Northern Ireland are well served.
- A1.10 This is the first year that Ofcom has assessed the BBC's compliance against all of the conditions in the Operating Licence, as this was the first year that all of the conditions have been in force for the full year. This section outlines our assessment of the BBC's compliance with the Operating Licence conditions between 1 April 2018 and 31 March 2019 (the relevant period). Any conditions set for the calendar year have been measured across the 2018 calendar year.
- A1.11 The BBC Scotland channel was introduced in February 2019 at which point BBC Two Scotland was discontinued and the calendar year regulatory conditions applicable to BBC Two Scotland were replaced with new conditions applicable to the BBC Scotland channel. Therefore, in this report we have assessed the BBC's compliance for the calendar year 2018 against the conditions for BBC Two Scotland that were in place up to the commencement of the new channel.<sup>5</sup> We will assess the BBC's performance for the BBC Scotland channel's regulatory conditions in next year's annual report.<sup>6</sup>

## Compliance assessment

- A1.12 The BBC complied with all, but two conditions imposed on it under the Operating Licence. The conditions which the BBC did not meet were:
- Condition 2.40.3, which requires Radio 2 to broadcast at least 260 hours of live music in each financial year (on p.9); and,
  - Condition 2.71.1 for Radio nan Gàidheal to ensure that the proportion of content which is speech content is on average at least 60% in core hours (on p.17).
- A1.13 The BBC explained that the shortfall of three hours of live music on Radio 2 was due to unforeseen circumstances and has assured Ofcom that it has put a more robust monitoring

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<sup>4</sup> Article 46 (3) of the [Charter](#).

<sup>5</sup> Included in the [Consolidated version of the Operating Licence as of 27 March 2018](#).

<sup>6</sup> The regulatory conditions applicable to the new BBC Scotland Channel include one condition which applies on a financial year basis. We have not assessed this condition for this year's annual report as it was in force for only a few weeks prior to the end of the 2018/19 financial year. We will assess the BBC's performance against this condition when we assess the calendar year conditions for BBC Scotland in next year's annual report.

system in place to ensure it can take timely action to programme additional live music if necessary. This monitoring system will track performance against the condition on a quarterly basis to prevent this breach from happening again. We accept that last minute cancellations and unavoidable late changes to the planned schedule happen, but the BBC should have contingency arrangements in place to ensure that it schedules sufficient hours to meet its targets. In this instance as the margin of under-delivery is small and given the assurances the BBC has given to prevent this breach from happening again, we are not taking enforcement action. Moving forward we will pay close attention to this condition when assessing the BBC's compliance and will look to take enforcement action if it fails to meet this condition next year.

A1.14 The Radio nan Gàidheal speech condition was intended to secure the delivery of speech levels at the time the Operating Licence came into place. We now understand that the level, set at 60%, required an increased level of delivery, which was not the intention of the quota. Given the circumstances of this breach we have decided to take no further action. We have engaged with the BBC and stakeholders with an interest in Gaelic language radio to ensure that reducing the level of this condition so that it reflects the BBC's pre-existing level of delivery of c.40-45% is not a concern. We have therefore decided to amend the Operating Licence as set out below. These conditions will be updated on our [website](#) at the time of publishing this Report. The changes we are making are as follows:

- condition 2.71.1 has been amended to require BBC Radio nan Gàidheal to ensure that the proportion of content which is speech content is on average at least 40% in core hours.
- conditions 2.73 and 2.83.1 have been amended so that the hours applied are in line with BBC Radio nan Gàidheal's operating hours. The amended hours for the condition are 07:30 to 19:00 on Mondays to Fridays and 09:00 to 11:00 on Saturdays and Sundays.

A1.15 We are satisfied the BBC has met the diversity conditions, but we do have concerns with the way in which it has reported to us on diversity, specifically:

- The BBC's Annual Report included a statement signaling compliance with its operating conditions but did not cover the conditions around diversity, audience portrayal and representation in this statement of compliance. We expect this to be included next year.
- Condition 2.42. The BBC has not set out its approach to representation and portrayal clearly. We expect the BBC to develop and capture its work on representation and portrayal to provide much richer evidence moving forward. We expect the BBC to disaggregate the component parts of this condition in future years and provide separate evidence to support each of the sub conditions.
- Condition 2.48. We are disappointed in the time it has taken to provide a report into compliance with its Diversity Commissioning Code of Practice. We will be consulting on amending the Operating Licence to require this report alongside the BBC's Annual Report. While we recognise that this was the first year the code was

reported on, the substance of the report can be improved on for next year, we will be working with the BBC over the next six months on how to address our concerns.

- Condition 2.45. We have concerns with how the BBC identifies dissatisfied audience groups using the approach of net satisfaction. We expect the BBC to undertake a more complete review of dissatisfied audiences, and to report on any following steps it will be taking to improve audience satisfaction amongst any dissatisfied groups that it has identified by 31 January 2020. We will consult on amending the Operating Licence if necessary.
- Condition 2.50. The BBC provides a wealth of diversity data through its Equality Information Report and has provided us with additional detail to comply with the diversity conditions. Next year we will require the BBC to provide us this information in a specific format so that we can calculate and publish the data ourselves to be consistent with our TV and Radio Diversity and Equality reports.

For more detail on each of these areas please see pages 14-20 of our BBC Annual Report.

A1.16 The following table sets out our assessment of the BBC’s compliance with the regulatory conditions of the Operating Licence between 1 April 2018 and 31 March 2019 or calendar year 2018.<sup>7</sup> As in the Operating Licence, the conditions in the table are arranged by public purpose.

**Purpose 1:**

Condition number	Service	Summary of regulatory condition	2018/19 assessment
2.4.1	BBC One	Network news programmes at intervals throughout the day	Schedule provided
2.4.2	BBC One	Calendar year quota <sup>8</sup> for network news programmes: 1,520 hours, with 280 hours in peak	1,655 hours, including 295 hours in peak <sup>9</sup>
2.4.3	BBC One	Calendar year quota for network current affairs programmes during peak: 45 hours	47 hours
2.5	BBC One & BBC Two	Calendar year quota for network current affairs programmes: 450 hours, with 106 hours during peak	568 hours, including 106 hours in peak
2.6.1	CBBC	News at intervals throughout the day	Schedule provided
2.6.2	CBBC	Financial year quota for news: 85 hours	92 hours
2.7.1	BBC News Channel	More international news than other main continuous news channels in the UK	Monitoring provided to demonstrate that it

<sup>7</sup> Note that these tables contain summaries of the relevant conditions. The full and authoritative text can be found in the [BBC Operating Licence](#) at the regulatory condition indicated

<sup>8</sup> Calendar year quotas were measured across the 2018 calendar year

<sup>9</sup> We have assessed compliance with all of the quantitative data reported in this annex based on evidence provided by the BBC

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			covered more international news than other main continuous news channels in the UK
2.7.2	BBC News Channel	More local/regional news than other main continuous news channels in the UK	Monitoring provided to demonstrate that it covered more international news than other main continuous news channels in the UK
2.8.1	Radio 1	Weekday quota for news during daytime: one hour per day, including two extended bulletins with one in peak	1 hour, two extended bulletins, including one in peak <sup>10</sup>
2.8.2	Radio 1	Bulletins at regular times during daytime at weekends	Schedule provided
2.9.1	1Xtra	Weekday quota for news during daytime: one hour per day, including two extended bulletins	1 hour, two extended bulletins
2.9.2	1Xtra	Bulletins at regular times during daytime at weekends	Schedule provided
2.10.1	Radio 2	Weekly quota for news and current affairs programming: 17 hours, with 3 hours in peak	17 hours, including 3 hours in peak
2.10.2	Radio 2	News bulletins at regular times	Schedule provided
2.11	Radio 3	News at intervals throughout the day	Schedule provided
2.12.1	Radio 4	Financial year quota for news and current affairs programmes: 2,750 hours	3,394 hours
2.12.2	Radio 4	Daily reports of Parliamentary proceedings when Parliament is sitting	Today in Parliament schedule provided
2.13.1	BBC Radio 5 Live	Financial year quota: 75% of its output must be news and current affairs programming	76% of output was news and current affairs <sup>11</sup>

<sup>10</sup> Condition 2.16 of the Operating Licence allows for the BBC to request that the requirements in conditions 2.8.1, 2.9.1, 2.10.1, 2.14 or 2.15 be suspended for a specified period. Over the Christmas period of 2018 the BBC requested a temporary suspension of the news condition for Radio 1 (condition 2.8.1), 1Xtra (2.9.1), and BBC Asian Network (condition 2.15). More information can be found on the [Performance page of our website](#) under Updates

<sup>11</sup> Calculated as the hours of news programmes and news content within other programmes (e.g. news bulletins), excluding any non-news content in news programmes (e.g. promotional material)

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2.13.2	BBC Radio 5 live	Extensive coverage of elections (local, general, and the UK's devolved chambers) and regular coverage of European and international politics	Evidence provided of news programmes that cover these subjects
2.14	BBC 6 Music	Weekly quota for news: 6 hours	6 hours
2.15	BBC Asian Network	Weekly quota for news and current affairs programming: 24 hours	24 hours
2.17	BBC Online	Must ensure that it provides adequate links to material provided by third parties	Editorial guidelines provided <sup>12</sup>

### Purpose 2:

Condition number	Service	Summary of regulatory condition	2018/19 assessment
2.18	BBC One	Financial year quota for arts and music programmes: 45 hours, with some in peak	63 hours, including 29 hours in peak
2.19	BBC One & BBC Two	Financial year quota for religious programmes: 115 hours, with some in peak	141 hours, including 9 hours in peak
2.20	BBC Two	Financial year quota for arts and music programmes: 175 hours, with some in peak	221 hours, including 69 in peak
2.21	BBC Four	Financial year quota for new arts and music programmes: 175 hours	236 hours
2.22	CBeebies	Must deliver a range of content to support pre-school children in their learning	Evidence of content provided
2.23.1	CBBC	Financial year quota for drama: 1,000 hours	1,906 hours
2.23.2	CBBC	Financial year quota for factual programmes: 675 hours	1,226 hours
2.24	BBC Alba	Weekly quota for originated programming for learners of the Gaelic language: 5 hours. For the purpose of this requirement, "originated programming": 2.24.1 does not include news; 2.24.2 includes programming first shown on other UK Public Services.	13 hours

<sup>12</sup> Our [review of BBC's news and current affairs](#) found that the BBC's internal hyperlinks provide an important service, connecting readers to 'explainers', as well as in-depth analysis of, and commentary on, news stories to help them gain a better understanding of the issues. However, our work indicates the BBC could provide more links to external, third-party content to benefit users and support the wider news industry and we will be following up on this finding.

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2.25	Radio 1	Financial year quota for new documentaries: 40 new documentaries	42 new documentaries
2.26	1Xtra	Financial year quota for documentaries: 40 documentaries	43 documentaries
2.27.1	Radio 2	Financial year quota for arts programming: 100 hours	131 hours
2.27.2	Radio 2	Financial year quota for documentaries: 130 hours	130 hours
2.27.3	Radio 2	Financial year quota for religious output that covers a broad range of faiths: 170 hours	199 hours
2.28.1	Radio 3	Financial year quota: 45% of the music output must be live or specially recorded	57% of output was live or specially recorded
2.28.2	Radio 3	Financial year quota: there must be 440 live or specially recorded performances	501 live or specially recorded performances
2.28.3	Radio 3	Financial year quota: it must commission 25 new musical works	32 new musical works
2.28.4	Radio 3	Financial year quota for new documentaries on arts and cultural topics: 35 new documentaries	38 new documentaries
2.29.1	Radio 4	Financial year quota for original documentaries covering a range of different subjects: 375 hours	403 hours
2.29.2	Radio 4	Financial year quota for original religious programming that covers a broad range of faiths: 200 hours	225 hours
2.30	BBC 6 Music	On average across the year each week it must allocate 10 hours to one or more of the following: speech-based features, documentaries and essays	520 hours across the year to one or more of the listed categories
2.31	BBC Online	Content that supports children and teenagers in their formal learning in all parts of the UK	Hyperlinks to BBC Bitesize section of the website provided

**Purpose 3, original productions:**

<b>Condition number</b>	<b>Service</b>	<b>Summary of regulatory condition</b>	<b>2018/19 assessment</b>
2.32.1	BBC One	Calendar year quota for original productions: 75% of all programmes	86% of hours were originations
2.32.2	BBC One	Calendar year quota for original productions: 90% of all programmes in peak	99% of hours were originations



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2.32.1	BBC Two	Calendar year quota for original productions: 75% of all programmes	92% of hours were originations
2.32.2	BBC Two	Calendar year quota for original productions: 90% of all programmes in peak	95% of hours were originations
2.32.1	BBC Four	Calendar year quota for original productions: 75% of all programmes	92% of hours were originations
2.32.2	BBC Four	Calendar year quota for original productions: 60% of all programmes in peak	89% of hours were originations
2.32.1	BBC Parliament	Calendar year quota for original productions: 90% of all programmes	98% of hours were originations
2.32.2	BBC News channel	Calendar year quota for original productions: 90% of all programmes	98% of hours were originations
2.32.1	CBBC	Calendar year quota for original productions: 72% of all programmes	81% of hours were originations
2.32.2	CBeebies	Calendar year quota for original productions: 70% of all programmes	72% of hours were originations
2.32.1	BBC Alba	Calendar year quota for original productions: 75% of all programmes	94% of hours were originations

**Purpose 3, first-run UK originations:**

<b>Condition number</b>	<b>Service</b>	<b>Summary of regulatory condition</b>	<b>2018/19 assessment</b>
2.33	BBC One	Calendar year quota for first-run UK originations across daytime and peak: 4,000 hours	4,344 hours
2.34	BBC Two	Calendar year quota for first-run UK originations across daytime and peak: 2,200 hours	2,826 hours
2.35	CBBC	Calendar year quota for first-run UK originations across daytime and peak: 400 hours	413 hours
2.36	CBeebies	Calendar year quota for first-run UK originations across daytime and peak: 100 hours	127 hours

**Purpose 3, distinctiveness:**

<b>Condition number</b>	<b>Service</b>	<b>Summary of regulatory condition</b>	<b>2018/19 assessment</b>
2.38	BBC One & BBC Two	Financial year quota for comedy programmes: 300 hours with some in peak	353 hours, including 215 in peak
2.39.1	Radio 1	Financial year quota: 45% of its music must be from UK acts	47% from UK acts

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2.39.2	Radio 1	Financial year quota: 50% of its music must be new music with a significant proportion of new and emerging UK artists	52% new music with a significant proportion of new and emerging UK artists
2.39.3	Radio 1	Weekly quota for specialist music: 60 hours	67 hours
2.39.4	Radio 1	Financial year quota for new sessions live or recorded in the previous three months: 175 new sessions	182 new sessions
2.39.5	Radio 1	Requirement to play a broader range of music than comparable providers, taking into account both the number of plays and the size of the playlist, at both peak listening time and daytime	Evidence provided to demonstrate compliance
2.39.6	Radio 1	Calendar year quota for at least two major social action campaigns	3 campaigns
2.40.1	Radio 2	Financial year quota: 40% of its music must be from UK acts	49% from UK acts
2.40.2	Radio 2	Financial year quota: 20% of its music must be new music with a significant proportion of new and emerging UK artists	28% new music with a significant proportion of new and emerging UK artists
2.40.3	Radio 2	Financial year quota for live music: 260 hours	257 hours <sup>13</sup>
2.40.4	Radio 2	Financial year quota for specialist music: 1,100 hours	1,193 hours
2.40.5	Radio 2	Requirement to play a broader range of music than comparable providers, taking into account both the number of plays and the size of the playlist, at both peak listening time and daytime	Evidence provided to demonstrate compliance
2.41	Radio 5 Live	Financial year quota for live commentary: must be offered on at least 20 sports	20 sports offered <sup>14</sup>

### Purpose 4, diversity:

Condition number	Service	Summary of regulatory condition	2018/19 assessment
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<sup>13</sup> The BBC were in breach of this condition by three hours, more information can be found above in paragraph A1.13

<sup>14</sup> The sports offered were: athletics, boxing, men's cricket, women's cricket, Formula 1, men's football, women's football, golf, gymnastics, horse racing, netball, road cycling, rugby league, men's rugby union, swimming, tennis, track cycling, triathlon, para-athletics and MMA.

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2.42.1	UK public services	The BBC must report on how it has had regard to the range of diverse communities of the whole of the UK. Including age, disability, gender reassignment, race, religion and belief, sex, sexual orientation and socioeconomic background	Relevant information to support compliance with this condition is found throughout the BBC's Annual Report
2.42.2	UK public services	The BBC must report on how it has served and delivered content for the whole of the UK	Relevant information referenced from the BBC's Annual Report on pp.26, 38, 40, 42, 44 and 46
2.42.3	UK public services	The BBC must report on how it had accurately represented the whole of the UK	Relevant information referenced from the BBC's Annual Report on pp. 38, 40, 42, 44, 46 and 81-82
2.42.4	UK public services	The BBC must report on how it has authentically portrayed the whole of the UK	Relevant information referenced from the BBC's Annual Report on pp.34, 38, 39, 40 - 42, 43, 45 and 47
2.42.5	UK public services	The BBC must report on how it has raised awareness of the different cultures and viewpoints of the whole of the UK	Relevant information to support compliance with this condition is found throughout the BBC's Annual Report
2.43	UK public services	The BBC must report on its progress towards meeting its on-screen and on-air representation and/or portrayal targets	Relevant information referenced from the BBC's Annual Report on pp.81-82
2.44.1	UK public services	The BBC must measure and report on audience satisfaction with how the BBC represents, portrays and serves diverse audiences	The BBC has not provided a specific answer to this sub condition but have referenced

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			<p>audience data from the BBC’s Annual Report on pp. 18-19, 23, 26, 34-35, 39, 41, 43 and 45-46 as well as providing Ofcom with additional survey data showing audiences’ opinions of how the BBC fulfils the mission and different aspects of public purpose 4. We consider this information supports the BBC’s compliance with this condition<sup>15</sup></p>
2.44.2	UK public services	The BBC must measure and report on audience satisfaction with how the BBC reflects the whole of the UK on-screen and on-air, particularly in regard to first-run content across all genres	<p>The BBC have referenced audience data from the BBC’s Annual Report on pp. 18-19, 23, 26, 34-35, 39, 41, 43 and 45-46 as well as providing Ofcom with additional survey data showing audiences’ opinions of how the BBC fulfils the mission and different aspects of public purpose 4. We consider this information supports the BBC’s compliance with this condition.</p>

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<sup>15</sup> We expect the BBC to disaggregate the component parts of this condition in future years and provide separate evidence to support each of the sub conditions.

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2.44.3	UK public services	The BBC must measure and report on audience satisfaction with how the BBC raised awareness of different cultures and viewpoints	The BBC has not provided a specific answer to this sub condition but have referenced audience data from the BBC's Annual Report on pp. 18-19, 23, 26, 34-35, 39, 41, 43 and 45-46 as well as providing Ofcom with additional survey data showing audiences' opinions of how the BBC fulfils the mission and different aspects of public purpose 4. We consider this information supports the BBC's compliance with this condition
2.45.1	UK public services	Where any audience groups are dissatisfied with the BBC's performance under condition 2.44 the BBC must identify steps it will take to seek to improve audience satisfaction among those particular audience groups	The BBC did not identify any dissatisfied audience groups and provided its methodology in assessing whether audience groups are satisfied or not using net satisfaction. We expect the BBC to undertake a more complete review of dissatisfied audiences, reporting on any steps it will be taking to improve audience satisfaction. We will amend the condition if necessary

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2.45.2	UK public services	Where any audience groups are dissatisfied with the BBC's performance under condition 2.44 the BBC must report on the steps taken and the effect that those steps have had on audience satisfaction in those particular audience groups	N/A
2.46	UK public services	The BBC must, by 1 April 2018, establish and comply with a code of practice, approved by Ofcom, related to its commissioning process	The code was approved by Ofcom and published by the BBC on 28 March 2018. The BBC's report on compliance with the code demonstrates that it has complied with the code but we expect more detail to be included next year
2.47	UK public services	In particular, the code of practice must set out the steps that the BBC will take, when commissioning content, in respect of: on-screen portrayal and casting; workforce diversity of commissioned production teams; and the production and commissioning decision process	The code includes these specified matters
2.48	UK public services	The BBC must monitor its compliance with the code of practice and report annually on compliance during the previous financial year	Report provided to Ofcom
2.50.1	UK public services	The BBC must monitor and report on the diversity of all staff, including: the number of staff by age, disability, gender reassignment, race, religion and belief, sex, sexual orientation and socioeconomic background	Relevant information referenced from the BBC's Annual Equality Information Report on pp. 259, 261, 263, 266, 268, 272, 276 and 281-283
2.50.2	UK public services	The BBC must monitor and report on the diversity of all staff, including: the job level of staff by: Board members and nonexecutives; senior managers; middle/junior managers; and non-management	Relevant information provided to Ofcom and the BBC has explained how its job level categories map onto the job level categories of the condition

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2.50.3	UK public services	The BBC must monitor and report on the diversity of all staff, including: the job type of staff by: programming; commissioning; technical/engineering; sales/marketing; and support functions/administrative	Relevant information provided to Ofcom
2.50.4	UK public services	The BBC must monitor and report on the diversity of all staff, including: the extent to which the BBC has made progress towards meeting its diversity workforce targets	Relevant information referenced from the BBC's Annual Report on p.259

**Purpose 4, nations and regions: Programme making in the nations and regions: network programmes**

<b>Condition number</b>	<b>Service</b>	<b>Summary of regulatory condition</b>	<b>2018/19 assessment</b>
2.53.1	Network Programmes	Calendar year quota for network programmes made in the UK outside of the M25: 50% of the hours of network programmes	62% of hours of network programmes
2.53.2	Network Programmes	There must be a suitable range of network programmes made in the UK outside of the M25	Evidence of suitable range provided through PSB returns
2.53.3	Network Programmes	Calendar year quota for network programmes made in the UK outside of the M25: 50% of the expenditure of network programmes	51% of expenditure of network programmes
2.54.1	Network Programmes	Calendar year quota for network programmes made in England (outside of the M25): 30% of the hours of network programmes	37% of hours of network programmes
2.54.2	Network Programmes	Calendar year quota for network programmes made in England (outside of the M25): 28% of the expenditure of network programmes	28% of expenditure of network programmes
2.56.1	Network Programmes	Calendar year quota for network programmes made in Scotland: 8% of the hours of network programmes	17% of hours of network programmes
2.56.2	Network Programmes	Calendar year quota for network programmes made in Scotland: 8% of the expenditure of network programmes	10% of expenditure of network programmes
2.58.1	Network Programmes	Calendar year quota for network programmes made in Wales: 4% of the hours of network programmes	5% of hours of network programmes
2.58.3	Network Programmes	Calendar year quota for network programmes made in Wales: 5% of the expenditure of network programmes	6% of expenditure of network programmes

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2.60.1	Network Programmes	Calendar year quota for network programmes made in Northern Ireland: 2% of the hours of network programmes	2% of hours of network programmes
2.60.3	Network Programmes	Calendar year quota for network programmes made in Northern Ireland: 3% of the expenditure of network programmes	3% of expenditure of network programmes
2.62	Network Programmes	The expenditure referred to in conditions 2.53, 2.54, 2.56, 2.58 and 2.60 must be referable to a suitable range of production centres	The data on different productions and different locations used is provided as part of the Made Out of London data returns

**Purpose 4, nations and regions: Programme making in the nations and regions: radio services**

<b>Condition number</b>	<b>Service</b>	<b>Summary of regulatory condition</b>	<b>2018/19 assessment</b>
2.64	UK Public Radio Services	Financial year quota that at least one third of expenditure is incurred outside of the M25	39% of expenditure was incurred outside of the M25
2.65.1	Radio 1	This radio service must incur some of the relevant expenditure in meeting condition 2.64	Contributed to the expenditure incurred outside of the M25
2.65.2	Radio 2	This radio service must incur some of the relevant expenditure in meeting condition 2.64	Contributed to the expenditure incurred outside of the M25
2.65.3	Radio 3	This radio service must incur some of the relevant expenditure in meeting condition 2.64	Contributed to the expenditure incurred outside of the M25
2.65.4	Radio 4	This radio service must incur some of the relevant expenditure in meeting condition 2.64	Contributed to the expenditure incurred outside of the M25
2.65.5	BBC Radio 5 Live	This radio service must incur some of the relevant expenditure in meeting condition 2.64	Contributed to the expenditure incurred outside of the M25



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2.66	Radio 3	Financial year quota for relevant expenditure incurred outside of the M25: 40% of expenditure	46% of expenditure was incurred outside of the M25
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**Purpose 4, nations and regions: Programming for the nations and regions**

Condition number	Service	Summary of regulatory condition	2018/19 assessment
2.67.1	BBC One & BBC Two	Calendar year quota for programmes of national and regional interest: 6,300 hours	6,462 hours
2.67.2	BBC One & BBC Two	Of those programmes in condition 2.67.1 there must be a suitable range of programmes including regional news	Evidence provided as part of the PSB return process. Genres included news, current affairs, arts, children's, drama, comedy, factual and sport, among others
2.67.3	BBC One & BBC Two	Calendar year quota for the programmes made in the nation or region in which they are of national or regional interest: 95% of those programmes in condition 2.67.1	99.7% made in relevant location
2.67.4	BBC One & BBC Two	Calendar year quota for those programmes in condition 2.67.1 that must be non-news programmes in peak: 700 hours	729 hours of non-news in peak
2.67.5	BBC One & BBC Two	Calendar year quota for those programmes in condition 2.67.1 that must be non-news programmes immediately before or after peak: 280 hours	315 hours non-news adjacent to peak
2.68	BBC One	Calendar year quota for programmes which are of national or regional interest in condition 2.67.1 include news of national or regional interest: 4,300 hours at intervals throughout the day, of which 2,100 hours during peak	4,761 hours, including 2,159 hours in peak
2.70	BBC Parliament	Financial year quota for proceedings allocated to Scottish Parliament, Northern Ireland Assembly and Welsh Assembly: 300 hours	321 hours
2.71.1	Each BBC Local Radio service	Financial year quota for each BBC Local Radio service for the proportion of speech content: on average 60% in core hours	66% of output in core hours was speech content on average

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2.71.1	Each BBC Local Radio service	Financial year quota for Each BBC Local Radio service for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
2.72.2	BBC Radio Scotland	Financial year quota for BBC Radio Scotland for the proportion of speech content: on average 60% in core hours	94% of output in core hours was speech content on average
2.72.2	BBC Radio Scotland	Financial year quota for BBC Radio Scotland for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
2.72.3	BBC Radio nan Gàidheal	Financial year quota for BBC Radio nan Gàidheal for the proportion of speech content: on average 60% in core hours	44% of output in core hours was speech content on average <sup>16</sup>
2.72.3	BBC Radio nan Gàidheal	Financial year quota for BBC Radio nan Gàidheal for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
2.72.4	BBC Radio Wales	Financial year quota for BBC Radio Wales for the proportion of speech content: on average 60% in core hours	67% of output in core hours was speech content on average
2.72.4	BBC Radio Wales	Financial year quota for BBC Radio Wales for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
7.72.5	BBC Radio Cymru	Financial year quota for BBC Radio Cymru for the proportion of speech content: on average 60% in core hours	69% of output in core hours was speech content on average
7.72.5	BBC Radio Cymru	Financial year quota for BBC Radio Cymru for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
2.72.6	BBC Radio Ulster and BBC Radio Foyle	Financial year quota for BBC Radio Ulster and BBC Radio Foyle for the proportion of speech content: on average 60% in core hours	66% of output in core hours was speech content on average

<sup>16</sup> The BBC was in breach of this condition by 16%, more information can be found above in paragraph A1.14

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2.72.6	BBC Radio Ulster and BBC Radio Foyle	Financial year quota for BBC Radio Ulster and BBC Radio Foyle for the proportion of speech content: on average 100% in breakfast peak	100% of output in breakfast peak was speech content on average
2.74.1	each BBC Local Radio station	News and information of particular relevance to the area and communities it serves at intervals throughout the day	Each station provided a compliance note which included information on how it provided content relevant to its area
2.74.2	each BBC Local Radio station	Provision of other content of particular relevance to the area and communities it serves	Each station provided a compliance note which included information on how it provided content relevant to its area
2.75	each BBC Local Radio station (with exceptions at 2.76)	Weekly quota for original, locally-made programming: 95 hours	118 hours
2.76	BBC Radio Guernsey, BBC Radio Jersey, BBC Radio Somerset	The obligation to provide original, locally-made programming (condition 2.75) applies in relation to the following stations with the following quotas: BBC Radio Guernsey – 80 hours; BBC Radio Jersey – 80 hours; BBC Radio Somerset – 70 hours	BBC Radio Guernsey – 101 hours BBC Radio Jersey – 101 hours BBC Radio Somerset – 90 hours
2.77.1	BBC Online	News and information for the English regions	Relevant hyperlinks provided to pages on the BBC website
2.77.2	BBC Online	Dedicated coverage of sport for the English regions	Relevant hyperlinks provided to pages on the BBC website
2.78.1	BBC One Scotland	Financial year quota for news and current affairs programmes: 290 hours	341 hours
2.78.2	BBC Two Scotland	Financial year quota for non-news programmes: 155 hours	215 hours

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2.79	BBC One Scotland and BBC Two Scotland	Provision of a range of genres in its programming that reflects Scotland's culture	Evidence provided of the range of genres and reporting on how it represents the nations and regions found in the BBC's Annual Report
2.80	BBC Two Scotland	Financial year quota for non-news programmes, including Gaelic output: 200 hours	228 hours
2.81	BBC Alba	Live news programmes each weekday evening, including during peak, and a longer news review at weekends	Schedule provided
2.82.1	BBC Radio Scotland	Weekly quota for news and current affairs: 50 hours	60 hours
2.82.2	BBC Radio Scotland	Several regional opt-outs each weekday (offering news, sport and information), and some regional opt-out community programming in evenings	Schedule provided
2.82.3	BBC Radio Scotland	Content and music of particular relevance to Scotland	Evidence provided on how the BBC represents the nations and regions in its Annual Report
2.83.1	BBC Radio nan Gàidheal	News frequently across the day, particularly between 07:00 to 08:30 and 16:00 to 19:00 on Mondays to Fridays and 07:00 to 11:00 on Saturdays and Sundays	Schedule provided
2.83.2	BBC Radio nan Gàidheal	Content and music of particular relevance to Scotland	Evidence provided on how the BBC represents the nations and regions in its Annual Report
2.84.1	BBC Online	News and information for Scotland	Relevant hyperlinks provided to pages on the BBC website
2.84.2	BBC Online	Content in Gaelic	Relevant hyperlinks provided to pages on the BBC website
2.84.3	BBC Online	Dedicated coverage of sport for Scotland	Relevant hyperlinks provided to pages on the BBC website
2.85.1	BBC One Wales	Financial year quota for news and current affairs programmes: 275 hours	341 hours

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2.85.2	BBC One Wales	Financial year quota for non-news programmes: 65 hours	130 hours
2.86	BBC One Wales and BBC Two Wales	Provision of a range of genres in its programming that reflects Wales's culture	Evidence provided of the range of genres and reporting on how it represents the nations and regions found in the BBC's Annual Report
2.87	BBC Two Wales	Financial year quota for non-news programmes: 175 hours	200 hours
2.88.1	BBC Radio Wales	Weekly quota for news and current affairs: 32 hours	35 hours
2.88.2	BBC Radio Wales	Content and music of particular relevance to Wales	Evidence provided on how the BBC represents the nations and regions in its Annual Report
2.89.1	BBC Radio Cymru	Weekly quota for news and current affairs: 23 hours	24 hours
2.89.2	BBC Radio Cymru	Content and music of particular relevance to Wales	Evidence provided on how the BBC represents the nations and regions in its Annual Report
2.90.1	BBC Online	News and information for Wales	Relevant hyperlinks provided to pages on the BBC website
2.90.2	BBC Online	Content in Welsh	Relevant hyperlinks provided to pages on the BBC website
2.90.3	BBC Online	Dedicated coverage of sport for Wales	Relevant hyperlinks provided to pages on the BBC website
2.91.1	BBC One Northern Ireland	Financial year quota for news and current affairs programmes: 310 hours	377 hours
2.91.2	BBC One Northern Ireland	Financial year quota for non-news programmes: 90 hours	102 hours
2.92	BBC One Northern Ireland and	Provision of a range of genres in its programming that reflects Northern Ireland's culture	Evidence provided of the range of genres and

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	BBC Two Northern Ireland		reporting on how it represents the nations and regions found in the BBC's Annual Report
2.93	BBC Two Northern Ireland	Financial year quota for non-news programmes: 60 hours	166 hours
2.94	BBC Two Northern Ireland	Irish language programming and Ulster-Scots programming	Evidence provided on how the BBC represents the nations and regions in its Annual Report. In the relevant period there were 30 hours of Irish language programmes and 17 hours of Ulster-Scots content
2.95.1	BBC Radio Ulster	Weekly quota for news and current affairs: 35 hours	42 hours
2.95.2	BBC Radio Foyle	Weekly quota for news and current affairs: 20 hours	23 hours
2.95.3	BBC Radio Ulster and BBC Radio Foyle	Content and music of particular relevance to Northern Ireland	Evidence provided on how the BBC represents the nations and regions in its Annual Report
2.95.4	BBC Radio Ulster and BBC Radio Foyle	Financial year quota for indigenous minority language programmes, including Irish and Ulster-Scots output: 240 hours	241 hours
2.96.1	BBC Online	News and information for Northern Ireland	Relevant hyperlinks provided to pages on the BBC website
2.96.2	BBC Online	Content in Irish and Ulster-Scots	Relevant hyperlinks provided to pages on the BBC website
2.96.3	BBC Online	Dedicated coverage of sport for Northern Ireland	Relevant hyperlinks provided to pages on the BBC website

## Schedule 3 obligations

A1.17 The following section sets out our assessment of the BBC's compliance in 2018/19 with the applicable regulatory obligations in Schedule 3 of the Agreement.<sup>17</sup> We also provide further detail on Schedule 3(7), which is about competition in commissioning.

Regulatory obligation	2018/19 assessment
Paragraph (1): No charge to be made for reception of UK public services and associated content	We required the BBC to report to us if and in what cases it charged for reception. It stated that it made no such charges.
Paragraphs (3) – (5): Content standards, fairness code, party political broadcasts and retention of recordings	These are reported on separately in the content standards section of the main report.
Paragraph (6): Programmes to be reserved for independent production	The BBC must meet the quota that 25% of the hours of qualifying programming in each year across its television public service channels are allocated to broadcasting a range and diversity of independent productions. It must also meet similar quotas for each of BBC One and BBC Two. The BBC reported that it exceeded each of these quotas (achieving 30.3% of hours across all channels in 2018 and 27.6% and 41.5% of hours on BBC One and BBC Two respectively). The BBC provided these figures to Ofcom in response to a formal information notice as part of our annual broadcaster data returns process.
Paragraph (7): Television, radio and online production – securing competition between BBC producers and external producers	We are satisfied that the BBC met its obligation to secure competition for at least 40% of the in-house guarantee for television drama, comedy, entertainment and factual programmes by 31 December 2018 – see paragraphs A1.23 – A1.25 below.
Paragraph (8): Code relating to programme commissioning	The BBC has maintained and continued to apply its existing <a href="#">code relating to programme commissioning</a> previously agreed with Ofcom. It has confirmed it did not make any revisions to the code in 2018. It also provided Ofcom with data which showed, to Ofcom's satisfaction, that it had fulfilled the reporting requirement in its code for 2018.
Paragraph (9): Code relating to provision for the hearing and visually impaired	As set out in the <a href="#">Ofcom Television Access Services</a> report for 2018, the BBC maintained and applied the Code on Television Access Services and achieved all of its annual quotas.

<sup>17</sup> Paragraph 2 of Schedule 3 to the [Agreement](#) is not a specified requirement on which Ofcom must report – see clause 59 of the [Agreement](#).

Paragraph (10): Retention and production of recordings	Ofcom has set the periods of time that the BBC must retain recordings in its published complaints handling procedures. The BBC has complied with this requirement.
Paragraph (11): International obligations	We have confirmed with the DCMS that there are currently no such arrangements in place.
Paragraph (12): Equal opportunities	On the basis of Ofcom's <a href="#">Diversity and equal opportunities in television</a> report 2019, Ofcom's <a href="#">Diversity and equal opportunities in radio</a> report 2019, supplementary information provided to Ofcom and the BBC's report in relation to paragraph (14) (below), we are satisfied that the BBC has complied with this obligation in 2018/19. The information provided by the BBC on persons employed in connection with making programmes or other material for inclusion in the UK public services does lack detail however and we will work with the BBC to bring further transparency in this area.
Paragraph (13): Training	On the basis of the BBC report under paragraph (14) (below), evidence in the BBC's Annual Report and the provision of additional information requested by Ofcom, which we have assessed, we are satisfied that the BBC has complied with this obligation for 2018/19.
Paragraph (14): General provisions about arrangements under paragraphs 12 and 13	The BBC published an annual report about the operation and effectiveness of the arrangements it made under paragraphs (12) and (13). On the basis of its contents, as well as the provision of supplementary information requested by Ofcom in 2018 which we have assessed, and which the BBC advised has not changed, we are satisfied that the BBC has complied with this obligation for 2018/19.

## Competition in commissioning

- A1.18 Ofcom has two roles in relation to competition in the BBC's commissioning activity. First, to consider whether any additional intervention is necessary to protect fair and effective competition in commissioning. Second, to assess the BBC's compliance with the requirements placed on it under Schedule 3(7) of the Agreement and, if necessary, to enforce them. Schedule 3(7) requires the BBC to open up more commissioning opportunities to competition between producers and that, where it does so, that competition must be on a fair, reasonable, non-discriminatory and transparent (FRNDT) basis.
- A1.19 Following a review of the way the BBC goes about commissioning content, we published in February this year a statement in which we decided not to impose any new requirements with respect to commissioning, given that the BBC was already subject to a requirement to



ensure FRNDT commissioning under the Agreement.<sup>18</sup> However, we published guidance, which sets out the factors we will consider in assessing whether the BBC has met its obligations regarding FRNDT commissioning, in particular in the event of an investigation.

A1.20 We also obtained commitments from the BBC to publish and provide us with additional information to increase transparency for stakeholders and allow us to undertake our monitoring role.

### Schedule 3(7) requirements

A1.21 The specific quota requirements imposed on the BBC under Schedule 3(7) of the Agreement are, firstly in relation to making relevant television programmes,<sup>19</sup> that it must:

- secure competition for the commissioning of at least 40% of the in-house guarantee for drama, comedy, entertainment and factual programmes by 31 December 2018, alongside maintaining existing levels of competition;
- remove the in-house guarantee for children's, sport and non-news related current affairs programmes by 31 December 2019; and
- secure competition for 100% of relevant TV programmes by 31 December 2027.

A1.22 There are separate quotas for radio and online public services. The BBC must secure competition in commissioning for at least 60%<sup>20</sup> of relevant radio programmes<sup>21</sup> by 31 December 2022, and it must secure competition for the commissioning of 100% of relevant online material<sup>22</sup> by 31 December 2027.

### BBC's competition obligation for television commissioning by 31 December 2018

A1.23 The BBC set out in its Annual Report 2018/19 and its first TV commissioning supply report,<sup>23</sup> that it had ensured that, for relevant television programmes, 43% of the previous in-house guarantee for drama, comedy, entertainment and factual had been opened up to competition. It published alongside the TV commissioning supply report its calculation methodology and an assurance statement from Ernst and Young verifying its calculations.<sup>24</sup>

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<sup>18</sup> Ofcom, [Commissioning for the BBC Public Services](#), February 2019.

<sup>19</sup> 'Relevant television programmes' means all television programmes included in the UK Public Services except: (a) Programmes reserved for independent productions; (b) News and news-related current affairs programmes; (c) Any programme where the BBC considers that complying with the obligation would not secure value for money.

<sup>20</sup> Of the total time allocated to broadcasting relevant radio programmes on the UK Public Broadcast Services.

<sup>21</sup> 'Relevant radio programmes' means all network radio programmes included in the UK Public Services except: (a) News programmes; and (b) Repeats, continuity, simulcasts, EBU material and autoplayed music.

<sup>22</sup> 'Relevant online material' means all online material included in the UK Public Services except: (a) Programmes included in the UK Public On Demand Programme Services; (b) News and news-related current affairs material; and (c) Any material where the BBC considers that complying with the obligation would not secure value for money.

<sup>23</sup> [BBC TV Commissioning Supply Report 2018](#)

<sup>24</sup> [BBC methodology for TV Commissioning Supply Report and EY assurance statement](#)

A1.24 The BBC also provided us with information it had used to calculate the percentage of relevant programmes opened up to competition. It confirmed in response to a statutory information notice that it holds data that confirms the accuracy of the figures and the calculations provided to us.

A1.25 Having analysed this information, we are satisfied that the BBC met its obligation to secure competition for at least 40% of the in-house guarantee for television drama, comedy, entertainment and factual programmes by 31 December 2018.

### **BBC's progress towards compliance with its other commissioning requirements**

A1.26 As we noted in our first annual report on the BBC, the BBC has confirmed that it has removed the in-house guarantee for the production of children's, sport and non-news current affairs television programming.<sup>25</sup>

A1.27 The BBC has also reported progress towards compliance with the other commissioning requirements<sup>26</sup> and we will continue to monitor this.

### **The FRNDT requirement**

A1.28 Schedule 3(7) is clear that, in meeting the quota, the BBC is required to ensure that there is genuine competition between BBC producers and external ones (whether independent or not) on a FRNDT basis.

A1.29 The BBC has provided Ofcom with evidence about the outcomes of its competitive commissioning processes. Ofcom has not received any complaints from stakeholders about those processes failing to meet the requirement to be FRNDT and we have not opened any investigations into non-compliance.

A1.30 We will continue to monitor whether the BBC is meeting its obligations regarding FRNDT commissioning. This will include engagement with production companies to understand more about the BBC commissioning process.

## **Operating Framework requirements**

A1.31 Ofcom is required by the Charter to set an Operating Framework to secure effective regulation of the BBC activities as set out in the Charter and Agreement.<sup>27</sup> These cover the full range of our responsibilities.

A1.32 The Operating Framework must include requirements to protect fair and effective competition in relation to:

- a) material changes the BBC proposes to the UK public services and non-service activities;

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<sup>25</sup> See paragraph A1.16 of [Annex 1 to Ofcom's Annual Report on the BBC: 2017/18](#).

<sup>26</sup> [BBC Annual Report 2018 / 19](#) p161

<sup>27</sup> Article 46 of the [Charter](#).

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- b) the effect of UK public services, trading activities and non-service activities on fair and effective competition; and
- c) agreements with, and conduct affecting, third parties in relation to UK public services, trading activities and non-service activities.

A1.33 We must also include requirements about the relationship between the BBC and its commercial and trading activities. These are described in more detail below.

A1.34 In March 2017, we published a statement (which we updated in October 2017), [Introduction to Ofcom’s Operating Framework for the BBC](#). In it, we explained our role and the BBC’s role under the new regulatory scheme and detailed how our Operating Framework for the BBC is structured.

A1.35 We have set the Operating Framework in a series of documents which impose requirements on the BBC and provide guidance on our regulatory approach. Most of these applied from 3 April 2017. The following table summarises the position in relation to the requirements we have set in the Operating Framework.

Relevant Charter/ Agreement provision	Operating Framework requirement	Assessment of BBC compliance
The impact of proposed changes to the BBC’s public service activities (Articles 11 and 20 of the Charter and clauses 7 to 11 and 15 to 20 of the Agreement)	Specified requirements contained within: <a href="#">Assessing the impact of proposed changes to the BBC’s public service activities: Ofcom’s procedures and guidance</a>	We have set out in the main body of this report more detailed comments on what we and the BBC have done in these areas.
The impact of the BBC’s ongoing public service activities (Article 11 of the Charter and clauses 12, 15, 21 and 22 of the Agreement)	Specified requirements contained within: <a href="#">Assessing the impact of the BBC’s public service activities: Ofcom’s procedures and guidance</a>	
The impact of the BBC’s commercial and trading activities (clauses 23 to 27, 28, 31 and 32 of the Agreement)	Specified requirements contained within: <a href="#">Updated requirements and guidance on the BBC’s commercial and trading activities</a>	
The impact of the distribution of BBC public services (Article 11 of the Charter and clauses 15 and 61 of the Agreement)	Specified requirements contained within: <a href="#">Distribution of BBC public services: Ofcom’s requirements and guidance</a>	

### Commercial and trading activities

A1.36 We monitor the BBC’s commercial and trading activities and their relationship with the BBC public service in order to protect fair and effective competition. Overall the BBC has

complied with our reporting requirements and we have not, as a result of our review of this information, opened any investigations. As discussed in relation to the specific areas below, there are some areas where we would like to better understand what the BBC is doing and we will be considering these further within our review of BBC Studios. In addition, the BBC has made some changes to the lines of business<sup>28</sup> it maintains and reports on within BBC Studios. We will consider whether these new lines of business provide sufficient transparency for Ofcom and stakeholders on the performance of the different activities within BBC Studios, as part of our review of BBC Studios.

### Our role regulating the BBC's commercial and trading activities

- A1.37 One of Ofcom's principal functions in regulating the BBC is to set requirements that govern the relationship between the BBC public service and its commercial activities. The purpose of these requirements is to ensure that the relationship between its **commercial activities** and the public service does not distort the market or create an unfair competitive advantage. The BBC's public services can also undertake **trading activities** which are ancillary to its core public service functions and are commercial in nature.
- A1.38 We have set rules in relation to:
- a) how the commercial and trading activities are governed;
  - b) how information can be shared between the BBC public service and its commercial subsidiaries;
  - c) how transfer prices for goods and services are set (both for goods and services supplied by the BBC public service to the commercial subsidiaries and those supplied by the commercial subsidiaries to the BBC public service);
  - d) the need for commercial activities to earn a commercial rate of return over an appropriate period; and
  - e) providing transparency to the market and Ofcom in relation to the performance of the commercial subsidiaries and their adherence to our requirements.
- A1.39 The reporting and publication of information by the BBC is important in providing transparency, incentivising its compliance with the relevant requirements and holding it to account for its performance. It allows Ofcom to monitor the trading and separation relationship between the BBC public service and its commercial subsidiaries, as well as give confidence to the wider market that the BBC is complying with its regulatory obligations.
- A1.40 Following further work in this area, including looking at the processes and practices around the operation of the commercial subsidiaries and their relationships with the BBC's public service, we published updated trading and separation requirements and guidance in February 2019. These updated requirements clarified a number of the existing requirements, introduced some additional reporting obligations to provide greater

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<sup>28</sup> 'Lines of business' refer to the different groups within the commercial subsidiaries that the BBC organises its commercial activities into and reports separately on.

transparency of how the BBC is meeting our requirements and reduced the frequency of reporting to six monthly.

- A1.41 Our updated requirements applied for the BBC's 2018/19 full year reports.<sup>29</sup> The additional reports included further information on actual transfer charges and additional detail on financial performance (to support our rate of return requirements). The BBC is also required to publish an Annual Statement setting out how it has complied with our operational separation requirements which concern information sharing between the BBC public service and its commercial subsidiaries and having appropriate governance arrangements. This provided more transparency to Ofcom and stakeholders on how the BBC is complying with our operational separation requirements.

### Review of BBC Studios

- A1.42 We are also launching a review of the evolution of BBC Studios this year which will include how it has implemented our trading and separation requirements. This will be informed by issues raised by stakeholders and information gathered under our monitoring programme (as discussed below) and we are aiming to publish the terms of reference by the end of 2019. We expect this work to continue into 2020/21.

### Our assessment of compliance for 2018/19

- A1.43 The BBC published and reported to us the required information for our monitoring work by the required deadlines. We did not take any enforcement action during the period in relation to the trading and separation requirements. We are continuing to actively monitor the information the BBC provides and regularly engaging with it to understand the context of this information.
- A1.44 In addition, as set out in our statement on the updated trading and separation requirements, we have been engaging with the NAO, Deloitte (who does the fair trading audit for the BBC) and the BBC following the publication of the BBC's annual report in July 2019. We are in the process of assessing whether the assurance gained from these audits will be sufficient for our purposes.

### Operational separation

- A1.45 The BBC is required to ensure there are measures and controls in place to restrict commercial subsidiaries' access to information about the public service that could give them an unfair advantage or distort the market. The subsidiaries should also have distinct and separate governance from the public service.
- A1.46 As we have noted at page 23 of our report, the BBC has improved the transparency of its governance arrangements. It has also increased the number of non-executive directors on the Commercial Holdings Board (which is responsible for the governance, assurance and

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<sup>29</sup> Ofcom, 2019. The BBC's commercial and trading activities: requirements and guidance The BBC's quarterly reporting for Q1 and Q2 2018/19 was on the basis of the requirements put in place in [July 2017](#).

oversight of the BBC's commercial subsidiaries) in response to concerns raised by Ofcom and in the BBC's commercial transparency review.<sup>30</sup>

- A1.47 Additionally, the first Annual Statement on operational separation was published as part of the BBC's Annual Reports and Accounts in this reporting period.<sup>31</sup> Alongside this, the BBC also published a separate Statement of Operational Separation and its information sharing protocol on its website.<sup>32</sup> As required, the BBC also provided us with a report of the conflicts of interest identified as a result of a director serving on the board and/or executive committee of both the Public Service and a commercial subsidiary.
- A1.48 The BBC has published the necessary information in line with our updated requirements. However, we have identified certain areas where it would be useful for us to understand in greater detail the approach taken by the BBC to the implementation of operational separation. These areas include risk identification and management (beyond the obvious risks around commissioning), information sharing and managing conflicts of interest. We will engage with the BBC to understand this further as part of our review of BBC Studios.

### Supply and pricing of goods and services

- A1.49 Essentially, the BBC is required to supply and price the goods and services it provides in accordance with normal market principles to ensure the BBC's commercial activities do not receive an unfair competitive advantage or distort the market.<sup>33</sup> This includes supplying and pricing goods and services to third parties on equivalent terms. However, the costs for business support services that the public service only provides to the commercial subsidiaries (such as HR, IT finance and legal) should be based on their long run costs of provision.
- A1.50 The BBC published updated transfer pricing methodologies in July 2019. It has now created one manual to cover all subsidiaries which is simpler and more transparent for stakeholders.<sup>34</sup>
- A1.51 Under the updated requirements, the BBC also reported more information on transfer charges for 2018/19. This includes total transfer charges by subsidiary and key categories. This information will allow us and stakeholders to understand how these charges have changed over time and monitor the trends and anomalies.
- A1.52 Our work so far has involved a high-level review of the methodologies used by the BBC to set transfer charges. We are currently undertaking further work to understand how the BBC has implemented its transfer pricing requirements and some of the outputs of this work will feed into the review of BBC Studios.

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<sup>30</sup> Christopher Saul, 2018. BBC Commercial Transparency Review.

<sup>31</sup> BBC, 2019. [Annual Reports and Accounts 2018/19](#), p 139

<sup>32</sup> BBC, 2019. [Statement of Operational Separation](#).

<sup>33</sup> This includes setting prices based on the relevant market price or benchmark and where there is no reliable market information, prices should be based on costs.

<sup>34</sup> BBC, 2019. [BBC Fair Trading: Consolidated Group Trading Manual](#).

## Rate of return

- A1.53 The BBC's commercial activities are required to earn a commercial rate of return over an appropriate period of time.<sup>35</sup> Our requirements reinforce the principles that the BBC should act like a rational private investor with respect to its commercial activities and these activities should be undertaken at arms-length and in accordance with normal market principles.
- A1.54 We require the BBC to report on the financial performance and target rates of return for each of its commercial subsidiaries and lines of business within the commercial subsidiaries. For 2018/19 the commercial subsidiaries at least earned a rate of return within the BBC's target ranges.<sup>36</sup> The BBC is also required to notify us of the steps it is taking where it considers that it has not achieved a commercial rate of return in any subsidiary or line of business. The BBC did not submit any notification in this regard which indicates that it considers that all of its commercial subsidiaries and the lines of business within those subsidiaries earned commercial rates of return.
- A1.55 However, the BBC has made some changes to the way it allocates revenues and costs across the merged BBC Studios which has impacted the rates of return achieved by the different lines of business. We will look to understand further within our review of BBC Studios how the BBC allocates revenues and costs across the lines of business and what a commercial rate of return and appropriate time period should be for each and line of business and BBC Studios overall.
- A1.56 In March 2018 as part of our review of the materiality of the merger of its production activities with BBC Worldwide, the BBC provided voluntary commitments to give assurance that transparency of its financial reporting within BBC Studios would be preserved. This included a commitment that the lines of business in the new BBC Studios would be consistent with the existing lines of business prior to the merger i.e. that production and distribution activities would be kept separate and that the BBC would separately report on each of these lines of business in accordance with our requirements on both the forward-looking target commercial rates of return and financial performance.<sup>37</sup>
- A1.57 In April 2019, the BBC notified Ofcom that it has made some changes to the lines of business for BBC Studios and subsequently withdrew this commitment in September 2019.<sup>38</sup> The BBC's changes combined the previous five lines of business into two (including merging production and distribution activities) and this will reduce the granularity of reporting for BBC Studios. The BBC's targets for 2019/20 were submitted to Ofcom on the basis of these new lines of business and we expect that its reporting of the 2019/20 actual results will also be on this basis.

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<sup>35</sup> By loss making we mean activities that earn below a commercial rate of return (over an appropriate period).

<sup>36</sup> Published by the BBC in December 2018.

<sup>37</sup> Ofcom, 2018. [The merger of BBC Studios and BBC Worldwide: The BBC's commitments](#).

<sup>38</sup> BBC commitments for BBC Studios-Worldwide merger, version 2, updated 27 September 2019.

[http://downloads.bbc.co.uk/aboutthebbc/reports/reports/studios\\_worldwide\\_commitments\\_v2.pdf](http://downloads.bbc.co.uk/aboutthebbc/reports/reports/studios_worldwide_commitments_v2.pdf).

A1.58 As set out in our report (page 22) we will be considering, as part of our review of BBC Studios, whether these new lines of business provide sufficient transparency for Ofcom and stakeholders on the performance of the different activities within BBC Studios. This will include whether there should be any changes to the trading and separation requirements and we will publish our views to give stakeholders an opportunity to comment, as a priority within this review.

## Other specified requirements and relevant matters

A1.59 We are also required to report on the BBC’s compliance with the following additional specified requirements:

Relevant Charter/ Agreement provision	Requirement	Assessment of BBC compliance
Provision of information to Ofcom (Article 47, the Charter)	The BBC must provide information that Ofcom formally requires under Article 47.	The BBC responded to all of the Article 47 notices we have served on it over 2018/19.
BBC complaints handling (clause 56 of the Agreement)	<p>In September 2017, Ofcom published its <a href="#">determination in relation to the BBC’s editorial complaints handling</a> which set out the:</p> <ul style="list-style-type: none"> <li>- period for which the BBC must retain records of its handling of relevant editorial complaints;</li> <li>- form and intervals at which the BBC must report editorial complaints to Ofcom; and</li> <li>- form and intervals at which the BBC must publish information about the operation and effectiveness of its procedures for editorial complaints.</li> </ul> <p>In October 2018, Ofcom published its equivalent <a href="#">determination in relation to the BBC’s non-editorial (competition and other regulatory) complaints handling</a>.</p>	The BBC has complied with the determinations Ofcom set in relation to editorial complaints handling and non-editorial (competition and other regulatory) complaints handling.



## Complaints made to Ofcom

- A1.60 In enforcing compliance by the BBC with ‘competition requirements’<sup>39</sup> and other ‘relevant requirements’,<sup>40</sup> we may consider complaints and carry out investigations into compliance as we consider appropriate.
- A1.61 In 2018/19, we received one complaint relating to the BBC competition requirements, which concerned the procurement of audience voting services. The complaint was referred to us after being assessed by the BBC. On careful consideration we decided the complaint did not breach any of the BBC’s competition requirements and therefore did not require further investigation. This decision was made in line with our enforcement procedures and taking account of our administrative priorities.
- A1.62 We also received one complaint relating to compliance by the BBC with its other relevant requirements in 2018/19. This concerned equal opportunities between those who share a relevant protected characteristic and those who do not share it. On careful consideration we decided the complaint did not breach any of the BBC’s other relevant requirements and therefore did not require further investigation. This decision was made in line with our enforcement procedures and taking account of our administrative priorities.

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<sup>39</sup> A ‘competition requirement’ is any requirement placed on the BBC by Ofcom to regulate the impact of the BBC’s activities on competition. These requirements are set out in Ofcom’s [Procedures for enforcement of BBC competition requirements](#).

<sup>40</sup> A ‘relevant requirement’ is a specified requirement placed on the BBC by Ofcom or the Charter and Agreement, which is not covered by a more specific Ofcom enforcement procedure. These requirements are set out in Ofcom’s [Procedures for enforcement of requirements in the BBC Agreement and compliance with Ofcom enforcement action](#).