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Dear Patricia,

This letter and its Annex represent the Scottish Government's response to Ofcom's consultation: *Holding the BBC to account for the delivery of its mission and public purposes*.

This consultation has been an opportunity to consider how, in a rapidly-changing landscape, we can best assist Ofcom in addressing the challenging task which it has been set, that of regulating and measuring the performance of the BBC.

The Scottish Government views our relationships with Ofcom and with the BBC as partnerships. We particularly welcome the constructive dialogue which we enjoy with Ofcom across the whole range of its responsibilities, and its proactive approach to stakeholder engagement.

We also welcome the commitments which Ofcom has given in respect of performance monitoring on an ongoing basis, over and above the fixed annual cycle of formal review and reporting. We believe this will be of particular importance in the next few years. The BBC's progress towards delivering on the new commitments to Scotland made in February of this year will not fall to be formally reviewed in the annual cycle until the end of the BBC's 2017-18 reporting year, in April/May 2018. That period represents a potentially worrying hiatus, which on-going performance monitoring can help to mitigate.

We believe that Ofcom's work can make a very significant contribution to ensuring that Scotland benefits to the maximum possible extent from the services and production activity of the BBC and that the services Scotland receives from the BBC are of the highest quality and widest possible availability, and sensitive to Scottish concerns, interests and needs.

I wish to highlight here a number of issues where we feel that there are particular problems associated with Ofcom's proposed approach.

- We remain unconvinced that a single UK licence is the best approach. We believe that a dedicated licence is necessary for real transparency and accountability to licence payers in Scotland. A proxy licence is inadequate in several respects, notably that it fails to disaggregate services to the level at which an individual consumer in Scotland can understand what they receive in return for their licence fee. Ofcom is, of course, aware that the licence fee raised in Scotland is spent at a disproportionately lower rate in Scotland than in England, Northern Ireland and Wales and we continue to argue that increased proportionate investment for the benefit of our audiences and our creative sector is a reasonable ask of the BBC and, indeed, the regulator.
- We are not persuaded that adopting existing production quotas as a baseline is the best approach, as it may underestimate the BBC's historic performance, resulting in quotas which are insufficiently challenging. The BBC's investment in Scotland-based production has been historically poor and robust quotas could help redress that, whilst also helping the BBC to deliver on its new purpose which requires investment in the UK's creative economy – an investment that we would expect to see proportionately delivered across the nations and regions of the UK.
- Our aim is that the BBC produces more content that is rooted in Scotland both culturally and economically, so that our diverse audiences feel more represented by authentic content and our companies and our crew can share in sustainable growth. In this connection, we would urge Ofcom to review the current definition of what is counted as "Scottish" production. Our aim is to ensure that more is devised, filmed and fully produced in Scotland, since this would improve the prospects for richer and more authentic representations of Scotland, as well as maximising economic returns. This point is given added emphasis by the fact that examples of "Scottish" series cited in the BBC's recently published interim Annual Plan for 2017-18 were filmed in Scotland but produced elsewhere.
- We recommend that Ofcom implements clear measures, and indicative outcomes, for the BBC's contribution to supporting the creative industries in nations at a strategic level, as well as in monetary terms or contributions by quotas. The BBC's size, scale and influence make it imperative that the responsibility this brings with is clearly recognised, and that the BBC should operate as a major partner in strategic development of the sector in Scotland. The BBC's public purposes clearly encompass such a strategic role, and we are aware of a number of initiatives where the BBC is already acting in this way, which made it particularly disappointing to see this aspect of its purposes is effectively overlooked in the BBC's interim Annual Plan.
- In this regard, we believe Ofcom should commit to a broader review of "out of London" definitions as an urgent priority. The production sector in Scotland loses valuable business as each year passes and the current definitions remain unchanged.
- We are not content, that BBC Alba is treated differently from other services as regards first-run originations, as no quota has been set. This is an urgent issue given the well-evidenced case that the level of repeats is adversely impacting on performance in terms of declining audience levels. We understand Ofcom's position to be that it wishes to avoid intervening in matters of managerial/editorial decision-making which are properly for the BBC. However, we would suggest that employing differential measures of performance would in effect represent just such an intervention – and an unhelpful one in terms of Scotland's interests.

There are two further areas where we would like to see Ofcom offer more of a challenge to the BBC:

- We feel that a measure should be set for network news coverage of devolved nations – while accepting this would not be easy to devise.
- We believe that a measure should be set to ensure there is a clear relationship between educational content provided by the BBC for school age pupils and the distinctive curriculum provisions for each of the four nations, given the fact that education is a devolved matter and there are differences in this area.

We welcome recent opportunities afforded to officials to discuss Ofcom's position on these matters, and on other points addressed in our detailed response, which can be found in the Annex. We would welcome continuing discussion as Ofcom develops its positions further, particularly once Ofcom has had time fully to consider the contents of the BBC's recently published interim Annual Plan 2017-18. We are looking to that Plan as a further opportunity to continue our dialogue with the BBC and with Ofcom, and specifically to explore how the BBC's welcome new commitments to Scotland can be brought, so far as is possible, within the ambit of Ofcom's regulatory role.

Kind regards
Fiona Hyslop

FIONA HYSLOP

ANNEX

SCOTTISH GOVERNMENT RESPONSE TO ‘HOLDING THE BBC TO ACCOUNT FOR THE DELIVERY OF ITS MISSION AND PUBLIC PURPOSES’

<i>Consultation question</i>	<i>Scottish Government (SG) response</i>	<i>Rationale</i>	<i>Predicted effect of Ofcom proposal</i>
Questions about the operating licence			
<p>Q.1 Do you agree with our overall approach to setting the operating licence?</p>	<p>Nations operating licences (consultation document, 4.16) Ofcom’s <i>The BBC’s services: audiences in Scotland</i> https://www.ofcom.org.uk/data/assets/pdf_file/0030/99/525/bbc-services-scotland.pdf provides a clearer overview of the regulatory framework for BBC services in Scotland than the (BBC Trust) documents it supersedes. The SG welcomes assurances from Ofcom that it will use its capacity to impose further regulatory conditions regarding nations’ services (see BBC Agreement, 13.4) alongside performance measures to achieve the effect of a dedicated licence for Scotland. However the SG remains of the view that there should be dedicated operating licences for each UK nation so that there is a single, clear reference point for licence payers and stakeholders on what they may expect from the BBC.</p> <p>Contributing to the development of the creative sectors in the nations The SG welcomes the high-level objectives (Licence, 1.31) for the BBC to “support” and “build sustainable growth” for creative industries across the UK. However</p>	<p>The ‘virtual’ licence setting out the regulatory conditions Ofcom proposes to apply to services in the nations consists of obligations drawn down from the overall UK operating licence. It therefore fails to fully capture some key BBC obligations to audiences in the nations — development of the creative sector, network representation, network news coverage and the level of originations — which are also not fully grasped in the BBC Annual Plan. In a dedicated licence, Ofcom could define more clearly the distinctive duties of the BBC in relation to audiences in each nation. These could be developed from the starting point of each nation’s overarching cultural priorities and competitive environment, from which appropriate BBC responses could be derived.</p> <p>The Licence does not set measures to ensure delivery of the high level objective. In the Purpose (4) section of the Licence (at 2.39 – 2.81) there are performance</p>	<p>The proposed approach is more transparent, but does not fully grasp some key issues specific to the nations.</p> <p>Ad hoc assessment alone may not drive forward necessary</p>

	<p>performance measures should be set to ensure that progress is made.</p> <p>Objective/qualitative The SG welcomes the pragmatic approach adopted to measurement (consultation, 3.2: seeking the '<i>objectively measurable</i>'), and in particular the intention to complement this with the use of ad hoc reviews "<i>to address issues that are more difficult to assess quantitatively</i>" (consultation, 3.5).</p> <p>Responsiveness The SG welcomes the intent (consultation, 3.6) that the BBC and Ofcom processes of measurement and review, taken together, should be "<i>inherently dynamic</i>". However this will require careful management if it is to produce timely responses where issues arise.</p> <p>Audience views There should be in-depth research of audience views in the nations (consultation, 3.9) to allow for proper disaggregation of Scottish audience views.</p> <p>Approach to proposing regulatory conditions The SG notes the proposed approach to accept quota levels set by the BBC Trust unless they have been</p>	<p>measures for programming making in the nations and regions, but none for the element of the purpose requiring that the BBC "contribute to the development [of the creative economies in the nation]". "Assessment of the BBC's impact on the creative economy" under Annex 6 purpose 4 in the Licence will be valuable, but there is a need for Ofcom to set firm performance indicators given the failure to make any commitment or offer a target in the BBC Annual Plan.</p> <p>Some key aspects of BBC performance (e.g. portrayal and representation, impartiality) can be hard to measure objectively but because of their centrality to the BBC's mission, should nevertheless be subject to external scrutiny, and if necessary, sanction. It is therefore welcome that Ofcom has left room for qualitative intervention, should that be deemed necessary.</p> <p>There is a risk that the complex interplay of the various strands of governance and regulation undertaken by BBC and Ofcom could hinder progress on urgent issues. Ofcom and BBC may need to work closely together to ensure that processes are actively managed to produce timely outcomes on important issues.</p> <p>Some aspects of audience needs and tastes in Scotland are highly distinctive, as are elements of the BBC offer. To support proper assessment of BBC performance in Scotland, audience research should take full account of these distinctive audience perspectives.</p> <p>The SG believes the low level of originations on BBC Alba represents a clear risk to the channel's</p>	<p>progress.</p> <p>Use of ad hoc reviews gives Ofcom scope to tackle complex issues beyond the reach of conventional measures.</p> <p>Dynamic approach will allow Ofcom and BBC to produce timely responses on key audience issues.</p> <p>In-depth research will allow Ofcom to set specific measures for BBC performance in Scotland.</p> <p>If applied across the board, this pragmatic</p>
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	consistently exceeded, or “unless we have a specific policy rationale for doing so” to “reflect changes to BBC mission or purposes” and/or “address key areas where we feel there is risk of underperformance” (consultation, 4.22-26). The SG believes there is a specific policy rationale for setting a quota for originations on BBC Alba.	performance and that Ofcom should make an exception to the general, pragmatic approach and set a challenging target for the BBC in this respect (see below, response to Q4: BBC Alba first-run originations).	approach may fail to address some urgent performance issues.
Q.2 Do you agree with the approach we have proposed for public purpose 1, (News & information) including the high-level objectives and regulatory conditions we are proposing?	<p>Devolved nations coverage</p> <p>The SG welcomes the recognition (consultation, 4.30) that the BBC “should seek to improve its coverage of devolved nations in its news and current affairs and factual output”. However performance measures, beyond broad audience satisfaction measures, should be set in the Licence to ensure that progress is made towards delivery.</p> <p>“Build people’s understanding of all parts of the UK”</p> <p>The SG believes that this element of the public purpose (Licence 1.16.1) is not reflected strongly enough in the high level objectives in the Licence at 1.22 and that performance measures should be set.</p>	<p>Research has shown that, though the BBC has clear strengths compared with other broadcasters, levels of coverage of devolved issues on network news can be very low (see <i>Nations Impartiality Review: A snapshot</i> Cardiff School of Journalism, June 2016). http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/revi ew_report_research/impartiality/2016/cardiff_university_2016.pdf</p> <p>We note the scope for content analysis on nations themes in news output (Annex 6, Purpose 1) but believe some indicators should be set to allow progress to be measured.</p> <p>This is an area where it can be argued that there is a specific policy rationale. BBC networks serve audiences in four administrations where public services are run in different ways against different performance frameworks. To build mutual understanding between all parts of the UK, the BBC should report on all four in a pro-active, co-ordinated and comparative way.</p>	<p>Unlikely to be effective unless performance indicators are set.</p> <p>There is a risk of continuing under-performance in this important, complex area where BBC has found it difficult to make progress.</p>
Q.3 Do you agree with the approach we have proposed for public purpose 2, (Learning) including the high-level objectives and regulatory	<p>Curriculum resources</p> <p>The SG welcomes the proposed condition on BBC Online to continue “curriculum-linked support for children and teenagers in each of the nations” (consultation, 4.51.3 and Licence p 32 – Regulatory Condition number 2.30) and the mention of the BBC’s role in provision for formal education especially BBC Bitesize (consultation document at 4.48) but there should be a clear obligation</p>	<p>Stakeholder concerns that support for formal education be tailored to the different curricula in each nation (consultation, 4.52) are noted but are not fully reflected in the Regulatory Condition which requires only “content that supports”. While the different education systems do share generic needs, there are also some specific needs. Support for children and teenagers’ formal</p>	<p>Does not oblige the BBC to address specific needs of different national curricula.</p>

<p>conditions we are proposing?</p>	<p>to provide specific curriculum-linked resources in each nation.</p> <p>BBC Radio nan Gàidheal The regulatory conditions should cover Radio nan Gàidheal's distinctive role in supporting Gaelic learners in as Regulatory condition 2.23 does for BBC Alba (Licence, p 28).</p>	<p>education should take account of priorities and cultural specificities in the various Nations.</p> <p>Radio nan Gàidheal provides valuable opportunities for language learning.</p>	<p>Does not capture a valuable aspect of the service.</p>
<p>Q.4 Do you agree with the approach we have proposed for public purpose 3, (Creativity) including the high-level objectives and regulatory conditions we are proposing?</p>	<p>“Distinctive output and services” The SG welcomes recognition of the need to increase requirements on the BBC (consultation, 4.64) to “reflect, represent and serve audiences, taking into account the needs of the diverse communities of UK’s nations and regions” and Ofcom’s expectation (Licence, 1.29) that the BBC will set out in its annual plan how it will secure distinctiveness “in each and every UK Public Service” including its Nations and IML services.</p> <p>Nations first-run originations Nations TV services should be included in the quotas for first-run originations in the Licence at 2.32-35.</p> <p>BBC Alba first-run originations BBC Alba should be included in the quotas for first-run originations in the Licence at 2.32-35.</p>	<p>There are particular needs in relation to origination, innovation and ambition in the various UK nations, and in developing their creative economies. The BBC should consider these elements of distinctiveness not only at UK level, but also at the level of the UK nations.</p> <p>First-run originations are an important indicator of innovation and creativity, and contribute strongly to development of the creative sector. Obligations on Nations services should be clear.</p> <p>The comparatively low level of first-run originations on BBC Alba poses a risk to the channel’s ability to deliver its mission. It is unclear how the proposed change in the level of “original productions” discussed in the consultation document at 4.84 (“we have proposed adding a new original production quota for BBC Alba”) would address the low level of first-run originations, i.e. new programmes. Ofcom should assess the level of originations the channel requires to deliver its mission. Funding is a matter for the BBC, which has an option to increase it.</p>	<p>Should ensure distinctiveness of Nations and IML services.</p> <p>Risk that levels of innovation and creativity on Nations services are lower than on UK networks.</p> <p>Risk to delivery of BBC Alba mission due to low level of new programming.</p>

<p>Q.5 Do you agree with the approach we have proposed for public purpose 4, (Nations and regions) including the high-level objectives and regulatory conditions we are proposing?</p>	<p>Representation and portrayal The SG welcomes the high level objectives to “accurately represent and authentically portray” all audience groups from the nations (Licence, 1.31) although the definition given appears unsophisticated. Performance indicators and targets should be set by Ofcom, and bespoke Scottish audience research and independent content analysis undertaken.</p> <p>Network production quotas The SG welcomes the setting of a quota in place of a target (Licence, 2.41) but believes that the minimum level (8%) should be higher. The SG also welcomes the requirement that the spend is “referable to ... different production centres in Scotland” (Licence, 2.41.2).</p> <p>Contributing to the development of the creative sectors in the nations The SG welcomes the high-level objective for the BBC to “build sustainable growth for the creative industries across the UK” (Licence, 1.31.2). However as noted above in response to Q1, the SG believes performance measures should be set in this area so that the economic benefit of spending more of the Scottish licence fee revenue locally comes on stream as quickly as possible. Ofcom should also urgently review the definitions of “Out of London” and set a regulatory framework to ensure that forthcoming investment is used to embed network TV production in the sector in Scotland.</p>	<p>There will be scope for quantitative and qualitative research under ‘Impact’ in Annex 6 purpose 4 however no benchmark for improvement is set other than saying the Ofcom “expect[s] the BBC to work to improve audience satisfaction among the audience groups who feel under-represented and poorly portrayed over this next charter period” (consultation, 4.126).</p> <p>The quota is in line with population share. However it presents no real challenge to the BBC over current levels of performance, and does not formalise the BBC’s own ambition to treat “as a floor, not a ceiling” the 8% target it has already set itself.</p> <p>The SG does not consider that programme making is, of itself, an adequate proxy for “development of the creative sector”. “Lift-and-shift” does not help long-term development; commissioning strategies can neglect certain genres (e.g. drama in Scotland); and many, including a Commons committee, have questioned the current “Out of London” definitions. The licence fee re-invested in Scotland is the country’s largest public sector intervention in broadcasting and should be used strategically by the BBC to develop indigenous development across all skills and genres. The economic benefits which would flow from this have been absent for too long and action should be taken urgently. Given the lack of specificity in the BBC Annual Plan, we suggest that Ofcom sets a performance framework to</p>	<p>No clear external measurable framework set for representation and portrayal.</p> <p>Consolidates recent progress but does not set a challenge. Range requirement will help spread benefits.</p> <p>Without a performance framework, progress is likely to be slow.</p>
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	<p>Sport The regulatory conditions could do more to encourage the BBC to ensure that its expenditure on sports rights benefits audiences in all four UK nations, including protected equality groups.</p> <p>Diversity The SG welcomes the introduction by Ofcom of regulatory conditions for the BBC's obligation to reflect the diversity of the UK, and the comprehensive description of this (Licence, 1.32.2-3)</p>	ensure that no further time is lost.	
Question about setting and amending the operating licence			
Q.6 Do you agree with Ofcom's approach to how we will set and amend the operating licence, as set out in Annex 5?	<p>Procedure As a partner in running BBC Alba, MG Alba should be consulted (Licence, Annex 5 at A5.3) on the same footing as the BBC on any relevant matter relating to the setting of a Licence.</p>	BBC Alba is managed jointly by the BBC and MG Alba, the Scottish Government's Gaelic language broadcasting agency.	
Questions about performance measures			
Q.7 Do you agree with our proposed overall approach to performance measurement?	<p>Approach to assessment The SG welcomes the commitment to a "bespoke programme of evidence gathering and audience research" (consultation, 5.8) as a basis for assessing BBC performance. It should be fully comprehensive, take account of regional differences within Scotland, and be conducted by a Scottish-based agency with knowledge of the Scottish broadcast environment including the Gaelic</p>	Proper assessment of BBC delivery in Scotland can only be made if the distinctive perspectives of licence payers and the production sector across Scotland are comprehensively researched by consultants with experience and knowledge of the local cultural and media environment.	High-quality, detailed research will allow Ofcom to assess BBC performance in Scotland against audience and stakeholder needs.

	broadcasting environment.		
Q.8 Do you agree with the proposed framework of: availability; consumption; impact; contextual factors?	<p>Availability/accessibility</p> <p>There is an assumption throughout that licence payers are able to access all BBC services by one means or another and this may be considered a pre-condition for full delivery of the public purposes. However it is not always the case and in the proposed framework for metrics, accessibility could perhaps be included as a sub-aspect of 'availability' throughout Annex 6.</p>	Some licence payers have problems with radio and TV reception, broadband reception or broadband speed which can affect their ability to access BBC services.	The level of service a consumer gets from the BBC will vary depending on quality of reception and connectivity.