

Review of Public Service Media (2019–23)

Annex 1 : Legal Framework

Report

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Introduction

A1.1. In this Annex, we set out Ofcom’s duty to review and report on public service television broadcasting and the extent to which the public service broadcasters (“the PSBs”), taken together, have fulfilled the statutory purposes and objectives for their services. We also highlight aspects of the individual obligations to which the PSBs are subject, and which are relevant to matters discussed in this report.

Ofcom's duties to review public service broadcasting

- A1.2. The Communications Act 2003 (“the Act”) requires Ofcom to review at least every 5 years on how the public service broadcasters have, taken together, fulfilled the public service broadcasting purposes.¹ Fulfilment of the purposes must be compatible with the public service broadcasting objectives.² The public service broadcasting purposes and objectives are set out in the next section. We must report on the findings of our review with a view to maintaining and strengthening the quality of public service broadcasting.³
- A1.3. In carrying out our review of how the public service broadcasting purposes have been fulfilled, we must also consider:
- the costs of provision and the sources of income available to the public service broadcasters to meet those costs;⁴ and
 - the contribution that other media services make to the public service broadcasting objectives. The media services in question include the commercial portfolio channels of the PSB providers, television services provided by the multichannel sector, radio stations, Video on-Demand (“VoD”) and other online services where there is a person with editorial control of the content on the service.⁵
- A1.4. Ofcom's general duties under section 3 of the Act are relevant to carrying out our review, including our duty to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom.⁶

The public service broadcasting statutory purposes and objectives

- A1.5. The public service broadcasting purposes are set out in the Act and are to provide:
- a) programmes that deal with a wide range of subject matters;
 - b) television services that meet the needs and satisfy the interests of as many different audiences as practicable;
 - c) television services which are properly balanced, so far as their nature and subject matter are concerned, for meeting the needs and interests of audiences; and
 - d) programmes which maintain high general standards, including in terms of content,

¹ Section 264 of the Communications Act 2003. The public service broadcasting purposes are listed at section 264(4).

² Section 264(6) of the Communications Act 2003.

³ Section 264(3) of the Communications Act 2003.

⁴ Section 264(7) of the Communications Act 2003.

⁵ Section 264A of the Communications Act 2003.

⁶ Section 3(4)(a) of the Communications Act 2003.

quality of programme making and editorial integrity.⁷

- A1.6. The fulfilment of the purposes must also be compatible with the public service broadcasting objectives, which are to:
- a) inform, educate and entertain;
 - b) reflect and support cultural activity in the UK, such as drama, comedy and music;
 - c) facilitate civic understanding and fair and well-informed debate on news and current affairs;
 - d) satisfy a wide range of different sporting and other leisure interests;
 - e) include a suitable quantity and range of educational programmes; and programmes dealing with science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest;
 - f) include a suitable quantity and range of high-quality and original programmes for children and young people; and
 - g) reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom; and include programmes made outside the M25.⁸

The “PSB channels”

- A1.7. The Act designates which television services are, together, responsible for delivering the public service broadcasting purposes. The services are: all of the BBC’s public broadcast television services, each Channel 3 service,⁹ Channel 4, Channel 5 and S4C.¹⁰ We refer to these services as “**the PSB channels**”.

Changes introduced by the Media Act

- A1.8. Section 1 of the Media Act 2024 amends the Act by replacing the public service broadcasting purposes, as listed above, with the public service remit, and replacing the objectives with the public service requirements. In addition, it allows the public service broadcasters to fulfil their remits via a wider range of audio-visual services, including their other portfolio channels and their VoD services.
- A1.9. Due to our report concerning the years 2019-2023 inclusive, we have conducted our review in accordance with the law as written at the time, i.e. prior to the enactment of the amendments under the Media Act, and the remainder of this Annex reflects the law at this time. Nonetheless, we recognise that we will be conducting our future reviews in accordance with the new and amended provisions, as described in the previous paragraph. As a result, throughout our report we make reference to the amendments under the Media Act where appropriate, and our recommendations are made with the changes introduced by the Media Act in mind.

⁷ Section 264(4) of the Communications Act 2003.

⁸ Section 264(6) of the Communications Act 2003.

⁹ There are 15 regional [Channel 3 services](#) plus a national Channel 3 service that provides the national breakfast-time service.

¹⁰ Section 264(11) of the Communications Act 2003.

Public Service Broadcasters

statutory remits and requirements

A1.10. In addition to contributing to the fulfilment of the public service broadcasting purposes, each PSB channel also has a specific remit set out in legislation, together with further commitments established in their broadcasting licences or, in the case of the BBC, its Royal Charter¹¹ and Agreement.¹²

Channel 3 and Channel 5

A1.11. The statutory remit for the Channel 3 services and Channel 5 is the provision of a range of high quality and diverse programming.¹³

Channel 4

A1.12. The statutory remit for Channel 4 is to provide a broad range of high quality and diverse programming which, in particular, demonstrates innovation, experiment and creativity; appeals to the tastes and interests of a culturally diverse society; makes a significant contribution to educational programming; and exhibits a distinctive character.¹⁴

A1.13. In addition to providing the Channel 4 service, the Channel 4 Corporation has a range of statutory media content duties which it can deliver across all of its television services and online services.¹⁵ They include requirements to:

- a) make a broad range of high-quality content that appeals to the tastes and interests of a culturally diverse society;
- b) provide news and current affairs content; and
- c) provide content which appeals to older children and young adults.

S4C

A1.14. S4C's statutory remit is to provide a broad range of high quality and diverse programming in a service in which a substantial proportion of the programmes are in Welsh.¹⁶ S4C does not have an operating licence but it is subject to quotas, including in relation to news and current affairs, original productions, and independent productions.¹⁷

¹¹ [Royal Charter](#) for the continuance of the BBC made on 8 December 2016.

¹² [Agreement](#) between the Secretary of State for Culture, Media and Sport and the BBC made on 7 November 2016.

¹³ Section 265(2) of the Communications Act 2003.

¹⁴ Section 265(3) of the Communications Act 2003.

¹⁵ Section 198A of the Communications Act 2003.

¹⁶ Schedule 12, Part 2, paragraphs 3(2) and 3(3) of the Communications Act 2003.

¹⁷ Paragraphs 7-9 of Schedule 12 to the Communications Act 2003.

Specific requirements

A1.15. Ofcom is required by statute to include specific conditions in the licences for the Channel 3 services, Channel 4 and Channel 5.¹⁸ The conditions include requirements for:

- a) news and current affairs programming. In particular, requirements to provide high quality news and current affairs programming throughout the day, including specific time allocations or quotas as appropriate;¹⁹
- b) regional programme-making, specifically requirements to make a proportion of programmes outside London, and for a proportion of expenditure to be on making programmes outside London.²⁰ Ofcom determines the level of these quotas, which are set out in the relevant broadcasting licences. For Channel 3 services, Ofcom must also set quotas for regional programmes, including regional news;
- c) the broadcast of independent productions.²¹ In particular, there is a statutory minimum quota (which may be amended by the Secretary of State by way of order), and PSB providers must abide by a code of practice when agreeing terms for the commissioning of independent productions (see further paragraphs A1.23-A1.24 below); and
- d) the broadcast of original productions. The definition of original productions is drawn up by the Secretary of State by order, and Ofcom sets the specific programmes quotas for each PSB at an appropriate level to ensure that the channel is consistently of a high quality.²²

A1.16. Ofcom has specific powers to publish criteria and impose conditions in relation to the provision of children's programmes on Channel 3 services, Channel 4 and Channel 5.²³

The BBC: Mission and Public Purposes

A1.17. The BBC's Mission and Public Purposes are set out in the BBC's Royal Charter. The Mission of the BBC is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.²⁴ The BBC Public Purposes are:

- a) to provide impartial news and information to help people understand and engage with the world around them;
- b) to support learning for people of all ages;
- c) to show the most creative, highest quality and distinctive output and services;
- d) to reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the United

¹⁸ All of the public service broadcaster [licences](#) are published on Ofcom's website.

¹⁹ Section 279 of the Communications Act 2003.

²⁰ Sections 286-288 of the Communications Act 2003.

²¹ Section 277 of the Communications Act 2003.

²² Section 278 of the Communications Act 2003 and the Broadcasting (Original Productions) Order 2004 (S.I. 2004/1652).

²³ Section 289A of the Communications Act 2003. Ofcom was also required under section 296 of the Act to set a quota for Channel 4 for a suitable proportion of programmes to be programmes that are intended for use in schools. Following the implementation of section 16 of the Media Act, this requirement has been repealed.

²⁴ Article 5 of the BBC Charter.

Kingdom; and

- e) to reflect the United Kingdom, its culture and values to the world.²⁵

The BBC Operating Licence

A1.18. Ofcom is required under the BBC Charter²⁶ to set an Operating Licence for the BBC's UK Public Services, which include all of the BBC's television services. Ofcom must set conditions in the Operating Licence that we consider appropriate for requiring the BBC:

- a) to fulfil its Mission and promote the Public Purposes;
- b) to secure the provision of distinctive output and services; and
- c) to secure that audiences in Scotland, Wales, Northern Ireland and England are well served.²⁷

A1.19. Under the BBC Agreement Ofcom must also set the Operating Licence in accordance with the requirement to impose specific conditions which relate to:

- a) distinctiveness;
- b) third party online material;
- c) quotas for news and current affairs (quantity and scheduling);
- d) quotas for original productions; and
- e) quotas for regional programme-making and for nations and regions programming.²⁸

A1.20. The Operating Licence which Ofcom has set contains a broad range of requirements, including the following:²⁹

- a) quotas for current affairs and for news programming;
- b) conditions for arts, music, comedy and religious programming;
- c) conditions for drama and factual programming for children;
- d) a requirement for BBC Online to provide support for learning in all parts of the UK;
- e) quotas for original productions, and for first-run UK originations;
- f) minimum hours and minimum spend for productions made outside London and in the nations;
- g) regional programming requirements; and
- h) reporting requirements in relation to the BBC's diversity targets and a commissioning Code of Practice for diversity.

²⁵ Article 6 of the BBC Charter.

²⁶ Further information on the BBC's operating framework and how the Royal Charter and BBC Agreement places a range of obligations on the BBC can be found on [our website](#).

²⁷ Article 46(3) of the BBC Royal Charter.

²⁸ Schedule 2 to the BBC Agreement.

²⁹ [BBC Operating Licence](#), effective from 23 March 2023. The previous version of the Operating Licence, dated 13 October 2017, may be found [here](#).

- A1.21. In 2022 we modernised the [BBC Operating licence](#) to enable the BBC to adapt and innovate in how it delivers its content to meet its public purposes across its linear and online services.
- A1.22. The BBC is also required to comply with provisions on independent productions (equivalent to those that apply to the other PSBs) to ensure that 25% of the total amount of time allocated to the broadcasting of qualifying programmes included in its television broadcasting services is allocated to the broadcasting of a range and diversity of independent productions.³⁰

Commissioning of independent productions

- A1.23. The Act requires Ofcom to include conditions in the licences of all licensed PSB channels in order to secure that at least 25% of the time allocated to the broadcasting of “qualifying programmes” on that channel is allocated to the broadcasting of a range and diversity of “independent productions”.³¹ Equivalent provisions also apply to the BBC and to S4C.³²
- A1.24. PSB providers must draw up and, from time to time, revise and comply with a code of practice setting out the principles they will apply when agreeing terms for the commissioning of independent productions on PSB channels.³³ These codes of practice must secure the high-level outcomes prescribed in legislation in the manner described in Ofcom guidelines on commissioning.

Accessibility requirements

- A1.25. As with all television channels licensed in the UK, the PSB linear TV services are required to observe Ofcom’s Code on Television Access Services (the “Accessibility Code”).³⁴ The Accessibility Code includes specific targets for each PSB service and guidance about how to provide television access services, particularly in relation to subtitling, audio-description for audiences with a visual impairment, and translation into sign language.

Must offer and must provide obligations

- A1.26. In order to ensure wide availability of their PSB services, the licensed PSBs are required under their licences to supply PSB services to the holder of the relevant multiplex licence for broadcast by digital terrestrial television. They are also subject to “must-offer” and “must-provide” obligations in their licences in relation to the broadcasting of their PSB services on other services, including cable and satellite platforms. These obligations secure the following objectives:
- a) that digital channels or services are offered for broadcasting and distribution over every appropriate network;³⁵
 - b) that each provider of those channels or services enters into arrangements which ensure that their digital channels or services and any ancillary services are broadcast

³⁰ Paragraph 6 of Schedule 3 to the BBC Agreement.

³¹ Section 277 of the Communications Act 2003. This provision has since been amended by section 8 of the Media Act 2024.

³² Paragraphs 1 [BBC] and 7 [S4C] of Schedule 12 to the Communications Act 2003.

³³ Section 285 of the Communications Act 2003 [licensed public service broadcasters], paragraph 8 of Schedule 3 to the BBC Agreement [BBC] and paragraph 10 of Part 2 of Schedule 12 to the Communications Act 2003 [S4C].

³⁴ Ofcom’s Code on [Television Access Services](#).

³⁵ ‘Appropriate network’ is defined in section 272(7) of the Communications Act 2003.

or distributed on appropriate networks so that those channels and services are made available for reception by as many members of the intended audience for a given service as possible; and

- c) that such arrangements prohibit the provider of the network from charging for reception of the channels or services.³⁶

A1.27. In addition, the BBC is required to do all that is reasonably practicable to ensure that viewers, listeners and other users are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost-effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet. The BBC Board must set its distribution policy, consulting with Ofcom.³⁷

A1.28. The “must offer” requirements applying to PSBs are matched with “must carry” obligations which apply to certain networks, to ensure the wide availability of PSB channels.

Charging prohibition

A1.29. The PSB channels are free at the point of delivery, without subscription or contract. Specifically, the licensed PSB providers and the provider of S4C are subject to statutory licence conditions which prohibit them from imposing charges on persons in respect of their reception of PSB channels.³⁸ Similarly, under the BBC Agreement, the BBC may not charge for reception in the UK of UK Public Services or associated content (the licence fee is not to be considered a charge for this purpose).³⁹ However, the BBC may provide (or develop, test or pilot) a subscription service for UK Public Services with the approval of the Secretary of State, which would not be considered as breaching the general prohibition on the BBC charging for reception of UK Public Services or associated content.⁴⁰

³⁶ Sections 272-276 of the Communications Act 2003. Section 276 has since been repealed by the Media Act 2024.

³⁷ [BBC Distribution Policy](#).

³⁸ Sections 207 [S4C]; 214(8) [Channel 3 & Channel 5]; and 231(9) [Channel 4] of the Communications Act 2003.

³⁹ Schedule 3, paragraph 1 of the BBC Agreement.

⁴⁰ Article 50 of the BBC Agreement.