

Education and Culture Committee
Scotland's Educational and Cultural Future

OFCOM

Section 1

Introduction

We welcome the invitation to submit evidence to the Scottish Parliament Education and Culture Committee's inquiry into Scotland's educational and cultural future following the Referendum.

This memorandum does not consider how broadcasting would or should be regulated in the event of Scotland becoming an independent country. Instead, Ofcom's evidence is confined to how broadcasting and related regulation is currently applied in Scotland, with reference to how Scottish cultural interests are considered within Ofcom's activities and processes.

We trust this will provide the Committee with useful background information relevant to its inquiry and to help inform its discussions.

Ofcom's Office in Scotland

The Communications Act 2003 requires Ofcom to establish and maintain separate offices in each of the four nations of the UK. Ofcom (Scotland) has a team of four people in its Content, Consumer and External Affairs Group based in Glasgow, led by a Director, dealing with regulatory and public affairs duties. The role of the team in Scotland is to represent Ofcom in Scotland and Scotland in Ofcom. It ensures that it keeps in touch with the views and opinions of citizens and consumers, the regulated industries and stakeholders more generally in Scotland and factors these in to Ofcom's policy and decision making. The office draws on the specialist expertise of other groups within Ofcom as appropriate.

Section 2

Ofcom's Role

Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television and radio, fixed-line and mobile telecommunications, the airwaves over which wireless devices operate and postal services.

Ofcom's primary duty as set out in the Communications Act 2003 is to further the interests of citizens and consumers in these areas. In addition, we have a number of specific duties relating to broadcasting. These include: securing the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety range of tastes and interests and; securing the maintenance of a sufficient plurality of providers of different television and radio services.

We also handle complaints about television and radio broadcasting and assess each complaint against the Ofcom Broadcasting Code or other relevant codes or licence conditions. The Code contains rules that UK broadcasters (including the BBC in certain areas) must comply with. During 2012/13 we assessed 16,334 complaints about broadcast content UK-wide and we conducted 324 investigations, some of which generated significant levels of public interest.

The BBC Trust¹ regulates due impartiality, due accuracy, bias or commercial references in BBC programming (with the exception of the relevant product placement rules in the Broadcasting Code). Under the terms of the Communications Act the BBC is not licensed by Ofcom in the same way as the commercial broadcasters and to reflect this situation a Memorandum of Understanding² exists between Ofcom and the BBC Trust. So the BBC is ultimately accountable to the BBC Trust with regard to the areas referred to above.

Ofcom's Public Service Broadcasting Review and Scottish broadcasting

The Communications Act requires Ofcom to periodically review the extent to which the public service broadcasters have provided relevant television services which (taking them all together over the period as whole) fulfil the purposes of public service television broadcasting in the UK with a view to maintaining and strengthening the quality of its provision.

We conducted our first Public Service Broadcasting (PSB) Review in three phases during 2004-05. The third phase was published on 8 February 2005, followed by a final statement on programming for the nations and regions, published on 9 June 2005. The review concluded that there was a continued requirement for programming that reflected the distinct identities, cultures, histories and interests of Scotland, Wales and Northern Ireland. It was noted that this requirement was not likely to be met by UK-wide programming alone, nor by reducing minimum requirements on regional programming in the nations in line with our decisions for the English regions.

The final statement in our second PSB Review was published on 21 January 2009. In this second Review we looked at the Scottish Government's proposed Scottish Digital Network. The Scottish Broadcasting Commission had put the estimated annual cost at £75 million. A

¹ <http://www.bbc.co.uk/bbctrust/>

² <http://www.ofcom.org.uk/files/2010/06/Memorandum-of-Understanding-between-The-Office-of-Communications-Ofcom-and-the-BBC-Trust.pdf>

separate analysis that we commissioned forecast the costs at a similar level. We recognised that difficult choices had to be made about the use of scarce resources. We stated at the time of the Review our belief that there was an alternative model for a Scottish Digital Network that should be considered by the UK and Scottish Parliaments. This alternative would be for the network to be a competitive fund which would support a series of interconnected initiatives in Scotland-wide television, local television, online and radio. We did not take a view as to which model should be recommended and noted that it was for the UK and Scottish Governments to consider this and the associated issues of funding in order to decide what was best for Scottish viewers and citizens.

Broadcast Licensing and Compliance in Scotland

Ofcom monitors its licensees' compliance with the various broadcasting quotas. These obligations originate in the Communications Act 2003 or in European legislation, and Ofcom has a duty under the Act to monitor and enforce compliance with these quotas.

Quotas in the following areas are relevant to our licensees' television programming in Scotland:

- Original productions – programmes commissioned by broadcasters from in-house production resources or independent producers.
- Independent productions – programmes made by companies that are independent of broadcasters.
- Out-of-London productions – network programmes made in the UK outside the M25.
- Networked national and international news.
- Networked current affairs.
- Nations and regions programmes on Channel 3 and the BBC – made and shown in the nations and English regions.

In terms of TV production in Scotland, there are two key sets of obligations for Ofcom's licensees. One is the requirement to show a specified level of regional programmes, including at peak times. Ofcom has recently consulted on and completed its Channel 3 relicensing process.³ As a result Ofcom required enhanced coverage of Scottish affairs in the area covered by ITV's Border licence. In addition to retaining a full 30 minutes of weekday early evening news relevant to the region, Ofcom required a further weekly 90 minutes of regional programming to be scheduled for viewing in the Scottish part of the Border region.

STV has consistently delivered more regional programming in its Central and North Scotland licensed areas than required by its regulatory obligations and did not propose any reduction in these obligations during the relicensing process. Ofcom decided to maintain STV's regional programming obligations which are:

- News 4:00⁴
- Other 1:30 (of which current affairs 0:33)
- Total 5:30

The second key area is out of London (OOL) production. Ofcom reports on the hours and value of programmes made out of London. Current guidance says that, to qualify as an OOL

³ Documents relating to Channel 3 relicensing are available at <http://stakeholders.ofcom.org.uk/consultations/c3-c5-obligations/>

⁴ Hours/minutes per week, averaged

production, network programmes must meet at least two of the following three criteria that relate to the location, spend and crew:

- a) the production company must have a substantive business and production based in the UK outside the M25;
- b) at least 70% of the production budget (excluding the cost of on-screen talent, and certain pre-production costs) must be spent in the UK outside the M25; and
- c) at least 50% of the production staff (i.e. not on-screen talent) by cost must have their usual place of employment in the UK outside the M25.

We receive annual data from each of the Public Service Broadcasters⁵ giving expenditure and volume details for all programmes produced outside the M25, together with details of which of the three qualifying criteria (location, spend or crew) are valid for each programme and which nation or English region the programme should be allocated against.

Our OOL register publishes detail about the qualifying network programming. Ofcom decided to publish this register to improve the transparency of our procedures and quality of data, enabling us to more effectively monitor compliance with the OOL quota.⁶

We summarise on a geographical basis the OOL production data in our annual PSB network compliance report.⁷

Ofcom recently consulted on Channel 4's Licence Renewal, including its out of England quota.⁸ This considered the potential impact of C4's out of England quota on producers in the nations.

The Ofcom (Scotland) Office provided input into licensing decisions resulting in the award of community radio and local TV licences in Scotland. Local TV services for Glasgow and Edinburgh are due to be launched this year and licences for Aberdeen, Ayr, Dundee, Falkirk and Inverness will be advertised in 2014/15.

Ofcom has awarded 33 community radio licences in Scotland in locations geographically spread across the country. Twenty two stations are on air with two licences handed back, and the remaining nine from the most recent licensing phase in Scotland preparing to launch.

Ofcom also regulates localness on commercial radio. The main challenge for regulation is to ensure, as far as possible, that listeners are served by one or more commercial radio stations providing local programming, in such a way that allows the radio industry to remain financially viable.⁹

Commercial radio stations in Scotland are required to comply with the headline or essential character of service that is set out in their licence format. The way Ofcom measures compliance with the character of service contained in the Format changed following our Future of Radio projects in 2007 and 2008.¹⁰

⁵ OOL requirements apply to BBC, ITV, Channel 4 and Channel 5

⁶ The most recent register can be found at:

http://stakeholders.ofcom.org.uk/binaries/research/statistics/2013Sept/2MOL_register_2012.pdf

⁷ See slides 9-13 in last year's report: <http://stakeholders.ofcom.org.uk/binaries/broadcast/reviews-investigations/psb-review/psb2013/compliance.pdf>.

⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/renewal-c4-licence-out-of-england-quota/summary/condoc.pdf>

⁹ We published a statement on localness regulation at

<http://stakeholders.ofcom.org.uk/consultations/radio/statement/?a=0>

¹⁰ There is more information about regulation around radio formats at:

<http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/about-formats>

Gaelic

Ofcom's office in Scotland leads on Ofcom's regulatory obligations with respect to MG ALBA. Ofcom has a statutory obligation to consult both the Scotland Office and Scottish Government in making appointments to the MG ALBA board. In addition, MG ALBA has to submit to Ofcom for approval its annual operational plan on how it is proposing to carry out its functions during its next financial year.

Research

Our research programme provides valuable data on broadcasting in Scotland. For the last eight years, we have published a Communications Market Report for Scotland which reveals the expenditure and volume both for TV programmes specifically made for Scottish viewers and for networked shows made in Scotland. These annual reports are an important tool for policy makers and other stakeholders in Scotland, enabling them to track broadcasting trends and the impact of broadcasters.

Some of the main findings of the most recent Communications Market Report for Scotland¹¹ are:

- Total expenditure by public service broadcasters on first-run originated TV programmes specifically for viewers in Scotland fell by 6% from 2011 to 2012 to £52m.
- Expenditure on current affairs by the BBC and STV increased by 6% between 2007 and 2012 against a 27% decline for the UK as a whole. Scotland was the only nation to show an increase over this period.
- Scotland has the greatest number of HD-ready TV homes at 79%.
- Digital Terrestrial Television (such as Freeview) has overtaken satellite as the most widely-used TV platform in Scotland. Forty-three per cent of all TV households now use the service.
- BBC One's and STV's early evening news bulletins attracted greater share in Scotland than in the UK; an average 30% share of TV viewing - marginally higher than the UK at 28%
- In the ITV Border region ITV's evening news share was 38% and the BBC's 25%.

¹¹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr13/scotland/>

Section 3

Governance and Scotland

Ofcom has a Memorandum of Understanding governing liaison with both the Scottish and UK Governments. Since Ofcom was established it has engaged actively with the Scotland Office and the Scottish Government and Parliament on key broadcasting issues.

Although broadcasting is a reserved area of government, Ofcom regularly provides evidence in writing or in person to Scottish Parliament committees. Examples include the Education and Culture Committee discussion on public service broadcasting in 2012, the Scotland Bill Committee in 2011 and the Education, Lifelong Learning and Culture Committee inquiry into the Scottish local newspaper industry in 2010.

Internally, Ofcom's advisory structure includes our independent Communications Consumer Panel, which, as a critical friend, provides valuable input to our decisions. Mairi Macleod is the representative for Scotland on the Panel which keeps broadcasting-related areas under review including content access services – the subtitling, signing and audio description that enable people to access a wide range of audio-visual content. Our views are also informed by the work of our national advisory committees, including the Advisory Committee for Scotland, chaired by Philip Schlesinger, and by our Content Board, on which Iseabail Mactaggart represents Scottish interests.

The experience and expertise of Ofcom's Advisory Committee for Scotland and Ofcom's Content Board feeds in to Ofcom's broadcasting work in Scotland. Ofcom's Advisory Committee for Scotland represents the interests of people in Scotland in communications issues and includes members from across Scotland, with experience and interests across the full range of our activities including public service broadcasting. The chairmen of all three of Ofcom's National Advisory Committees sit on Ofcom's Nations Committee. Its role includes: understanding the political dynamics in each Nation and advising on the political engagement by Ofcom in each Nation; agreeing appropriate processes for Ofcom Board and Content Board engagement with each National Advisory Committee; monitoring stakeholder events in each Nation and involvement and engagement from Ofcom Board, Content Board, National Advisory Committee members and Ofcom executives.