

Response from Ofcom to questions posed by the Committee following the evidence session on 4 October 2023

During the evidence session, Eleanor referenced changes to commercial radio licensing proposed under the Draft Media Bill that would change the regime for enforcing public service commitments for licence holders. Please could an explanation of these changes be provided, including a publicly available source if possible?

The [Explanatory Notes](#) which were published alongside the draft Media Bill by the UK Government include, at paragraph 14, a summary of the proposed changes to the regulation of radio services. This is the only publicly available source we are aware of. For any further information on the proposals in the draft Media Bill, you should contact the Department for Culture, Media and Sport of the UK Government.

What assessment has Ofcom made of the relative importance of certain sports (such as rugby) to audiences in Wales?

In 2022 we commissioned and published a [report](#) from Ampere Analysis looking at trends and dynamics in the sports broadcasting sector. This included a section that looked at trends in audience consumption habits of sport and listed events. This did not focus on particular sports, nor did we look at audiences in specific Nations or Regions.

Our role in the Listed Events regime is principally to assess applications from broadcasters for consent to broadcast listed events (in circumstances where our consent is required). We determine whether to give our consent by reference to criteria set out in our [Code](#), which focuses on the way in which rights were acquired and can also require us to consider whether there are restrictions placed on a broadcaster in how they make coverage available. We do not approve the broadcasters' coverage plans nor do we determine which events should be listed, which is a matter for the Secretary of State for Culture, Media and Sport. For this reason, our research thus far has been focused on understanding changes to the rights market rather than the relationship between audiences and certain sports.

How has the ability of public service broadcasters to buy sports rights changed since the current sports rights listing regime was established?

The report linked above provides insights into the trends and changes seen across the sports rights market in recent years, including the changing role of PSBs. PSBs have maintained a steady level of investment in sports in recent years, largely driven by focussed on Listed Events. However, there are a number of challenges facing PSBs that may impact their ability to compete for sports rights. PSBs are facing budget constraints, whether from a freeze to the licence fee or a downturn in the advertising market, and this is compounded by production cost inflation. Sports rights can be expensive, and these budget constraints may be impacting PSBs' ability to compete for these rights packages. In recent years PSBs have also faced competition from new global media organisations

interested in expanding into the sports market. Warner Bros Discovery appear to have committed to sports and have ample resources to invest, but it should be noted that the extent to which other players, such as Amazon or Apple TV+, are committed to investing in sports is still unclear. PSBs have long faced competition in the sports rights market from Pay TV providers, such as Sky or BT Sport, so this is not a new challenge but is certainly becoming more acute.

Summary of the Listed Events regime

The Secretary of State for Culture, Media and Sport has the power to draw up a list of sporting (or other) events of 'national interest'. The regime's aim is to promote the availability of live coverage of these events on free-to-air services by seeking to ensure that, when offered, the broadcast rights for listed events are offered to 'qualifying services' (and indeed 'non-qualifying services') on 'fair and reasonable' terms (as described in the Code).

The regime divides broadcasters into two categories of service based on a measurement criteria:

'Qualifying services' must be free and received by 95% of the UK population.

'Non-qualifying services' are all other broadcasters, including Pay-TV providers and free-to-air services that do not reach 95% of the population.

The list consists of:

- **Group A events** – a broadcaster requires consent to exclusively broadcast live coverage of these events.
- **Group B events** – a broadcaster requires consent to exclusively broadcast live coverage of these events, but the Code sets out that consent will be granted 'automatically' where another broadcaster (in the other category of service) has rights to provide adequate secondary coverage such as highlights (as further defined in the Code), and rights to provide live radio coverage have also been acquired.

Draft Media Bill

- The draft Media Bill simplifies the qualification criteria for the regime by removing the measurement criteria, and instead providing that only PSBs and services provided by PSBs will qualify as long as they are provided for free. This would mean that, for the first time, S4C would be considered a 'qualifying service'.
- It also makes provision to extend the regime to include "internet programme services" as well as television programme services.
- The regime does not currently include 'digital rights', including on-demand rights, which have become an important element in the sale of sports rights. This, together with changes to viewing habits (i.e. catch-up and on-demand viewing), raised questions about whether the listed events regime remains fit for purpose. DCMS is carrying out a review of whether 'digital rights' should be included in the listed events regime, and will announce its position in due course.

- One objective of the regime is to find an ‘appropriate balance’ between promoting free-to-air sports events for the public and allowing rights holders to negotiate agreements in the best interests of their sport.
- S4C is campaigning for greater protection for sports content in Welsh. Given the service’s remit to support and encourage the use of Welsh it argues that certain sporting events that are of national significance in Wales (e.g. the Euros, The Six nations Rugby Tournament) should be protected and made available free-to-air in Welsh regardless of the ownership of the primary rights.
- S4C has lobbied DCMS for changes to the listed events regime and expects changes to be brought forward in the Media Bill. S4C would like to see a Wales list of events that would have to be available free-to-air on S4C, but current proposals do not go as far as S4C would like.

Ofcom says that the Operating Licence it sets for the BBC should contain “appropriately challenging” regulatory conditions in relation to the BBC’s services. Have any metrics used to measure the BBC’s performance for audiences in Wales improved since 2017?

The Charter requires Ofcom to set an Operating Licence which secures, amongst others, that audiences in Wales are well served. In March of this year, we published a new Operating Licence for the BBC:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/255721/bbc-operating-licence-march-2023.pdf

Alongside regulatory requirements that apply to the whole of the UK, the Operating Licence also contains requirements specific to programming and services for Wales. These include requirements relating to:

- Television programme production in Wales: the licence ensures that at least 5% of hours and 5% of expenditure on network television programmes must relate to programme making in Wales.
- Programmes made for Welsh audiences: a suite of provisions, including a range of quotas, ensure programmes are made with Welsh audiences in mind. These include:
 - A requirement for BBC One Wales to show at least 275 hours of news and current affairs programmes every year;
 - A requirement for BBC One Wales and BBC Two Wales to show programmes other than news and current affairs;
 - A requirement for BBC Radio Wales to allocate at least 1,669 hours to news and current affairs programmes (and to provide news bulletins regularly throughout the day);
 - A requirement for BBC Radio Cymru to allocate at least 1,199 hours to news and current affairs (and to provide news bulletins regularly throughout the day);

- A requirement for the BBC's linear services specific for Welsh audiences and its online services (BBC iPlayer, BBC Sounds, and the website) to provide content of interest and relevant to audiences in Wales.

Under the new Operating Licence, the BBC is required to publish a range of information in its Annual Plan and Annual Report, including information related to how it delivers for audiences in Wales. This includes, for example, detailed information relating to non-news programming on BBC One Wales and BBC Two Wales, and hours of network programmes which are specifically aimed at audiences in the nations and regions.

Ofcom assesses how the BBC delivers for audiences, including how it delivers for audiences in Wales, on an annual basis. We do this by assessing compliance with the conditions in the operating licence, but also assessing its performance more widely. We published an up to date performance measurement framework in July of this year:

https://www.ofcom.org.uk/_data/assets/pdf_file/0025/264463/performance-measurement-framework_2023.pdf

Ofcom's annual reports and performance reports on the BBC are available here:

<https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc/performance/bbc-annual-report>

The data for our performance assessment is based on a range of sources, including Ofcom surveys, for example the Ofcom BBC Performance Tracker, Ofcom BBC Children's Tracker, and the Ofcom News Consumption Survey; and industry data, such as Barb and RAJAR.

The performance measures for the BBC have continued to evolve since 2017. Examples include:

- Including a specific survey to measure perceptions of children, including a robust sample within Wales
- Understanding more about device take-up for radio across the UK with the inclusion of smart speakers on the radio industry survey, RAJAR (including a robust sample within Wales)
- Including more nations' analysis in our Barb and RAJAR analysis in our performance monitoring
- Identifying gaps in knowledge and introducing new annual tracking surveys which include boosts in the nations (Audio survey, Podcast survey, VoD survey)
- Using supplementary third-party data where available, such as the IPA's cross-media survey, TouchPoints