
How Ofcom regulates the BBC

A review

[How Ofcom regulates the BBC](#) – Welsh translation

CONSULTATION:

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1. Overview

This consultation marks the beginning of our review of BBC regulation, and will form the basis of our advice to government for its mid-term Charter review.

The BBC is at the heart of the UK's public service media (PSM) system, playing a central role across TV, radio and online. It is the UK's most widely used media provider and delivers a range of high quality and distinctive content for audiences across the country. However, media markets and audience behaviour are changing rapidly. This presents significant challenges for the UK broadcast industry, including the BBC.

Ofcom's *Small Screen: Big Debate* review examined these changes and looked at ways to renew and strengthen the UK's PSM system for the next decade and beyond. Specifically, *Small Screen: Big Debate* sets out an urgent need to modernise regulation to ensure PSM can thrive in the digital age.

In 2017, Ofcom became the BBC's first external regulator, and a new regulatory framework was put in place. Since then, we have highlighted some important issues, particularly the need for the BBC to adopt greater openness and transparency, including about how it articulates its plans and reports on performance, and how it sets out its decision making in relation to content standards (notably, due impartiality) and complaints handling. We have also challenged the BBC to make sure it delivers for all audiences.

As we near the mid-point of the current BBC Charter period, we are required to produce a 'Periodic Review' of the BBC. We plan to use this opportunity to build on the conclusions of *Small Screen: Big Debate*, and reflect on our BBC regulation over the last four years to ensure it remains fit for purpose in holding the BBC to account on behalf of viewers and listeners. As set out in *Small Screen: Big Debate*, there is a specific need to update the BBC's Operating Licence for the digital age.

We invite views from interested parties on the scope of our review and on how we can update our regulation. The closing date for responses is 5pm on **15 September 2021**.

What will our review cover?

The review will cover all areas of our regulation of the BBC:

- how we hold the BBC to account for delivering its Mission and Public Purposes;
- how we protect competition in relation to the BBC's activities; and
- how we ensure broadcast content complies with the standards in the Broadcasting Code, including the due impartiality rules.

What are our key considerations?

In carrying out our review, our primary objective is to ensure our regulation of the BBC is fit for the future and remains as effective as possible. To achieve this, we will focus on ensuring our regulation:

- drives the BBC to a position of greater transparency about its plans and processes for the benefit of all, including audiences, industry and Parliament;
- supports the BBC's shift towards online delivery alongside traditional broadcasting; and

- allows the BBC to innovate and change to meet audience needs and expectations.

We believe we should enshrine these principles in an updated Operating Licence for the BBC, so that the Licence:

- requires greater transparency and more effective reporting from the BBC on its plans for delivering the Mission and Public Purposes and how it evaluates success;
- enables us to hold the BBC to account for delivery across all its services, including online; and
- gives the BBC more scope to determine how best to fulfil its Operating Licence obligations, albeit with strong oversight by Ofcom.

How will we deliver our review?

We will deliver the review through three reports:

- **Winter 2021** – An assessment of the BBC’s performance over the Charter period so far;
- **Spring 2022** – A Periodic Review report to include recommendations to the Department for Digital, Culture, Media and Sport (DCMS) to inform its mid-term Charter review, and any changes we intend to make to our own processes; and
- **Spring 2022** – A consultation on proposals to evolve the BBC’s Operating Licence, and subsequently, a new Licence.

2. Background to this consultation

- 2.1 In 2017, Ofcom became the first external regulator of the BBC.¹ We have a duty to hold the BBC to account on behalf of audiences by providing fair, robust and independent regulation in three areas: performance (holding the BBC to account for delivering the Mission and Public Purposes), competition (protecting competition in relation to the BBC’s activities) and editorial standards (ensuring content broadcast complies with the standards in the Broadcasting Code).²
- 2.2 Since our regulation of the BBC began, we have undertaken a substantial amount of work across all three of these areas. Each year, we have assessed the BBC’s performance in delivering its Mission and Public Purposes and its compliance with the conditions in the Operating Licence,³ and produced an Annual Report that outlines our assessment.⁴ We have also carried out two ad hoc reviews of the BBC’s performance.⁵ We have undertaken two BBC Competition Assessments (“BCA”) (for BBC Scotland and BBC iPlayer)⁶ and are currently in the process of undertaking a third.⁷ We have also considered numerous editorial standards cases under the unique ‘BBC First’ process, which involves us typically considering complaints about BBC content after they have been considered by the BBC itself.
- 2.3 Under the Charter, Ofcom has a duty to “carry out and publish two or more detailed periodic reviews” between 2017 and 2027 (the “Charter period”), looking at “the extent to which the BBC is fulfilling its Mission and promoting each of the Public Purposes, and addressing any specific issues of concern identified by Ofcom”.⁸ The Charter also states that the first of these Periodic Reviews should be undertaken “in sufficient time” to inform the Government’s mid-term Charter review, which the Government must carry out between 2022 and 2024.⁹
- 2.4 The BBC faces significant challenges in adapting to trends in the market and changes in audience behaviour, which could impact how it delivers for all audiences. Our recommendations in *Small Screen: Big Debate* set out how public service broadcasters, including the BBC, need to be supported in the transition to online.¹⁰ Tim Davie made clear in his introductory speech as Director-General that the BBC is aware of the challenges it

¹ Section 198 of the Communications Act 2003 gives Ofcom the power to regulate the BBC. Ofcom’s powers and duties are set out in the [BBC Charter and Agreement](#). Articles 44 to 51 of the Charter establish Ofcom’s role.

² The [Introduction to Ofcom’s Operating Framework for the BBC](#) provides further background on Ofcom’s regulation.

³ [Operating Licence for the BBC’s UK Public Services](#) as issued on 13 October 2017 and the updated [Operating Licence for the BBC’s UK Public Services](#), dated 25 March 2021.

⁴ [Ofcom’s Annual Reports on the BBC](#).

⁵ Ofcom, 2018. [Representation and portrayal on BBC Television](#) and Ofcom, 2019. [Review of BBC news and current affairs](#).

⁶ Ofcom, 2018. [Ofcom review of proposed BBC Scotland television channel](#) and Ofcom, 2019. [BBC iPlayer Competition Assessment: statement on Ofcom’s final determination](#).

⁷ See [Ofcom review of proposed BBC Three television channel](#).

⁸ Article 51(1) of the Charter.

⁹ Article 51(2) and Article 57 of the Charter.

¹⁰ Ofcom, July 2021. [Small Screen: Big Debate Statement – Recommendations to Government on the Future of Public Service Media](#).

faces and is taking steps to address them.¹¹ He has said that the BBC does not deliver to all audiences equally, with some people getting extraordinary value from the BBC, while others are underserved.¹² The Director-General has also highlighted that the BBC needs to continue to develop its online offer.¹³

- 2.5 We plan to use our first Periodic Review to consider how regulation needs to adapt as the BBC continues to address these challenges, and to identify what changes might need to be made to ensure our regulation remains effective for the remainder of the Charter period, and beyond.

¹¹ BBC, 3 September 2020. [Tim Davie's introductory speech as BBC Director-General.](#)

¹² RTS, October 2020. [A BBC for all? BBC's Director-General Tim Davie talks at the RTS Digital Convention 2020.](#)

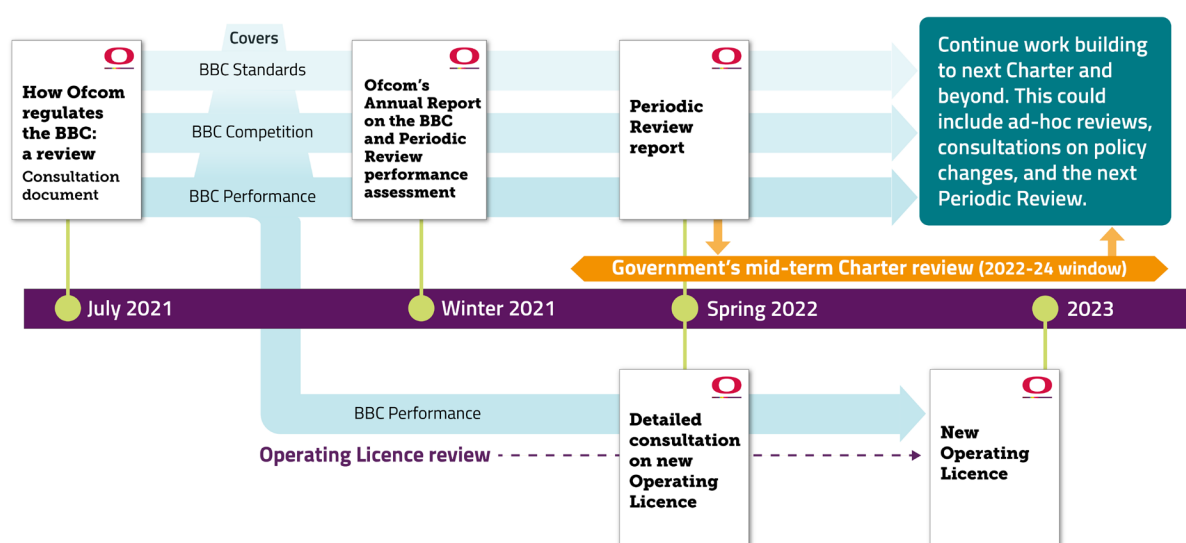
¹³ BBC, 3 September 2020. [Tim Davie's introductory speech as BBC Director-General.](#)

3. Reviewing our regulation of the BBC

Reports and publications

- 3.1 Our review of BBC regulation builds on *Small Screen: Big Debate* as well as our broader experience of regulating the BBC. It will cover all three areas of our regulation and will feed into the following reports:
- 3.2 First, we will publish an assessment of the BBC’s performance over the Charter period to date (the “performance assessment”). This assessment will consider how the BBC has delivered its Mission and Public Purposes and how it has responded to issues identified by Ofcom, for example in our Annual Reports on the BBC. It will cover all aspects of our role. We will publish this assessment alongside our Annual Report on the BBC, scheduled for winter 2021.
- 3.3 Second, we will publish a Periodic Review report (the “Periodic Review report”) on the effectiveness of the regulatory framework for the BBC. We will make recommendations for amending BBC regulation, if appropriate. This – together with the performance assessment – is intended to be a helpful input into the Government’s mid-term Charter review process. We will then work with DCMS on any changes to the Agreement and, where this impacts our regulatory role, adjust what we do in line with that for the remainder of the Charter period. We will also identify any additional work, such as ad hoc reviews by Ofcom or proposals for changes to Ofcom’s processes. We plan to publish the Periodic Review report in spring 2022.
- 3.4 Third, we will publish a consultation with proposals to update the BBC’s Operating Licence in spring 2022. We will look to have a new Licence in place by April 2023.

Figure 1: How Ofcom regulates the BBC – a review



Key themes of the review

- 3.5 We will be reviewing regulation across all areas of our duties – performance, content standards, and competition. In addition, we believe there are some important cross-cutting themes, which we also intend to consider as part of our Periodic Review.

Transparency and engagement

- 3.6 The Charter states that the BBC must observe high standards of openness and seek to maximise transparency and accountability.¹⁴ The BBC has a unique funding model through the licence fee, and therefore has unique responsibilities to be open with the public and Parliament on how it is delivering for audiences, and to act in a way that is beneficial to the sector as a whole. We have consistently raised issues about the BBC’s transparency, including about how it articulates its plans and reports on performance, particularly in the context of its online services, and how it sets out its decision making in relation to content standards (notably, due impartiality) and complaints handling. Most recently, we wrote to the Director-General welcoming the commissioning of a review into the effectiveness of the BBC’s editorial policies and governance (“the Serota Review”).¹⁵
- 3.7 There are some good examples where the BBC has demonstrated transparency. For example, the BBC made commitments in its 2021/22 Annual Plan for how its services would contribute to the delivery of the Mission and Public Purposes, which in some cases went beyond the conditions set out in the Operating Licence. The BBC’s [Across the UK](#) document also provided helpful additional insight into its plans to strengthen the BBC’s presence across the whole of the UK and get closer to audiences across the Nations and regions, helping it to better deliver for these audiences. We will use this review to work with the BBC and stakeholders to improve transparency across all the BBC’s activities.

Public value

- 3.8 The concept of public value pre-dates our regulation and is intrinsically linked to the BBC’s success in delivering its Mission and Public Purposes. It encompasses how the BBC delivers for individuals, for example through its services and content, and contributes to wider society and the UK broadcasting industry. As the BBC adapts its services to meet the needs of audiences, through online and traditional broadcast services, it will be important for the BBC to adapt its measure of public value.¹⁶

¹⁴Article 12(1) of the Charter.

¹⁵ [Letter from Dame Melanie Dawes to Tim Davie](#), May 2021.

¹⁶ The BBC commissioned a study to help it develop and test new metrics to assess how it delivers against its Mission, creates public value and shapes the market. See December 2020, Institute for Innovation and Public Purpose. [Creating and measuring dynamic public value at the BBC: A scoping report](#).

- 3.9 Our current processes require the BBC to assess the public value of proposed changes to the UK Public Services¹⁷ in its Public Interest Tests.¹⁸ We then review the BBC’s public value assessments when we undertake our competition assessment.¹⁹
- 3.10 In this review, we will look at whether public value could be made more central to how we assess the BBC’s performance and impact. Themes raised in our past competition assessments²⁰ will inform our work.

Diversity

- 3.11 The Charter requires the BBC to reflect the diverse communities of the whole of the UK,²¹ and we set diversity-related conditions in the BBC Operating Licence, including a requirement to produce a Diversity Commissioning Code of Practice.²² Diversity is a cross-cutting theme across our considerations of both how we regulate the BBC and how it has delivered for all audiences. We will consider specific issues relating to diversity in the context of our broader ongoing diversity work programme and will include any relevant issues in our Periodic Review report, for example, how diversity issues might impact BBC content standards, including the way that the BBC handles complaints.

Small Screen: Big Debate

- 3.12 Some of the changes we are recommending as part of *Small Screen: Big Debate* would have an impact on the BBC Charter and Agreement. We will work with government as it progresses any proposals for change.

Reviewing our regulatory role

Performance

- 3.13 We hold the BBC to account for its delivery of the Public Purposes through enforceable regulatory conditions we set on the BBC’s UK Public Services in the Operating Licence.²³ Ofcom is also responsible for setting [performance measures](#) to assess the BBC’s

¹⁷ Clause 7(1) of the Agreement and Part 1 of Schedule 1 to the Agreement.

¹⁸ Clauses 7(6), 8, and 10 of the Agreement, and Article 20(4) of the Charter.

¹⁹ We have identified gaps in the BBC’s assessments in the past. For example, in [the BBC iPlayer Public Interest Test](#) (April 2019) for changes to BBC iPlayer, the BBC provided limited explanation as to how it would ensure that public value would be delivered if viewing shifted from broadcast TV to BBC iPlayer; it also did not consider the public value generated by other broadcasters. See Ofcom, August 2019. [BBC iPlayer Competition Assessment: Final determination](#).

²⁰ We recently confirmed that we are undertaking a competition assessment (“BCA”) of the BBC’s proposal to launch BBC Three as a television channel, in which we will review the BBC’s latest public value assessment. We will also draw on this work.

²¹ Article 14 of the Charter. In addition, the BBC is also required, as set out in articles 4 and 6(4) of the Charter, to promote Public Purpose 4 which is described as follows: “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 Kingdom...”.

²² Paragraph 2.46 of the Licence as issued on 13 October 2017.

²³ The Operating Licence does not cover the BBC World Service; responsibility for setting a licence for the BBC World Service lies with the BBC (clause 34 of the Agreement). However, the Periodic Review will also have regard to the performance of the BBC World Service in accordance with clause 35(7) of the Agreement.

compliance with these conditions and to examine its wider performance.²⁴ We report annually on the BBC's performance as part of our Annual Report on the BBC.

BBC Operating Licence

- 3.14 We set the current Operating Licence in 2017. In line with the Charter and Agreement's requirements for the "First Operating Licence",²⁵ it consists largely of quantitative requirements (such as quotas) which are specific to individual BBC television and radio services. We said the Licence should be able to adapt to changing audience needs and expectations.²⁶ Although some changes have been made, we have not undertaken a full review of the Operating Licence since 2017.
- 3.15 Our experience of regulating the BBC over the last four years shows there are some areas of the Operating Licence that need updating to ensure our regulation remains effective.²⁷ Specifically, the BBC is increasingly focusing on the delivery of content through its online services. However, there is limited recognition and regulation of the BBC's online services in the Operating Licence. In addition, the focus on quantitative requirements means the BBC is incentivised to focus and report on how content and services meet quotas, rather than on how content and services meet the needs of audiences.
- 3.16 In order to address these shortcomings, we propose to adopt the following approach to updating the Licence:
- 3.17 First, we believe that **the Licence should enable us to hold the BBC to account for its delivery across all its services, not just its television and radio services**. By expanding our Licence to cover the BBC's online services, such as BBC iPlayer and BBC Sounds, more comprehensively, we would seek to achieve greater transparency as to how the BBC uses those services to deliver for audiences, as well as give the BBC more recognition for the contribution these services make to the delivery of the Mission and Public Purposes.
- 3.18 Second, we believe that **the BBC should have scope to determine how best to fulfil its Licence obligations across its platforms and services**, provided it sets out publicly how its plans deliver the Mission and Public Purposes. In practice, Licence conditions could allow the BBC to decide which online or broadcast services to make its content available on. It would be up to the BBC to decide where best to reach audiences in a way that ensures all viewers, users and listeners are well served, regardless of how they access the BBC.
- 3.19 We also believe this means that our regulation should move away from primarily requiring compliance with quantitative conditions and output reporting. Instead, we believe our

²⁴ These are in addition to the measures set by the BBC Board to assess and report on the BBC's performance (clause 14(2) of the Agreement).

²⁵ Schedule 2 of the Agreement required Ofcom to have regard to specific factors in setting the first Licence.

²⁶ Paragraph 1.9 of the Operating Licence as issued on 13 October 2017.

²⁷ Ofcom must continue to have regard to the considerations set out in the Agreement after the first Operating Licence and is required by the Agreement to continue to impose certain conditions in a new Licence. Our [Procedures for setting and amending the BBC Operating Licence](#) set out the considerations we must have regard to when amending the Licence. The provisions of the Agreement which are most relevant to the amending (or setting) of a Licence are clause 13 and Schedule 2.

regulation should combine quantitative requirements with requirements which focus on how the BBC delivers for audiences, using measures such as the quality, reach and impact of programming (qualitative requirements). The current Licence already recognises the importance of qualitative requirements through the high-level objectives set out in Section 1 of the Licence.²⁸ However, where appropriate, we would make this approach more central to the Licence.

- 3.20 In considering the right balance between quantitative and qualitative requirements, we are mindful of the need to secure certain types of programming and the distinctiveness of the BBC's services, and to ensure the BBC continues to deliver for all audiences, wherever they consume the BBC's content (including for audiences who continue to rely on the BBC's traditional broadcast services). This means the Licence will continue to include quotas alongside qualitative requirements.
- 3.21 Third, we believe **the Licence should enable Ofcom to hold the BBC more effectively to account by requiring greater transparency and more effective reporting from the BBC**, both when it sets out its plans for delivering its Mission and Public Purposes and when it assesses how it has delivered against those plans. We believe increased transparency is key to a new Licence, and any changes to give the BBC more scope to decide how to deliver its Licence obligations cannot be delivered without it.
- 3.22 Under the Charter,²⁹ the BBC must publish an Annual Plan and Annual Report and Accounts for each financial year. Its Annual Plan must include (among other things): the creative remit for that year; the work plan for that year; and provision for the UK's nations and regions. It must then report the following year on how it has delivered on these plans. Following the receipt of the BBC's Annual Report and Accounts, Ofcom must publish an Annual Report which (among other things) assesses the BBC's performance and its compliance with our Operating Licence.³⁰
- 3.23 To achieve greater transparency, we believe the BBC's Annual Plan could be the key vehicle for the BBC to provide a clear and full explanation of how it plans to comply with the quantitative and qualitative Licence requirements we would set, and deliver the Mission and Public Purposes. We could require the BBC – through enforceable reporting obligations – to make specific commitments in the Annual Plan for the year ahead for how it plans to deliver our regulatory requirements. This could include quantitative commitments, setting out the number of hours it would make available and how it would distribute its hours across its platforms and services. We could also require the BBC to explain *how* such commitments would deliver the Mission and Public Purposes, to provide a clear rationale for any changes it has made to its commitments from year to year, and to explain how it plans to monitor their impact.
- 3.24 In relation to the BBC's Annual Report and Accounts, the BBC must set out whether it has complied with our regulatory requirements. We could also require it to explain how it has

²⁸ Section 1 of the Operating Licence for the BBC's UK Public Services.

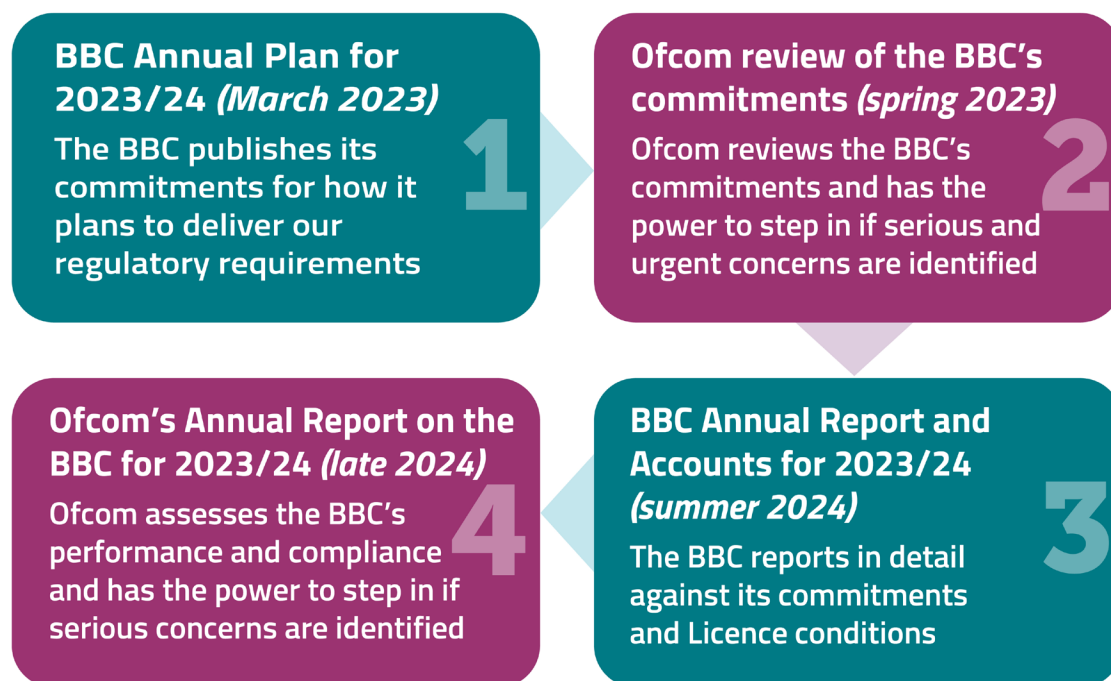
²⁹ Articles 36 and 37 of the Charter.

³⁰ Article 50 of the Charter.

met its own commitments and provide clear evidence and explanation to support that. In addition, the BBC could be required to set out what actions it will take to address any areas of concern.

- 3.25 Fourth, we believe **it is important that Ofcom can step in, in a timely manner, if we have any serious concerns about the BBC’s planned or actual delivery.** If we require the BBC to make commitments in its Annual Plan, we will want to review them thoroughly. In the case of any serious concerns about how its planned delivery complies with our regulatory requirements, or about the amount of information provided, several possible actions could be appropriate. This could range from requiring the BBC to produce more information about its commitments, to issuing formal directions in the most serious and urgent cases, such as if we considered the BBC’s commitments were very likely to breach a Licence requirement.
- 3.26 We already assess the BBC’s compliance with its regulatory requirements in our Annual Report on the BBC. If we have any serious concerns about the BBC’s compliance, we will expect to consider specifically whether to reinstate quotas or other prescriptive requirements.
- 3.27 Figure 2 below illustrates how the reporting cycle described above could work in practice, setting out when the relevant documents would be published:

Figure 2: A possible reporting cycle for each financial year (the dates in this example are based on the first reporting year under a new Licence)



Performance measurement

- 3.28 As the BBC delivers more content on its online services and we seek to cover these services more comprehensively in the Operating Licence, we will look at how our performance

framework needs to be updated.³¹ Our framework will need to evolve to effectively measure and analyse how the BBC is reaching different audiences and meeting audience needs across all its platforms and services. We will also need to consider the appropriate metrics for assessing the BBC's performance and compliance with qualitative obligations.

Protecting audiences and maintaining content standards

- 3.29 Ofcom's role in protecting audiences is to ensure that broadcast material complies with standards set in The Broadcasting Code ("the Code").³² We also have a duty under the Agreement to set procedures to handle and resolve complaints referred to us about the BBC's TV, radio and on demand programmes.³³
- 3.30 In accordance with the Charter and Agreement, Ofcom holds the BBC to account against the rules of the Code to ensure that adequate protection from harm and offence is provided to BBC audiences and that content standards are maintained.³⁴ The BBC also has its own Editorial Guidelines that reflect the Code and the BBC requires all of its content to adhere to these guidelines. Ofcom ensures compliance with the Code primarily through the consideration of complaints, although we may also launch investigations on our own initiative. The Agreement also requires Ofcom to determine the form and frequency of the BBC's complaints reporting to Ofcom, as well as the publication of information about the operation and effectiveness of the BBC's complaints handling.³⁵
- 3.31 As part of this Periodic Review, **we will consider whether BBC First continues to deliver for audiences.** 'BBC First' means that, if a viewer or listener has a complaint about something they have seen or heard in a BBC programme, they must normally complain to the BBC in the first instance.³⁶ If a complaint about BBC content is made directly to Ofcom before being submitted to the BBC, it will normally be referred back to the BBC. This allows audiences to hold the BBC to account by engaging with it directly through a single complaints process, with independent regulatory oversight of all editorial matters by Ofcom. Complainants can refer their complaint to Ofcom if they are dissatisfied with the BBC's final response, consider that the imposition by Ofcom of a sanction against the BBC may be appropriate, or if the BBC fails to respond to the complaint in a set timeframe.
- 3.32 BBC First is a unique process designed to meet the particular challenges of regulating the BBC. It allows the BBC to consider and potentially resolve complaints before they reach Ofcom, which does not apply to any other broadcaster regulated by Ofcom.

³¹ Ofcom's procedures for setting and amending performance measures are set out in [Holding the BBC to account for delivering for audiences: Performance Measures](#).

³² These duties are set out in the Communications Act 2003 and the Broadcasting Act 1996. In addition, article 46(7) of the Charter states that Ofcom must secure the observance of standards in the content in the relevant UK Public Services which must be in accordance with the Standards and Fairness Codes.

³³ Clause 57 of the Agreement.

³⁴ Code rules cover areas including: the protection of under-18s; harm and offence; due impartiality and due accuracy; and fairness and privacy.

³⁵ Clauses 56(7) and 56(8) of the Agreement.

³⁶ This does not apply for Fairness and Privacy complaints, which can be made directly to Ofcom. See [How Ofcom deals with BBC TV, radio and on demand complaints](#).

- 3.33 First, we will **consider how the BBC could improve its transparency in decision-making and complaints handling, including in relation to due impartiality**. Public confidence in the operation and effectiveness of the BBC’s complaints process depends on the BBC being sufficiently transparent in how it handles and resolves complaints.
- 3.34 In 2017, we set a series of requirements, by way of our [BBC Complaints Determinations](#), for the BBC to publish data regarding its complaints function in detail. This was to build and maintain public confidence in the operation of the BBC First framework. The BBC now publishes fortnightly information on editorial complaints, namely:
- the total number of programme complaints, with additional information about the programmes which received a high volume (over 100);
 - information on relevant complaints which are editorial complaints³⁷ which are progressed to the BBC’s Executive Complaints Unit (“ECU”)³⁸ and the outcome of some of these complaints; and
 - the percentage of complaints that received a response within the relevant time period.
- 3.35 We have kept our BBC Complaints Determinations under regular review and have also published Annual Reports into the BBC’s performance in its complaints handling across its services, including in the area of due impartiality.
- 3.36 While we have considered generally that the BBC First framework has worked well, a standards case in 2019, *BBC Breakfast*, gave us serious concerns regarding the BBC’s transparency around its complaints processes, and we acted to address this as a matter of urgency.³⁹ After we publicly highlighted our concerns:
- the BBC reviewed its complaints process and consulted on changes to its Complaints Framework, which were subsequently introduced in June 2020;⁴⁰ and
 - we also revised our BBC Complaints Determinations to encourage the BBC to be more transparent in its decisions on editorial complaints, particularly in relation to the outcome of complaints which progress to the ECU.
- 3.37 Although we note the improvements that the BBC has made since 2017, including steps taken in 2020 to publish more data on complaints, as we said in our most recent Annual

³⁷ These are complaints relating to the observance of standards set in the Ofcom Broadcasting Code and/or the allocation of party election, party political and referendum campaign broadcasts.

³⁸ The ECU is the second and final stage in the BBC’s internal complaints procedure. It investigates complaints impartially and independently of the interests of the programme makers/content providers. It will decide whether a breach of the BBC’s Editorial Guidelines has taken place. The ECU’s findings on significant editorial complaints are [published fortnightly](#).

³⁹ Ofcom received 18 complaints about *BBC Breakfast* broadcast on 17 July 2019. The majority of complainants objected to the fact that the BBC ECU had, on 26 September 2019, partially upheld a complaint about the programme under the BBC’s Editorial Guidelines on the grounds that it breached the BBC’s due impartiality requirements. Following public criticism, the BBC’s Director-General overturned the ECU’s finding on 30 September 2019. Ofcom assessed the programme under the due impartiality rules in the Code and did not consider the programme would have breached these rules. See Ofcom, October 2019. [Ofcom’s assessment of BBC Breakfast, BBC One, 17 July 2019](#). We considered that there were significant issues with the reasons for the decisions that the BBC reached about compliance with the Editorial Guidelines and the Code. Neither the BBC ECU’s full reasoning nor the subsequent reasoning of the former Director-General for overturning the ECU’s finding were published by the BBC.

⁴⁰ BBC, June 2020. [BBC Complaints Framework and Procedures](#).

Report, there is scope to go further. Our BBC Complaints Determinations are due for further review in 2021. However, we intend to incorporate this into the Periodic Review.

- 3.38 Second, we will **scrutinise the BBC’s process for handling and expediting serious complaints**. It is particularly important that the BBC is sufficiently transparent in how it identifies, handles and expedites serious complaints. This includes complaints received during election periods, where there is greater expectation for the BBC to respond swiftly at short timescales where necessary.
- 3.39 Finally, we will also **examine whether the BBC’s complaints process continues to deliver for audiences**. Making a complaint about a BBC programme should be a straightforward process and what happens to a complaint should be clear to everyone who makes one. However, we know that some complainants have incorrectly brought their complaint directly to Ofcom before contacting the BBC and some also tell us that they find the BBC’s complaints process difficult to understand. Separately, we are also aware that the timeframes for receiving a response from the BBC can sometimes be lengthy, potentially acting as a deterrent to complainants escalating their issue to Ofcom. Further, the BBC, like Ofcom, receives significantly more complaints now than previously.⁴¹ Given the BBC First framework, this has also occasionally impacted on the time taken for the BBC to respond to complainants.
- 3.40 After consideration, we have decided not to examine two additional areas: first, in 2019 we conducted an extensive [review of BBC news and current affairs](#) which considered, in part, due impartiality. Through our ongoing content standards enforcement work, we keep the BBC’s compliance with the due impartiality rules in the Code under close review. Whilst we are not minded to include due impartiality as a standalone area to examine in the Periodic Review, we would not hesitate in considering this issue in future if the need arises. Second, we believe it would be appropriate for us to consider the suitability of the BBC online arrangement⁴² in the next Periodic Review of the BBC, in light of impending changes to online safety regulation to tackle harmful content online.

Assessing the impact of the BBC on competition

- 3.41 It is essential that the BBC modifies its public services to meet the changing needs of audiences. It is also important that the BBC’s commercial activities adapt to changing market conditions so that they can respond to opportunities as they arise and maximise returns (which are ultimately used to supplement the licence fee or re-invest in the commercial activities). We support the need for the BBC to innovate, grow and change as long as this is done fairly.

⁴¹ The BBC received 368,377 Stage 1 complaints in 2019/20, compared to 218,352 in 2018/19. See [BBC Group Annual Report and Accounts 2019/20](#), p. 105 and [BBC Group Annual Report and Accounts 2018/19](#), p.134.

⁴² Online material means content on the BBC website and apps. This includes written text, images, video and sound content. It **does not** extend to social media, Bitesize, BBC material on third party websites and World Service content, among other things.

- 3.42 As a large, publicly funded organisation which operates across the UK television, radio and online sectors, the BBC has the potential to impact competition. The aim of the regulation set out in the Charter and the Agreement is to limit any adverse impacts on competition to those that are necessary for the BBC to deliver on the Mission and Public Purposes. If competition is not properly protected then this could mean less choice for audiences if, for example, the actions of the BBC deter entry, its rivals stopped offering services, or there was a reduction in quality improvements or innovation which might otherwise have occurred.
- 3.43 The BBC is required to have regard to the effects of its activities on competition in the UK and to have regard to promoting positive effects on the wider market.⁴³ Where the BBC makes a material change to its UK Public Services it must, among other things, consider the effect on fair and effective competition in the UK and avoid any unnecessary negative impact.⁴⁴
- 3.44 The BBC must also ensure that its commercial activities do not distort the market or create an unfair competitive advantage as a result of its relationship with the licence fee funded public service activities.⁴⁵
- 3.45 Ofcom has a role in protecting fair and effective competition.⁴⁶ We have put in place rules for both the public service and commercial activities and we review the changes the BBC makes to these activities.
- 3.46 As set out in *Small Screen: Big Debate*, there have been significant changes in both the market and in audience behaviour. We expect this pace of change will continue. It is also important that the framework provides sufficient flexibility for the BBC to continue to innovate and meet audience needs while ensuring fair and effective competition is protected.

The process for changes to the UK Public Services

- 3.47 The BBC must consider whether any proposed change to its UK Public Services is material.⁴⁷ For any material change the BBC must carry out and consult on a Public Interest Test (“PIT”) and can only implement the change if it has been approved by Ofcom.⁴⁸ The PIT must consider how the proposed change helps the BBC to meet its Mission and Public Purposes and whether the public value created by the change justifies any adverse impact on fair and effective competition.⁴⁹ In reaching a subsequent decision, Ofcom must also

⁴³ Article 11 of the Charter.

⁴⁴ Article 11 of the Charter. See also Article 20(4) of the Charter and clauses 7 to 11 of the Agreement.

⁴⁵ Article 18(b) of the Charter. See also Article 20(5) of the Charter.

⁴⁶ Among other things, Ofcom must set requirements in the BBC’s Operating Framework to protect fair and effective competition in the UK (Article 46 of the Charter).

⁴⁷ Many of the decisions that BBC makes on a day to day basis (while sometimes high profile) are not considered material. Clause 7(7) of the Agreement defines a material change as a new UK Public Service or a change to a current UK Public Service that may have a significant adverse impact on fair and effective competition.

⁴⁸ Clause 7(6) of the Agreement in relation to UK Public Services, and clause 16(5) in relation to non-service activities.

⁴⁹ Clauses 8, 10, 17 and 19 of the Agreement, and Article 20(4) of the Charter.

consider whether the change is material, and carry out either a BCA or a shorter assessment considering the same issues as the BBC's PIT.⁵⁰

- 3.48 If the BBC does not consider the change to be material and Ofcom agrees with the BBC's assessment, there are no further regulatory requirements. However, if we disagree with the BBC and consider that its proposed change is material, we may, among other things, direct the BBC to carry out a PIT.⁵¹ In practice, to avoid this occurring, the BBC normally provides its materiality assessments to Ofcom prior to implementing any change to its services.
- 3.49 Through conversations with stakeholders and as we have gained more experience about how the material changes regime works in practice, we have identified a number of issues.
- 3.50 **More clarity on the initial materiality process could be beneficial.** It is for the BBC to undertake the initial assessment of whether a change is material. We and stakeholders have raised concerns about a lack of engagement with stakeholders during this process and that the BBC is not providing sufficient detail about the changes it plans to make. As a result, there is concern that the BBC has not fully considered the impact of changes on competition.
- 3.51 While Ofcom has no formal role in this initial process, in practice the BBC provides its assessments to Ofcom for review. This has led to a lack of clarity for stakeholders about Ofcom's role in the process. It also means that all changes, even changes that hold no, or a low risk, of impacting the market, are being evaluated by Ofcom.
- 3.52 We plan to **consider whether any changes are needed to the BBC PIT and Ofcom BCA processes to ensure the BBC can effectively meet audience needs and that fair and effective competition is protected.** The current process of the BBC undertaking a PIT, followed by an Ofcom materiality assessment and BCA (or shorter assessment) can be duplicative and may not provide the right incentives, particularly for the BBC. The BBC has noted the importance of avoiding duplicative regulation and red tape in allowing it to innovate.⁵² Other stakeholders have raised concerns about the lack of detail in the PIT consultations and that the BBC does not take their views into account.

Commercial activities

- 3.53 The BBC may only carry out commercial activities through subsidiary companies. To ensure there is an effective boundary between the public service and the commercial activities, we have imposed a number of requirements on the BBC to protect fair and effective competition.⁵³

⁵⁰ Clause 9(2) of the Agreement in relation to UK Public Services, and clause 18(2) in relation to non-service activities. See also Ofcom, March 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance.](#)

⁵¹ Clause 9(6) of the Agreement in relation to UK Public Services, and clause 18(6) in relation to non-service activities.

⁵² BBC, March 2021. [The BBC's response to Ofcom's 'Small Screen: Big Debate' consultation on the Future of Public Service Broadcasting](#), p.5.

⁵³ Ofcom, February 2019. [The BBC's commercial and trading activities: Ofcom's requirements and guidance.](#)

- 3.54 BBC Studios is the BBC’s main commercial subsidiary. Since it was incorporated in 2017 (when the majority of the production activities were moved out of the public service), it has been merged with BBC Worldwide (that sells programmes in the UK and around the world), has taken full control of seven out of ten UKTV channels and entered into significant content deals including with Discovery, BritBox and Sky.
- 3.55 In our review of BBC Studios, we are looking to better understand how the BBC has implemented the requirements.⁵⁴ The BBC Studios Review considers whether any changes are needed to protect fair and effective competition and/or ensure the BBC has sufficient flexibility to meet the challenges and opportunities of the evolving markets it operates in within the current regulatory framework.
- 3.56 The Periodic Review provides an opportunity for discussion about whether the framework created by the Charter and Agreement is still fit for purpose, taking account of market developments and the way BBC Studios has evolved over the past four years.
- 3.57 In particular, we think it will be helpful to **consider within the Periodic Review the role of the public service in the operation of the commercial activities**. For example, should it be made clear that it has significant oversight of the commercial activities and responsibility for setting their strategic direction or should its role be more directly limited to ensuring the commercial activities fit with the Mission and Public Purposes?

Consultation questions

We request stakeholders’ views and evidence on the following questions:

Question 1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.

Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.

Question 3: Do you have any views on how to measure the BBC’s performance?

Question 4: Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.

Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC’s UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.

Question 6: Do you have any concerns about the regulatory framework for the BBC’s commercial activities that are not being considered in the review of BBC Studios?

⁵⁴ Ofcom, April 2021. [Review of the interaction between BBC Studios and the BBC Public Service](#).

4. Next steps

- 4.1 The deadline for responding to this consultation is **15 September 2021**. We welcome evidence from stakeholders on the areas outlined in this consultation.
- 4.2 We will consider all stakeholder representations when undertaking our analysis, which we expect will require some further research and information gathering.
- 4.3 We plan to publish our first in-depth review of the BBC's performance as part of our 2020/21 Annual Report on the BBC, currently scheduled for winter 2021. This review will assess the BBC's performance throughout 2020/21, and consider how the BBC has delivered its Mission and Public Purposes and responded to issues raised by Ofcom over the Charter period to date.
- 4.4 We plan to publish our Periodic Review report in spring 2022, which will set out areas Ofcom thinks that government should consider in its own mid-term Charter review. It will also signpost any further work Ofcom will undertake.
- 4.5 In spring 2022, we will also publish a detailed consultation on a new Operating Licence for the BBC's UK Public Services.
- 4.6 We intend to meet with interested stakeholders to discuss our proposals further in the autumn.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 15 September 2021.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/how-ofcom-regulates-the-bbc>. You can return this by email to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to bbcregulationreview@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only.
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- A1.5 Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
- A1.6 Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.7 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.8 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.9 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.10 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.11 If you want to discuss the issues and questions raised in this consultation, please contact bbcregulationreview@ofcom.org.uk.

Confidentiality

- A1.12 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that

everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.13 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.14 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.16 Following this consultation period, Ofcom plans to publish an assessment of the BBC's performance over the Charter period to date alongside our Annual Report on the BBC in winter 2021. We also plan to publish a Periodic Review report in spring 2022 which will include recommendations to DCMS for its mid-term Charter review. We also plan to consult on proposals for a new BBC Operating Licence in spring 2022.
- A1.17 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Consultation questions

A4. Consultation questions

A4.1 This consultation is seeking views from stakeholders in relation to how we plan to review our regulation of the BBC.

Question 1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.

Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.

Question 3: Do you have any views on how to measure the BBC's performance?

Question 4: Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.

Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.

Question 6: Do you have any concerns about the regulatory framework for the BBC's commercial activities that are not being considered in the review of BBC Studios?