

## Research Briefing

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# Media Bill: policy background

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## Summary

A Media Bill was included in the [Background Briefing Notes to the Queen's Speech of 10 May 2022](#) (PDF). According to the Briefing Notes, the Bill would:

- enable the sale of Channel 4.
- ensure that public service content was prominent, available, and easily accessible across a range of platforms.
- update the public broadcasting framework for the digital age and promote the production and distribution of distinctively British content.
- enable Ofcom to introduce a video-on-demand code to protect UK audiences from harmful material.
- update the public service remit of S4C (Sianel Pedwar Cymru), the Welsh language television service, to include digital and online services.
- repeal [section 40 of the Crime and Courts Act 2013](#) – this would, if commenced, require news publishers to pay the costs of any court judgment if they were not a member of an approved regulator, regardless of the outcome of the court judgment.

The Media Bill has not yet been introduced.

In January 2023, [the Government announced that Channel 4 would remain in public ownership](#). The forthcoming Bill would relax the “publisher-broadcaster” restriction in Channel 4’s remit so that it would have a greater ability to produce and monetise its own content. The Bill would also create a new statutory duty for the corporation’s board to ensure the long-term financial sustainability of Channel 4.

This Briefing gives background to the above policy areas and some of the issues covered in the [broadcasting white paper](#) (PDF) of April 2022.

# 1 New technologies and changing viewing habits

The [Communications Act 2003](#) was the last major update to broadcasting legislation. At that time, most people relied on the five free-to-air terrestrial channels provided by the UK's public service broadcasters (PSBs, section 3 of this briefing looks at PSBs in more detail). The output of commercial broadcasters was available to a minority of viewers who subscribed to Sky or cable services. Television programmes were watched at the time they were broadcast ("linear viewing").

Since then, the broadcasting landscape has changed dramatically with the rise in popularity and availability of streaming and internet-delivered services. Netflix's subscription video on demand (SVOD) service launched in the UK in the 2012. Amazon Prime Video followed in 2013 and Apple TV+ launched in November 2019. Over 75% of UK households now use a video-on-demand service.<sup>1</sup> Viewers can watch TV when it suits them, on a range of devices including smartphones, laptops and tablets, with younger people in particular moving away from linear viewing.<sup>2</sup>

Connected TVs allow viewers to access content through different user interfaces, including electronic programme guide (EPGs), digital video recorders (such as TiVo), video on-demand players (such as Netflix or BBC iPlayer) or TV platforms.<sup>3</sup>

Another development has been consolidation in the global market with, for example, Amazon acquiring MGM and the US telecoms company AT&T merging its media division, WarnerMedia, with Discovery. Ofcom, the UK's communications regulator, has said that while this can deliver more choice for audiences, it can add further pressure to the financial sustainability of public service media in the UK.<sup>4</sup> The Government has also warned that UK-based broadcasters are directly competing with services based overseas, many of whom have greater financial resources.<sup>5</sup> The new global players (eg Amazon, Google, Apple)<sup>6</sup> could "crowd out" UK broadcasters.<sup>6</sup>

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<sup>1</sup> DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022, p11 (accessed 27 February 2023)

<sup>2</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16 2019, November 2019, p3 and pp7-10 (accessed 27 February 2023)

<sup>3</sup> As above, para 231

<sup>4</sup> Ofcom, Small Screen: [Big Debate Statement - Recommendations to Government on the future of Public Service Media](#) (PDF), July 2021, para 1.3 (accessed 27 February 2023)

<sup>5</sup> DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022, pp12-3

<sup>6</sup> As above, p13

In March 2021, the Digital, Culture, Media and Sport Committee concluded that the changing broadcasting landscape meant the 2003 Act was no longer fit for purpose.<sup>7</sup> Later in the year, Ofcom also said broadcasting legislation needed overhauling for the digital age.<sup>8</sup>

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<sup>7</sup> Digital, Culture, Media and Sport Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, p3 (accessed 27 February 2023)

<sup>8</sup> Ofcom, Small Screen: [Big Debate Statement - Recommendations to Government on the future of Public Service Media](#) (PDF), July 2021, p2

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## 2

# Broadcasting white paper (April 2022)

In a June 2021 [Written Ministerial Statement](#), Oliver Dowden, then Secretary of State for Digital, Culture, Media and Sport (DCMS), said the Government would publish a broadcasting white paper in autumn 2021.<sup>9</sup> This would ensure the UK's broadcasting system was “dynamic, relevant” and meet the needs of audiences in the future. To inform the white paper, there were DCMS consultations on:

- the ownership model of Channel 4.
- the regulation of video-on-demand services.

The consultations are discussed later in this Briefing. The DCMS responded to both on 28 April 2022, the same date that it published a [broadcasting white paper](#) (PDF).<sup>10</sup> This set out the Government's plans to:

- introduce a new “public service remit” for the UK's public service broadcasters (PSBs): the BBC, ITV, STV, Channel 4, S4C and Channel 5.
- pursue a change to private ownership for Channel 4.
- give Ofcom powers to introduce a video-on-demand code to protect audiences from harmful material.
- reform the listed events regime for broadcasting events of national interest.
- update the “prominence” rules so that viewers can easily find public service channels on online TV platforms (eg smart TVs, pay TV services, streaming sticks and set top boxes).
- review the independent TV production sector “to make sure it remains effective for promoting growth”.
- continue to engage with the radio industry to gain a better understanding of the policies and practices of smart speaker platforms.

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<sup>9</sup> DCMS, [Broadcasting Policy](#), HCWS113, 23 June 2021

<sup>10</sup> DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022 (accessed 27 February 2023)



In an accompanying press release, Nadine Dorries, then Secretary of State, [said the reforms would revamp broadcasting law to usher in a new golden age for British television and radio.](#)<sup>11</sup>

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<sup>11</sup> [Broadcasting reforms to create new golden age of British TV and help nation's public service broadcasters thrive](#), DCMS press release [online], 28 April 2022 (accessed 27 February 2023)

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### 3

## Public service broadcasting (PSB)

The UK's public service broadcasters (PSBs) are:

- the BBC – funded primarily through the licence fee.
- Channel 4 – publicly owned but commercially funded.
- Channel 3 licence holders - ITV in England and Wales, STV in Scotland and UTV in Northern Ireland – fully commercial.
- Channel 5 – fully commercial.
- S4C (the independent Welsh language service) - part publicly and part commercially funded.<sup>12</sup>

PSBs have additional obligations to other broadcasters, such as requirements to show a certain amount of news and current affairs programmes. They must also provide their services for free across all TV platforms, including pay TV (in turn, TV platforms must make those services available – the ‘must offer, must carry’ principle). The PSBs receive benefits in return, including the right to appear prominently on electronic programme guides (EPGs). This arrangement is sometimes referred to as the “PSB compact”.

All free-to-air BBC services are bound by PSB obligations, including iPlayer. However, PSB obligations only extend to the main linear Channel 3, Channel 4 and Channel 5 services. ITV Hub, All 4 and My5 are not covered by the PSB remit.

Ofcom, the communications regulator, is responsible for ensuring compliance with the PSB duties and publishes an annual compliance report. The most recent was published in August 2021.<sup>13</sup> The Ofcom website [includes further material on the performance of PSBs](#).

Under [section 264 of the Communications Act 2003](#), Ofcom must review PSB every five years. A [review of 2014 to 2018](#) was published in February 2020.<sup>14</sup>

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<sup>12</sup> For further detail, see Digital, Culture, Media and Sport Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, pp4-5

<sup>13</sup> Ofcom, [PSB Annual Compliance Report 2021](#) [online], August 2021 (accessed 27 February 2023)

<sup>14</sup> Ofcom, [Small Screen: Big Debate – a five-year review of Public Service Broadcasting 2014-18](#), February 2020 (accessed 27 February 2023)

## 3.1

# PSB statutory purposes and objectives

The PSBs have a collective responsibility to contribute to the fulfilment of PSB purposes. These are set out in [section 264\(4\) of the Communications Act 2003](#):

- a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;
- (b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;
- (c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and
- (d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to—
  - (i) the contents of the programmes;
  - (ii) the quality of the programme making; and
  - (iii) the professional skill and editorial integrity applied in the making of the programmes.

The fulfilment of the purposes must be compatible with the PSB objectives, as set out in [section 264\(6\) of the 2003 Act](#), and summarised by Ofcom:

- to inform, educate and entertain.
- to reflect and support cultural activity in the UK, such as drama, comedy and music.
- to facilitate civic understanding and fair and well-informed debate on news and current affairs.
- to satisfy a wide range of different sporting and other leisure interests.
- to 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.
- to include a suitable quantity and range of high-quality and original programmes for children and young people.

- to 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.<sup>15</sup>

### Individual obligations

In addition to contributing to the fulfilment of the PSB purposes, each PSB has further obligations, as set out in the 2003 Act and their licences with Ofcom. The BBC's are set out in its Royal Charter and Agreement and operating licence with Ofcom. A July 2021 Ofcom document sets out in full the additional statutory (or Charter) obligations, as well as the requirements included in Ofcom's licences with each PSB.<sup>16</sup> A summary of the BBC's Charter obligations and the statutory PSB remits of the other PSBs is given below.

### BBC

The BBC's public service remit is set out in its Royal Charter. Under Article 4, the BBC's main object is the fulfilment of its mission and the promotion of the public purposes. Article 5 states 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". Article 6 sets out the public purposes:

- to provide impartial news and information to help people understand and engage with the world around them.
- to support learning for people of all ages.
- to show the most creative, highest quality and distinctive output and services.
- 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.
- to reflect the United Kingdom, its culture and values to the world.

### Channel 3 and Channel 5

[Section 265\(2\) of the 2003 Act](#) sets out the public service remit for Channel 3 and Channel 5 - "the provision of a range of high quality and diverse programming".

### Channel 4

Channel 4's remit is set out in section [265\(3\) of the 2003 Act](#) - "the provision of a broad range of high quality and diverse programming which, in particular":

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<sup>15</sup> Ofcom, [PSB regulatory framework Small Screen: Big Debate statement: Annex 5](#) (PDF), July 2021, pp1-2 (accessed 27 February 2023)

<sup>16</sup> Ofcom, [PSB regulatory framework Small Screen: Big Debate statement: Annex 5](#) (PDF), July 2021

- (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
- (b) appeals to the tastes and interests of a culturally diverse society;
- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character.

In addition to providing the Channel 4 service, the Channel 4 Corporation has statutory content duties which it can deliver across all its television and online services. These include requirements to:

- make a broad range of high-quality content that appeals to the tastes and interests of a culturally diverse society.
- provide news and current affairs.
- provide content which appeals to older children and young adults.
- make, broadcast and distribute high-quality films, intended to be shown to UK audiences, and broadcast and distribute films (including third party films) that reflect cultural activity in the UK to audiences.
- support the development of people with creative talent.
- promote alternative views and new perspectives.
- promote measures intended to ensure that people are well-informed and motivated to participate in society.
- support and stimulate well-informed debate on a wide range of issues, including by providing information and views from around the world and by challenging established views.<sup>17</sup>

#### S4C

S4C's Welsh language 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 consists of programmes in Welsh.<sup>18</sup>

## 3.2

### PSB – still relevant in the digital age?

Two select committee reports have called for the legislative framework for PSB – ie the Communications Act 2003 – to be updated to take account of the streaming and internet-delivered services that have emerged since then. In

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<sup>17</sup> As above, p3

<sup>18</sup> [Paragraph 3\(3\), Part 2 of Schedule 12 to the Communications Act 2003](#)

July 2021, Ofcom published recommendations to Government that also said the Act needed overhauling for the digital age.

## House of Lords Committee on Communications and Digital report (November 2019)

A November 2019 report from the House of Lords Committee on Communications and Digital examined the contemporary role of PSBs, the financial pressures they faced, and whether the PSB compact was “fit for the age of the video on demand”.<sup>19</sup> The Committee’s view was that PSB remained “essential” and that UK society and democracy would be “worse off” without it.<sup>20</sup> According to the Committee, PSB:

- brings the nation together in a way in which other media cannot – eg through ‘event’ television (sport, landmark drama and documentary series and live entertainment) that attracts a large number of viewers and provokes discussion across the country.<sup>21</sup>
- raises the level of quality, as well as ensuring continued investment in original UK content across a range of programming.<sup>22</sup>

The Committee said an essential feature of PSB was its universality - free at the point of use after paying the licence fee. The availability and affordability of PSB was “unmatched by other services”.<sup>23</sup>

However, the Committee raised concerns that PSBs were struggling to serve all audiences in the face of increased competition and changing viewing habits. The Committee said younger people and people from BAME backgrounds were not being served “well enough”:

...Viewing of BBC channels by 16–34-year-olds has halved since 2010; this group spends only two minutes watching BBC iPlayer each day, compared with 40 minutes on Netflix. BAME viewers spend less time watching public service broadcasters than the average.<sup>24</sup>

According to the Committee, PSBs’ legitimacy depended on serving these groups better in future. To do so, PSBs had to take creative risks and do more to involve people from different backgrounds in the development and making of programmes.<sup>25</sup>

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<sup>19</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16 2019, November 2019

<sup>20</sup> As above, para 31

<sup>21</sup> As above, para 31 and paras 81-94

<sup>22</sup> As above, para 31

<sup>23</sup> As above, para 31

<sup>24</sup> As above, p3. See paras 32-80 for further discussion

<sup>25</sup> As above, p3

## Digital, Culture, Media and Sport Committee report (March 2021)

The Digital, Culture, Media and Sport Committee considered the future of public service broadcasting in a March 2021 report.<sup>26</sup> The Committee said linear broadcast television by PSBs remained “important” and that universality was at the “heart of PSB” and should remain so.<sup>27</sup> The COVID-19 pandemic had highlighted the role PSB content could play in bringing the country together and providing access to topical, UK-specific information and entertainment.<sup>28</sup> The pandemic had also reinforced the “critical importance of free and easy access to trusted news sources” and the role that PSBs could play in tackling the spread of misinformation online.<sup>29</sup>

However, the Committee warned that PSBs were at risk of losing touch with the under-35s. Reaching younger audiences, and building relationships with them, was “of the utmost importance” for the long-term popularity and sustainability of PSBs.<sup>30</sup> The Committee also said much more needed to be done to increase diversity - notably disabled people and BAME representation - and particularly in upper levels of management.<sup>31</sup>

The Committee claimed the 2003 Act was no longer fit for purpose and new primary legislation was “urgently needed to” ensure the PSB compact was sustainable within the increasingly internet-based audio-visual landscape.<sup>32</sup>

## Ofcom recommendations (July 2021)

Ofcom’s [“Small Screen: Big Debate” review](#) looked at the future of public service broadcasting and media (PSM). In July 2021, after a consultation (from 8 December 2020 to 16 March 2021),<sup>33</sup> Ofcom published a statement setting out recommendations to Government. This noted the continued value of PSB:

- UK audiences benefitted from “incredible growth in high-quality content, available on TV and online, and provided by both public service and commercial broadcasters”.
- the pandemic had “reinforced the special importance” of PSB (eg high-quality, trusted and accurate news, entertainment programmes and educational content to support home schooling).

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<sup>26</sup> DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021

<sup>27</sup> As above, para 24

<sup>28</sup> As above, para 28

<sup>29</sup> As above, para 35

<sup>30</sup> As above, para 48

<sup>31</sup> As above, para 112

<sup>32</sup> As above, p3

<sup>33</sup> Ofcom, [Small Screen: Big Debate Consultation - the Future of Public Service Media](#) (PDF), December 2020 (accessed 27 February 2023)

- PSBs were central to the UK creative economy and remained the largest commissioners of content from across the UK - around £3bn was spent each year on new programmes in a broad range of genres. UK-commissioned content that was less commercially viable (eg regional news, or minority language and religious programmes) would not be widely made without PSBs.<sup>34</sup>

However, rapid changes in the industry and a transformation in viewing habits were making it harder for PSBs to compete for audiences. Ofcom referred to further consolidation in the market since its December 2020 consultation:

...with Amazon acquiring MGM in a multibillion-dollar deal and US telecoms company AT&T merging its media division, WarnerMedia, with Discovery. While the presence of international players contributes to the success of the UK's creative economy and delivers more choice for audiences, it adds further pressure to the financial sustainability of PSM in the UK. Meanwhile connected TV platforms are increasingly intermediaries in the relationship between broadcasters and their audiences, undercutting the commercial benefits of the current regulatory model.<sup>35</sup>

Ofcom said PSBs had to accelerate their digital plans if they were to maintain a strong link with existing audiences, including younger viewers. The regulatory system also needed updating for the digital age. To ensure PSB and media was financially sustainable and capable of delivering for audiences watching broadcast TV and online, Ofcom recommended:

- a revised set of PSM objectives, with new legislation to secure and strengthen its most important features - a broad range of programming that reflects all parts of the UK and the ability to engage the widest possible audiences. There should also be a new PSB objective to support the UK's creative economy.
- new legislation to secure prominence for live and on-demand public service content across all major TV services and platforms. Ofcom should be given monitoring and enforcement powers.
- updated legislation so the same requirements supporting independent productions apply to all broadcast TV and online PSM content.
- updated rules for PSM providers, so that their requirements would ensure online and broadcast TV audiences benefited from PSB.

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<sup>34</sup> Ofcom, Small Screen: [Big Debate Statement - Recommendations to Government on the future of Public Service Media](#) (PDF), July 2021, p2

<sup>35</sup> As above, p2



- introducing flexibility to enable additional providers to deliver new PSM content, alongside existing PSM providers.<sup>36</sup>

Ofcom said it would support the Government on how the recommendations could be included in its white paper and any subsequent media legislation.<sup>37</sup>

### 3.3

## The white paper – new PSB purposes

In its April 2022 broadcasting white paper, the Government said the PSB system remained vital to the UK’s economic, cultural and democratic life.<sup>38</sup> However, at the time of the 2003 Act, television broadcasting was still predominantly analogue, and video-on-demand services and global streaming services has not yet emerged. The system therefore needed updating to take account of these changes.

According to the white paper, the purpose of a modern PSB system was “to ensure that viewers continue to have access to a wide range of public service content on a free-to-air basis”. In this context, PSB content includes:

- culturally relevant content that reflects the United Kingdom of today and the values that define it.
- economically important content produced by independent producers and across the UK.
- democratically impactful content such as trusted, impartial news and current affairs.<sup>39</sup>

The existing PSB purposes and objectives would be replaced with a “new, shorter remit, focussed on the things that they are uniquely positioned to deliver, and would make us poorer as a nation – culturally, economically and democratically – if they were not provided”.

Given the changes in technology since 2003, the Government would legislate to give PSBs greater flexibility in how they delivered their remits. This would make it easier for them to make their content available on a wider range of free-to-air platforms.

PSBs would continue to have their own individual channel remits. This would help ensure the current high standards of programme quality were maintained, and that a wide range of content was produced for viewers to enjoy.

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<sup>36</sup> As above, pp2-6

<sup>37</sup> As above, p64

<sup>38</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p22

<sup>39</sup> As above, pp22-3

The Government would also consult on embedding the importance of distinctively British content directly into the existing quota system.<sup>40</sup>

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<sup>40</sup> As above, p23

## 4 Prominence rules for PSBs

An Electronic Programme Guide (EPG) is an on-screen menu that tells viewers which TV and radio programmes are available on their televisions. As noted earlier in this Briefing, as part of the “PSB compact”, PSBs have the right to appear prominently on electronic programme guides.<sup>41</sup> This is to make them easy to find and watch. Ofcom publishes a code to regulate the EPG provision and must review it “from time to time”. Ofcom must also report on how EPGs provide information about, and access to, PSB channels and VoD content.<sup>42</sup>

The current framework guarantees that the first five channels the British public find when they switch on their TVs are operated by PSBs. As the DCMS has noted, the framework provides important cultural and societal benefits, allowing viewers to easily find their favourite programmes. Prominence also boosts viewership and engagement, which is important to advertising revenue and brand value for PSBs. This ensures they can continue to deliver high quality, original programming.<sup>43</sup>

In a July 2019 report, Ofcom said that “prominence” underpinned the delivery of public service broadcasting in the UK.<sup>44</sup> However, the current framework pre-dates the widespread availability of TV programmes online and only covers the prominence of linear PSB channels within EPGs. Changes to viewing habits – ie a move to online viewing, including accessing PSBs’ content through catch-up or on-demand services – had resulted in calls for the law to be updated. Ofcom called for new legislation to keep PSB content prominent and to support the sustainability of the PSBs. A new framework would ensure that viewers could continue to find the PSBs’ linear and on-demand services across connected devices (smart TVs, set-top boxes and streaming sticks).<sup>45</sup>

In its November 2019 report on PSB, the House of Lords Committee on Communications and Digital endorsed Ofcom’s recommendation to update the prominence regime and said the Government should legislate to do so.<sup>46</sup>

The March 2021 report on PSB from the DCMS Committee, [said the Government had been too slow to act on Ofcom’s recommendations](#). The Committee recommended the Government prioritise primary legislation to

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<sup>41</sup> [Section 310 of the Communications Act 2003](#)

<sup>42</sup> [Section 311A of the Communications Act 2003](#)

<sup>43</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p23

<sup>44</sup> Ofcom, [Review of prominence for public service broadcasting](#) (PDF), July 2019, p2 (accessed 27 February 2023)

<sup>45</sup> As above, p1

<sup>46</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16 2019, November 2019, para 238

update the 2003 Act to ensure that prominence would be extended to online viewing platforms.<sup>47</sup>

In its June 2021 response, the Government [said it was committed to acting on Ofcom's prominence recommendations and would do so as soon as the legislative timetable allowed](#).<sup>48</sup> A September 2021 [DCMS press release](#) confirmed the Government would update the rules on prominence.<sup>49</sup>

## 4.1 The white paper – reforms to prominence

The broadcasting white paper includes plans to introduce a new prominence regime for on-demand television so that public service content would be available and easy to find on designated TV platforms. The regime would also include “appropriate recognition for the unique relevance of the public service content produced by STV and S4C in particular areas of the UK”.

The white paper explains that the framework will be principles-based, proportionate and flexible:

...the providers of designated TV platforms – those used by a significant number of UK viewers as a main way of watching television content on-demand – will be required to give appropriate prominence to PSBs' designated on-demand services. We expect TV platform providers which are in scope to include popular Smart TVs, pay TV operators, and global TV platform providers. This new regime is to be enforced by Ofcom, who will be required to develop and maintain guidance on the new framework.

Our new prominence regime for on-demand services will be proportionate and flexible, so it can adapt to the differences across the market and ongoing changes, without creating undue burdens and negatively impacting consumer choice and experiences. Ofcom will also be given the necessary new enforcement powers, including information gathering powers and the ability to impose financial penalties where appropriate in the event of non-compliance. The regime will incorporate new rules to ensure availability of content on relevant TV platforms by requiring PSB providers to offer their designated on-demand services to platforms and requiring platforms to carry these PSB on-demand services.<sup>50</sup>

It would be underpinned by the following statutory objectives:

- ensuring that PSB on-demand services are available to view by as many members of their intended audiences as practicable;

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<sup>47</sup> DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, para 80

<sup>48</sup> [The future of public service broadcasting: Government Response to Committee's Sixth Report of Session 2019-21](#) (PDF), HC 273 2021-22, June 2021, p7 (accessed 27 February 2023)

<sup>49</sup> [New rules to protect 'distinctively British' public service broadcasting](#), DCMS press release [online], 15 September 2021 (accessed 27 February 2023)

<sup>50</sup> DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022, p24

- ensuring that PSB on-demand services are given appropriate prominence on relevant TV platforms; and
- ensuring that PSB on-demand services are made available on terms that are consistent with the sustainable delivery of PSB obligations, but which also do not place disproportionate restrictions on consumer choice or TV platforms' ability to innovate.<sup>51</sup>

Ofcom would be given a dispute resolution function so that if PSBs and platforms could not reach mutually beneficial commercial arrangements, Ofcom could intervene in support of effective negotiations.<sup>52</sup>

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<sup>51</sup> As above, p24

<sup>52</sup> As above, p24

## 5 Listed events

[Part IV of the Broadcasting Act 1996](#) (“the 1996 Act”) gives the Secretary of State the power to draw up a list of sporting events of national interest. The aim is “to make sure that key sporting events are made available to all television viewers, particularly those who cannot afford the extra cost of subscription television”.<sup>53</sup>

No definition of “national interest” is given in the Act.<sup>54</sup> However, the DCMS has said a “listed event” is “one which is generally felt to have special national resonance” and which contains “an element which serves to unite the nation, a shared point on the national calendar, not solely of interest to those who follow the sport in question.”<sup>55</sup>

The listing of an event ensures the broadcast rights to that event, if offered, must be made available on “fair and reasonable terms” to the free-to-air channels that are received by 95% of the UK population.<sup>56</sup>

The inclusion of an event in the list does not mean it has to be shown on television. Sports rights holders are not obliged to offer events and broadcasters are not obliged to bid for coverage of them.<sup>57</sup>

Under section 97 of the 1996 Act, the Secretary of State can add and remove events from the list at any time, but only after consultation with:

- the BBC.
- the S4C Authority.
- Ofcom, the UK’s broadcasting regulator.
- the holder of the rights for the event in question.

The current list consists of two groups:

- **Group A events** - full live coverage must be offered.  
This group includes the FA Cup Final, the Olympic and Paralympic Games, and the Women’s Football World Cup European Championships.

<sup>53</sup> DCMS, [Coverage of sport on television](#) (PDF), Undated, p4 (accessed 23 February 2023)

<sup>54</sup> Report of the Independent Advisory Panel to the Secretary of State for Culture, Media and Sport, [Review of free-to-air listed events](#) (PDF), November 2009, para 15 (accessed 23 February 2023)

<sup>55</sup> DCMS, [Coverage of sport on television](#) (PDF), p4

<sup>56</sup> As above, p4

<sup>57</sup> As above, p5

- **Group B events** - these can have live coverage on subscription television provided that secondary coverage is offered to the free-to-air broadcasters.

This group includes the Six Nations rugby union tournament, the Ryder Cup, and cricket test matches played in England.

In its November 2019 report on PSB, the House of Lords Committee on Communications and Digital said the listed events regime provided “important protection for the availability of major sports events”. The Committee recommended that the Secretary of State should consult sporting bodies, broadcasters and the public over “increasing modestly” the number of listed events.<sup>58</sup> In its response to the Committee’s report, the Government said it was supportive of the listed events regime. However, the Government had no plans to review the current regime because it believed this struck an “appropriate balance between retaining free-to-air sporting events for the public while allowing rights holders to negotiate agreements in the best interests of their sport”.<sup>59</sup>

## 5.1

### The white paper – listed events to be reviewed

The broadcasting white paper said the current list of events achieved an “appropriate balance” between retaining free-to-air sports events for the public, while allowing rights holders to negotiate agreements in the best interests of their sport.<sup>60</sup> However, it also noted the framework was established in 1996 and does not 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 (ie catch-up and on-demand viewing), raised questions about whether the listed events regime remained fit for purpose:

If for example the Olympic 100 metre final was broadcast live in the middle of the night on the BBC, but all streaming and catch-up rights were sold to a different broadcaster and kept behind a paywall, then a culturally relevant event might not be available to a wide audience on a free-to-air basis.<sup>61</sup>

A review of the listed events regime would consider whether its scope should be extended to include digital rights.<sup>62</sup>

Further detail on the listed events is available in:

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<sup>58</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16 2019, November 2019, para 94

<sup>59</sup> DCMS, [Government response to House of Lords Select Committee on Public Service Broadcasting: Public service broadcasting: as vital as ever](#) (PDF), February 2020, p4 (accessed 27 February 2023)

<sup>60</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p24

<sup>61</sup> As above, p25

<sup>62</sup> As above, p25

- Commons Library Briefing, [Broadcasting: listed sporting events](#) (PDF).
- Ofcom, [Code on Sports and Other Listed and Designated Events](#) (PDF), July 2014.

## 5.2 Digital Rights Review (November 2022)

In November 2022, the DCMS published guidance on its listed events digital rights review.<sup>63</sup> The guidance explained that the review would consider:

- the relative importance of digital rights for listed events as opposed to linear rights, both now and as predicted into the future, including examining audience behaviours, business models, and how changes in technology and/or live vs catch up viewing impacts audience engagement with events of national interest.
- how digital rights are currently negotiated, and predicted future developments from public services broadcasters, other broadcasters and rights holders (both international and domestic).
- the broader landscape surrounding securing digital rights, including contractual; legislative; commercial; financial; and practical benefits or constraints that would prevent or hinder as many people as possible from accessing listed events for free.
- the UK's international obligations, including under the European Convention on Transfrontier Television.<sup>64</sup>

The deadline for responses was 15 December 2022.

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<sup>63</sup> DCMS, [Listed Events: Digital Rights Review](#) [online], November 2022 (accessed 28 February 2023)

<sup>64</sup> As above



## 6 BBC funding

A [Royal Charter](#) (PDF) (Cm 9365) provides the constitutional basis for the BBC and, among other things, sets out its public purposes. The current Charter began on 1 January 2017 and runs to 31 December 2027. The Charter is accompanied by an [Agreement](#) (PDF) (Cm 9366) which provides further detail on issues covered in the Charter.

### 6.1 The licence fee model

Under the BBC's Royal Charter and Agreement, the BBC is funded primarily through the licence fee.<sup>65</sup> The licence fee model is intended to safeguard the BBC's independence from government and the market.<sup>66</sup>

A licence is required, even if a viewer does not watch BBC programmes. Under [Part 4 of the Communications Act 2003](#), a licence is needed to:

- watch or record programmes as they're being shown on TV, on any channel.
- watch or stream programmes live on an online TV service - eg ITV Hub, All 4, YouTube, Amazon Prime Video, Now TV, Sky Go.
- download or watch any BBC programmes on iPlayer.<sup>67</sup>

The above applies to any device used, including a TV, desktop computer, laptop, mobile phone, tablet, games console, digital box or DVD/VHS recorder.

On 17 January 2022, the Government announced [the cost of a TV licence would remain at £159 for two years, before rising in line with inflation from April 2024](#).<sup>68</sup>

The 2003 Act is supported by the Communications (Television Licensing) Regulations (SI 2004/692). These set out the types of television licence, the

<sup>65</sup> Article 43 of the Royal Charter

<sup>66</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16, November 2019, para 184

<sup>67</sup> This applies to any provider and any device used, including a TV, desktop computer, laptop, mobile phone, tablet, games console, digital box or DVD/VHS recorder. See: TV Licensing website, ["Do I need a TV licence?"](#) (accessed 27 February 2023)

<sup>68</sup> [HC Deb 17 January 2022 cc38-40](#)

criteria for obtaining them, the fees payable, and the concessions available. There is a Library Briefing on [TV licences for the over-75s](#) (PDF).

The use of a television receiver without a valid licence can lead to prosecution, a court appearance and a fine of up to £1,000. In some cases, where there is a refusal to pay the fine and where all other enforcement methods have been tried, a person can be sent to jail. The current position is controversial and there have been calls for non-payment to be decriminalised – see the Library Briefing [TV licence fee non-payment: should it be decriminalised?](#) (PDF).

## 6.2 The future of the licence fee

The licence fee model dates to linear viewing - watching television programmes at the time of broadcast. Changes in viewing habits (eg a move to video-on-demand) and the growth of new technologies, has resulted in the model being challenged.<sup>69</sup>

In a February 2015 report on the future of the BBC, the Culture, Media and Sport Committee noted that some people viewed the licence fee as “anachronistic” and disliked paying for a service they used “seldom or not at all”.<sup>70</sup> The Committee concluded that the licence fee was becoming “harder and harder to sustain given changes in communications and media technology and services, and changing audience needs and behaviours”.<sup>71</sup>

However, in its November 2019 report, the House of Lords Committee on Communications and Digital, claimed the licence fee was the “guarantor of the BBC’s financial independence and underpins its unique quality”. A move to a subscription model, as favoured by some, would undermine the “fundamental principle of universality” that the BBC should be free-to-air.<sup>72</sup>

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<sup>69</sup> Booth P, [Transforming the BBC into a subscriber-owned mutual](#) (PDF), Institute of Economic Affairs, October 2019; Booth, P (ed), [The case for privatising the BBC](#) (PDF), Institute of Economic Affairs, 2016; Ramsey P and Herzog C, [The end of the television licence fee?](#), European Journal of Communication, 2018; Weeds H, [Is The Television Licence fee fit for Purpose in the Digital Era?](#), Economic Affairs, 36(1), February 2016; Adam Smith Institute, [Global Player or Subsidy Junkie? Decision time for the BBC](#) (PDF), July 2010; [Abolish the BBC television license](#), e-petition, closed June 2019; [Revoke the TV licence using legislation](#), e-petition, closed September 2020; [Abolish the TV licence, it shouldn't be a legal requirement, e-petition](#), closed May 2017 (all accessed 27 February 2023)

<sup>70</sup> Culture, Media and Sport Committee, [Future of the BBC](#) (PDF), HC 315 2014-15, February 2015, paras 191-6 (accessed 27 February 2023)

<sup>71</sup> As above, para 212

<sup>72</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16, November 2019, para 201

## Digital, Culture, Media and Sport Committee report (March 2021)

In its March 2021 report on PSB, the DCMS Committee noted a “significant minority” of PSB countries in Europe had moved away from a traditional licence fee model attached to a device.<sup>73</sup> This had been driven by factors including:

- the increased number of people accessing radio and TV through computers, smartphones and tablets, which has made a licence fee tied to ownership of a TV set and/or radio anachronistic.
- the issue of free-riders, where people continue to access public service broadcasting content and services without paying a licence fee.
- difficulties and costs of collection and enforcement.
- a perceived unfairness where flat licence fees are not tied to people’s ability to pay.
- questions surrounding the legitimacy of, and public dissatisfaction with, the licence fee.
- governments seeking to reduce the independence of public service broadcasters (PSBs).<sup>74</sup>

The countries that had switched from the traditional licence fee model had moved to a universal fee implemented as either:

- a household/individual fee – Finland, Germany, Sweden; or
- a state grant - Iceland, Netherlands, Romania.

According to the Committee, these changes had resulted in less stable funding and the erosion of broadcasters’ independence from politicians.

An annex to the Committee’s report examined the arguments for and against the licence fee model and alternatives to it. Some of its findings are briefly set out below.

### Household/individual fee

A household/individual fee has the following advantages:

- simplicity: could minimise evasion and the cost of collect and/or enforcement if funding can be deducted directly and is payable by all citizens.
- fairer and more progressive than a flat licence fee, depending on the terms of payment.
- not tied to specific devices or types of media; all citizens pay.

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<sup>73</sup> DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156, March 2021

<sup>74</sup> As above, Annex A

However, it has disadvantages:

- more easily subject to political interference and/or pressure than the licence fee. Would need to be set up with safe-guards to minimise the possibility of political interference.
- can be less transparent than a licence fee.
- payable by all citizens, including those who do not use public service broadcasting so could be unpopular.

### **State budget model**

According to the Committee, a state budget model has these advantages:

- simplicity: could minimise evasion and the cost of collection and/or enforcement if funding can be deducted directly and is payable by all citizens.
- potentially fairer and more progressive than a flat licence fee, depending on the terms of payment.
- not tied to specific devices or media, so all citizens pay.

This model also had disadvantages:

- easily subject to political interference and pressure. Less transparent than a licence fee.
- might not be cheap/simple to implement.
- payable by all citizens, including those who do not use public service broadcasting, so could be unpopular.

### **Advantages of moving from the UK licence fee model**

The Committee set out the advantages of the UK moving from its current licence fee model:

- the ability to create a more progressive funding model based on ability to pay, rather than a flat fee.
- requiring all citizens to pay regardless of media use removes free-rider problems.
- a simpler model could address the anachronism of the licence fee being tied to live TV and iPlayer viewing, but not radio and PSB content distributed via the internet (including social media).
- reduced collection and enforcement costs.
- could address the financial deficit that the BBC might face if decriminalisation of TV licence fee evasion is introduced.

### **Disadvantages of moving from a licence fee model:**

However, a move from the current model could have disadvantages:

- the licence fee is the most stable and predictable form of funding for publicly funded public service broadcasting.
- requiring all citizens to pay regardless of media use could be unpopular and seen as unfair.
- could be hugely disruptive for the BBC (and S4C) and direct energy from programme-making towards defending public service broadcasting as a concept.
- can be costly to implement a new funding model.
- non-licence fee funding models are more open to political interference.

As well as considering the arguments for replacing the licence fee with a household/individual fee or state grant, the Committee considered alternative funding options:

- advertising.
- subscription.
- taxation as a supplement to public funding.
- donations.

According to the Committee, none of the alternatives were “sufficiently attractive to justify recommending” that the licence fee model be replaced for the BBC’s next Charter period.<sup>75</sup>

### Government response (June 2021)

In its June 2021 response, [the Government said the current licence fee model was guaranteed by the Royal Charter until December 2027](#).<sup>76</sup> However, because of changes to the broadcasting landscape, the Government would reconsider the model ahead of the next Charter Review (due to be completed by 2027).

## 6.3

### The white paper – BBC funding model to be reviewed

The broadcasting white paper confirmed the Government would carry out a review of the licence fee funding model before the next Charter period.<sup>77</sup> The white paper noted an increasing number of households were choosing not to hold a TV licence, as fewer people chose to watch live TV or other activities

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<sup>75</sup> As above, pp51-2

<sup>76</sup> DCMS, [The future of public service broadcasting: Government Response to Committee’s Sixth Report of Session 2019–21](#), June 2021, p6

<sup>77</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p17

that required a TV licence. If this trend continued, there would be challenges to the sustainability of the licence fee:

For example, if fewer households are required to hold a TV licence, and there is a desire to maintain the BBC's current level of funding, then the price of the licence fee would need to increase, potentially significantly, for those households who continue to be required to hold a TV licence.<sup>78</sup>

The Government said it was concerned that the licence fee was enforced by criminal sanctions, with the potential for enforcement action to be taken against vulnerable elderly people. The Government also said the "ongoing disparity" in the proportion of sanctions against women was unfair, with 74% of people convicted for TV licence evasion in 2019 being women.<sup>79</sup>

The review of the licence fee has not yet started.<sup>80</sup>

## 6.4 Lords Committee report on BBC funding (July 2022)

The future of the BBC's funding was examined in a July 2022 report from the Lords Communications and Digital Committee.<sup>81</sup> After considering alternatives to the licence fee model<sup>82</sup>, the Committee concluded that some form of public funding for the BBC remained necessary. The licence fee was one option, but its drawbacks were "becoming more salient" – the link to a television set was "increasingly outdated" while its regressive nature meant that raising the fee to the levels the BBC required would "hit the poorest hardest".<sup>83</sup>

On alternatives, the Committee said that a universal household levy linked to council tax bills was one option that could take greater account of people's ability to pay. A ring-fenced income tax was another. Reforming the existing licence fee to provide discounts for low-income households was a third option.<sup>84</sup>

According to the Committee, substituting the licence fee entirely for advertising would provide insufficient income and would decimate the revenues of other PSBs. A full subscription-based model would also deliver inadequate revenues and face major technical hurdles and accessibility

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<sup>78</sup> As above, p17

<sup>79</sup> As above, p17

<sup>80</sup> [HL Deb 16 December 2022 c883](#)

<sup>81</sup> Lords Communications and Digital Committee, [Licence to change: BBC future funding](#) (PDF)[online], HL Paper 44, July 2022 (accessed 28 February 2023)

<sup>82</sup> As above, chapter 4

<sup>83</sup> As above, p3

<sup>84</sup> As above, p3

barriers.<sup>85</sup> Funding the BBC through Government grant would risk undermining editorial independence.<sup>86</sup>

The Committee called on the BBC to publish a “bold new vision” as its funding model would ultimately depend on “what the BBC should be for and what it exists to provide”. It also observed that any changes to the BBC’s funding model would require public support. The Government should therefore commit to holding national consultations before proposing changes.<sup>87</sup>

## Government response (October 2022)

In its October 2022 response, the Government said, among other things, that it had concerns about the fairness of the licence fee funding model. The future of the BBC was a “vital issue”. Details of a review would be set out “in due course”.<sup>88</sup> Following this, the question of the BBC’s future funding model would be finalised in the Charter Review.<sup>89</sup>

## BBC response (October 2022)

The BBC’s response to the Committee’s report was also published in October 2022.<sup>90</sup> This referred to “five key principles” that underpinned the existence of the BBC as a national and global asset for the future:

- Does it deliver the Mission? - providing a universal public service in the UK, to inform, educate and entertain. Everybody uses and benefits from our trusted impartial news, quality British content, and education services.
- Does it safeguard impartiality and independence? - championing free democracy in the UK and globally. Operating without fear of or favour to political or commercial interests.
- Does it provide a sustainable financial model? - supporting a BBC to innovate and modernise to meet new audience demands. Enabling the BBC to be ambitious, operate at scale in a global digital marketplace.
- Does it help the creative economy grow? - enabling the BBC to invest and work in partnership to grow the world-leading UK creative industries, develop British talent and export British content and services globally. Creating a strong UK brand valued across the world.
- Does it deliver fair value for audiences? - ensuring a system that is fair for our audiences, offering good value versus the market and is widely supported.

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<sup>85</sup> As above, pp3-4

<sup>86</sup> As above, p4

<sup>87</sup> As above, p4

<sup>88</sup> DCMS, [Government response to the House of Lords Communications and Digital Committee’s ‘BBC future funding’ report](#) [online], October 2022, paras 6-7 (accessed 28 February 2023)

<sup>89</sup> As above, para 24

<sup>90</sup> BBC, [Letter from Tim Davie, BBC Director-General, to Baroness Stowell, Chair of the Lords Communications Committee](#) [online], 21 October 2022 (accessed 28 February 2023)

Consideration of these principles was “critical” when deciding the best way to fund the BBC.<sup>91</sup>

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<sup>91</sup> As above, p2



## 7

# BBC governance

As noted earlier in this Briefing, a [Royal Charter](#) (PDF) (Cm 9365) provides the constitutional basis for the BBC. The Charter is accompanied by an [Agreement](#) (PDF) (Cm 9366). Ofcom regulates the BBC.

The BBC website includes a section on [how the BBC is governed and regulated](#). It also provides details of the:

- [the BBC Board](#).
- [Executive Committee](#).
- [Commercial Board](#).
- [Senior staff](#) (including their roles and pay).

[BBC policies and guidelines](#) are available, including:

- [Editorial Guidelines](#) and [Supplementary Notes](#).
- [BBC code of conduct](#).
- [Workforce diversity and inclusion](#).

## Ofcom's role

Ofcom regulates the BBC and has responsibility for all areas of BBC content standards, including the accuracy and impartiality of news, and the impartiality of any programme covering matters of political or industrial controversy and issues relating to current public policy.

Ofcom's website has a range of documents on its [Operating Framework for the BBC](#), including a [Consolidated Version of its Operating Licence](#) (PDF) (July 2020). Ofcom's assessment of the BBC's performance uses a [measurement framework](#) (PDF) published in October 2017.

The BBC must comply with the regulatory conditions in its licence. If Ofcom is satisfied that the BBC has failed to comply with a condition, and has given the BBC a reasonable opportunity to make representations about the matter, Ofcom can:

- direct the BBC (or accept undertakings from the BBC) to take such steps Ofcom consider will remedy the failure to comply, and ensure that the BBC complies with their requirements properly in future.

- serve on the BBC a notice requiring it to pay to Ofcom, within a specified period, a specified penalty up to a maximum of £250,000.

Ofcom publishes an annual report on the BBC's compliance against its regulatory requirements. The report for 2020-21 was published in November 2021.<sup>92</sup> In addition, Ofcom must conduct at least two in-depth periodic reviews of the BBC's performance during the Charter period, and it can carry out additional reviews where it feels it is appropriate to do so.

A [consultation on how Ofcom regulates the BBC](#) (PDF) ran from 21 July to 15 September 2021. This informed Ofcom's advice to the Government for its mid-term Charter review.

## Complaints about the BBC

Complaints about BBC content must initially be raised with the BBC. A summary of [how the process works is available from the BBC's website](#). The BBC's [Complaints Framework and Procedures](#) (PDF) (June 2020) gives further detail. If someone is dissatisfied with the final response received from the BBC, they can make a complaint to Ofcom. The Ofcom website has a section on [how it deals with BBC complaints](#). This includes an [April 2017 document on Ofcom's procedures](#) (PDF).

## BBC Action Plan for Impartiality and Editorial Standards (October 2021)

In May 2021, the BBC published Lord Dyson's [investigation into the circumstances around Martin Bashir's 1995 Panorama interview with the Princess of Wales](#).<sup>93</sup> The Dyson Report found, among other things, that "without justification, the BBC fell short of the high standards of integrity and transparency which are its hallmark".<sup>94</sup> The BBC Board accepted Lord Dyson's findings in full and commissioned a review, led by Sir Nicholas Serota, of the BBC's editorial processes, governance and culture.

The [Serota Review](#) (PDF) was published on 29 October 2021.<sup>95</sup> This found that although editorial oversight and governance had evolved and improved at the BBC, there was "still potential for significant improvement".<sup>96</sup> The BBC adopted the Review's findings in full and, in response, announced an action plan on impartiality, editorial standards and whistleblowing to "help develop

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<sup>92</sup> Ofcom, [Annual Report on the BBC 2020-21](#) (PDF), November 2021 (accessed 27 February 2023)

<sup>93</sup> [BBC publishes Lord Dyson's report](#), BBC media release [online], 20 May 2021 (accessed 27 February 2023)

<sup>94</sup> BBC, [Report of The Dyson Investigation](#) (PDF), 20 May 2021, p5 (accessed 27 February 2023)

<sup>95</sup> BBC, [The Serota Review: BBC editorial processes, governance, and culture](#) (PDF), October 2021 (accessed 27 February 2023)

<sup>96</sup> [BBC plan outlines push for fair, accurate and unbiased content](#), BBC media release [online], 29 October 2021 (accessed 27 February 2023)

and safeguard staff and improve output across all BBC services”.<sup>97</sup> The key elements of the action plan were summarised in a BBC media release:

- **Reviews:** New thematic reviews covering output in key areas of public debate to ensure due impartiality and that a breadth of voices and viewpoints are being reflected. The first will cover UK public spending and taxation. It will begin in January next year and be completed by the summer.
- **Oversight:** The BBC’s Editorial Policy team will be strengthened and given increased responsibility to support content makers. The BBC Executive will lead internal management content reviews to assess the extent to which content meets editorial standards.
- **Investigations:** A simple set of procedures will be published for dealing with internal investigations; with designated, experienced staff able to conduct investigations; and clarifications to the Complaints Framework on how the BBC handles accelerated editorial complaints about broadcast or published content.
- **Monitoring:** The Board will monitor impartiality metrics including: editorial complaints; training; audience perception and demographic data; tracking actions from the 10-point plan.
- **Editorial values and culture:** The BBC’s editorial values and Editorial Guidelines are a requirement of working for the BBC and a contractual commitment for all staff. It will be made clear that deliberate or negligent breaches of a serious nature, or attempts to conceal them, will result in disciplinary action or dismissal, regardless of seniority, profile, or role. The Editorial Guidelines will be more prominent and easy to use and editors and managers will be encouraged to build trust through open discussion within their teams.
- **Improved governance:** The Editorial Guidelines and Standards Committee – which assesses standards post-broadcast - will be strengthened with the appointment of two editorial experts with experience from outside the BBC. These appointments will be subject to the same requirements on impartiality applied to other members of the Board.
- **Training:** Impartiality training launched this year will be extended right through the organisation, including freelancers and new joiners – at all levels – to ensure a strong understanding of the essentials.
- **Transparency:** New measures to improve transparency both internally and externally will be adopted, for instance sharing information at a senior level on emerging editorial trends, risks, and issues
- **Whistleblowing:** A new editorial whistleblowing policy; with senior leaders nominated to deal with complaints and increased training.
- **Voices and viewpoints:** Managers will be challenged to represent audiences from all parts of the UK, both on and off screen – via the Across the UK plan to diversify staff and through ongoing audience research.<sup>98</sup>

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<sup>97</sup> As above

<sup>98</sup> As above

## Mid-term review

Under Article 57 of the BBC's [Royal Charter](#) (PDF), the Secretary of State can undertake a mid-term review of the BBC focusing on the governance and regulatory arrangements for the BBC. It must not consider:

- the Mission of the BBC.
- the Public Purposes of the BBC.
- the licence fee funding model of the BBC for the Charter period.<sup>99</sup>

The Secretary of State must consult the BBC, Ofcom and the devolved administrations in determining the scope and terms of reference of the review. The review must be completed by 2024.<sup>100</sup> It can recommend changes for consideration at the next Charter Review, or it can result in updates to the Framework Agreement before then.

### 7.1

## The white paper – BBC mid-term review and updated framework agreement to follow

The broadcasting white paper said the Government was consulting on the scope and terms of reference of the mid-term review which would begin later in 2022. It also explained that the Government was interested in the effectiveness of the BBC's governance and regulation arrangements in enabling greater impartiality; more accountability for editorial standards, including the handling of complaints; and a BBC that represented “the breadth of the audience it was established to serve”. Ofcom's role in holding the BBC to account would also be examined.<sup>101</sup>

### 7.2

## BBC mid-term review launched (May 2022)

The mid-term review was launched on 26 May 2022. A press release set out the issues that would be considered:

- Editorial standards and impartiality: assessing the effectiveness of the BBC's governance mechanisms (including changes made in the light of the [Serota Review](#)) in ensuring compliance with its editorial standards including impartiality requirements, and the regulatory arrangements for the enforcement of the BBC's content standards;

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<sup>99</sup> [Royal Charter](#) (PDF), Cm 9365, December 20216, Article 57(5)

<sup>100</sup> As above, Article 57(3)

<sup>101</sup> DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022, pp16-7

- Complaints: the way the BBC handles complaints through its BBC First system, and Ofcom’s framework for assessing BBC complaints as part of ensuring effective oversight of the BBC and its relationship with licence fee payers;
- Commercial governance and regulation: whether the governance and regulatory arrangements of the BBC’s commercial subsidiaries ensure the effective functioning of the BBC’s commercial subsidiaries in accordance with its Charter obligations and appropriately support the BBC’s ability to maximise revenue in support of its public service activities;
- Competition and market impact: evaluating how the BBC and Ofcom assess the market impact and public value of the BBC in an evolving marketplace and how that relates to the BBC’s role in the UK media ecology, including with regard to commercial radio and local news sectors and other content makers and distributors;
- Diversity: evaluating how well the BBC’s governance arrangements deliver on the duty for the BBC and its output to reflect the entirety of the whole United Kingdom, including how it ensures diverse perspectives and interests are taken into account, and its duty to enter partnerships with other organisations throughout the UK, and also the extent of Ofcom’s regulation of these requirements; and
- Transparency: assessing the way in which BBC governance mechanisms support the BBC’s duty to demonstrate high standards of openness and transparency in the BBC’s reporting of progress against key commitments and performance against the above themes, and the extent of Ofcom’s regulation of that transparency.<sup>102</sup>

Nadine Dorries, then Secretary of State, commented that the BBC was a “world-class broadcaster” but one which had to “adapt to a rapidly changing landscape”:

...The Government is committed to ensuring the BBC is more impartial, more accessible and more reflective of our country’s variety of viewpoints.

This review will build on our recent progress to make the BBC more accountable to those who fund it, level up people’s access to the job opportunities it offers and ensure it continues to work in the best interest of the public.<sup>103</sup>

The GOV.UK website includes [letters from the Secretary of State to the BBC, Ofcom, and devolved administrations on the BBC Mid-Term Review and Framework Agreement](#).

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<sup>102</sup> [BBC review to focus on impartiality and ‘levelling up’ job opportunities](#), DCMS press release [online], 26 May 2022 (accessed 27 February 2023)

<sup>103</sup> As above. See also [Written Ministerial Statement HCWS67](#), 26 May 2022

## 7.3

### Updated Framework Agreement (May 2022)

On 26 May 2022, the Government also announced [changes to the BBC's Framework Agreement](#) (PDF).<sup>104</sup> The updated Agreement now includes BBC commitments to:

- more fully reflect and represent people and perspectives in the UK that currently are under-represented in the BBC's content;
- increase investment outside of London, with 60% of radio and 50% of TV programme production expenditure to be outside London by the end of 2027;
- deliver 1,000 apprenticeships per year by the end of 2025;
- make progress on workforce accessibility targets, including the new target for 25% of staff to be from low socio-economic backgrounds;
- report on how the BBC's commercial activities increase the UK's cultural and economic impact abroad.<sup>105</sup>

The updated Agreement also reflects the BBC Board's responsibility to oversee the delivery of the BBC's impartiality action plan and assess the BBC's performance against its editorial standards as recommended by the Serota Review.<sup>106</sup>

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<sup>104</sup> DCMS, [An Agreement Between Her Majesty's Secretary of State for Digital, Culture, Media and Sport and the British Broadcasting Corporation](#) [online], CP 682, May 2022 (accessed 27 February 2023)

<sup>105</sup> [BBC review to focus on impartiality and 'levelling up' job opportunities](#), DCMS press release [online], 26 May 2022 (accessed 27 February 2023)

<sup>106</sup> As above

## 8 Channel 4 ownership

Channel 4 launched in 1982 and is one of the UK’s public service broadcasters.<sup>107</sup> It is a publicly owned, non-profit organisation that invests its income back into commissioning content. It receives no public money and is funded entirely through its commercial activity. Most of its income comes from TV and online advertising.

Unlike other public service broadcasters, Channel 4 has no in-house production company - it is a “publisher-broadcaster” which must commission content from external production companies.<sup>108</sup>

### 8.1 Consultation on Channel 4 ownership (July – September 2021)

A [consultation on the future ownership model for Channel 4](#) ran from 6 July 2021 to 14 September 2021. Oliver Dowden, then Secretary of State for Digital, Culture, Media and Sport, [said the consultation was needed because the broadcasting landscape had “changed beyond recognition”](#) since Channel 4 launched in 1982. For example, there was increased global competition, changing audience habits, and a decline in linear advertising revenue.

The Government’s view, to be tested through the consultation, was for a change to private ownership. According to the Government, this would give Channel 4 “greater access to new strategic and investment opportunities”.

On 4 April 2022, in a series of tweets, Nadine Dorries, then Secretary of State, said Channel 4’s current ownership model was holding it back from competing against companies such as Netflix and Amazon.<sup>109</sup> The proceeds from a sale of Channel 4 would be reinvested into “levelling up the creative sector, putting money into independent production and creative skills in priority parts of the country”.<sup>110</sup>

<sup>107</sup> The Broadcasting Act 1980 set up Channel 4

<sup>108</sup> As a “publisher-broadcaster”, Channel 4 has to commission content from external production companies. It cannot produce its own content. For further detail see chapter 2 of House of Lords Committee on Communications and Digital, [The future of Channel 4](#) (PDF), HL Paper 108, November 2021 (accessed 23 February 2023)

<sup>109</sup> Nadine Dorries @NadineDorries. “Channel 4 rightly holds a cherished place in British life and I want that to remain the case”... (Twitter thread). 4 April 2022 [accessed 23 February 2023]. Available from: <https://twitter.com/NadineDorries/status/1511076442980896769>

<sup>110</sup> As above

## 8.2

## The white paper – private ownership of Channel 4

The broadcasting white paper confirmed plans to pursue a change of ownership of Channel 4. The white paper acknowledged that Channel 4 delivered commercially successful content and that it had a “distinctive brand”.<sup>111</sup> It also recognised the “strength of feeling” on Channel 4’s ownership.<sup>112</sup> However, the market in which Channel 4 operated had “changed radically” and its historical performance did not guarantee its future sustainability. According to the Government, the investment in content and technology needed to succeed in a changing media landscape would be “delivered at greater scale and with greater pace under private ownership, supported by private-sector capital”.<sup>113</sup>

The “publisher-broadcaster” restriction would be removed from Channel 4 so that it could “diversify its revenue streams into content and improve its business resilience”. The Government disagreed with those who claimed the restriction was needed for the independent production sector to succeed. Moreover, Channel 4 would still be required to commission a minimum volume of its programming from independent producers, in line with quotas placed on other public service broadcasters.<sup>114</sup>

The white paper said Channel 4 would remain a public service broadcaster and noted that ITV, STV, and Channel 5 were privately owned.<sup>115</sup> A new owner would have to adhere to Channel 4’s “ongoing commitments” while allowing it to “adapt and grow”:

...This will include retaining its remit to provide distinctive, educational, innovative and experimental programming that represents the breadth of society. It will also include equivalent obligations for news and current affairs provision, to show original programmes, and to continue to make programmes outside London and across the UK. In particular, we will expect a Channel 4 under new ownership to continue working with independent production companies right across the UK...<sup>116</sup>

The Government’s [response to its consultation on Channel 4](#) (PDF)<sup>117</sup> and a [decision rationale and sale impact analysis on a change of ownership](#)<sup>118</sup> were

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<sup>111</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p18

<sup>112</sup> As above, p18

<sup>113</sup> As above, p18

<sup>114</sup> As above, p19

<sup>115</sup> As above, p18

<sup>116</sup> As above, pp19-20

<sup>117</sup> DCMS, [Government response to the consultation on a potential change of ownership of Channel 4 Television Corporation](#) (PDF), 28 April 2022 (accessed 27 February 2023)

<sup>118</sup> DCMS, [Decision rationale and sale impact analysis for a change of ownership of Channel 4](#), 28 April 2022 (accessed 27 February 2023)



published on the same date as the white paper and provide further detail on the decision to pursue private ownership of Channel 4.

## 8.3

### Government announces Channel 4 to remain publicly owned (January 2023)

On 5 January 2023, Michelle Donelan, then Secretary of State, [announced that Channel 4 would not be privatised after reviewing the business case for its sale](#).<sup>119</sup> There would instead be reforms to help Channel 4 “grow and better compete in the age of streaming giants”:

- The Media Bill would relax the publisher-broadcaster restriction in Channel 4’s remit, so it would have a greater ability to produce and monetise its own content and grow its commercial income.
- The Media Bill would create a new statutory duty for the corporation’s board to ensure the long-term financial sustainability of Channel 4.
- Channel 4 would increase its annual investment in 4Skills - its paid training and placement programme for young people - from £5 million to £10 million by 2025. It would also increase its number of roles outside London from an original target of 300 to 600.
- The Government would make it easier and simpler for Channel 4 to draw down on its £75 million credit facility. This would enable it to make investments that could put it on a more sustainable footing.
- If it pursued more ambitious investment opportunities to promote the corporation’s long-term sustainability, the Government would support Channel 4 to access more private capital under its current borrowing limit of £200 million.<sup>120</sup>

Channel 4 [welcomed the Government’s decision and said it provided “a firm basis on which to establish the sustainable direction of Channel 4”](#).<sup>121</sup>

For further discussion, see the Library Briefing, [Channel 4: A change of ownership?](#) (PDF).

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<sup>119</sup> [Channel 4 to remain publicly owned with reforms to boost its sustainability and commercial freedom](#), DCMS press release [online], 5 January 2023 (accessed 27 February 2023)

<sup>120</sup> As above

<sup>121</sup> [Statement from Channel 4 in response to a decision and statement by the Government](#) [online], 5 January 2023 (accessed 27 February 2023)

## 9

## S4C

S4C (Sianel Pedwar Cymru - Channel Four Wales) was established by the Broadcasting Acts of 1980 and 1981. The Channel started broadcasting in November 1982. At first, 22 hours of Welsh language programmes were broadcast each week, alongside English programmes from Channel 4. S4C is now a wholly Welsh language channel broadcasting over 115 hours of programmes each week.<sup>122</sup> It commissions independent producers from Wales to make most of its programmes and has said it is the “cornerstone of the creative industries in Wales”.<sup>123</sup>

From April 2022, all S4C’s public funding comes from the licence fee. It also generates commercial revenues through activities including advertising sales and programme sponsorship.

S4C has noted the importance of PSB in sustaining a country’s culture, including its language:

...The smaller the country, the greater the danger that the media available to the public are dominated by content created and paid for elsewhere. The cost of creating content is such that it is almost never in the interest of commercial producers and broadcasters to make programmes in lesser-spoken languages, such as Welsh. A good deal of high-quality English-language production, reflective of a broad British culture, can continue to be generated even without the application of public funding. The communities who speak minority languages such as Welsh, however, are entirely dependent on public service broadcasting for the provision of broadcast content in their own language.

The Welsh language is part of the cultural heritage of the UK, but also a living language spoken as the language of choice by hundreds of thousands of people. Part of S4C’s mission is to pass on the language to future generations and to help meet the target set by the Welsh Government of achieving 1 million Welsh speakers by 2050...<sup>124</sup>

S4C has seen “significant growth” outside of Wales, with audiences watching drama, sport, nostalgia programmes, and children’s content.<sup>125</sup>

## Calls for S4C’s statutory remit to be updated

S4C’s current remit refers to “providing television programme services of high quality with a view to their being available for reception wholly or mainly by

<sup>122</sup> S4C website, [Introducing S4C](#) (accessed 28 February 2023)

<sup>123</sup> S4C, [Written evidence to the DCMS Committee inquiry on the future of public service broadcasting](#) (PDF), 2021?, p4 (accessed 28 February 2023)

<sup>124</sup> As above, p4

<sup>125</sup> As above, p4

members of the public in Wales.”<sup>126</sup> In an April 2017 document, S4C said this was “created in line with media consumption habits from the past” and did not allow S4C to commission specifically for digital audiences.<sup>127</sup>

S4C said it should be re-classified as a Public Service Media (PSM) content provider as a more contemporary reflection of its service and the way in which other UK PSBs were already operating. The public service remit of S4C should be updated to enable S4C to provide:

- high-quality, Welsh language Public Service Media content.
- on television and digital platforms.
- to the audience in Wales, across the UK and beyond.<sup>128</sup>

An August 2017 report from the Welsh Parliament Culture, Welsh Language and Communications Committee recommended that S4C’s remit should be amended to remove the current geographical and television only restrictions.<sup>129</sup>

In a March 2021 report, the Committee said that powers over S4C (eg setting its remit) and other public service Welsh language broadcasting matters should be devolved to Wales.<sup>130</sup>

## Independent Review of S4C (March 2018)

In 2017, the DCMS appointed Euryng Ogwen Williams to lead an independent review of S4C. This examined:

- S4C’s public service remit and its ability to deliver high quality content.
- S4C’s funding methods.
- S4C’s governance structure.<sup>131</sup>

The review was published in March 2018 and recommended, among other things:

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<sup>126</sup> S4C, [Pushing the boundaries: Multi-platform Welsh language media service](#) (PDF), April 2017, p46 (accessed 28 February 2023)

<sup>127</sup> As above, p6

<sup>128</sup> As above, p46

<sup>129</sup> Culture, Welsh Language and Communications Committee, [Outside the Box: The Future of S4C](#) (PDF), August 2017, pp12-3 (accessed 28 February 2023)

<sup>130</sup> Culture, Welsh Language and Communications Committee, [Exploring the devolution of broadcasting: How can Wales get the media it needs?](#) (PDF), March 2021, pp28-9 (accessed 28 February 2023)

<sup>131</sup> GOV.UK, [Building an S4C for the future: An independent review by Euryng Ogwen Williams](#), March 2018 (accessed 28 February 2023)

- modernising the public service remit of S4C so that it could prioritise digital innovation alongside linear broadcast as its strategic priority, including through the development of a digital hub with digital content production capability.
- providing S4C’s public funding entirely through the licence fee. The government should review S4C funding as part of its licence fee funding settlement negotiations with the BBC.
- replacing the S4C Authority with a unitary board that includes executive management as well as non-executive members.<sup>132</sup>

The Government’s response, published at the same time as the review, accepted all the recommendations.<sup>133</sup> It said changing the structure of the S4C Authority would require legislation. However, until this was introduced, the Government would agree interim arrangements with S4C to develop a shadow unitary board. This would be implemented by September 2018.<sup>134</sup>

## 9.1 The white paper – S4C’s remit to be updated

The broadcasting white paper said S4C’s public service remit would be updated to include digital and online services and the current geographical broadcasting restrictions would be removed. According to the white paper, the changes would allow S4C to broaden its reach and offer its content on a range of new platforms in the UK and beyond. S4C would also have greater clarity on its ability to invest and generate commercial revenue.

Legislation would be introduced to support S4C and the BBC in moving away from the current “somewhat rigid” framework requiring the BBC to provide S4C with a specific number of hours of television programming. S4C and the BBC would be able to agree an alternative arrangement that better suited the evolving broadcasting landscape and the changing way in which people access content.

S4C’s unitary board and audit arrangements, implemented following the 2017 independent review, would be reflected in updated legislation.<sup>135</sup>

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<sup>132</sup> DCMS, [Building an S4C for the future: An independent review](#) (PDF) [online], December 2017 (accessed 28 February 2023). The review is dated December 2017 but was published in March 2018.

<sup>133</sup> DCMS, [Government response to the S4C independent review: ‘Building an S4C for the future’](#) (PDF) [online], March 2018 (accessed 28 February 2023)

<sup>134</sup> As above, p8

<sup>135</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p20

## 10

## PSBs and independent TV production

The UK's TV production industry is a mix of:

- large and small independent producers - ie companies that are not substantially owned by a UK broadcaster; and
- broadcasters' in-house production arms and external subsidiaries.

An October 2020 report for Ofcom estimated there were 450 production companies operating in the UK, ranging from small specialists to large multinational operations.<sup>136</sup>

The Communications Act 2003 places the following obligations on PSBs, as summarised by Ofcom:<sup>137</sup>

- an **independent production quota** - each year, PSB channels commit to commissioning a minimum of 25% of their qualifying programming to a range and diversity of independent productions.<sup>138</sup>
- **codes of practice** - the providers of every licensed PSB channel must draw up, and amend when required, a code of practice setting out the principles they will apply when agreeing terms for commissioning independent productions.<sup>139</sup> Broadcasters put in place these codes based on guidance issued by Ofcom.<sup>140</sup>

There are further rules about programming made out-of-London as well as national and regional quotas.<sup>141</sup>

In its November 2019 report on PSB, the House of Lords Committee on Communications and Digital said the requirements of the 2003 Act had helped to “nurture the growth of the production sector”.<sup>142</sup> The Committee referred to the UK's production sector as “a national success story”.<sup>143</sup> The UK was the world's second biggest exporter of TV and in 2018 the independent

<sup>136</sup> Mediatique, [State of the markets in which BBC Studios operates: a report for Ofcom](#) (PDF), October 2020, p43 (accessed 28 February 2023)

<sup>137</sup> Ofcom, [Small Screen: Big Debate: Public service broadcasters and the UK production sector - call for evidence](#) (PDF), February 2021, p3 (accessed 28 February 2023)

<sup>138</sup> [Section 277 of the 2003 Act](#). Equivalent provisions also apply to the BBC and to S4C.

<sup>139</sup> [Section 285 of the 2003 Act](#)

<sup>140</sup> See Ofcom, [Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers](#) (PDF), June 2007 (accessed 28 February 2023)

<sup>141</sup> See Ofcom, [Regional production and regional programme definitions: Guidance for public service broadcasters from 2021](#) (PDF), June 2019 (accessed 28 February 2023)

<sup>142</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16, November 2019, Box 3 on p29

<sup>143</sup> As above, para 95

production sector received £962 million in international revenue, an increase of 90 per cent over the last five years.<sup>144</sup>

## 10.1 Terms of trade

In line with the codes of practice Ofcom requires PSBs to draw up for commissioning independent productions, [Pact](#) (the UK screen sector trade body) negotiated standard “Terms of Trade” (ToT) with the PSBs. These were originally introduced to protect independent production companies from the dominance of PSBs.<sup>145</sup> Before the ToT were introduced, the independent sector was highly fragmented and heavily dependent on the PSBs. Independent producers had little scope to negotiate production fees.<sup>146</sup> The ToT require separate negotiations for primary and secondary and international rights, as explained by the Lords Committee on Communications and Digital:

...This means that public service broadcasters cannot make acquiring the secondary and international rights a precondition of buying the primary rights to a programme. Independent production companies can therefore negotiate a better deal for secondary and international distribution with another broadcaster or SVOD if they do not wish to sell those rights to the primary rights-holder. For example, series 1 of *Derry Girls* was made by Hat Trick Productions which sold the primary rights to Channel 4 and the secondary and international rights to Netflix.<sup>147</sup>

John McVay, Chief Executive of Pact, told the Lords Committee the independent production sector would “collapse” without the ToT because independent producers relied on intellectual property rights for asset value to grow their businesses.<sup>148</sup>

In its March 2021 report on PSB, the DCMS Committee said the ToT had played a “huge role in the growth of the UK independent production sector”. The sector had grown from an estimated £850m in 2003 to over £3bn in 2001.<sup>149</sup>

The ToT arrangements do not apply to SVODs. The Committee noted that SVODs have a “fundamentally different” business model to PSBs when it comes to commissioning content - they have bigger budgets, and secure exclusive rights to content with large upfront fees to production companies in exchange for the intellectual property assets. The Committee referred to Michaela Coel, the creator of the BBC series *I May Destroy You*, who turned

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<sup>144</sup> As above, para 95

<sup>145</sup> As above. See also DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, para 68

<sup>146</sup> DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, para 68

<sup>147</sup> House of Lords Committee on Communications and Digital, [Public service broadcasting: as vital as ever](#) (PDF), HL Paper 16, November 2019, Box 4 on p36

<sup>148</sup> As above, para 128

<sup>149</sup> DCMS Committee, [The future of public service broadcasting](#) (PDF), HC 156 2019-21, March 2021, para 68

down a \$1m offer from Netflix for the show because it would have required her to give up all her rights to the content.<sup>150</sup>

The Committee recommended that SVODs should invest in the production ecology as well as benefit from it. However, any move to reform the ToT should take account of the diverging business models of the different commissioners in the UK production sector.<sup>151</sup>

## 10.2

### The white paper – terms of trade to be updated

The broadcasting white paper includes a commitment to ensure the UK remains a “thriving production hub for both domestic and international content producers”. The ToT regime would be updated to reflect changes in technology and the way viewers watch content from PSBs. Consideration would also be given to whether aspects of the regime should be extended to radio and audio producers that produce programming for the BBC. A review would look at the emergence of “super-indies” within the regime:

...we want to ensure that the benefits of the terms of trade regime, and the quota for independent production which operates alongside it, accrue to SMEs who will benefit most from these interventions. The sector’s impressive growth has facilitated the emergence of so-called ‘super indies’ which – whilst still classed as independent – are often larger than the broadcasters they work with. We therefore plan to initiate a review looking at whether to introduce a revenue cap for ‘qualifying independent’ producer status, to ensure that that status remains an effective lever in promoting the growth of the sector<sup>152</sup>

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<sup>150</sup> As above, para 69

<sup>151</sup> As above, para 71

<sup>152</sup> DCMS, [Up Next: The Government’s vision for the broadcasting sector](#) (PDF), 28 April 2022, p29

# 11

## Video-on-demand services

Video-on-demand (VoD) services include BBC iPlayer, ITV Hub, All 4, My5, Disney+, Netflix and Apple TV+.

Ofcom's [Broadcasting Code](#) applies to content on “traditional” television and radio programmes.<sup>153</sup> This is designed, among other things, to protect audiences from harmful and offensive material. BBC iPlayer is the only VoD service covered by the Code.

### 11.1

## Consultation on audience protection standards (August – October 2021)

A DCMS consultation on [audience protection standards on video-on-demand services](#) ran from 31 August 2021 to 26 October 2021. This noted that audience protection tools (eg password-protected accounts, pin codes, content warnings and age verification) on VoD services other than BBC iPlayer were not standardised and could cause concern and confusion, as well as potential for harm to users. The Government was “minded” to “align better the rules between VoD services that provide a TV-like experience and ‘traditional’ linear TV”. This would ensure that UK audiences would receive a similar level of protection no matter how they watched television.

...Not all VoD providers deliver a TV-like experience like mainstream services such as Netflix where viewers watch programming interchangeably with traditional linear services, therefore any regulatory change will need to be proportionate, to ensure freedom of expression is not undermined. Similarly, for small or niche services, it could be disproportionate for their business model to be required to comply with the very high standards of the entire Broadcasting Code.

The consultation sought views on whether:

- UK audiences viewing TV-like VoD programme content should receive the same or similar level of protections as if they were watching traditional television.
- VoD services not currently regulated by Ofcom, and which targeted UK audiences, should be brought within UK jurisdiction.

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<sup>153</sup> Ofcom, [Broadcasting Code](#), 31 December 2020 (accessed 28 February 2023)



## 11.2

# The white paper – video-on-demand code to be introduced

The broadcasting white paper and the Government’s response to the VoD consultation set out plans to further regulate VoD services. In its response to the consultation, the DCMS [said it would legislate, in a “light touch manner” to give Ofcom powers to draft and enforce a Video-on-demand Code, similar to its Broadcasting Code](#). The new regime would be aimed at larger, TV-like video-on-demand services, so that major services which engaged UK audiences would be subject to the same or similar obligations as UK broadcasters:

...This will also ensure that larger TV-like on-demand providers who are not currently regulated in the UK, but who target and profit from UK audiences, will now rightly come under Ofcom jurisdiction. The specific services that will be subject to enhanced regulation will be determined by the Secretary of State following a review by Ofcom.

This will ensure that larger on-demand streaming services will have the same or similar obligations as traditional broadcasters, including effective handling of complaints. Ofcom tools to regulate video-on-demand, such as information gathering and enforcement powers, will also be brought in line with existing broadcasting regulation.

In our light touch regime, increased conformity on protection tools and measures, such as age ratings, PIN codes and warnings, will not be made compulsory. Instead, Ofcom will be given an ongoing duty to assess on-demand providers’ audience protection measures. This will ensure that the systems put in place by video-on-demand providers are effective and fit for purpose, and allow Ofcom to secure change if needed.

To respect free speech and proportionality, smaller, lower risk on-demand services would continue under existing rules to ensure that services with a smaller audience size, and posed a lower-risk to viewers, were not “unfairly or unnecessarily penalised.”<sup>154</sup>

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<sup>154</sup> DCMS, [Government response to the consultation on audience protection standards on video-on-demand services](#), 28 April 2022 (accessed 28 February 2023)

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# 12

## Press regulation

In November 2012, Lord Justice Leveson published his [report on the “culture, practices and ethics of the press”](#).<sup>155</sup> The current system of press regulation is a response to this report.

A [Royal Charter](#) on press regulation was granted in October 2013. This incorporated key recommendations from the Leveson Report, allowing for one or more independent self-regulatory bodies for the press to be established. Any such body would be recognised and overseen by a Press Recognition Panel. The [Press Recognition Panel](#) (PRP) launched in November 2014.

Most newspapers have signed up to [IPSO](#), the Independent Press Standards Organisation, which has not applied for recognition and does not intend to do so. A small number of publications have joined [IMPRESS](#). This body is “Leveson-compliant” and was recognised by the PRP in October 2016 as an “approved” regulator.

Other publications, for example the Guardian, have not joined any regulator and have appointed their own internal readers’ ombudsmen.

Two legislative changes arising from Leveson were designed to provide financial incentives to newspaper publishers to join a regulator recognised by the PRP:

- [section 40 of the Crime and Courts Act 2013](#) would make it easier for the public to challenge alleged illegality by news publishers who chose not to subscribe to an approved regulator because it would mean publishers having to pay both sides’ legal costs, whether they won or lost a case. This section has not been brought into force.
- [sections 34 to 39 of the 2013 Act](#) offer protection from the risk of “exemplary damages” in certain civil litigation claims to those “relevant publishers” that sign up to the Royal Charter framework and make exemplary damages available in those claims for the courts to award as a punitive measure against “relevant publishers” who have not signed up. These sections are in force.

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<sup>155</sup> [An Inquiry into the Culture, Practices and Ethics of the Press](#) [online], HC 780, 4 volumes, November 2012

Much of the press industry is opposed to the Royal Charter and section 40. The [News Media Association](#) (NMA) describes itself as the “the voice of national, regional and local news media organisations in the UK”. The NMA has been campaigning against section 40 which, it claims “is designed to punish newspapers in libel and privacy cases – even if they win - if they have refused to sign up to state-backed regulation, a mixture of medieval prerogative and political control”.<sup>156</sup>

The Library Briefing, [Press regulation after Leveson](#) (PDF)(July 2018), gives further background to the current system.

## Government plans to repeal section 40

The 2019 Conservative Party Manifesto said section 40 sought to “coerce the press” and would be repealed to “support free speech”.<sup>157</sup>

The Background Briefing Notes to the 2022 Queen’s Speech say that the Media Bill would repeal section 40 to remove a “threat to the freedom and sustainability of the press”.<sup>158</sup>

## Comment

IMPRESS CEO Ed Proctor said repealing section 40 would remove the incentive for news publishers to be well regulated:

The repeal of section 40 will limit legal protections for news publishers who subscribe to Royal Charter approved regulation and remove the incentive for news publishers to be well regulated. The decision marks a missed opportunity to ensure access to justice for ordinary people who are harmed by the press and equally, to protect news publishers from exorbitant lawsuits brought about by those with vast wealth and power.<sup>159</sup>

However, the NMA welcomed the Government’s intention to repeal section 40 – “repealing this pernicious legislation will be a very welcome step forward for press freedom in this country.”<sup>160</sup>

The Media Reform Coalition, an organisation working to create “a media system that operates in the public interest”, said the Government had succumbed to pressure from the national media with its plans to repeal section 40.<sup>161</sup> According to the Coalition, section 40 was the “one remaining vestige of hope for fair and effective independent press regulation” and the

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<sup>156</sup> NMA website, [Press freedom](#) (accessed 28 February 2023)

<sup>157</sup> Conservative Party, [Get Brexit Done Unleash Britain’s Potential](#) (PDF)[online], 2019, p48 (accessed 28 February 2023)

<sup>158</sup> Prime Minister’s Office, [Background Briefing Notes to the Queen’s Speech of 10 May 2022](#) (PDF), May 2022, p41 (accessed 28 February 2023)

<sup>159</sup> [IMPRESS calls for law makers to retain news publisher protections set out in Crime and Courts Act 2013](#), IMPRESS news [online], 12 May 2022 (accessed 28 February 2023)

<sup>160</sup> [NMA Welcomes Inclusion Of Draft Digital Markets, Competition and Consumer Bill In The Queen’s Speech](#), NMA news [online], 12 May 2022 (accessed 28 February 2023)

<sup>161</sup> Fenton N, [Playing to the Press Gallery: the repeal of Section 40](#), Media Reform Coalition blog, 12 May 2022 (accessed 28 February 2023)

“best opportunity in half a century to reform our media regulation in the interest of the public and for democracy”.

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