

Independent Commission on the Constitutional Future of Wales: report of the broadcasting sub-group

Summary

- The global nature of broadcasting, including rapid changes in technology, and viewing habits poses a significant challenge to public broadcasting, democracy and the overall media and digital environment in Wales and beyond. This, coupled with regulatory changes on the horizon at UK level means that the sector is facing a period of significant change.
- There is consensus across the evidence that change is needed to help Wales deal with these challenges. Views differed as to whether they could be addressed within the existing legislative framework or through devolving powers to the Senedd, Welsh Government or an independent body.
- A vibrant broadcasting and communications sector with strong governance and accountability arrangements is fundamentally important to Welsh democracy. The ‘democratic deficit’ caused by inadequate Welsh content, affects citizens’ understanding of devolution and of the decision-making processes that affect their lives.
- Current governance and accountability arrangements need to be strengthened. Public service broadcasters are exposed to light-touch scrutiny in respect of their activity in, for, and about Wales.
- The group welcomes the Expert Panel on a Shadow Broadcasting and Communications Authority for Wales’s report. The group agreed with its recommendation that more technical work was needed to understand the implications of the various pathways to future devolution. It would be important for any proposed authority to be able to demonstrate value for money and impact.
- In order to ensure a coherent structure of pan-UK governance, any devolved broadcasting institutions established in Wales would ideally be mirrored by the creation of similar bodies in Scotland and Northern Ireland. The case for devolution of broadcasting powers to other UK nations is not something the group has considered, but many of the challenges for broadcasting in Wales would also apply in those places.

The sub-group's approach

The members of the sub-group are:

Commissioners: Kirsty Williams, Albert Owen, Lauren McEvatt, Miguela Gonzalez (chair)

Expert Panel: Auriol Miller

In line with the remit agreed by the Commission for the sub-groups, the group agreed that they should take a broad overview of broadcasting powers and how they relate to the constitutional options.

The subgroup considered several reports into the future of Broadcasting in Wales, including:

- The Senedd's Culture, Welsh Language and Communications Committee *Exploring the devolution of broadcasting: How can Wales get the media it needs?*
- Institute of Welsh Affairs' *Broadcasting Regulation in Wales* Report
- The Expert Panel on Shadow Broadcasting and Communications Authority for Wales Report *A new future for broadcasting and communications in Wales*
- Welsh Affairs Select Committee Report into Broadcasting in Wales

The sub-group met on 22 and 27 September.

On 22 September the group agreed its approach and met the authors of IWA's report, Dylan Moore and Enrique Uribe Jongbloed.

On 27 March the group met Mel Doyle and Professor Elin Haf Gruffudd Jones, co-chairs of the Expert Panel on Broadcasting, to discuss their report.

Context

The media landscape is changing rapidly. The transition from analogue to digital formats, and the rise of high-speed internet, has seen the emergence of streaming global giants such as Netflix and Amazon Prime Video offering unprecedented choice for consumers and leading to a decline in viewing of traditional linear television channels. Whilst this has created positive opportunities for the sector and consumers, it has also created significant challenges, especially to public service broadcasters who operate within national regulatory frameworks.

Broadcasting plays a unique role in safeguarding the Welsh language, Welsh culture and identity. Welsh broadcasting relies heavily on Public Service Broadcasters. Wales is therefore especially vulnerable to these changes.

The rise in content and choice has not necessarily led to a growth in Welsh content. News and current affairs provision in Wales is often described as inadequate. There is also often a lack of visibility/audibility of a Welsh perspective in and on UK affairs. This has implications for the vibrancy and robustness of Welsh democracy.

Powers

‘Broadcasting and other media’ is defined as a reserved matter in Schedule 7A of the Government of Wales Act 2006, as amended by the Wales Act 2017, through Reservation 158: Broadcasting and other media. Westminster sets the framework for the regulation of broadcasting, with the most relevant legislation being the Broadcasting Act 1996 and the Communications Act 2003. The broadcasting industry in Wales is regulated by the Office of Communications (Ofcom). The Welsh Government has policy responsibility for a number of policy areas that intersect with broadcasting (Welsh language, skills, sport, etc).

As in Wales, broadcasting is a reserved matter in both Scotland and Northern Ireland (NI), as set out in Schedule 5 of the Scotland Act (1998) and Schedule 3 of the Northern Ireland Act (1998).

In Northern Ireland, the last review of public service broadcasting was held by the former Committee for Culture, Arts and Leisure in 2008. It concluded that NI audiences might be better reflected with new governance and regulatory structures; that the BBC could be better scrutinised by the NI Assembly and its committees; that NI could be more fully represented in network-wide programming. In the same year, the Scottish Broadcasting Commission completed its report making many similar recommendations to those made in Wales over the past decade, ‘Scotland has undoubtedly benefited from being part of the overall broadcasting ecology of the UK, which has produced a rich tradition of high production values and public service content. However, Scotland has always been rather marginalised within this generally successful UK framework and that needs to change.’ The Scottish Government is due to publish a paper on Broadcasting as part of its [prospectus for an Independent Scotland](#).

The Welsh Government and Senedd have some limited oversight and public appointment roles in broadcasting: from appointing members of the Ofcom and BBC boards to scrutinising public service broadcasters via arrangements codified in specific memoranda of understanding.

The Senedd has a Memorandum of Understanding with Ofcom which commits the regulator to consulting relevant committees of the Senedd on its Annual Plan, appearing before Senedd committees, and laying its annual report and accounts before the Senedd. The Senedd also has a Memorandum of Understanding with the BBC which commits the broadcaster to laying its annual reports and accounts before the Senedd and appearing before Senedd committees.

The Welsh Government has a Memorandum of Understanding with Ofcom¹, which gives the Welsh Government power to appoint the Welsh members of the Ofcom board, commits the regulator to meet with Welsh Ministers and consult the Welsh Government on its Annual Plan and. This MoU is currently being reviewed. A similar arrangement is in place for Scotland and Northern Ireland. The Welsh Government also has a Memorandum of Understanding with the BBC and UK Government which commits the UK Government to consulting the Welsh Government on the BBC Charter review, and for the Welsh Government to lay the draft charter and framework agreement before the Senedd². As a result of the Digital Economy Act 2017 and the last BBC Charter Renewal process, a new BBC Board was instituted, with representatives from England, Scotland, Wales and NI represented.

In 2022 the UK Government published a white paper, *Up next: the government's vision for the broadcasting sector*. This included commitments to:

- Carry out a review of the BBC licence fee funding model ahead of the next Charter period (the current period ends 31 December 2027)
- Consult on embedding the importance of distinctively British content into the existing quota system ('We will be clear that this includes programmes that reflect the lives and concerns in different parts of the UK').
- Update the public service remit of S4C, to include digital and online services and removing the current geographical broadcasting restrictions.

The Secretary of State for Culture, Media and Sport, announced the publication of a [draft Media Bill](#) on 29th of March 2023 to deliver the commitments outlined in the White paper.

Views of political parties

The political parties in Wales set out their views on the question of devolved broadcasting ahead of the 2021 Senedd election.

Plaid Cymru promised to 'press for the full devolution of broadcasting and telecommunications to Wales, including regulatory, taxation and financial powers... over all Welsh language and English language public service broadcasting, as well as the regulation of commercial radio and local television.'

Welsh Liberal Democrats pledged to 'continue to campaign for the devolution of broadcasting' with specific priorities being S4C, and the next Channel 3 licence for Wales.

The Welsh Conservatives stated that they did not believe that the devolution of broadcasting would improve accountability of public service media organisations or,

¹ [Microsoft Word - Wales MoU \(4\) \(1\).docx \(publishing.service.gov.uk\)](#)

² [Revised Memorandum of Understanding.pdf \(senedd.wales\)](#)

indeed, solve other pressing issues facing the sector, and instead suggested engagement with the UK Government to explore ‘different avenues’ for improvement.

Welsh Labour suggested a ‘nuanced examination of the sort of broadcasting landscape we need in Wales in the twenty first century. One that keeps the most important aspects of what being part of a wider UK landscape can offer – such as through the BBC – but which isn’t the status quo, either, and which offers more accountability to Wales as a way to help us attain the more robust national and local coverage we need, in both the Welsh and English language and in the context of such a fast-changing environment.’

The Co-operation Agreement between Plaid Cymru and the Welsh Government said “There are also ongoing threats to, and attacks on, public service broadcasting from the UK Conservative Government. Plaid Cymru and the Welsh Government agree that broadcasting and communications powers should be devolved to the Senedd.”³

Evidence

[The Expert Panel on a Shadow Broadcasting and Communications Authority for Wales Report](#)

In the Co-operation Agreement (2021) between the Welsh Government and Plaid Cymru, there was a commitment to: ‘Explore the creation of a shadow Broadcasting and Communications Authority for Wales, to address our concerns about the current fragility in the media and attacks on its independence. This body would support the use of the Welsh language, particularly in digital and encourage media plurality.’

The Expert Panel on a Shadow Broadcasting and Communications Authority for Wales was established in June 2022 to provide recommendations and options to help strengthen Wales’ media and support the development of plans for an effective and fit for purpose regulatory framework for Wales.

The panel was co-chaired by Welsh broadcaster Mel Doel and Professor Elin Haf Gruffydd Jones. The Panel held its first meeting in July 2022. Its final report was published on the 3rd of August 2023. It engaged with a range of stakeholders and commissioned targeted research.

Findings

The report recognised the timeliness of the Panel’s work in the context of the radical changes that have and continue to take place in the broadcasting and digital landscape. It noted that action was needed to protect public broadcasting, safeguard democracy and improve the overall media environment in Wales. The report highlighted gaps in data and information on media provision and consumption in Wales, confusion regarding devolved and reserved powers as they apply to

³ See Annex 2 of the Expert Panel on Broadcasting report.

broadcasting and communication and increasingly blurred lines between broadcasting, communications and the media.

The Panel believed that current scrutiny arrangements were light-touch and that there should be more direct accountability to the people of Wales. The Panel concluded that policy, regulation, and accountability all needed to be strengthened. Its main recommendation is that a Shadow Broadcasting and Communications Authority (the Shadow Authority) should be established to increase transparency and visibility at a Welsh level, strengthen governance arrangements and support greater accountability to the Senedd.

The report recommended a phased approach to the establishment of a Shadow Authority, starting with the formation of a Shadow Broadcasting and Communications Working Group (SBCA Working Group) from September 2023.

SBCA Working Group (September 2023 to August 2024)

The role of the SBCA Working Group would be to deliver the recommendations of the Panel and take forward the work to set up a Shadow Authority by September 2024.

Shadow Authority (September 2024 to August 2025)

The report outlines several key work areas for the Shadow Authority, covering insight, engagement, infrastructure, advice, accountability and the Welsh language.

The Shadow Authority from September 2025 onwards

The report suggests that agreement on the work of the Shadow Authority from 2025 will be dependent on the insight and findings of the Shadow Authority's work in 2024/2025 and any movement towards further devolution of broadcasting and communications powers to Wales.

Devolution of broadcasting and communications powers

The Panel recommended there was scope for progress by a Shadow Authority without further devolution of powers to the Senedd. It recommended that, during the lifespan of the Shadow Authority to 2025, responsibility for the key functions of policy, accountability and regulation are retained by the existing bodies that house them. The report sets out a range of pathways the Welsh Government could go down, related to devolving regulation and/or accountability for broadcasting and communications to Wales, highlighting the potential benefits and challenges in each case. These pathways include taking action within the Senedd's current legislative powers, negotiating a new BBC Charter, with a separate Charter for each nation, devolving oversight and regulation of S4C to the Senedd, devolving accountability for Welsh public service broadcasters to the Senedd and devolving oversight and regulation of public service broadcasting to the Senedd. The Panel advised that the

Shadow Authority should explore these pathways towards devolution in technical detail, in order to advise the Welsh Government on proposals for the future.

It concluded that a significant amount of progress may be made without further devolution and recommended that the Welsh Government initially pursued actions within the scope of its current legislative powers. If tangible progress is not possible as work progresses, the Welsh Government may wish to seek further devolution. The potential risks of devolving broadcasting and communications should not be a barrier to innovative, sophisticated thinking about how it could be done, and the benefits it could bring.

Welsh Government response

The Deputy Minister for Arts, Sport and Culture issued a [written statement on the 3rd of August](#) which welcomed the report. The Welsh Government will consider the report's recommendations and respond formally in due course. Media reports have suggested that Welsh Government will not accept the recommendation to establish an authority due to the significant budgetary pressures it is facing. In response Welsh Government has said that no decision has been made.⁴

[IWA Broadcasting Regulation in Wales Report](#)

The IWA and Media Cymru Report "IWA Broadcasting in Wales" report assessed the current state of regulation and accountability for broadcasters in Wales, and considered options available for future models of regulation.

Part 1 mapped out the current resources available to regulators and policy-makers in Wales. The Map had three layers: 1. Who regulates broadcasting in Wales, and how; 2. What can be regulated in order to impact broadcasting, and how; 3. And what influence does Wales already have on these existing legal and regulatory frameworks.

Part 2 looked at four case studies of countries with devolved broadcasting frameworks. With examples taken from Spain, Germany, Belgium and the Netherlands, the report identified various frameworks for shaping the governance of broadcasting and points to the benefits and pitfalls of each approach.

In Spain, some broadcasting powers were devolved to Catalunya, Galicia and the Basque Country, and evidence showed that regional regulators could coexist with a single national regulator. However, Spain also demonstrated the danger of political partisanship in regional broadcasting.

⁴ [New Welsh media body plan not happening, BBC is told - BBC News](#)

In Germany, powers over public service broadcasting were ‘pooled’ within independent bodies, and this is what the IWA recommends as a potential way forward for Wales.

Belgium and the Netherlands provided cautionary tales, with problems including divisions between language communities, completely separate media markets and fragmentation in the population, as well as reduced funding for regional broadcasters.

Report Recommendations

The IWA report recommended that the Welsh Government should set up an Institute for Media in Wales before the end of the current Senedd term in May 2026. It should be independent from government and have a remit to serve the interests of citizens and audiences in Wales. This is similar remit to the Shadow Authority suggested by the Expert Panel on Broadcasting. However, the IWA report goes a step further and recommends the UK Government should transfer some functions relating to broadcasting from DCMS (all appointments to boards governing broadcasters, policy responsibility for commercial broadcasting, and decisions related to the BBC Charter, BBC Agreement and Broadcasting Licence Fee) to Welsh Government or an independent Commission. Appointments to the Commission should be made via the public appointments process by relevant ministers in each of the four nations of the United Kingdom, and the composition of the Commission should be equally representative of the four nations.

IWA's preference was to transfer functions to an independent body rather than the Welsh Government *“to avoid a persistent ‘tug of war’ over powers between the UK Government and devolved governments, and to maintain the integrity of the media and the health of our democracy”*

[Culture, Welsh Language and Communications Committee – Exploring the devolution of broadcasting: How can Wales get the media it needs?](#)

In March 2021, the Culture, Welsh Language and Communications Committee of the Fifth Senedd published a report titled ‘Exploring the devolution of broadcasting: How can Wales get the media it needs?’

The report recognised the rapidly globalising nature of broadcasting and noted that the supply of media content for Wales was inadequate (see box below⁵). It highlighted that there was widespread dissatisfaction with the supply of media content for Welsh audiences and identified news and current affairs content as the biggest shortfall. It asked Welsh Government, UK Government and OFCOM to set out how this could be improved. It also called for an independent funding commission to be established with distinct Welsh representation to ensure greater role for Wales in funding decisions (such as setting the licence fee). It also called for a greater role for the Senedd in the financing and regulation of media provision in

⁵ Box lifted from Senedd report pg 14 [Exploring the devolution of broadcasting: how can Wales get the media it needs? \(senedd.wales\)](#)

Wales, and for responsibility for S4C and other public service Welsh Language matters to be devolved to Wales.

The report concluded that Wales needed powers in this area. However, views on the extent of that further devolution varied with some favouring the full devolution of broadcasting powers to the Senedd, and others more limited new powers in specific areas.

The Senedd's Culture, Welsh Language and Communications committee has highlighted the content deficit several times:

- In 2018 the Committee called the retreat of news journalism from Wales “a profound public policy issue, which policy makers at all levels, not least the Welsh Government, need to address as a priority issue”.
- In 2017 the Committee said that the BBC should “provide an additional £30 million annually for English language drama and broadcasting about Wales”.¹⁸ The BBC has since committed to investing an additional £8.5 million per year in English language programming for Wales.
- In 2017 the Committee said that cuts in funding for Welsh language broadcaster S4C “have been both severe and disproportionate” and are having “a lasting and severe impact on its ability to provide its service”
- In 2017 the Committee said that “the sort of laissez faire approach described by ITV Cymru Wales has not led to Welsh voices being adequately represented on the ITV network. The channel’s approach to commissioning has failed to capture the richness of Welsh communities and there are considerable aspects of Welsh life that are not portrayed either on ITV network or on ITV Cymru Wales”.
- In 2018 it called for the UK Government to consider introducing a regulatory requirement for commercial radio stations in Wales to report on distinctly Welsh news, as well as local and UK news as part of its reform of commercial radio. In the same report it called for the BBC to explore options to enable a Wales opt-out on network radio services. Neither of these recommendations have been implemented.
- In 2019 it called for the Welsh Government to develop a film strategy which, among other things, would “support Welsh language and other distinctly Welsh productions with a view to increasing the visibility of Welsh language and culture on the international stage.
- In 2019 it called for the Welsh Government to develop a film strategy which, among other things, would “support Welsh language and other distinctly Welsh productions with a view to increasing the visibility of Welsh language and culture on the international stage.

The Welsh Affairs Committee inquiry into broadcasting in Wales was published on the 27 October 2023. It called for a levelling of the playing field between Public Service Broadcasters and streaming companies, stressed the need for Welsh sport to be available free-to-air, and the need to safeguard the Welsh language across all media into the future. It warned that a lack of reform by Public Service Broadcasters would lead to a ‘digital extinction’ for the Welsh culture and language.

It highlighted that viewers of on-demand services struggled to find content relevant to Wales or Welsh language content through existing filters and search mechanisms. The Committee called on the UK Government to bring forward the Media Bill, which seeks to make outdated prominence rules fair between Public Service Broadcasters and streaming companies, to Parliament at the earliest opportunity.

The Committee noted that the scale of investment needed to sustain Welsh language broadcasting in the digital age was daunting. It called for a long-term partnership between S4C and BBC Cymru Wales. S4C budget had fallen by 36% since 2010, which had led it to fall behind in its own digital development. The Committee urged the UK Government to safeguard Welsh-language broadcasting and to be clear about future funding for S4C.

A number of sporting events were being placed behind the paywall by streaming companies. The Committee recognised that there was a tension between sports securing sufficient revenue and maintaining wide access for viewers and continuing the attraction of sports. However, the Committee recommended that the Listed Sporting Events, (free-to-air), should better prioritise Welsh games. It called on the UK and Welsh Governments, and broadcasters, to discuss how listed events regime could be amended to support a specific list of Welsh events. It also recommended that Ofcom’s remit should be amended to require certain events have Welsh language commentary.

The report highlighted the trend of local radio stations being absorbed into larger corporations, leading to a loss of local identity and coverage. To cater for local communities, a new generation of digital community radio stations have emerged. While some had been offered DAB licences, Wales was trailing the rest of the UK in making the switch to digital radio transmission due to connectivity issues in many areas. The Committee called on Ofcom to resume offering FM licences.

The report noted that the current rules on apprenticeships did not reflect Wales’ creative industries sector. It called on the Welsh Government and Welsh Government to roll-out of the shared apprenticeship system to address this.

Conclusions

- The current accountability/ scrutiny arrangements for Ofcom and the BBC in Wales have been described by some commentators as quasi-federal⁶. This

⁶ Senedd report pg 44 [Exploring the devolution of broadcasting: how can Wales get the media it needs? \(senedd.wales\)](https://www.senedd.wales/Exploring%20the%20devolution%20of%20broadcasting%3A%20how%20can%20Wales%20get%20the%20media%20it%20needs%3F)

arrangement is stronger than that of other regulators (e.g OFWAT) and does provide some degree of accountability/scrutiny for Wales within the regulatory framework. However, the group heard that accountability/ scrutiny was often light touch.

- There is therefore a strong case for strengthening the voice and influence of Wales in this complex and rapidly changing landscape. A stronger voice for Wales would help address the significant cultural and democratic challenges posed by changes in technology, viewing habits and the growth of unregulated global digital platforms. There is also often a lack of visibility/audibility of a Welsh perspective in and on UK affairs. There is a need for wider media to reflect Welsh produced and Welsh inflected commentary. The goal is to strengthen Welsh output, content creation, and public engagement with democratic institutions in Wales, in order to safeguard the Welsh language, identity and culture and ensure that the needs of the citizens were met.
- Wales should have more influence in policy decisions, governance, and accountability mechanisms in this area. Current accountability arrangements means that scrutiny of activity in Wales and about Wales lacks robustness and depth. This needs addressing as a priority.
- There are a number of ways to achieve this, for example, increased cooperation between relevant committees in Westminster and Senedd on confirmation hearings, closer co-operation between the Welsh and UK Governments on key decisions in relation to policy, funding and regulation, and/or Welsh representation on an independent funding commission.
- The report of the Expert Panel identifies several pathways to further devolution which could potentially strengthen Wales influence. The sub-group agrees with the Panel that further technical work was needed to understand the complex regulatory arrangements and the implications of different pathways to further devolution. This should include a cost/benefit analysis on what tangible improvements are envisaged for broadcasting in Wales versus the cost in time, complexity and finance needed to achieve them. This work should not be a barrier to progress on strengthening Wales's voice through stronger inter-governmental and inter-parliamentary co-operation as above.
- These pathways identified by the report could be applied to several of the Commission's constitutional options. International examples, referenced in the Expert Panel on Broadcasting and IWA's reports, demonstrate that it is possible for funding and regulatory competencies to be devolved, distributed, or shared between nation-state and sub-state levels of governance. For the debate to be an informed one, further technical work is needed to fully understand the implications of these pathways.

- **Devolution enhanced** e.g. if accountability for Welsh public service broadcasting was devolved to the Senedd this could allow the Welsh Government to determine the nature and parameters of scrutiny for public service broadcasting in Wales. However, this would involve dismantling or fragmenting existing regulatory structures, which is complex and takes detailed strategic consideration, multi-stakeholder involvement, and administrative time and investment.⁷ In this model, much stronger collaboration between governments and a meaningful voice for Wales in the decision-making process would be essential, even if ultimate decision-making power continued to be held at the UK level.
- In a **Federal UK**, Wales could have power over broadcasting, but choose to use its power to make decisions collaboratively with other UK nations. This could be within an independent body with equal representatives of the four nations, answerable to representatives of all four legislatures of the UK (as recommended by the IWA's report). However, this would need the agreement of the other nations.
- Full control of broadcasting to **an independent Wales**, could improve the way in which news and stories about Wales are portrayed, ensuring a coherent public service strategy for Wales, and thus strengthening democracy. However, it would require the de-coupling of complex regulation and significant challenges in relation to the structure and governance arrangements of the BBC and privately owned Public Service Broadcasters such as ITV. Wales is currently a net beneficiary of the licence fee, and this option could also have significant financial consequences.⁸

⁷ See the Expert Panel Broadcasting report, pg 29 on benefit and challenges .

⁸ See the Expert Panel Broadcasting report, pg 29 on benefit and challenges of various pathways