
Definition of New Music on Radio 1 and Radio 2

Variation to Ofcom's Operating Licence for the BBC's
UK Public Services

STATEMENT

Publication Date: 27 March 2018

About this document

Ofcom's responsibilities include holding the BBC to account for delivering its mission and promoting its public purposes. One of the ways we do so is by setting an operating licence for the BBC containing a set of regulatory conditions with which the BBC must comply.

In the operating licence issued in October 2017, we placed requirements on the BBC to ensure a significant proportion of Radio 1 and Radio 2's music output was New Music. However, we also noted that whether songs qualified as 'new' had for many years been determined by a physical release date. As physical sales have increasingly given way to downloads and streaming services, we said we would look to amend the definition of New Music to reflect how music is now released to the public.

We issued a consultation on an updated definition in January 2018. At the same time, we also proposed adjusting the proportion of New Music which the BBC is required to play on Radio 1.

This statement summarises the comments we received to our proposals, our responses to those comments, and sets out our final decisions.

The New Music conditions for Radio 1 and Radio 2 will come into force, using the new definition, on 1 April 2018.

Contents

Section

1. Summary	1
2. Analysis of responses to the New Music Consultation	4

Annex

A1. Impact assessment and equality impact assessment	13
A2. Notice of Variation	15

1. Summary

- 1.1 The BBC is the UK's most widely-used media provider, offering programming on television and radio, and content online. The public has exceptionally high expectations of the BBC, shaped by its role as a publicly-funded broadcaster with a remit to inform, educate and entertain the public, and to support the creative economy across the UK.
- 1.2 To meet these expectations, the BBC must deliver the mission and public purposes set out in its Charter, including a requirement to provide the most creative, highest quality and distinctive output.¹ These are supplemented in the Agreement with more detailed obligations.
- 1.3 The Charter gives Ofcom the task of setting an operating licence for the BBC to ensure it delivers both its mission and public purposes as well as the specific obligations laid out in the Agreement. In our first operating licence (the 'Licence'), we set a broad range of regulatory conditions, including specific requirements on Radio 1 and Radio 2 intended to contribute to the distinctiveness of the services.²
- 1.4 We decided that requiring Radio 1 and Radio 2 to play a specific level of new music, 45% and 20% respectively, at the particular times of day when the widest range of people were listening would help to set the services apart from comparable commercial stations. We also considered such conditions were necessary to ensure listeners were provided with increasing opportunities to hear material from a diverse range of artists, including new UK talent, in line with obligations specified in the Agreement.
- 1.5 However, changes over the past decade in the way music is distributed have called into question the continued appropriateness of the definition of New Music used in the Licence to set those conditions. We therefore decided to consult publicly on a possible revision to this definition to ensure our regulatory conditions would be effective. At the same time, we also proposed to revise the level of the New Music requirement for Radio 1 in the Licence to help to ensure that the station continues to be distinctive in future.
- 1.6 We published a consultation setting out our proposals (the 'New Music Consultation') on 23 January 2018.³

Objectives of the New Music Consultation

- 1.7 The objective of the New Music Consultation was to develop a revised definition of New Music that took into account how music distribution has changed over the past decade

¹ The "Charter" is used in the rest of this document to refer to the [Royal Charter for the continuance of the British Broadcasting Corporation](#). The [Agreement between the Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation](#) is referred to as the "Agreement".

² [Operating licence for the BBC's public services](#), October 2017.

³ [Definition of New Music on Radio 1 and Radio 2](#), January 2018.

with the growth of online sales and streaming services. By updating this definition we would be able to secure that the Licence conditions in which it is used:

- a) ensure Radio 1 and Radio 2 offer the broadest variety of output, including a range of music that is broader than that of comparable providers; and
- b) satisfy specific obligations under the Agreement “to ensure Radio 1 and Radio 2 music output in particular is more distinct from those of other broadcasters” and “to improve focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2”.⁴

1.8 We therefore proposed a definition that contained two elements:

- a) an extended time window to support the development of new and emerging artists by giving listeners the opportunity to become familiar with new tracks; and
- b) a mechanism encouraging the BBC to refresh the Radio 1 and Radio 2 playlists by restricting the period for which the most commercially successful songs contribute to the services’ New Music requirements.

1.9 Further, in the New Music Consultation, we explained that we had assessed the effect that applying the new definition would have on the output of Radio 1 and Radio 2. As our analysis showed that Radio 1 would significantly overdeliver against the New Music obligation we had proposed in the Licence, we proposed to increase the proportion of New Music which Radio 1 is required to play in Daytime from 45% to 50%.⁵

Responses to the New Music Consultation

1.10 We received 11 responses to the New Music Consultation: three were from organisations involved in radio broadcasting (including the BBC), two from trade associations and six from individuals. We have considered all responses in reaching our conclusions and have published all responses in full on our website.⁶

1.11 Respondents commented on the role of the BBC in playing new music and breaking new acts, the distinctiveness of Radio 1 and Radio 2 and on the approach taken by Ofcom in setting the Licence last year. Although all industry respondents broadly agreed with the structure of the proposed definition, those representing other radio broadcasters questioned whether the specific approach outlined in the New Music Consultation offered the BBC too much flexibility.

1.12 In Section 2 of this document we summarise the comments made by respondents, assessing the arguments presented and outlining the conclusions we have reached.

⁴ Paragraph 2 (3)(a) and (b) of Schedule 2 to the [Agreement](#).

⁵ "Daytime" means 06:00 to 19:00 on Mondays to Fridays and 08:00 to 14:00 on Saturdays and Sundays in relation to a UK Public Radio Service;

⁶ <https://www.ofcom.org.uk/consultations-and-statements/category-3/definition-new-music-bbc-radio>

Conclusion and next steps

1.13 In light of the analysis set out in Section 2, we have decided to amend the definition of New Music in the Licence to read as follows:

“A music track is to be considered “New Music” for a period of either:

(a) 12 months from first release (whether by physical, radio, download or streaming means), or

(b) 6 weeks from the date it first enters the Top 20 of the UK Official Singles Chart whichever is sooner.”

1.14 We have also decided to amend condition 2.39.2 of the Licence relating to Radio 1 to read as follows:

“in each Financial Year at least 50% of the music in Daytime is New Music, of which a significant proportion must come from new and emerging United Kingdom artists”.

1.15 The amendments set out above will come into force on 1 April 2018.⁷

⁷ In line with the relevant [Procedures](#), we have sent a hard copy of the amendment to the BBC and published it on our website (Annex 2 of this document).

2. Analysis of responses to the New Music Consultation

2.1 In the New Music Consultation we proposed amending the definition of New Music in the Licence as follows:

A music track is to be considered “New Music” for a period of either:

(a) 12 months from first release (whether by physical, radio, download or streaming means), or

(b) 6 weeks after it enters the Top 20 of the UK Official Singles Chart whichever is sooner.

2.2 We also proposed an amendment to the Licence to increase the level of the New Music requirement on Radio 1 from 45% to 50% of the music played on the station in Daytime.

2.3 We asked prospective respondents whether they agreed with the proposed amendments. Stakeholders commented on a range of issues including:

a) the scope of the Consultation and role of the New Music definition;

b) the length of time a track is considered to be new after its initial release; and

c) the contribution of commercially successful tracks to the New Music quotas.

2.4 In this section, we summarise the comments made by stakeholders on these and other issues, providing our view on the arguments presented and the conclusions we have reached.

Scope of the Consultation and role of the New Music definition

2.5 The BBC’s public purposes set out in the Charter include a requirement for the BBC to deliver “distinctive output and services”. This means that the BBC’s services must, when taken as a whole and among other things, deliver a mix of different genres and output, and a level of risk-taking, innovation and challenge that are substantially different to other comparable providers.⁸ The Agreement provides more specific detail about the type of content which the BBC is expected to deliver, and which Ofcom, in setting the BBC’s Licence should take into account.

2.6 In our March 2017 consultation, *Holding the BBC to account for the delivery of its mission and public purposes* (the ‘Licence Consultation’),⁹ we developed a set of high-level objectives to ensure the Licence we set for the BBC helped to secure the high-quality and distinctive output envisioned in the Charter.

⁸ [Charter](#), Clause 63.

⁹ [Holding the BBC to account for the delivery of its mission and public purposes: a consultation](#), March 2017, is referred to as “the March 2017 consultation” throughout this document. Paragraph 4.71.1.

- 2.7 To achieve these objectives, we decided to retain obligations set by the BBC's previous regulator which required a specific proportion of music on Radio 1 and Radio 2 to be New Music¹⁰. We also proposed increasing the amount of New Music which Radio 1 was required to play and to introduce a requirement for a significant proportion of New Music on Radio 1 and Radio 2 to come from new and emerging United Kingdom artists¹¹.
- 2.8 However, a detailed response from the BBC as part of the Licence Consultation led us to conclude a further review of the definition of New Music used in the Licence was required to ensure that it was fit for purpose.¹² For the New Music Consultation, therefore, we decided to develop a definition of New Music which would enable the regulatory requirements we had set in the Licence to:
- a) ensure Radio 1 and Radio 2 offer the broadest variety of output, including a range of music that is broader than that of comparable providers; and
 - b) satisfy our specific obligations under the Agreement "to ensure Radio 1 and Radio 2 music output in particular is more distinct from those of other broadcasters" as well as "to improve focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2".

Summary of responses

- 2.9 Radiocentre and Global both agreed that the previous definition of New Music was no longer appropriate because of changes to the way music is distributed.¹³
- 2.10 However, Radiocentre and Global both reiterated concerns they had previously made to Ofcom about the approach we had taken to setting the Licence.¹⁴ They considered that the Licence we had set did not fulfill the requirements of Schedule 2 of the Agreement regarding the distinctiveness of the BBC's radio services.¹⁵ Radiocentre also stated it had anticipated that the New Music Consultation would cover a broader range of issues, arguing our approach did not appear designed to drive change to increase distinctiveness, so much as reflect the Radio 1 and Radio 2's current performance.¹⁶

¹⁰ Schedule 2, 2, (1), (a) of the [Agreement](#) provides that Ofcom must have a presumption against removing any of the current requirements which would result in the provision of less distinctive output and services.

¹¹ Schedule 2, 2, (1), (b) of the [Agreement](#) provides that Ofcom must consider the case for increasing the current requirements in areas where the BBC has exceeded those requirements or where this would support the provision of distinctive output or services.

¹² Ofcom, [Statement: Holding the BBC to account for delivering for audiences, Annexes](#), October 2017; page 51.

¹³ [Radiocentre's response to the New Music consultation](#), paragraph 23. [Global's response to the New Music consultation](#), paragraph 8.

¹⁴ See [Radiocentre](#) and [Global's](#) responses to the Licence Consultation.

¹⁵ [Radiocentre's response to the New Music consultation](#), paragraphs 12 to 15. [Global's response to the New Music consultation](#), paragraph 7.

¹⁶ [Radiocentre's response to the New Music consultation](#), paragraphs 17 & 21.

Ofcom's response

- 2.11 Under Schedule 2 to the Agreement, Ofcom is responsible for setting regulatory conditions for BBC UK Public Services to secure distinctive output. As we explained in our statement on the Licence,¹⁷ views differ on the right approach to the number and level of regulatory conditions, and inevitably judgements are required in setting the overall balance and on individual conditions. Responses to the Licence Consultation were generally supportive of the conditions we proposed to ensure the distinctiveness of the BBC's output and it remains our view that the Licence delivers on our responsibilities under the Agreement.
- 2.12 Further, in our statement on the Licence, we also explained that the regulatory conditions we set were only one part of how we will hold the BBC to account.¹⁸ Our performance measurement framework will examine the range of the BBC's output,¹⁹ and we will use the evidence base this provides to assess how the BBC is delivering its mission and public purposes, including the delivery of distinctive output and services. We will publish a report later this year detailing our findings. If our ongoing assessment indicates that changes are necessary to continue to secure distinctiveness, we will make changes to the Licence.
- 2.13 As explained in our New Music Consultation, our decision to update the definition of New Music originated from a concern that developments in music distribution had rendered the previous definition unfit for purpose; this was a position accepted by all industry respondents. In updating the definition of New Music, we have sought to ensure our policy objectives can be delivered by the Licence conditions on Radio 1 and Radio 2 which use it. Radiocentre and Global's concerns regarding the appropriateness of the conditions themselves and the Licence more broadly were addressed in our statement on the Licence and we do not propose to revisit them here.²⁰

Length of time a track is considered to be new after initial release

- 2.14 In the New Music Consultation we explained how the promotion and distribution of new music had changed in recent years. As in the past, record labels still promote an artist's new work over a 12 to 18 month period, depending on its commercial success. However, previously labels may have issued several physical pre- and post-album singles, as well as the album itself, over this period. Only certain tracks would be made available for individual purchase, and those that were would generally be made available to stations during a four-to-six pre-release phase.
- 2.15 Now, tracks tend to be available for purchase and streaming on the same day they are released to radio. Albums are often released at the same time as singles with the result that all of an artist's new tracks are available for individual purchase and streaming almost from the start of the 12 to 18 month promotional window. The discrete marketing periods

¹⁷ [Annexes to our statement, Holding the BBC to account for delivering for audiences](#), paragraph A2.17.

¹⁸ [Statement: Holding the BBC to account for delivering for audiences](#), paragraph 1.10.

¹⁹ [Statement: Holding the BBC to account for delivering for audiences](#), paragraph 3.34 to 3.38.

²⁰ [Annexes to our statement, Holding the BBC to account for delivering for audiences](#), paragraphs A3.28 to A3.33.

associated with physical releases over that window have been replaced by ‘impact dates’ selected by the labels which identify a track’s intended peak exposure.

- 2.16 Given these changes, in the New Music Consultation we proposed the definition of New Music should capture a number of ‘impact dates’ around the release of an album to promote a range of material. We also considered this would allow tracks from newer artists and less popular genres the time after their initial release to find an audience through radio play. We decided that a period of 12 months from initial release best replicated the promotional window in the context of modern music release practices.

Summary of responses

- 2.17 Radiocentre and Global both argued that the proposed 12 month period was too long.²¹
- 2.18 Although Radiocentre noted that a long initial period could drive the commercial success of certain artists or tracks, it questioned whether this was relevant to the goal of the Charter and the Agreement to secure a distinctive BBC. It also argued that Ofcom had acknowledged in the New Music Consultation that a 12 month period could lead to a reduction in the distinctiveness of the music played on Radio 1 and Radio 2. It said its own analysis of Radio 1 and Radio 2’s Daytime output suggested that 45% and 28% of the music played on Radio 1 and Radio 2 respectively had been released in the previous six months, and cited this as evidence that a 12 month period was insufficiently stretching.²² Global stated its view that a track could not be considered ‘new’ for more than six months after initial release.²³
- 2.19 In contrast, UK Music, the British Phonographic Industry (BPI) and the BBC supported our proposed approach.²⁴ The BPI stated that album campaigns could run for longer than 18 months, with some singles not charting until well over 12 months after release, depending on the length of time it took for fans to discover music that had not been heavily promoted at the point of initial release. It noted that in 2017 three UK artists who had never previously had a Top 20 single had entered the Top 20 of the Official Singles Chart more than 12 months after release. The BPI therefore suggested that a 12 month restriction should be applied flexibly.²⁵

Ofcom’s response

- 2.20 In updating the definition of New Music we have been keen to ensure that our approach reflects the distribution patterns of the modern music industry. It is not the role of Ofcom to seek to change how long record labels look to promote tracks from an artist as new. Instead, by taking into account the music industry’s promotional cycle, we have sought to

²¹ [Radiocentre’s response to the New Music consultation](#), paragraph 31. [Global’s response to the New Music consultation](#), paragraph 13.

²² [Radiocentre’s response to the New Music consultation](#), paragraph 31 to 34.

²³ [Global’s response to the New Music consultation](#), paragraph 13.

²⁴ [UK Music’s response to the New Music consultation](#), paragraph 3. [BPI’s response to the New Music consultation](#), paragraph 6. [BBC’s response to the New Music consultation](#), page 1.

²⁵ [BPI’s response to the New Music consultation](#), paragraphs 24 to 28.

develop a definition which ensures that the definition of New Music used in the Licence conditions for Radio 1 and Radio 2 continues to ensure the distinctiveness of their output.

- 2.21 As noted above, it remains normal practice within the music industry to promote a number of songs from a single artist over a period of 12 to 18 months. We therefore consider a definition including only a 6 month window, as proposed by Global, could artificially restrict the range of material which the BBC could consider as New Music for the purposes of the Licence, as compared with the previous approach. It would also limit the ability of the BBC to discover and support emerging UK artists and of the artists to build audience familiarity with airplay over a more extended period.
- 2.22 Equally, we acknowledge the BPI's point that some material will only secure significant airplay more than a year after its initial release. However, the exceptions cited by the BPI also serve to show that the significant majority of UK artists who enter the Top 20 of the UK singles chart for the first time following airplay on BBC radio services do so within 12 months of a track's initial release. We further note that the fact that a track may no longer qualify as New Music does not prevent it being played on Radio 1 or Radio 2. Rather, it simply means that it would not be counted towards the quota for New Music.
- 2.23 Having considered the points made by respondents, our view remains that it is appropriate for tracks to qualify as New Music for up to 12 months. As set out below, however, we do not consider that this restriction is sufficient, of itself, to ensure the distinctiveness of Radio 1 and Radio 2.

The contribution of commercially successful tracks to the New Music quotas

- 2.24 In the New Music Consultation, we explained our view that it would not be appropriate for the most commercially successful tracks to contribute towards the New Music requirements for Radio 1 and Radio 2. We stated that this could lead to a reduction in the distinctiveness of the stations' musical output compared to that offered by commercial radio services.
- 2.25 As such, we proposed a limitation on the ability of tracks to contribute to the BBC's New Music quotas once they had reached a prominent position in the Official UK Singles Chart. We noted that while a case could be made for either a Top 20 or a Top 40 based limitation, our analysis suggested the difference between these options on the musical output of Radio 1 and Radio 2 was likely to be marginal (see Figure 1). We concluded that a Top 20 limitation was appropriate.
- 2.26 We then considered for how long after entering the Top 20 tracks should continue to be treated as New Music. We noted some stakeholders had argued that a strict limitation of around four weeks would prevent many songs from reaching their full commercial potential. Conversely, others argued that a longer period of around eight weeks could prove counter-productive, as it might encourage the BBC to leave the most popular songs on its playlists for extended periods at the expense of newer material. We concluded that permitting the BBC to continue to treat tracks as New Music for six weeks after entering

the Top 20 would both meet our policy objectives and provide an appropriate balance between these competing concerns.

Summary of responses

- 2.27 Radiocentre and Global argued that the definition of New Music should exclude tracks four weeks after they had entered the Top 40.²⁶ Radiocentre considered that a period of six weeks after entry to the Top 20 in the definition was arbitrary and questioned the relevance of a track's commercial potential to our policy objectives.²⁷ It highlighted five recent commercially successful albums, expressing concern that the definition proposed by Ofcom would allow the majority of tracks from these albums to qualify as New Music for a full 12 months.²⁸
- 2.28 Global submitted its own analysis of the different impact of Top 20 and Top 40 restrictions on Radio 1's output, to argue for a Top 40 restriction to be used.²⁹ It considered that the six weeks limit for songs to qualify as New Music we had proposed would be a looser restriction than permitted previously.³⁰
- 2.29 In contrast, the BBC agreed with our proposal. It disagreed, however, with our assessment in the New Music Consultation that the difference between using the Top 20 and Top 40 would be marginal, arguing that a Top 40 based restriction would limit its ability to support new and emerging artists.³¹

Ofcom's response

- 2.30 We have carried out some quantitative analysis to show the impact of different options on the proportion of music currently played in Daytime on Radio 1 and Radio 2 which would qualify as New Music. The impact of varying the chart segment and the number of weeks tracks qualify as New Music from the date they first enter the chart is shown in Figure 1 below.

²⁶ [Radiocentre's response to the New Music consultation](#), paragraph 44. [Global's response to the New Music consultation](#), paragraph 12.

²⁷ [Radiocentre's response to the New Music consultation](#), paragraph 40.

²⁸ [Radiocentre's response to the New Music consultation](#), paragraph 41 to 42.

²⁹ This analysis covered Radio 1 output in weeks commencing 3 July 2017 and 9 October 2017.

³⁰ [Global's response to the New Music consultation](#), paragraphs 14 to 16.

³¹ [BBC's response to the New Music consultation](#), page 3.

Figure 1: Proportion of New Music played on Radio 1 and Radio 2 during Daytime

			Radio 1	Radio 2
% of total music played within 12 months of first release...	or 4 weeks from the date it first enters the...	Top 20	51%	27%
		Top 40	48%	26%
	or 6 weeks from the date it first enters the...	Top 20	56%	27%
		Top 40	54%	27%
	or 8 weeks from the date it first enters the...	Top 20	59%	27%
		Top 40	57%	27%

Source: Ofcom analysis of RadioMonitor and Official Charts Company over three sample weeks in 2017; weeks commencing 11 March 2017, 8 July 2017 and 7 October 2017.

- 2.31 Under each of these options, the output of Radio 1 and Radio 2 would be compliant with the New Music quotas currently in the Licence. As such, we could adopt the most restrictive approach as proposed by Radiocentre and Global, defining New Music as those tracks which have been released in 12 months of first release or four weeks from the date it first enters the Top 40. However, the New Music conditions also contribute towards Ofcom’s requirements to improve the BBC’s focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2. Adopting such a restrictive approach would limit the extent to which successful new artists could qualify as New Music, thus limiting the BBC’s ability to support them. The commercial potential of tracks is important in considering the role BBC Radio has in supporting, as well as introducing, new and emerging UK artists; a role highlighted in BPI and UK Music’s responses.³²
- 2.32 Nevertheless, once a track climbs to a high chart position, it is likely to be both established with the public and receive significant airplay on commercial radio services. We have therefore exercised judgement as to the appropriate balance between the restriction of commercially successful tracks and the promotion of new UK talent, and decided that music should only qualify as New Music for six weeks from the date they first enter the Top 20 of the UK Chart.
- 2.33 We note Global’s view that this would represent a loosening of the four week condition which historically applied, but as we explained in the New Music Consultation, this does not take into account the fact that it was previously commonplace for singles to be made available to radio stations for an additional four-to-six week pre-release phase.
- 2.34 We considered Radiocentre’s point that most of the tracks from five successful 2017 albums had not entered the Top 20 and would therefore qualify as New Music for 12 months under the proposed definition. However, our analysis shows that neither Radio 1 nor Radio 2 had played any of these tracks during Daytime since their release. As it is not

³² [UK Music’s response to the New Music consultation](#), paragraphs 7 to 15. [BPI’s response to the New Music consultation](#), paragraphs 2 to 5.

clear that there is an incentive for the BBC or other stations to play such tracks, we do not consider that further restrictions are necessary.

Other points raised by stakeholders

- 2.35 In their responses, stakeholders both suggested further amendments and raised potential concerns about the approach Ofcom would take in applying the definition of New Music.

Application of the definition to different versions of the same song

- 2.36 UK Music and BPI questioned whether different versions of the same song (such as remixes, remasters, demo, label releases of previously unsigned songs) would be considered as separate pieces of music. Both argued that this would be reasonable as artists may distribute early demo recordings online, before returning to them after signing with a record label.³³

Ofcom's response

- 2.37 At this time, we do not consider it is practical or appropriate for Ofcom to seek to provide detailed guidance of the kind proposed by UK Music or the BPI. We will return to this issue if we consider it is necessary to do so to secure the distinctiveness of the BBC's music radio services.

Other considerations in defining New Music

- 2.38 Radiocentre suggested that New Music, for the purposes of setting regulatory conditions on Radio 1 and Radio 2, could be defined as music played before its 'impact date'.³⁴
- 2.39 Global suggested that a track should only qualify as New Music for four weeks following its first play by the station.³⁵
- 2.40 Two individual respondents argued that there should be a minimum level of music from unsigned artists. Both considered that the BBC should be doing more to support unsigned artists.³⁶

Ofcom's response

- 2.41 The regulatory conditions were set following the Licence Consultation. The purpose of the New Music Consultation was to revise the definition of New Music used in those regulatory conditions. In any event, we do not consider that it would be appropriate to set a regulatory condition on the basis of impact dates determined by the music industry, as these are not objectively verifiable and open to 'gaming'. Similarly, Global's suggestion that

³³ [UK Music's response to the New Music consultation](#), paragraph 5. [BPI's response to the New Music consultation](#), paragraph 30 to 31.

³⁴ [Radiocentre's response to the New Music consultation](#), paragraph 30.

³⁵ [Global's response to the New Music consultation](#), paragraphs 17 to 20.

³⁶ [Robb Eden's response to the New Music consultation](#). [Ian Marshall's response to the New Music consultation](#).

New Music should be defined by reference to when tracks are played by the BBC would lead to regulatory requirements based on the BBC's own playlisting decisions.

- 2.42 Further, although we note the suggestion that the Licence should include conditions requiring Radio 1 and Radio 2 to play music from unsigned artists, we consider a condition of this kind to be outside the scope of the present consultation.

Ambiguity in our proposed definition of New Music

- 2.43 Radiocentre queried the meaning of the phrase "6 weeks after it enters the Top 20" in our proposed definition, highlighting Figure 1 of the New Music Consultation where we truncated it to "weeks of Top 20 entry"³⁷. They argued the latter phrasing in particular was potentially ambiguous.³⁸

Ofcom's response

- 2.44 In order to clarify the intended meaning of the definition, we have amended to the text to read "6 weeks from the date it first enters the Top 20."

Appropriateness of a New Music condition on Radio 2

- 2.45 Two individual respondents questioned whether it was appropriate for a New Music condition of any kind to apply to Radio 2.³⁹

Ofcom's response

- 2.46 We consider that a New Music requirement on Radio 2 is consistent with Ofcom's obligation under the Agreement to have particular regard to the desirability of setting requirements "to improve focus on promoting UK talent, particularly new acts, on Radio 1 and Radio 2."

³⁷ [Consultation: Definition of New Music on Radio 1 and Radio 2](#), Figure 1.

³⁸ [Radiocentre's response to the New Music consultation](#), paragraph 37.

³⁹ [Jim Johnson's response to the New Music consultation](#). [Patrick Heeley's response to the New Music consultation](#).

A1. Impact assessment and equality impact assessment

Impact Assessment

- A1.1 Ofcom has a legal duty to carry out impact assessments where our policy decisions are likely to have a significant effect on businesses or the public, or when there is a major change in Ofcom's activities.⁴⁰
- A1.2 Ofcom is required under the Charter and Agreement to put in place a Licence. The regulatory conditions in the Licence were set following the Licence Consultation and the New Music Consultation consulted on proposed revisions to the definition of New Music used in those regulatory conditions and a revision to the level of the New Music for Radio 1.
- A1.3 In reaching our view on the appropriate revised definition of New Music and Radio 1 level, we have considered the impact on the BBC, other radio stations, the music industry more generally and listeners. The analysis set out in this document and the New Music Consultation include such an impact assessment for the purposes of the relevant duties imposed on Ofcom.⁴¹ Taking into account the responses to the New Music consultation, our assessment remains that we do not consider the changes to have any additional positive or adverse impact.

Equality Impact Assessment

- A1.4 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on people with any of the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.⁴² We refer to groups of people with these protected characteristics as 'equality groups'.
- A1.5 We fulfil these obligations by carrying out an EIA, which examines the potential impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A1.6 In the operating licence issued in October 2017, we placed requirements on the BBC to ensure that a significant proportion of Radio 1 and Radio 2's music output was New Music. In setting this first Licence for the BBC, Ofcom conducted an EIA considering the effects of

⁴⁰ Section 7 of the Communications Act 2003.

⁴¹ For further information about our approach to impact assessments, see the guidelines: [Better policy-making: Ofcom's approach to impact assessment](#)

⁴² As defined in the Equality Act 2010.

Definition of New Music on Radio 1 and Radio 2

our proposed approach for holding the BBC to account for the delivery of its mission and public purposes.⁴³ We concluded that securing delivery of the BBC's mission and public purposes through this regulatory regime will bring benefits to all consumers of BBC output including equality groups.

- A1.7 In light of the responses to the New Music Consultation, our updated assessment is that we do not consider the change to the definition of New Music or increase in Radio 1's required provision to have any additional positive or adverse impact on equality groups.

⁴³ Ofcom, [Statement: Holding the BBC to account for delivering for audiences, Annexes](#), October 2017; paragraphs A6.11 to A6.25

A2. Notice of Variation

NOTICE NUMBER 1 DATED 27 MARCH 2018

TO THE OPERATING LICENCE FOR THE BBC'S UK PUBLIC SERVICES ISSUED ON 13 OCTOBER 2017 ("THE LICENCE")

RECITALS

- (A) On 15 December 2016, the Government published the Royal Charter for the continuance of the BBC ("the Charter") and the agreement between the Secretary of State for Culture, Media and Sport, and the BBC (the "Agreement") which required Ofcom to set a licence for the BBC's UK Public Services. On 13 October 2017, Ofcom issued the Licence.
- (B) Following consideration of developments in the distribution of new music, on 23 January 2018, in accordance with Ofcom's "Procedures for setting and amending the operating licence" published on 13 October 2017 (the "Procedures") and its consultation principles, Ofcom consulted with the BBC on proposed amendments to the Licence. In addition, Ofcom considered it appropriate in the particular circumstances to consult publicly having regard to the nature and significance of the proposals for industry.
- (C) On 27 March 2018 Ofcom published its decision to make the amendments to the Licence in the document entitled "Definition of New Music on Radio 1 and Radio 2: Variation to Ofcom's Operating Licence for the BBC's UK Public Services" ("the Statement").
- (D) For the reasons set out in the Statement, Ofcom has decided that it is appropriate to amend the Licence and is now varying it in order to do so. For ease of reference, Ofcom has also decided to make available a consolidated Licence together with a record listing variations.
- (E) In compliance with Clauses 80 and 13(5) of the Agreement and the Procedures, the BBC (the Licensee) has been consulted and given a reasonable opportunity to make representations on the proposed variation.

NOW THEREFORE the Licence shall be varied in the following manner:

1. Schedule 2, condition 3.1, page 34 of the Licence remove:

"New Music" means music which is either unreleased or it has been less than one month since release date (physical release, not download release);'

and insert:

'A music track is to be considered "New Music" for a period of either:

- (a) 12 months from first release (whether by physical, radio, download or streaming means),*
- or*
- (b) 6 weeks from the date it first enters the Top 20 of the UK Official Singles Chart whichever is sooner.'*

2. Regulatory condition 2.39.2, page 17 of the Licence remove: '45%' and insert '50%'.

Definition of New Music on Radio 1 and Radio 2

This variation to the Licence shall come into force on 1 April 2018.

SIGNED FOR OFCOM ON 27 March 2018

A handwritten signature in black ink that reads "Ke. Bakhurst". The signature is written in a cursive style and is positioned above a horizontal line.

Kevin Bakhurst,

Content Group Director, Ofcom