

An IWA Report,
in partnership with Media Cymru
February 2023

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Broadcasting Regulation in Wales: Parts 2 and 3



International case studies
and recommendations



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Media Cymru (www.media.cymru) is a £50m project funded through UK Research and Innovation's (UKRI) programme Strength in Places Fund, the Cardiff Capital Region (CCR), and the Welsh Government (through Creative Wales), bringing industry and university partners together with the goal to create a thriving, innovative media cluster in the CCR in Wales. Led by Cardiff University as part of the Creative Economy Unit (<https://www.cardiff.ac.uk/creative-economy>) it brings together 23 partners to drive a comprehensive strategic investment and innovation programme. Investment will focus on funding Research and Development in the media sector, building innovation capacities and knowledge spillovers as well as creating new infrastructure and resources to enable further direct and indirect spatial network effects to take place in the region.

For more information about Media Cymru, our support programme and research, contact:

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The IWA's research on broadcasting regulations is part of a project supported by the Joseph Rowntree Charitable Trust.



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Note

This short paper forms the second and third part of a three-part piece of research. The research presented here was conducted by researchers of the Media Cymru programme at the Creative Economy Unit of Cardiff University in collaboration with the IWA.

Part 1 aimed to provide an overview of the current legislative and regulatory frameworks governing broadcasting in Wales.

It is accessible via:

https://www.iwa.wales/wp-content/media/IWA_Broadcasting-Regulation-Part1-FINAL.pdf

Part 2 presented here provides an analysis of regulatory and oversight models for broadcast media and journalism in a selection of other countries with (non-) devolved governance frameworks in order to provide comparison with Wales.

Part 3 applies the findings of the above to give an assessment of the issues currently facing Wales in the area of broadcasting and makes recommendations for potential regulatory and non-regulatory solutions to these.

During the preparation of this report, on February 7 2023, the UK Prime Minister 'refocused' the Department for Digital, Culture, Media and Sport (DCMS), with the department reverting to its previous title, Department for Culture, Media and Sport. References to DCMS in this report are equally relevant before and after this change, and our analysis and recommendations stand unaffected.

Background

‘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, through the Broadcasting Act 1996 and the Communications Act 2003. A detailed examination of the complex frameworks governing broadcasting across the UK, with particular reference to Wales, is set out in Part 1 of this three-part research project on ‘Broadcasting Regulation in Wales’¹.

The devolution of broadcasting is currently under active consideration. In The Co-operation Agreement (2021) between the Welsh Government and Plaid Cymru, there is a commitment, as part of the Welsh Government’s policy programme for the Sixth Senedd, 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 document states explicitly: ‘We believe broadcasting and communication powers should be devolved to Wales’².

Following on from the first part of this research, this paper is intended to support the work of the Expert Panel set up as part of The Co-operation Agreement, 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’.³

We recognise that the work of the Expert Panel follows on from the report of the Culture, Welsh Language and Communications Committee of the Fifth Senedd, titled ‘Exploring the devolution of broadcasting: How can Wales get the media it needs?’ (March 2021)⁴ in which the Committee ‘agree[d] that the Senedd should gain powers over broadcasting’ but noted the variation in views regarding the extent of potential changes to the legislative and regulatory landscape around broadcasting.

It is worth highlighting that the committee suggested: ‘devolution of broadcasting to Wales could be viewed as a process rather than an event’ and that ‘the most germane question to ask is not “should broadcasting be devolved?”, but “how much of broadcasting should be devolved?”, and “how can Wales’s voice in the broadcasting landscape be strengthened?”’

1 https://www.iwa.wales/wp-content/media/IWA_Broadcasting-Regulation-Part1-FINAL.pdf

2 <https://www.gov.wales/sites/default/files/publications/2021-11/cooperation-agreement-2021.pdf>

3 <https://gov.wales/expert-panel-devolution-broadcasting-announced>

4 <https://senedd.wales/media/vjpf0fi4/cr-ld14207-e.pdf>

It is also important to note the overtly political context within which the work of the Expert Panel has been framed. Under the broad heading ‘Reforming the Foundations of Wales’, The Co-operation Agreement lists ‘Broadcasting’ under a strapline that states: ‘With devolution under threat from this Conservative UK Government, we must send a clear message to Westminster that the Senedd is here to stay and decisions about Wales are made in Wales.’ Deputy Minister Dawn Bowden cited ‘Ongoing threats to, and attacks on, public service broadcasting from the UK Government’⁵, in reference to developments at UK level.

Following two years of licence fee negotiations, the UK Secretary of State for Digital, Culture, Media and Sport (DCMS) announced in January 2022 that the licence fee will be frozen at £159 until 2024 and then rise in line with inflation for the following four years.⁶ In Wales, it was argued that while S4C’s public funding will for the first time be provided entirely through the licence fee in this new settlement – an arrangement widely welcomed – it could become possible that S4C faces cuts in the future if inflation rises without the licence fee adjusting to it. Similar financial pressures could be faced by BBC Wales.⁷

In addition, the publication of a UK Government White Paper, ‘Up next: the government’s vision for the broadcasting sector’ (2022) posed further questions for Wales. This paper outlined ‘the government’s vision for the broadcasting sector’ in the UK, which might further introduce changes to the current system and support structure for Wales’ broadcasting sector.⁸ Within this White Paper, the privatisation of Channel 4 was proposed, which would change the channel’s TV licence obligations. Although the privatisation plans have since been discarded, the new avenue the government proposed would have had a significant impact on Wales’ audio-visual sector. For example, it was suggested that about 55% of Channel 4’s spend goes to companies based in the nations and regions, which would then fall to just a 35% quota under private ownership.⁹

Within the UK-wide framework governing broadcasting regulation, Wales has no – or limited – power to influence the above discussed issues (see our [first paper](#) for an overview), and it is noteworthy that the Welsh Government frames the challenges facing the broadcasting industry as ‘a threat to devolution’ while the UK Government’s proposed reforms are also set against external threats: ‘rapid changes in technology, viewing habits and the entrance of global players’ to the market.

In response to these challenges, the UK Government commits ‘to act to support our system of public service broadcasting, using our new legislative freedoms [post-Brexit] to deliver a regulatory framework in the best interests of the UK’. This approach is therefore primarily

5 <https://www.gov.wales/expert-panel-devolution-broadcasting-announced>

6 <https://www.gov.uk/government/news/tv-licence-fee-frozen-for-two-years>

7 <https://nation.cymru/news/s4c-could-face-real-terms-cuts-as-bbc-licence-fee-due-to-be-frozen-for-two-years/>

8 <https://www.thenational.wales/business/20106137.implications-broadcasting-white-paper-s4c/>

9 <https://deadline.com/2022/09/channel-4-privatization-uk-tv-producers-in-last-ditch-attempt-to-reverse-plans-as-country-prepares-for-new-prime-minister-on-monday-1235106226/>

focused on a UK-wide context, with no stated intention to devolve powers to Wales, Scotland or Northern Ireland, although the following commitments are of particular interest to Wales:

- Carrying out a review of the BBC licence fee funding model ahead of the next Charter period (the current period ends 31 December 2027)
- Consulting 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').

Meanwhile in Europe, we can look to several models that distribute competencies regarding broadcasting regulation to different political levels. It is in this context that this current research investigates international European case studies of regulatory frameworks for broadcasting that give regions, sub-state nations and local authorities powers over broadcasting.

We aim to show the means and measures implemented in other countries to devolve broadcasting competencies, which in turn can be used as best practice to identify how Wales might have an impact on the local media landscape in the future. Furthermore, we will provide an assessment of the issues currently facing Wales in the area of broadcasting and make recommendations for potential regulatory and non-regulatory solutions for Wales.

Recommendations summary

The following is a summary of the five key principles which underpin the discussion and recommendations which follow. The principles and recommendations arise from careful consideration of case studies on broadcasting regulatory frameworks from across Europe, each selected because of their relevance to Wales.

Our five key principles

- 1** Public service broadcasting is a key pillar of the fourth estate, of paramount importance to the health of our democracy, and should continue to be publicly funded.
- 2** Broadcasting regulation for Wales should reflect current social, linguistic and political realities.
- 3** Decisions about broadcasting policy and regulation that impact Welsh citizens should be ratified through Welsh public bodies.
- 4** Decisions about funding broadcasting across the four nations of the United Kingdom should be made by a body composed equally of representatives from England, Scotland, Wales and Northern Ireland.
- 5** To maintain the integrity of the media and the health of our democracy, policymaking around broadcasting should be done through an independent body, nevertheless answerable to elected representatives in all four legislatures of the United Kingdom.

Our recommendations

- 1** 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:

- (a) Welsh Government**

or

- (b) an independent Commission**

Appointments to this 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.

Its decisions should be subject to confirmation hearings in front of the appropriate committees of the four legislatures of the United Kingdom.

Note

We note that there are models in Europe that suggest either option here is workable. However, in order to take account of the overtly political context within which current debates about the devolution of broadcasting are held, we seek 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. We therefore think policymaking around broadcasting should be conducted through an independent body, nevertheless answerable to elected representatives in all four legislatures of the United Kingdom. Our preference is therefore option (b).

2 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 governments, and have a remit to serve the interests of citizens and audiences in Wales.

The role of the Institute would be:

- to provide a media monitoring service on behalf of citizens and audiences in Wales, evaluating delivery of broadcasting;
- to scrutinise decisions made by governments, regulators or broadcasters that impact the content and quality of media provision in Wales;
- to enhance the visibility of existing accountability structures relating to Wales within UK-wide broadcasting regulation;
- to convene regular focus groups and commission research to further enhance Wales' media landscape.

Members of the Institute should:

- have relevant expertise in broadcasting (eg academic, policy, regulatory, linguistic, practitioner);
- be representative of Wales' population across a number of key demographic indicators.

Introduction to the case studies

There are a variety of regulatory frameworks in Europe for broadcasting. These can range from complete devolution of powers to hybrid regulatory systems to centralised systems such as that in the UK. To identify best practices for this research, we aimed to identify a variety of case studies that cover the different extents of regulatory devolution in other nations and regions as well as taking into consideration regions with significant minority languages. We identified the following case studies (see Table 1 below for an overview of the case studies and findings):

- 1 **Spain**, where each Autonomous Community can develop its own broadcasting system, for both the minority and majority language, and establish its own regional regulator but with no control over the national broadcaster;
- 2 **Germany**, where content-related regulation is a competency of the 16 federal states who organise a common regulatory framework via inter-state treaties, while the Bundestag [federal parliament] has competencies if regulation relates to economic and technical organisation;
- 3 **Belgium**, where media policy is completely devolved to each language community;
- 4 **The Netherlands**, which has a centralised regulatory framework and recently undertook reforms to take responsibilities away from regional authorities.

As our first paper showed, media regulatory frameworks often involve a variety of authorities, regulators, and different policy tools. We therefore focus on the following main questions in our in-depth case studies:

- 1 What administrative bodies and regulators have power over broadcasting?
- 2 Who regulates (local and minority language) content and how do they regulate it?
- 3 Who determines the financial support for broadcasting and how do they determine it?

	Wales (within UK, see Part 1)		Spain (selection of 3 of 19 autonomies)			Germany (14 of 16 federal states)	Belgium (3 autonomous language communities – focus on 2)		The Netherlands
Division	Wales		Basque Country	Catalunya	Galicia	16 federal states	Flanders	Wallonia	12 Provinces
Population	3.1 million		2.2 million	7.7 million	2.7 million	83.1 million	6.6 million	3.6 million	17.5 million
Official language	English (Welsh co-official in Wales)		Castilian (Minority Languages co-official in Autonomous Community)			German	Dutch	French	Dutch
Minority languages (% speakers in region)	Welsh (17.8%)		Basque (43%)	Catalan (80%)	Galician (80%)	Not relevant	Not available	Not available	Frisian (62.5% in Friesland: 400k)
Broadcasting regulatory system	Centralised to the UK Government, through 2 Acts and DCMS		Mainly centralized to the Spanish Government with decentralized power given to the Autonomous Communities to establish broadcasting entities/regulators and establish specific language requirements			Devolved to the federal states but marked through co-regulation through 16 broadcasting laws, which join together in inter-state treaties (quasi-national structure of broadcasting regulation)	Completely devolved matter reflecting separate media markets and languages in Belgium		Centralised to the Dutch Government
"National" PSB	BBC, ITV, Channel 4 and 5		RTVE			ZDF and ARD	None		NPO (governing body)
Local PSB (without commercial TV licence)	BBC Wales	S4C (Minority-language)	EITB (Minority-language and Majority-language)	CCMA (Minority- languages and Majority- language)	CRTVG (Minority-language and Majority-language)	ARD network of nine state broadcasters- NDR, RB, WDR, hr, SR, SWR, rbb, MDR, BR (no specific local minority language PSB)	VRT	RTBF	13 regional television stations (1 in Frisian)
Provision of local PSB	Only Wales*		Only Basque Country	Only Catalunya	Only Galicia	Nationwide	Nationwide	Nationwide	Nationwide
Local public services	2 TV channels, 2 radio channels, VOD part of BBC	1 TV channel, 1 VOD	5 TV channels, 6 radio channels, 1 VoD platform, 1 OTT Planned 2023	7 TV channels, 5 radio channels, 1 VoD Platform, 1 OTT Planned 2023	4 TV (one Satellite), 3 Radio, 1 VoD Platform, 1 OTT Planned 2023	11 TV channels, 73 Radio channels (some in local minority languages), 2 VoD Platforms	3 TV channels, 5 radio channels, 1 VOD	5 TV channels 5 radio channels 1 VOD	13 TV channels 4 radio channels
Relevant regulatory instruments and entities	Broadcasters are held accountable through various frameworks, codes, licences, charters, agreements, official appointments delineated through DCMS and the regulator Ofcom (see Part 1)		Both commercial and public service broadcasters are accountable to the national regulator (except in Catalunya, which has its own regulator) while 14 out of 17 Autonomous Communities in Spain hold media-related powers having their own legislation and impact on PSBs through appointments to boards			Commercial broadcasters are accountable to the regulator(s) while PSB has high level of self-governance through several independent bodies, with limited accountability to (local) government(s)	Broadcasters are accountable to each language communities' own media legislation, management contracts with PSBs and oversight structures of the separate regulators		Broadcasters are accountable to the Dutch Government, the national regulator, and nationally organised oversight structure (before 2016 provincial authorities had administrative and financial oversight)
Governance	BBC Royal Charter & Agreement; Communications Act 2003	S4C Authority; Communications Act 2003	Statute; parliamentary contract	Statute; parliamentary contract	Statute; parliamentary contract	Rundfunkstaatsverträge (treaties); Federal Constitutional Court obligations	Media Act, Management Contract	Media Act, Management Contract	Media Acts 2008, 2016
(Local) regulator(s)	Ofcom		CNMC (National)	CNMC (National) CAC (Autonomous community)	CNMC (National)	14 Media Authorities, which are organised in an umbrella organisation, die medienanstalt	VRM CRC	CSA	CvdM
Financial support settlement	UK government is responsible for setting the level of the licence fee and funding settlement is negotiated with the BBC (no fixed year cycle)		Parliament of the Autonomous Community establishes the budget allocated via contract (4-year)	Parliament of the Autonomous Community establishes the budget allocated via contract (4-year)	Parliament of the Autonomous Community establishes the budget allocated via contract (4-year)	Transparent consultation process between PSB and independent Commission (KEF) every 4 years (veto right for regional parliaments)	Financial support is settled through a five-year management contract, which is signed between the language community and the public broadcaster		Before 2016 the funding of the regional broadcasters was determined by the provincial authorities. Now, the Dutch Government sets a total budget for a specific timeframe, which is based on a 'concession policy plan' submitted by the RPO.
Funding model	Principally funded through licence fee paid by UK households		Government grant & advertising (grant and levies)	Government grant & advertising (grant and levies)	Government grant & advertising (grant and levies)	Principally funded through licence fee paid by German households (ZDF only also advertising)	Direct government grant (since 2002)	Principally funded through licence fee paid by local households (and advertising)	Direct government grant & advertising
Public funding (% of total) Per capita vs EU average	£188 million (100%) €5.6 a month, 184%	£88.8 million (98%) €2.6 a month, 86%	€138 million (91% of total) €5.28 a month, 172%	€248 million (80% of total) €2.68 a month, 87%	€103.5 million (94% of total) €3.17 a month, 104%	ZDF €2027 million (85% of total) €2.3 a month, 75% ARD €5626 million (86% of total) €6.9 a month, 226%	€430 million (63% of total) €3.53 a month, 116%	€357 million (71% of total) €4.19 a month, 137%	€850 million (92% of total) €4.04 a month, 133%

*Unlike other Wales-based television services, S4C is also available across the UK on Virgin Media as well as on Sky, YouView, Amazon Fire and others.



Case study 1: Spain (three autonomous regions)

The new constitution of Spain in 1978 created and provided devolved powers to 17 autonomous communities and two autonomous cities. Three of these autonomous regions created their own Public Service Broadcaster (PSB) soon after devolution of powers. The Basque PSB started in 1982, the Catalan service in 1983 and the Galician service started in 1985, all of them predicated upon the maintenance of language and culture of their Autonomous Community. Their organisations were modelled on the central structure of the national Radio y Televisión Española (RTVE) and have continued to be organised accordingly.

What administrative bodies and regulators have power over broadcasting?

Law 30 of 2022 provides the general overview of the requirements for audiovisual media provision in Spain, establishing the National Council for Market and Competition (CNMC) and the General Court in charge of broadcasting regulation and control. Legislative assemblies of the autonomous communities are granted the powers to create their own broadcasting organisations and regulators, assign broadcasting licences, and define language requirements for production in their territories, and they are also responsible for their control and supervision. They also elect the members of the PSB institutions and regulators, in a similar manner to the process for the national broadcaster RTVE, albeit with different member numbers.

Who regulates (local and minority language) content and how do they regulate it?

The assemblies of the autonomous communities oversee content regulation. Of the three cases selected, only Catalunya has an independent regulator (Consell de l'Audiovisual de Catalunya – Catalunya Audiovisual Council) tasked with 'overseeing the compliance of norms on pluralism, children and adolescent protection, legislation on advertisement, language regulations, production quotas and labelling of programs'¹⁰, exclusively for media outlets within the Catalunya borders (it has no jurisdiction over national broadcasting). The CNMC was established in 2013 and its remit includes regulation and control of media companies, including all content quotas defined by European regulations (except when already under autonomous control).¹¹

10

Consell de l'Audiovisual de Catalunya. (2022). MEMÒRIA ANUAL 2021 CAC. www.cac.cat, p. 5

11

<https://ijoc.org/index.php/ijoc/article/view/3845>

Who determines the financial support for broadcasting and how do they determine it?

The three PSB systems are supported mainly by government grants and levies directly defined by their respective parliaments, with a small proportion from advertisement (which has plummeted in the last 10 years – even in Catalunya). The overall budget for each of the broadcasting companies in 2022 is less than 90% of what it was in 2011 without accounting for inflation.

Main concerns, challenges, and benefits of the regulatory and policy system

The main challenges include financial instability, politicisation of the media, and the difficulty of reaching younger audiences through content. Autonomous broadcasters' dependence on grant funding agreed by the regional parliament and the decrease in advertisement income makes them financially vulnerable. CRTVG, CCMA and EITB are aiming to develop their respective OTT ('Over-the-top' media services, available via the internet, bypassing broadcast, satellite and cable, partially to reach younger audiences) in 2023¹², which requires extra funding, and risks the fragmentation of the audience. The regulator role is hampered by political partisanship and lack of funding in CAC's case in Catalunya and by the sheer extent of the areas to cover by the national regulator CNMC. The selection process for the members of the broadcaster corporations (both RTVE as well as CCMA) is also prone to politicisation and has been criticised.¹³

12 CRTVG. (2022). Plan Xeral de Actuación Corporación Radio e Televisión de Galicia. Actuación 2022-2023. EITB. (2022). EITB 2030 STRATEGY. www.eitb.eus

13 <https://doi.org/10.1177/02673231221111915>



Case study 2: Germany and its 14 federal states

Public broadcasting was reintroduced in Germany according to the country's political reorganisation following World War II (WWII), and was modelled on the BBC in the UK. The policymaking, supervision and monitoring of broadcasting is a federal state matter in Germany, becoming 'a complex landscape of regulatory instruments and entities that are underpinned by the inter-state cooperation' that shapes the remit, governance, and funding in broadcasting in Germany.¹⁴ The inter-state cooperation is marked by inter-state treaties thereby establishing a quasi-national structure of broadcasting regulation in Germany.

What administrative bodies and regulators have power over broadcasting?

The principal legal foundation for broadcasting lies in the broadcasting laws of each of the 16 German federal states, which are compiled in inter-state treaties. The Federal Constitutional Court's rulings contribute to the interpretation of regulations and their enforcement. There are 14 Länder authorities acting as regulators in Germany (*Landesmedienanstalten*), which together form the 'Medienanstalten', an umbrella organisation that coordinates their cooperation. The public service broadcasters, on the other hand, are primarily overseen and held accountable by broadcaster-specific public supervisory bodies (eg the TV Council; the Broadcasting Council; the Administrative Council).

Who regulates (local and minority language) content and how do they regulate it?

Content regulation can be better understood by looking in more detail how Zweites Deutsches Fernsehen (ZDF) and Association of Public Broadcasting Corporations in the Federal Republic of Germany (ARD) are impacted. There are major differences between them: ZDF is a legal entity, while ARD is a consortium or a network, made up of different organisations. The top governing body for ZDF is the Broadcasting Council, whereas for ARD it is the General Assembly, with a rotating leadership. In both cases, there is a high level of self-governance, with no accountability to (local) government(s): decisions are made within the organisation, notably including regarding how executives are elected. The governing bodies of ARD and ZDF consist of representatives of political parties, workers' unions, trade, and industry representatives, as well as religious institutions, universities, cultural and non-governmental organisations, to ensure that broadcasters are accountable to society and enjoy political independence. Notably, the Federal Court has limited the number of government representatives in these bodies to a maximum of one third.

Who determines the financial support for broadcasting and how do they determine it?

Public broadcasting is mainly financed through a licence fee (*Rundfunkbeitrag*), collected on behalf of ARD, ZDF and Deutschlandradio. ZDF can receive additional income through advertising and sponsorship. The licence fee is determined every four years through a process of consultation between German public service media and the independent Commission for the Determination of the Financial Requirements of the Broadcasters (KEF). The outcome contains a recommendation. The recommendation is then forwarded to the regional parliaments to decide. The KEF acts as one of many buffers between the broadcasters and the government. Since 2013, the licence fee (previously dependent on ownership of a television or radio) has been transformed into a household fee. In 2021 it was increased from €17.50 to €18.36 per month, following a failed attempt by the Land of Saxony-Anhalt to block it (this was overruled by the Federal Constitutional Court of Germany).

Main concerns, challenges, and benefits of the regulatory and policy system

Public service media in Germany draws on a solid financial foundation and high public funding per capita compared to other countries in the EU. In fact, ARD is the highest funded public broadcaster in the world, with a total annual income exceeding €6.5m. It is the second largest media group in Europe (after Sky). A recent study for the European Commission deemed the German system as exemplary for ensuring media diversity and independence from political influence. The devolution of broadcasting matters, the inter-state treaty arrangements and the establishment of independent bodies and entities ensures that regulation across Germany is not fragmented. At the same time, there is clear independence from political influence (from both federal and regional level parliaments).



Case study 3: Belgium and its three language communities

After the first Belgian State reform in 1970, three (language) community's, ie the German-speaking community, the Flemish Community and French Community, and three regions – Wallonia, Flanders and Brussels – were created. Since then, broadcasting and television have been assigned to the competence of those communities to enable their cultural autonomy.¹⁵ The communities have competences for both the technical aspects, frequency allocation, broadcasting licences (since 1990/1991) and the content of audiovisual media services. The federal authority has been limited to guaranteeing general supervision over the system of frequency allocation.¹⁶ In Belgium, there are three PSBs and no Belgium-wide PSB service: the Vlaamse Radio- en Televisieomroeporganisatie (VRT) for Flanders, the Radio-télévision belge de la Communauté française (RTBF) for Wallonia and Belgischer Rundfunk (BRF) for the German-speaking community.¹⁷

What administrative bodies and regulators have power over broadcasting?

Following the split competences for broadcasting regulation there are three separate laws. The responsibility for the enforcement of the media legislation rests with the regional media regulators: the Vlaamse Regulator voor de Media (VRM), the Conseil Supérieur de l'Audiovisuel (CSA), and the Medienrat for Flanders, Wallonia and the German-speaking community respectively. At the federal level, the Belgian Institute for Postal Services and Telecommunications (BIPT)¹⁸ regulates electronic communications and guarantees competition in the market. It also functions as media regulator in the Brussels-Capital Region, ensuring that operators in this bilingual area comply with specific regulations. Each of the regulators includes different bodies deciding on broadcasting matters and each PSB has different organisational structures. A 2007 law further established the Conference of Regulators for Electronic Communications (CRC) to stimulate coordination between the federal BIPT and the regional VRM and CSA.¹⁹

15 <https://ec.europa.eu/competition/sectors/media/documents/belgium.pdf>

16 <https://www.bipt.be/operators/media-regulator>

17 https://www.academia.edu/90099538/Public_Service_Media_in_a_Divided_Country_Governance_and_Functioning_of_Public_Broadcasters_in_Belgium

18 <https://www.bipt.be/operators/media-regulator>

19 <https://medialandscapes.org/country/belgium/policies/regulatory-authorities>

Who regulates (local and minority language) content and how is it regulated?

Broadcasters are subject to each language communities' own media legislation, management contracts with PSBs and oversight structures. Focusing on the two main communities Flanders and Wallonia, the VRM has a bicameral structure: the first chamber decides on general matters while the second chamber rules on issues regarding independence and the protection of minors. Responsibility for the awarding and monitoring of the contract between the government and public broadcaster also resides with the VRM. CSA, the Walloon counterpart, has similar responsibilities and three councils: an advertising council, a control council and a licence council.

Influence over the content produced via both PSBs is secured through a five-year management contract, signed between the language community and the public broadcaster. Both contracts clearly stipulate priorities following the prioritisation of the respective media Minister. These contracts specify the tasks and obligations of the broadcaster, how performance will be measured and what funding rules will apply. Both public broadcasters have a Board of Governors, comprising representatives from each political party.²⁰

Who determines the financial support for broadcasting and how do they determine it?

In 2023, the French-language public broadcaster, RTBF, is funded by a licence fee paid by local households. Flanders, on the other hand, abolished its licence fee and since 2002 has funded its public broadcaster, VRT, by direct government grant. Both public broadcasters are funded by a mixed funded scheme, however in contrast to RTBF, VRT is not entitled to income received from television advertising.²¹ Based on data from 2018, the Flemish VRT has a grant that makes up 63% of its total budget while RTBF can get up to 71% in public funding.²² Financial support is determined by the five-year management contracts for both PSBs. In Flanders this agreement is signed by both the Flemish government and the VRT board. The Flemish Parliament can give directions for the management agreement through resolutions. The Department of Culture, Youth, Sport and Media and the Flemish Minister of Culture, Youth, Sport and Media issue consultations to inform the contracts.²³

20 https://www.academia.edu/90099538/Public_Service_Media_in_a_Divided_Country_Governance_and_Functioning_of_Public_Broadcasters_in_Belgium

21 <https://www.newmedia-law.com/news/what-state-subsidies-are-there-for-belgian-media/>

22 https://www.academia.edu/90099538/Public_Service_Media_in_a_Divided_Country_Governance_and_Functioning_of_Public_Broadcasters_in_Belgium

23 <https://www.vlaamsparlement.be/nl/beheersovereenkomst-met-de-vrt-2021-2025>

Main concerns, challenges, and benefits of the regulatory and policy system

The governance of broadcasting in Belgium is characterised by completely separate media markets, each characterised by distinctive consumer behaviours, market players and separate public broadcasters. This makes the Belgian situation unique in Europe among federal states. Indeed, PSB policies, management contracts and media laws are completely separate and have their own distinct character and traditions. Because of this separation and political climate, researchers have argued that RTBF tends to take a more pro-Belgium stance than its Flemish counterpart (which rarely promotes either a Belgian identity or Belgian-wide news coverage).²⁴ Overall, the complete devolution of broadcasting there does not allow for the development of a state-wide national identity nor national news coverage.



Case study 4: The Netherlands

Regulation on broadcasting and television²⁵ are not devolved matters in the Netherlands; however before legislative changes in 2016, administrative and financial oversight of the regional broadcasters was part of the responsibilities of the provincial authorities. There are 13 regional broadcasters from 12 different regions (including one minority language channel), and they are rooted in their own specific region in terms of both finances and content. This case study focuses on the legislative changes in 2016 and their impact on regional broadcasters in the Netherlands.

What administrative bodies and regulators have power over broadcasting?

The new Media Act 2008 is the central law for broadcasting regulation. It regulates admission to the broadcasting system in general and sets requirements for public broadcasting including national, regional and local level broadcasting. In March 2016 proposed amendments to the Media Act were adopted, which essentially reformed regional broadcasting in the Netherlands. These amendments also led to the formation of a new organisation, called the Regionale Publieke Omroep (Regional Public Broadcasters - RPO), which now collectively represents the regional broadcasters and is the centralised institution that is legally responsible for public broadcasting on a regional level. Another important organisation is the Dutch Media Authority (Commissariaat voor de Media - CvdM), led by a Board of Commissioners with three members appointed by the Minister of Primary and Secondary Education and Media.²⁶

Who regulates (local and minority language) content and how is it regulated?

Based on the 2016 amendments to the Media Act, the new organisation RPO is granted an exclusive 'concession' by the Minister for Education, Culture and Science for the delivery of public broadcasting on a regional level. To obtain this concession, the RPO needs to submit a 'concession policy plan' to the Minister, and resubmit it again after five years. This covers plans for regional programmes in general terms, the intended audience of programmes, and the resources the RPO needs to achieve these goals. This means that the regional broadcasters do not have to submit individual plans to the Media Authority as was previously the case. The Minister and the RPO come to a 'performance agreement' based on this plan. The concession policy plan is made available to the public and the Minister is legally obliged to ask the CvdM and the Council for Culture (Raad voor Cultuur) for advice concerning the plan. As regulator, the CvdM also supervises compliance with the Media Act 2008, overseeing the national public service media (national, regional, and local), commercial broadcasters and administering the broadcasting licences.

25 The Main source for information for the Netherlands case study has been the following study from 2022: <https://op.europa.eu/en/publication-detail/-/publication/475bacb6-34a2-11ed-8b77-01aa75ed71a1/language-en>

26 <https://www.cvdM.nl/english-summary-dutch-media-authority>

Who determines the financial support for broadcasting and how is it determined?

Before the 2016 reforms, funding for regional broadcasters was administered by the media regulator, with each of the 13 regional broadcasters required to apply for a licence every five years. Regional broadcasters were subsequently funded by the provincial authorities. Since 2016, the central government has been responsible for funding regional broadcasters through a set total budget. This means that both the statutory duty of care and the financial responsibility for the regional broadcasters now fall under central government control. As of 1 January 2017, the total budget for regional broadcasters has been cut by €17 million.

Main concerns, challenges, and benefits of the regulatory and policy system

While this case study shows a movement towards greater centralisation rather than devolution of broadcasting power, there are several relevant issues to note. Overall, the 2016 reforms were designed to simplify oversight and processes for the regional broadcasters (with one organisation being required to apply for an agreement rather than each regional broadcaster applying individually). The reforms have been described by the European Association of Regional Television as a ‘milestone’ and have generally been seen as a positive development.

However, taking the responsibility of funding regional broadcasting away from the provinces has also led to severe budget cuts for the regional broadcasters. In two letters of December 2015 and January 2016, regional public broadcasters expressed concerns that the budget cuts would affect their performance and the quality of regional journalism. Furthermore, concerns included the loss of autonomy and the undermining of the role of the regional public broadcaster from Frisia (Omrop Fryslân) who only broadcasts in Frisian. The State Secretary awarded a special status to Omrop Fryslân because of this. However other regional dialects did not meet this requirement. Prior to the reform, when each province was obliged to fund at least one regional broadcaster, there were instances of provinces reducing funding to broadcasters and of broadcasters initiating legal action over these reductions. It is worth noting, however, that the reforms in the Netherlands are still in development, and therefore it is difficult to draw clear conclusions about the long-term impact of these reforms on the regional broadcasters.

Part 3: IWA analysis and recommendations

In these four case studies we aim to give an overview of the various regulatory frameworks for broadcasting that give sub-state nations, regions and local authorities powers over broadcasting. They demonstrate some of the measures and means by which broadcasting competencies have been ‘devolved’ in other European countries and therefore provide a ‘menu of options’ for potential exploration as to future best practice for Wales.

Overall, our research finds that broadcasting at a sub-state level is under threat across Europe. A recent study for the Swiss Federal Office of Communications, which examined local and regional television in Europe, began by noting that its initial assessment prompted ‘a degree of pessimism’. The study noted that local and regional television services are ‘by far the most affected’ by the global financial crisis, resulting in some ‘catastrophic situations’. The European Platform of Regulatory Authorities has also remarked that local and regional television stations ‘generally cannot cover their costs themselves and are dependent on public support.’²⁷

As a first principle for our discussion, therefore, we must begin by underlining that public service broadcasting is a key pillar of the fourth estate, of paramount importance to the health of our democracy, and should continue to be publicly funded.

Social, linguistic and political considerations

As we have seen through the case studies outlined in Part 2, regulatory systems for broadcasting in Europe are often inextricable from deep-rooted political, cultural and linguistic questions. Germany’s system was inaugurated in the years after WWII to prevent political interference in the media – to stop propaganda and enable independence for broadcasters. Belgium’s system is rooted in the principle of completely independent language communities, creating separate media markets. Spain’s devolution processes following the end of dictatorship aimed to distribute broadcasting power to newly autonomous regions and thereby compensate for the repression that had been experienced by local languages, but without losing central control.

For Wales within the United Kingdom therefore, we must to some extent begin by acknowledging the similarly inextricable nature of the relationship between broadcasting powers and wider socio-linguistic and political questions. The question of ‘devolving’ broadcasting is hotly contested by political parties because of both the symbolic and actual power inherent in the centres from which citizens receive their news, education and entertainment, and the wide range of programmes through which they see their own lives reflected (to greater or lesser extents) on television, radio, internet and other media. It is also worth noting that devolution is not widely – or mutually – understood by politicians, civil servants and the public in all four nations of the United Kingdom, and therefore ‘devolving broadcasting’ is open to much interpretation.

One reason why current explorations of alternative frameworks to govern broadcasting in Wales are relevant and important is that in the broadest of terms, having remained a reserved matter, broadcasting policy and regulation has not kept pace with devolution and wider shifts in the United Kingdom's shifting politics, nor with the distinct cultural and linguistic identity of Wales. This has been significantly strengthened through, for example, the Welsh Language Act 1993 and the various Wales Acts that have instituted and strengthened – at least in theory – the devolution settlement since 1998.

As noted in the introduction to the Interim Report of the Independent Commission on the Constitutional Future of Wales²⁸, 'Devolution was a major step forward for Welsh democracy, but the current settlement has been eroded by decisions of recent UK Governments particularly in the context of Brexit. The status quo is not a reliable or sustainable basis for the governance of Wales in the future.'²⁹

Our second principle, therefore, on which our recommendations are made, is that broadcasting regulation for Wales should reflect current social, linguistic and political realities.

European precedents for change

Our research also reveals that despite regulatory systems for broadcasting sometimes appearing to be 'locked in' – partly due to the often unique ties between broadcasting policy and historical developments of the type mentioned above – other recent developments and changes to regional broadcasting systems across Europe demonstrate that systemic changes are possible.

Most of our case studies highlight systems with very long traditions (Germany from the 1940s, Belgium from the 1970s and Spain from the 1980s) where broadcasting reforms were rooted in major reforms to entire states, but in more recent examples, such as in the case of the Netherlands (2010s), European countries have specifically legislated to alter regulatory frameworks for broadcasting, demonstrating realistic potential for Wales.

As well as the Netherlands' reform (see above), another recent example comes in Portugal, when in 2015 the Office for Media (Gabinete para os Meios de Comunicação Social – GMCS) was abolished. This body had been in charge of advising the Portuguese government on the design, implementation and evaluation of public policies for the media, and of ensuring the allocation and supervision of state incentives for the sector. However, primary legislation transferred the management of incentives and support for local and regional media to the Commissions of Regional Coordination and Development (regional bodies). The reforms were 'based on the idea that a more rigorous evaluation will result from the proximity between the decision-makers and beneficiaries'.

28

This report will be submitted to the Constitutional Commission to inform their thinking towards a final report, due December 2023

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<https://nation.cymru/wp-content/uploads/2022/12/Interim-report-by-the-Independent-Commission-on-the-Constitutional-Future-of-Wales-December-2022.pdf>

In both the Netherlands and Portugal, therefore, we see that shifting power to new authorities is indeed possible. However, it is also worth noting that, in both cases, these countries had a goal of simplifying policy and regulation for broadcasters, and this is also important to take into consideration for Wales. New frameworks or bodies should not mean more 'red tape'. It is also important to note that, in the case of the Netherlands, centralising power led to budget cuts and the undermining of regional goals – compelling evidence not only that change is possible, but that it is important that powers are devolved to localities rather than recalled to the centre.

Our own third principle for the recommendations of this research is therefore that decisions about broadcasting policy and regulation that impact Welsh citizens should be ratified through Welsh public bodies.

Funding and the Licence Fee

Another key finding of our research is that a number of European countries have shifted, or are planning to shift, to an alternative source of funding for public service media. Since 2000 licence fees have been replaced variously by direct government grants, universal household charges or a greater reliance on commercial income.

Beyond the examples set out in our specific case studies, in 2013 Finland shifted from a licence fee to a progressive 'tax' paid by all individuals to fund its public service broadcaster, Yleisradio Oy (YLE). In Denmark, the shift from a licence fee to direct taxation came into force from 2022. A number of countries have shifted from the licence fee to funding through state budgets, including the Netherlands (in 2000), Iceland (in 2009), and most recently France (2022).

As we see in the cases of both Spain and the Netherlands, there is a risk of instability in funding when it comes via regional grants, as has been the case for the broadcasters of Spain's autonomous communities, which suffered severe budget cuts in their grants following the 2008 economic crisis. Despite the 2022 funding settlement for S4C via the BBC licence fee, widely seen as favourable for the channel, future prevailing economic conditions and the question mark over the licence fee itself post-2027 mean that it is difficult to make a case for Wales' broadcasters continuing to be dependent on funding decisions made unilaterally by DCMS.

Our fourth principle is therefore that decisions about funding broadcasting across the four nations of the United Kingdom should be made by a body composed equally of representatives from England, Scotland, Wales and Northern Ireland.

Lessons from Europe, for Wales

Our four case studies were chosen in order to demonstrate the breadth and divergence of different systems for broadcasting policy and regulation in countries across Europe that have some key similarities, and also some significant differences, to the United Kingdom in terms of political structures and cultural, social and linguistic composition.

The main lessons we have identified for Wales include the following:

Germany

- If powers are devolved, agreements and bodies can be put into place to streamline regulation and policy across different nations and regions.
- Decisions about the content and funding of public service broadcasting ceded by central government do not necessarily have to be devolved directly to the governments of devolved nations, but can be ‘pooled’ within independent bodies to allow greater transparency, shared responsibility and distance from political interference.

Spain

- This case study proves that ‘regional’ regulators can coexist with a single national regulator – a new Broadcasting Authority for Wales would not have to compete with or duplicate the work of Ofcom, but could be afforded a specific remit to complement it to specifically strengthen democracy in Wales.
- It also exemplifies the risk of political partisanship eroding the independence of regional broadcasters and regulators, a similar risk to the below in relation to Belgium.

Belgium

- This case study demonstrates that ‘complete’ devolution, and/or broadcasting powers divided along linguistic lines, can lead to completely separate media markets and fragmentation in the population – a warning against attempts to ‘devolve S4C’ or hive off control of Welsh language media in isolation.

Netherlands

- This case study demonstrates the threat to funding settlements for regional or sub-state nation level broadcasters of centralised control over broadcasting policy.

Citizens' Voices, People's News

Before drawing together overall conclusions, and making our specific recommendations for the future of broadcasting policy and regulation in Wales, it is worth highlighting that in November 2022 the IWA published a report in collaboration with The Open University in Wales. 'Citizens' Voices, People's News: Making the Media Work for Wales'³⁰ was based on the deliberations of a citizens' panel of 15 Welsh citizens from a diverse range of backgrounds, and concluded that 'Media Regulation' was one of three key themes that need to be addressed if we are to 'make the media work for Wales' (the others being 'Democracy and Citizenship Education' and 'Recognising Welshness').

It is worth restating the recommendations made in relation to media regulation in that report here, as they directly relate to the discussion above and the recommendations to come.

Taken together with the case studies outlined above, they demonstrate a growing evidence base, from best practices elsewhere and from the considered deliberations of citizens in Wales, of support for the key principles and recommendations of this report.

- 1** We endorse the creation of a Shadow Broadcasting and Communications Authority for Wales, and recommend further exploration of a broadened remit for this body, that would include monitoring all media sources in Wales, including print.
- 2** We further recommend that the Shadow Broadcasting and Communications Authority for Wales should have a representative and diverse membership and should be set up to include a mechanism for consultation with Welsh citizens more widely when creating regulatory policy.
- 3** We recommend that the Shadow Broadcasting and Communications Authority for Wales develops a made-for-Wales best practice framework against which news outlets active in Wales could be measured (and given a trust rating akin to the food hygiene ratings issued by the Food Standards Agency), and which journalists (including trainees) could use for training and benchmarking.
- 4** We recommend that the Welsh Government should work with the UK Government to improve accountability of Public Service Media organisations (PSMs) to the Senedd, through devolution of specific broadcasting powers, and to create channels through which solutions to the transnational regulatory and non-regulatory issues facing the media in Wales, the UK and the wider world might be further explored.

Conclusion and recommendations

Following our mapping exercise covering the current frameworks governing broadcasting regulation in the United Kingdom as pertaining to Wales, and our analysis of case studies from contexts across Europe, the Institute of Welsh Affairs recommends the following specific ways forward in the area of broadcasting regulation.

As we made clear in Part 1 by publishing the *IWA Regulatory Map*, it is important when considering the function of any new body that the **setting of strategy and policy** (including funding) in relation to broadcasting (currently largely the function of DCMS) and **the execution of regulations and policies** around broadcasting (currently largely the function of Ofcom) remain separate. There is no precedent anywhere in Europe for combining the two, and so any new Broadcasting Authority for Wales needs to be focused on either policymaking or regulation, but not both.

However, we also conclude that the major ‘missing piece’ in the current regulatory and policy landscape around broadcasting (in Wales and the UK more generally) is a meaningful forum for the voices of audiences and citizens: the very people whom public service media is supposed to serve.

Our recommendations therefore take into account the need for reform in terms of setting of strategy and policy, the execution of regulations and policies *as well as* the broader remit implied in The Co-operation Agreement between the Welsh Government and Plaid Cymru, ie the remit of ‘a Shadow Broadcasting Authority for Wales... [to] include... strengthen[ing] Welsh democracy and clos[ing] the information deficit... support[ing] the Welsh language... [and] enhanc[ing] media pluralism and the use of the Welsh language on all media platforms’ is met.

Our hope is that the following recommendations uphold all five of the key principles we have outlined, as well as providing a route toward addressing the complex issues that continue to bedevil Wales’ media and democracy.

Recommendation 1

We therefore recommend, in the area of the setting of strategy and policy:

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:

(a) Welsh Government

or

(b) an independent Commission

Appointments to this 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.

Its decisions should be subject to confirmation hearings in front of the appropriate committees of the four legislatures of the United Kingdom.

Note

We note that there are models in Europe that suggest either option here is workable. However, in order to take account of the overtly political context within which current debates about the devolution of broadcasting are held, we seek 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. We therefore think policymaking around broadcasting should be done through an independent body, nevertheless answerable to elected representatives in all four legislatures of the United Kingdom. Our preference is therefore option (b).

Recommendation 2

In the area of the execution of regulations and policies:

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 governments, and have a remit to serve the interests of citizens and audiences in Wales.

The role of the Institute would be:

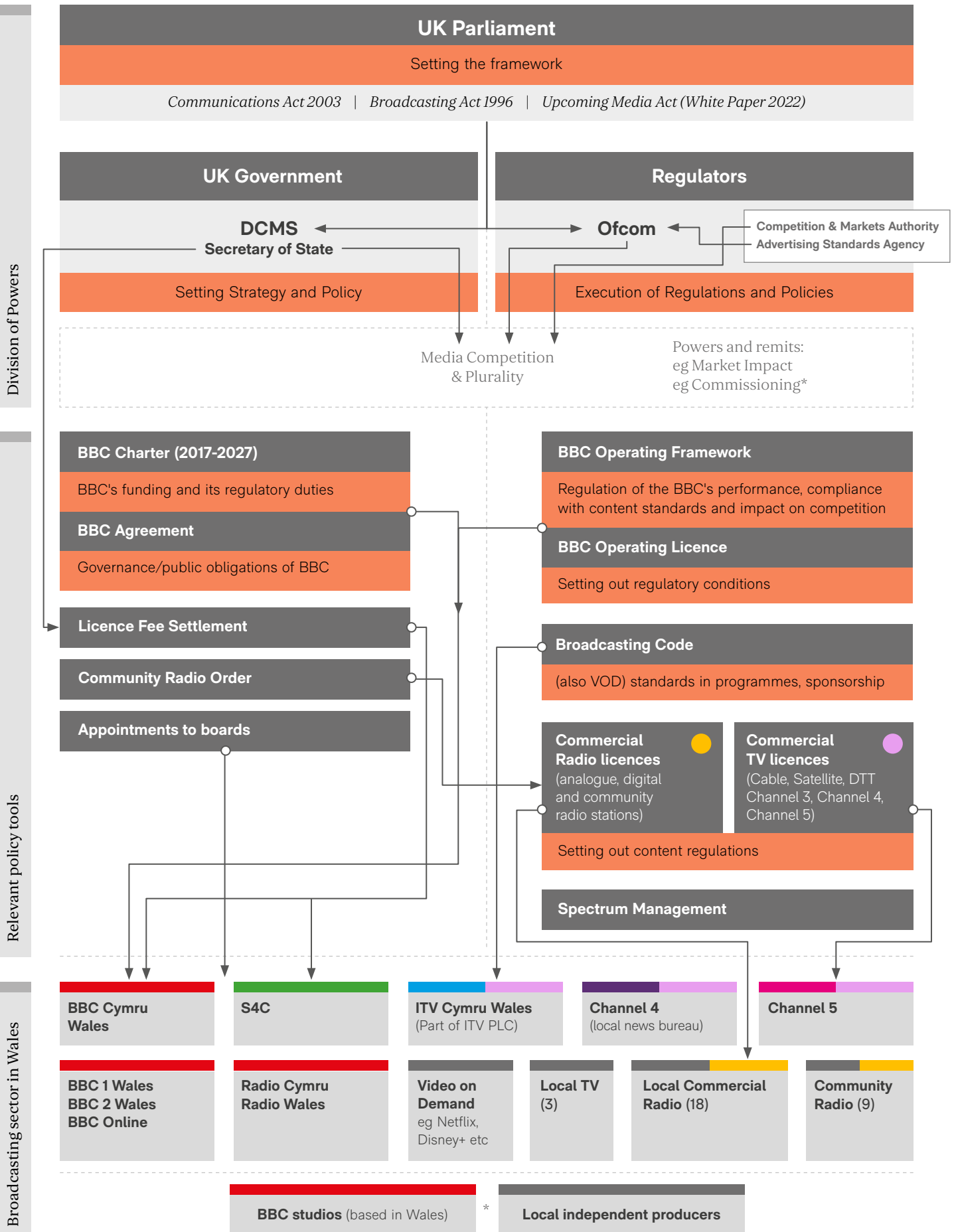
- to provide a media monitoring service on behalf of citizens and audiences in Wales, evaluating delivery of broadcasting
- to scrutinise decisions made by governments, regulators or broadcasters that impact the content and quality of media provision in Wales
- to enhance the visibility of existing accountability structures relating to Wales within UK-wide broadcasting regulation
- to convene regular focus groups and commission research to further enhance Wales' media landscape.

Members of the Institute should:

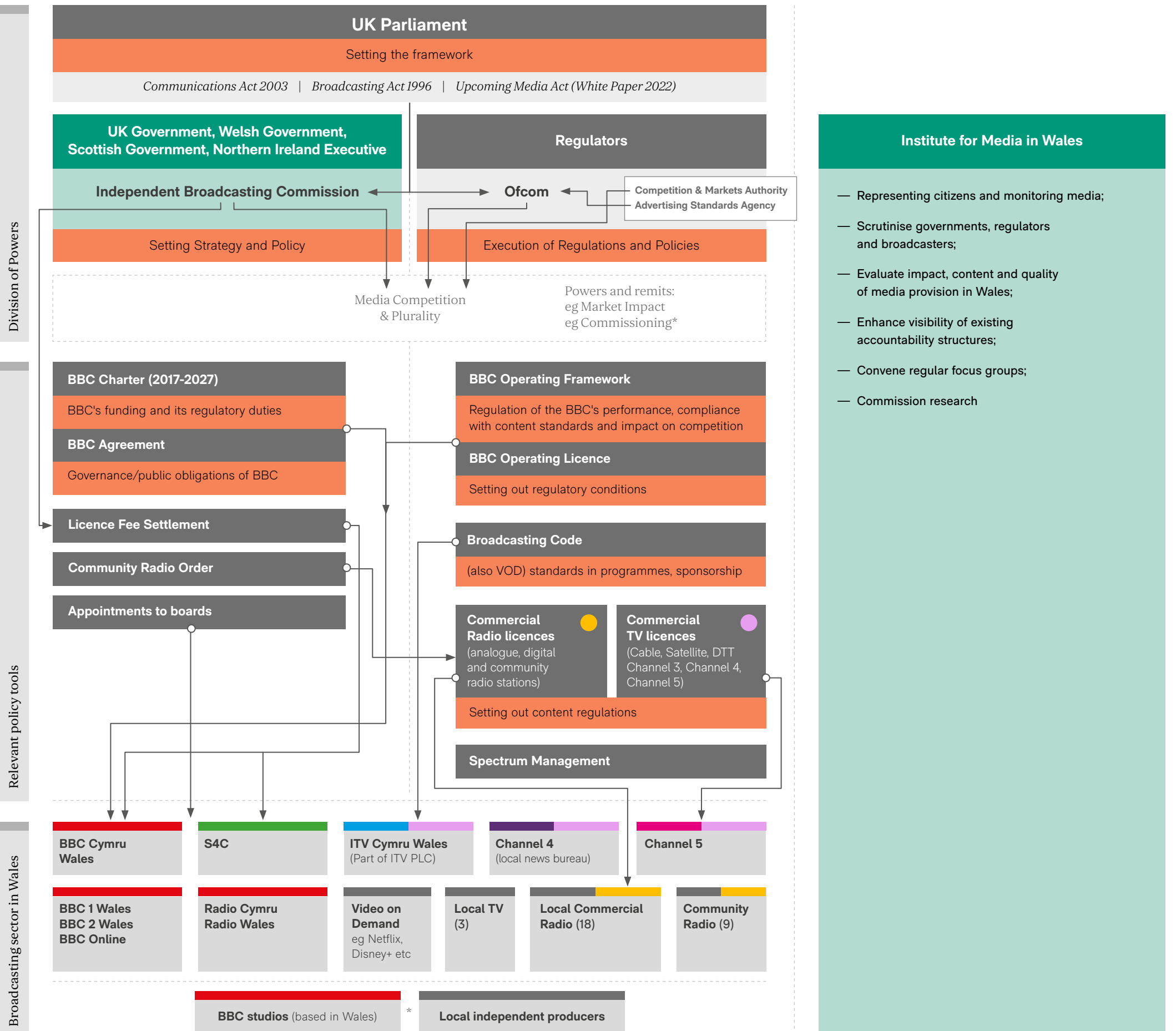
- have relevant expertise in broadcasting (eg academic, policy, regulatory, linguistic, practitioner)
- be representative of Wales' population across a number of key demographic indicators.

Appendices

Appendix 1: IWA Regulatory Map – current arrangements



Appendix 2: 'Rewired' regulatory map – suggested arrangements



Appendix 3: Glossary of acronyms

ARD	Association of Public Broadcasting Corporations in the Federal Republic of Germany
BBC	British Broadcasting Corporation (UK)
BR	Bayerischer Rundfunk (Germany)
CAC	Consell de'l Audiovisual Catalunya (Catalunya, Spain)
CCMA	Corporació Catalana de Mitjans Audiovisuals (Catalunya, Spain)
CNMC	Comisión Nacional de los Mercados y la Competencia (Spain)
CRC	Conference of Regulators (Belgium)
CSA	Conseil Superior de'l Audiovisuel (Belgium)
CvDM	Commissariaat voor de Media (Netherlands)
EiTB	Euskal Irrati Telebista (Basque Country, Spain)
Hr	Hessischer Rundfunk (Germany)
ITV	Independent Television (UK)
MDR	Mitteldeutscher Rundfunk (Germany)
NPO	Nederlandse Publieke Omroep (Netherlands)
NDR	Norddeutscher Rundfunk (Germany)
Ofcom	Office of Communications (UK)
OTT	Over-the-top
PSB	Public Service Broadcaster
Rbb	Rundfunk Berlin-Brandenburg (Germany)
RPO	Regionale Publieke Omroep (Netherlands)
RTBF	Radio-télévision belge de la Communauté française (Belgium)

Appendix 2: Glossary of acronyms

RTVE	Corporación de Radio y Televisión Española (Spain)
S4C	Sianel Pedwar Cymru (Wales, UK)
SR	Saarländischer Rundfunk (Germany)
SWR	Südwestrundfunk (Germany)
VOD	Video on Demand
VRM	Flemish Regulator for the Media (Belgium)
VRT	Vlaamse Radio- en Televisieomroeporganisatie (Belgium)
WDR	Westdeutscher Rundfunk (Germany)
YLE	Yleisradio Oy (Finland)
ZDF	Zweites Deutsches Fernsehen (Germany)

