



---

## **S4C Policy – Early Release of Rights**

April 2016

---



## Introduction

In accordance with the requirements of Section 285 of the Communications Act 2003, S4C has set out the principles that apply when content is commissioned by independent producers, in a Code of Practice approved by Ofcom.

In addition, the Ofcom guidelines for drawing up Codes of Practice expects Public Service Broadcasters to implement a formal policy on early release from the period when the commissioning broadcaster has exclusive rights (referred to as the holdback period) in relation to a programme that has been commissioned.

This policy sets out the principles that are implemented by S4C when considering requests to review and/or waive its exclusive holdback period, and also outlines the procedure and suggested timeline for processing a request.

### 1. S4C’s Standard Terms

1.2 For most *genres*, the Code of Practice and Standard Terms allow S4C an exclusive five year period to broadcast in the United Kingdom, with the right to extend for an additional two years. In the case of children’s programmes and educational programmes, S4C has an exclusive seven year period, with the right to extend for an additional three years.

1.3 A holdback period ensures that S4C:

- secures the exclusivity of the rights obtained by S4C for a reasonable period of time,
- thereby maximising the potential audience for Welsh language programmes in a competitive and multi-platform environment as much as possible;
- justifies the value of the investment in the programming, as much as possible; and
- ensures an open, consistent and transparent framework for S4C’s investment in its programming.

1.4 The table below outlines the usual holdback periods for S4C’s programming in relation to different uses of those programmes. Where the programme is a series, the holdback period is calculated from the date of the first broadcast of the last episode of the series on S4C.

1.5 For returning series, see 2.4 below.

### Usual Holdback Periods

Use	Holdback period in the UK	Holdback period outside the UK
Broadcast by another broadcaster	From the date that the programme is created until the	From the date that the programme is created until

	end of the Licence Period	24 hours after S4C broadcasts the programme for the first time on S4C.
Sale on DVD	From the date that the programme is created until 7 days after the last episode of the programme is broadcast on S4C for the first time.	From the date that the programme is created until 24 hours after S4C broadcasts the programme for the first time on S4C.
Online streaming (charged)/Download to Own (DTO)	From the date that the programme is created until 7 days after the last episode of the programme is broadcast on S4C for the first time.	From the date that the programme is created until 24 hours after S4C broadcasts the programme for the first time on S4C.
Free online streaming	From the date that the programme is created until the end of the Licence Period	From the date that the programme is created until 24 hours after S4C broadcasts the programme for the first time on S4C.
Subscription video on demand (SVOD) / Advertised video on demand (AVOD)	From the date that the programme is created until the end of the Licence Period	From the date that the programme is created until 24 hours after S4C broadcasts the programme for the first time on S4C.
Theatrical	From the date that the programme is created until the end of the Licence Period	From the date that the programme is created until 24 hours after S4C broadcasts the programme for the first time on S4C.

1.6 The holdback periods on exploitation by the producer apply to the UK only, but the producer must be able to satisfy S4C that any exploitation outside the UK, such as via the internet, mobile technology or satellite broadcasting (except for the unintentional overspill of a satellite signal to the UK), will not lead to a situation in which the programme will be viewable in the UK during the holdback period.

**2. Fundamental principles for the early release of holdback rights**

2.1 Although the Code of Practice protects the exclusive nature of the rights required by S4C, the policy on early release of holdback rights offers the flexibility and scope for the producer to take advantage of exploitation opportunities, including



co-production, re-versioning of content, secondary exploitation within the UK or the opportunity to form new partnerships.

- 2.2 S4C can agree to release holdback rights completely, or keep them in place while allowing for specific instances of exploitation.
- 2.3 If S4C agrees to the early release of holdback rights, or agrees to exceptions to them, this will not affect S4C’s right to continue to exercise the rights given to S4C in accordance with the terms of the licence on a non-exclusive basis.
- 2.4 For returning series, unless otherwise agreed in the licence, S4C will agree to release the first series following the first broadcast of the final episode of the third series of the programme on S4C and so on (therefore, S4C will release the second series following the broadcast of the final episode of the fourth series and so on). Should S4C decide not to commission a further series, it will agree to release each series once the usual holdback period for the final series has ended.

**3. Criteria for applying for an early release of holdback rights**

- 3.1 S4C will consider the early release of holdback rights provided that, in S4C’s opinion, early release will not undermine the exclusivity of the programme for the audience for which it was intended, nor de-value the investment that S4C has made (e.g. the level of flexibility when negotiating the holdback period for significant or high level investment may be limited).
- 3.2 S4C will expect to be compensated for agreeing to any early release of holdback rights. Compensation may include a reduction in the level of licence fee paid, the extension of the term of the licence, ensuring a greater number of transmissions, cross-promotion opportunities, ensuring a higher proportion of net income and/or any other benefit to S4C.

**4. Guidance on reviewing holdback rights**

- 4.1 The following table gives some indication of the holdback periods that S4C considers to be a minimum requirement. S4C will not be willing to consider reducing the holdback period beyond the periods identified below, except in exceptional circumstances.
- 4.2 The table is intended as a guideline only, and S4C will not be under any obligation to agree to a request for early release. This will be discussed in each case, and depends on editorial and financial factors, and the criteria outlined in this policy.

**Holdback Periods – Minimum Requirements**

Use	Holdback period
Broadcast by another broadcaster in the UK	Individual programme: from the date that the programme is created until a date 6 months

	<p>following the programme's first broadcast on S4C</p> <p>Series: from the date that the programme is created until a date 18 months following the first broadcast of the final episode on S4C.</p>
DVD Sales	From the date that the programme is created until the date of the programme's first broadcast on S4C
Online streaming (charged)/Download to Own (DTO)	From the date that the programme is created until the date of the programme's first broadcast on S4C
Subscription video on demand (SVOD) / Advertised video on demand (AVOD)	<p>Individual programme: from the date that the programme is created until a date 6 months following the programme's first broadcast on S4C</p> <p>Series: from the date that the programme is created until a date 18 months following the first broadcast of the final episode on S4C.</p>
Theatrical / non-theatrical	From the date that the programme is created until a date that may be before the programme is first broadcast on S4C

- 4.3 The production company and S4C will come to a separate agreement about the holdback rights in relation to the producer's ability to use the design and material of a website associated with a programme in relation to another broadcaster or third party's use of the website. Such a discussion will consider the content of the specific website, global availability of the website and the way in which any third party wishes to use the website and its content.

## 5. The process for applying for early release

- 5.1 Once a sale is anticipated, an official representative of the production company that owns the underlying rights should apply to S4C for permission to sell the programme.
- 5.2 Applications should be made electronically, and should be sent by e-mail to the Head of S4C's Legal Department.
- 5.3 A standard Application Form is attached in the Schedule. All applications should include the following information:
- Details about the programme including, where appropriate, details about the relevant agreement between S4C and the producer, including the programme/series' unique reference (Inumber);

- The date that the programme, or last episode of the series, was first broadcast on S4C;
- The reasons for making the application to reduce the standard holdback period, including any benefit to S4C or the production as a result of the agreement;
- Who is the proposed licensee or the third party that the producer wishes to vary the holdback period for their benefit;
- Details of the intended rights that the producer wishes to give to the third party; the proposed licence period; the proposed number of broadcasts; and the secondary broadcaster's proposed broadcast date; and
- The proposed licence fee, the distributor's commission (where relevant) and any anticipated sales costs.

5.4 Each application will be acknowledged within five working days. The applicant will be notified:

5.4.1 if insufficient details have been provided about the information required in order to process the application; and

5.4.2 of the timescale for considering the application.

5.5 The producer will be notified of S4C's decision within 20 working days of submitting the application (or where a request for further information has been made, within 20 working days of receipt of such information). If the producer informs S4C that they would like a response within a shorter period, S4C will endeavour to provide a response as soon as possible; however, it is the producer's responsibility to seek permission from S4C in plenty of time in order to ensure that S4C is able to give the application fair consideration.

5.6 A decision to review the holdback period will be made subject to ensuring that a licence or licence variation is signed, and incorporates the relevant terms and conditions noted in section 6 of this policy.

## **6. Terms and conditions for early release**

6.1 Any permission must be given by S4C in writing and will be subject to the producer's compliance with any conditions set by S4C.

6.2 S4C will expect the producer to place an obligation on its agents, distributors and/or licensees to:-

6.2.1 obtain S4C's approval if exploitation of the programme is likely to enable the public in the UK to access the programme on services other than S4C's services (including, without limitation, via online and mobile technology);

6.2.2 obtain S4C's approval for the third party's exploitation dates of the programme in the UK (on whatever platform);



- 6.2.3 ensure, on a contractual level, that S4C, by continuing to exploit its rights in the programme (including the right to broadcast the programme with English subtitles and/or soundtrack) shall not infringe the rights of any third party for whose benefit the holdback has been varied;
- 6.2.4 secure a credit to S4C in a form to be agreed with S4C, and ensure that S4C receives information about any communication, scheduling, marketing and/or publicity associated with the broadcasts; and
- 6.2.5 comply with such other provisions as are appropriate in the circumstances, including the administration and accounting arrangements of any repeat broadcasts.

## **7. Issues or disputes relating to this Policy**

Issues or disputes relating to the implementation of this Policy will be managed in accordance with the procedures outlined in S4C's Standard Terms.

## **8. Review**

This policy will be reviewed and updated regularly, and at least once every three years. The policy will be published and made available on the S4C Production Website – Policies and Guidelines.



## Schedule

### Application Form Early Release of Holdback Rights

Date of Application:	
<b>Producer's Details:</b>	
1. Name	
2. Contact	
3. E-mail address	
<b>Programme Details:</b>	
1. Title of the Programme	
2. Programme Reference (Inumber)	
3. Details of the relevant agreement between S4C and the producer	
4. Date of first broadcast of the programme/last episode of the series on S4C	
<b>Licensee/Third Party's Details:</b>	
1. Proposed licensee	
2. Rights to be given to the proposed licensee	
3. Proposed licence period	
4. Proposed number of broadcasts	
5. Proposed broadcasting dates	
6. Proposed licence fee	
7. Distributor's commission	
8. Anticipated sales costs	
<b>Further Details:</b>	
1. Reasons for making the application	

