



Broadcasting (Television Licence Fee Abolition) Bill

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The *Broadcasting (Television Licence Fee Abolition) Bill*, Bill 39 of 2007-08 would repeal the provisions in the *Communications Act 2003* that give rise to television licensing. It is due to have a second reading debate on 17 October. In effect the Bill would end the television licence system that provides the BBC with its main source of funding. The *Agreement* that complements the BBC's Royal Charter already allows the Corporation to seek, with government permission, alternative sources of income. Some of these would bring the BBC into direct competition with other broadcasters, an observation of relevance to Ofcom's current review of public service television broadcasting.

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1 The Bill

Part 4 of the *Communications Act 2003* comprises six sections (363-8) that govern the licensing of TV reception. Clause 1 of the two-clause *Broadcasting (Television Licence Fee Abolition) Bill 2007-08* would repeal this. The Bill extends to the whole of the UK and would come into force by the end of 2012 at the latest (clause 2). This latter date coincides with the anticipated completion of digital switchover when some 98.5% of the UK population is expected to have access to multi-channel television.

1.1 *Communications Act 2003*

The legal requirement to hold a TV licence is embodied by section 363 of the *Communications Act 2003* which begins:

(1) A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under this Part.

(2) A person who installs or uses a television receiver in contravention of subsection (1) is guilty of an offence.

(3) A person with a television receiver in his possession or under his control who-

(a) intends to install or use it in contravention of subsection (1), or

(b) knows, or has reasonable grounds for believing, that another person intends to install or use it in contravention of that subsection, is guilty of an offence...

What constitutes “use” of a television is defined in section 368(3): “References in this Part to using a television receiver are references to using it for receiving television programmes.” The Act is supported by the *Communications (Television Licensing) Regulations SI 2004/692* (as amended)¹ which set the level of the licence fee and which define “television receiver”.

1.2 *BBC Charter and Agreement*

The BBC’s Royal Charter makes frequent reference to the licence fee and so would likely require modification if the present Bill reached the statute book: among other cases, the Charter refers to the BBC Trust as “the guardian of the licence fee revenue”. The Charter also refers to the *Communications Act 2003* but Article 63 comments: “References to particular legislation should be read as referring to that legislation as amended or re-enacted from time to time.”

The BBC’s Royal Charter defines the licence fee in the following terms:

“licence fee” means sums which a person is liable to pay by virtue of any regulations under section 365(1) of the *Communications Act 2003* (sums payable for licences to use etc. television receivers);

The Royal Charter also defines “licence fee revenue”:

“the licence fee revenue” means any sums which may be paid to the BBC by the Secretary of State from time to time, pursuant to any Framework Agreement, to fund the services provided by the BBC for the promotion of its Public Purposes;

Article 57 of the Charter is relevant in that it makes clear that the term “licence fee payer” does not necessarily imply someone who pays a licence fee:

¹ *The Communications (Television Licensing) (Amendment) Regulations SI 2008/643*

57. The meaning of “licence fee payer”

In this Charter, a reference to a “licence fee payer” is not to be taken literally but includes, not only a person to whom a TV licence is issued under section 364 of the Communications Act 2003, but also (so far as is sensible in the context) any other person in the UK who watches, listens to or uses any BBC service, or may do so or wish to do so in the future.

Detailed provision on the funding arrangements for BBC services appears in the *Agreement* which complements the Charter.² The Agreement was made by a Deed between the Secretary of State and the BBC and approved after a debate in the House of Commons on 10 July 2006.³ There is no bar to the BBC being funded by alternative methods – it needs the Government’s permission under the arrangements set out in the BBC Agreement that complements the Charter. Clauses 75-80 of the Agreement detail the funding arrangements. Clause 76, paragraph 1 states:

The BBC shall not, without the prior approval of the appropriate Minister—

- (a) include any sponsored material in any of its services; or
- (b) provide any subscription service.

The definition of “sponsored material” given in clause 76 of the Agreement appears to embrace advertising:

“sponsored material” means any material whose relevant costs are met in whole or in part by an organisation or person other than the BBC, the Open University, or performers featured in the material, with a view to promoting, through the material’s inclusion in a service, its name, its trade mark, its image, its activities or its products or other direct or indirect commercial interests;

The BBC’s commercial services,⁴ such as the television station BBC World, do carry advertising but are prevented, by clause 75 of the Agreement, from receiving funding from licence fee income. However, there is some scope under this clause for the Secretary of State to give prior written approval for diversion of licence fee income to some television services funded by other means.

It may be noted that these questions about the interaction of the Royal Charter and BBC Agreement with the present Bill would not have arisen had the Government placed the Corporation on a statutory footing by Act of Parliament instead. Such a course was recommended both by the previous Culture, Media and Sport Committee⁵ and the House of Lords BBC Charter Review Select Committee.⁶

² Both Charter and Agreement are available online at <http://www.bbc.co.uk/bbctrust/framework/charter.html>

³ HC Deb 10 July 2006 cc1150-221

⁴ “Commercial services” are defined, in section 101 of the Agreement, as being (with some exceptions) primarily for profit.

⁵ Culture, Media and Sport Committee, *A public BBC*, HC 82-I 2004-05 para 246

⁶ House of Lords Select Committee on the BBC Charter Review, *The Review of the BBC’s Royal Charter*, HL Paper 50-I 2005-06 para 42

2 Television licensing

2.1 Licence income

The BBC's *Annual Report and Accounts 2007/08* includes the following information on income and expenditure for the year ended 31 March 2008:

BBC Group income of £4,415million represented a £238million (6%) increase on the previous year. Licence fee income rose 4% to £3,369million, reflecting the 3% increase in the cost of a TV licence, together with the reductions in collection costs and growth in number of UK households.

The main reason for the rise in income exceeding the fixed licence fee increase was the performance of the commercial businesses, where income of £720million (2007: £636million) was 13% up on last year (excluding the BBC's share of joint ventures income).

Group operating expenditure did not increase at the same rate (expenditure of £4,475million was 2.8% higher), mainly due to a reduction in the FRS⁷ 17 accounting charge for the cost of pension scheme benefits earned by members during the year. If these costs are excluded, operating costs rose by 6% in line with income.⁸

From the above, it is clear that the licence fee provides the BBC with its dominant source of income. The present, and future, cost to individual licence fee payers can be summarised as follows:

Under the most recent six-year settlement, BBC licence fee revenue will rise by a nominal 3% for 2 years, a nominal 2% for three years and by up to 2% in 2012/2013. For the licence payer this means that the colour TV licence fee will grow from £139.50 a year today to at least £148 a year in 2012.⁹

2.2 When a TV licence is needed

As noted earlier, Part 4 (section 363) of the *Communications Act 2003* requires that the installation or use of a television receiver requires the authorisation of a TV licence. This is regardless of the extent, if at all, one watches the BBC's services.

The TV Licensing website¹⁰ states:

You need a TV Licence to use any television receiving equipment such as a TV set, digital box, DVD or video recorder, PC, laptop or mobile phone to watch or record television programmes as they're being shown on TV.

If you use a digital box with a hi-fi system or another device that can only be used to produce sounds and can't display TV programmes, and you don't install or use any other TV receiving equipment, you don't need a TV Licence.¹¹

The BBC TV Licensing Management Team provided the following response for the BBC News website (16 June 2006):

⁷ Financial Reporting Standard

⁸ BBC, *Annual Report and Accounts 2007/08: The BBC Executive's review and assessment*, p85

⁹ Ofcom, *Ofcom's Second Public Service Broadcasting Review: Phase 2* (25 September 2008)

¹⁰ www.tvlicensing.co.uk

¹¹ <http://www.tvlicensing.co.uk/information/index.jsp>

Does someone need a TV Licence if they own a TV or other device capable of receiving a TV signal - either via a TV tuner or via live broadband stream - if they can prove they never actually use it to receive a TV signal?

For example - if I have a TV and video recorder and only ever use it to watch videos - and can prove that, if asked - do I need a licence?

A TV Licensing spokesperson said:

"The licensing requirement is not for ownership of a device, but for the installation and use of the TV receiving equipment.

"If you only ever use television receiving equipment to watch pre-recorded DVDs or videos, or your TV receiving equipment cannot receive programmes as they are being broadcast in the UK, then you do not need a licence.

"Those who wish to make it clear that they do not need a licence can take the following actions to detune their television set, but this is not compulsory:-

- remove the television from the aerial;
- cover the aerial socket so that it can't be used;
- ensure that when channels on the television are selected no television signal is received."

There has been a number of parliamentary questions related to the sustainability of the television licence mechanism in a multi-media age, including the following:

Mr. Gauke: To ask the Secretary of State for Culture, Media and Sport (1) what representations the Government have received from the BBC requesting that the application of the BBC television licence fee be extended to premises which do not have a television but which have access to the internet; [27597]

(2) what consideration the Government have given to extending the application of the BBC television licence fee to premises which do not have a television but which have access to the internet. [27598]

James Purnell: The Government have received no such representations from the BBC. However, the BBC, as television licensing authority, considers that the current definition of a television receiver in the licence fee regulations already extends to a PC that is used to watch television programme services over the internet, if they are received at the same time or virtually the same time as they are received elsewhere by conventional means.

The Government have no plans for any changes to the current arrangements but, as indicated in the BBC Charter Review Green Paper published in March 2005, believes that changes to the existing funding model might have to be considered if in future large numbers of people are downloading audio-visual content from the internet and watching it on their computers or mobile phones, rather than using traditional TV services.¹²

Elaboration on the licensing position with regard to mobile phones came in two written answers in the House of Lords:

Viscount Astor asked Her Majesty's Government:

Whether a mobile telephone that receives (a) analogue; (b) digital; or (c) satellite television requires a United Kingdom television licence. [HL4139]

¹² HC Deb 22 November 2005 cc 1817-8W

Lord Davies of Oldham: The BBC, as licensing authority, has responsibility for interpreting the television licensing legislation and determining licensing requirements in individual cases. However, a television licence is required to install or use any apparatus for the purpose of receiving any television programme service, whether by means of wireless telegraphy or otherwise and whether or not it is installed or used for any other purpose. The definition of a television programme service encompasses analogue, digital and satellite television services.

Viscount Astor asked Her Majesty's Government:

Whether a mobile telephone that receives United Kingdom television signals is covered by the owner's domestic television licence or whether a separate licence is required. [HL4140]

Lord Davies of Oldham: The BBC, as licensing authority, has responsibility for interpreting the television licensing legislation and determining licensing requirements in individual cases. However, a television licence permits the licensee or a person normally living with the licensee at the licensed address to use a television receiver powered solely by its own internal batteries anywhere in the United Kingdom, the Channel Islands or the Isle of Man.¹³

2.3 Collecting the TV licence

In his September 2001 criminal courts review, one of the many subjects covered by Lord Justice Auld was TV licence evasion. In this context the role of the BBC was summarised:

The Government decides what proportion of the licence fee income should go to the BBC, and currently the BBC receives it all. The BBC collects the fees on behalf of the Government and decides on enforcement and prosecution policies. These policies are based on the Code for Crown Prosecutors issued by the Director of Public Prosecutions and, therefore, take into account public interest considerations such as whether alleged offenders are in genuine financial hardship or otherwise vulnerable. The BBC devolves responsibility for prosecution to a contractor...¹⁴

Lord Justice Auld went on to recommend that, while the use of a television without a licence should remain a criminal offence, it should be dealt with in the first instance by fixed penalty notice "discounted for prompt purchase of a licence and payment of penalty, and subject to the defendant's right to dispute guilt in court."

As a result of the *Broadcasting Act 1990*, the BBC was made responsible for licence administration. Information on the BBC's contractors appears on the website of TV Licensing:

"TV Licensing" is a trading name used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system. The majority of administration is contracted to Capita Business Services Ltd, with cash related payment schemes contracted to Revenues Management Services Ltd. Over-the-counter services are contracted to PayPoint Collections Ltd. Marketing and public relations activities are contracted to the AMV Consortium. This consortium is made up of the following four companies: Abbott Mead Vickers BBDO Ltd, Fishburn Hedges Boys Williams Ltd, PHD Media Ltd and Proximity London Ltd. The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.¹⁵

¹³ HL Deb 28 February 2006 cc48-9W

¹⁴ <http://www.criminal-courts-review.org.uk/ccr-09.htm>

¹⁵ <http://www.tvlicensing.co.uk/aboutus/index.jsp>

TV Licensing has published the following *service standards*:

Our commitment to you

In all our dealings with you we will:

- Be courteous at all times.
- Answer all communications quickly and politely, aiming to 'get it right first time'.
- Uphold the principles of the Data Protection Act 1998.
- Act fairly, equitably and consistently towards all customers within the terms of the Communications Act 2003 and the Communications (Television Licensing) Regulations 2004.
- Process complaints quickly and fairly and undertake thorough and fair investigations.
- Where practicable, communicate in the language and format of a customer's choice.
- Inform customers of their most appropriate method of payment.
- Constantly seek to improve and maintain the quality of our activities.

Visiting officers

When a visiting officer calls at your home, he or she will:

- Always prove their identity by showing an identity card and, on request, provide a telephone number to confirm this.
- Be polite and courteous at all times.
- State why they are visiting.
- Only enter a property when given permission. If we are refused access, we may use our detection equipment or apply to court to obtain a search warrant.
- Conduct enquiries firmly and fairly, and in the least intrusive way possible.
- Never threaten or intimidate.
- Stop the enquiry if asked to leave.
- When necessary, take a statement, in accordance with the law, and ask the interviewee to sign it as an accurate account of the interview.
- Make sure the interviewee knows the consequences of a statement being taken.

A consistent approach

We aim to visit all addresses where occupants claim to have no TV receiver or they hold a black and white TV Licence. This way, we can ensure that everyone is correctly licensed and remove non-television users from standard mailing cycles for a minimum of three years.

When we visit people who have told us that they do not need a TV Licence over a third of those we make contact with do, need one, and a third of those with black and white licences in fact needed a colour licence.¹⁶

The powers of entry alluded to above derive from section 366 of the *Communications Act 2003*. Further information on the process has been given in a written answer:

Mr. Laurence Robertson: To ask the Secretary of State for Culture, Media and Sport what right of access the Television Licensing Authority has to enter private premises to search for equipment which may require a licence; and if she will make a statement. [129479]

Mr. Woodward: TV Licensing officials may enter premises to check for unlicensed use of a television receiver only with the consent of the occupier or with a warrant issued under section 366 of the Communications Act 2003 by a justice of the peace in England and Wales, a sheriff in Scotland or a lay magistrate in Northern Ireland. Such a warrant may be issued only if the relevant official is satisfied by information provided on oath that there are reasonable grounds for believing an offence of unlicensed use has been or is being committed; evidence of the commission of the offence is likely to be on the premises specified and a number of additional conditions are satisfied. A warrant permits the authorised person or persons to enter the premises at any time and to search, examine and test any television receiver there. It must be executed within one month following its grant.¹⁷

Households without televisions may receive periodic requests from TV Licensing to provide an explanation for their not having a licence. A reply might be expected to provide at least some of the necessary reassurance, even if it is not legally required:

Mr. Holloway: To ask the Secretary of State for Culture, Media and Sport whether those who do not have a television set are required to inform Television Licensing that they do not require a TV licence. [69812]

Mr. Woodward: A television licence is required to install or use a television receiver, as defined in regulations made by the Secretary of State, rather than a television set. Members of the public who do not require a television licence are under no obligation to inform TV Licensing of the fact.¹⁸

Some people have written to newspapers complaining of harassment, and taking exception to what they see as an unjustified presumption that they ought to use a television. The previous Select Committee on Culture, Media and Sport considered this issue in its report, *A public BBC*.¹⁹ A relevant passage is reproduced here:

152. We are well aware of concerns that the BBC's agent, TV Licensing, has sometimes deployed inappropriate tactics in attempts to maximise collection of the licence fee. These have included a crude and damaging assumption that every household must be in possession of a TV set, or equivalent apparatus. **While payment of the licence fee by households which actually have a TV is a legal obligation, we remind the BBC that the finances it receives from the licence are a privilege. The Corporation should use a less menacing style of advertising campaign.**

The Committee also called for the decriminalisation of licence-fee non-payment, arguing it should become a civil matter. The BBC and the Government responded thus:

¹⁶ <http://www.tvlicensing.co.uk/aboutus/servicestandards.jsp>

¹⁷ HC Deb 23 March 2007 cc1169-70W

¹⁸ HC Deb 15 May 2006 cc 667-8W

¹⁹ First Report, HC 82 2004-05, 16 December 2004

We will review the existing licence fee collection policy. Collection currently costs around £150 million each year and the Independent Panel [chaired by Lord Burns] noted the 'clumsiness' of the current arrangements. We will consider whether new technology allows collection to be conducted in a more cost-effective way, and whether, for example, increased use could be made of direct debit and internet payment schemes. As the Green Paper makes clear, we will also be looking further at how the licence fee is enforced.²⁰

Subsequently, the Government published its white paper on the BBC.²¹ On the matter of funding, the white paper states:

On collection and enforcement of the licence fee, we will make the [BBC] Trust more directly accountable for the activities of TV Licensing. We will encourage the take-up of easy payment schemes. And we will consider further proposals to divert offenders from the Criminal Justice system.

In a later debate on the BBC Charter, the Government Spokesperson for Culture, Media and Sport, Lord Davies of Oldham said:

My noble friend Lady Gibson, in an interesting speech, asked specifically whether we intend to decriminalise television licence evasion. I am sorry to disappoint her but we have no intention of doing so. As she will know, a review of the matter was carried out by Lord Justice Auld in 2001 and it was his view that such action should not take place and would be detrimental to the wider society. However, my noble friend has raised the issue again and I have no doubt that she will take other opportunities to press the case. I understand the sentiments behind her concern for those who fail to make their licence payments.²²

A recent development²³ has been the launch, by the BBC Trust, of a review into how the licence fee is collected. The questions posed for the associated public consultation are as follows:

Do you think it's clear when a TV licence is needed? Do you know about the different ways of paying for your licence? What's your view on the tone of the marketing and advertising about the need to pay a TV licence? Do you think the methods of enforcement, including letters, visits and detection, are reasonable and appropriate?

These are just some of the questions we're asking in our **public consultation, which is open until Friday 28 November 2008**.

3 Funding the BBC

In considering the renewal of the BBC's Charter, the Government conducted a public consultation, one outcome of which was a decision to retain the licence fee as the funding mechanism for the BBC. In its white paper, *A public service for all: the BBC in the digital age* (Cm 6763, March 2006) the Government summed up the consultation results thus:

Consultation and research throughout the course of Charter review has demonstrated support for the licence fee to continue as the "least worst" way of funding the BBC. In addition, research carried out by Ofcom has indicated public support for a flat fee, on

²⁰ Cm 6474, March 2005

²¹ *A public service for all: the BBC in the digital age*, Cm 6763, March 2006

²² HL Deb 16 June 2006 c 493

²³ BBC Trust press release, *BBC Trust to review how the licence fee is collected*, 8 September 2008

the basis that television, unlike other public services like healthcare and education, is something of a "luxury".²⁴

Both the House of Lords BBC Charter Review Select Committee and the previous House of Commons Culture, Media and Sport Select Committee gave consideration to the future funding of the BBC, including the possibility of introducing subscription, advertising and direct government grant. Both Committees recommended continuance of the licence. The House of Lords Committee's First Report included the following recommendation:

We recommend that the system of funding the BBC until 2017 should be through a licence fee. We support the Government's decision to conduct an interim review of methods of funding but this should not be conducted until after the completion of analogue switch-off.²⁵

(Analogue switch-off is expected to be completed in the UK by the end of 2012.)

In its report, *A public BBC*, the Commons Committee concluded:

The licence fee remains, as our predecessor committee stated, the least worst way of funding the BBC. While it is regressive and unfair on the disadvantaged in society, the evidence we received clearly indicates that there is no other viable and credible alternative which would ensure the current universality of access.²⁶

Both of the above-mentioned select committee reports (available on the parliamentary website)²⁷ include and rehearse the evidence for and against continuance of the television licence. The relevant paragraphs from the previous Commons Select Committee on Culture, Media and Sport are reproduced here:

Funding options

126. Possible alternatives to the licence fee as a source of funding for the BBC have been examined periodically. Reports were produced by the Peacock Committee^[105] in 1986 and the Davies Panel^[106] in 1999. The Davies Report recommended against the introduction of advertising, sponsorship or subscription on the BBC's public services. Peacock had similarly supported the retention of licence fee funding, while suggesting in the longer term that subscription could become technically viable. The subsequent development of conditional access systems does open up the possibility of making access to television services contingent on suitable payment, though in a way that is platform dependent. In this context, we note that such a subscription option for Freeview is not yet feasible, partly due to the absence of a "return path", by which two-way contact between broadcaster and viewer could be established.^[107]

127. Referring to the BBC funding review of the Davies Committee in 1999, the Institute of Practitioners in Advertising (IPA) rehearsed the arguments against the main alternatives to the licence fee: direct funding, advertising, sponsorship and subscription. Direct funding by taxation or grant "would render the Corporation vulnerable to political mood and the potential loss of editorial and political independence". Limited funds existed in the broadcast market as a whole to support the other options which could all affect the nature of BBC programming while, in the case of subscription, "negate the fundamental public purpose of the BBC as a free-to-air broadcaster." In the absence of an appropriate alternative funding mechanism, the IPA views "the licence fee as a necessary evil for the foreseeable future."^[108]

²⁴ Para 10.1.1

²⁵ First Report, HL 50 2005-06, Para 132

²⁶ First Report, HC 82 2004-05, Para 134

²⁷ http://www.parliament.uk/parliamentary_committees/parliamentary_committees16.cfm

128. Equity's submission expressed the belief that, despite its imperfections, the continuation of the Licence Fee was essential for the survival of high quality, diverse and original public service programming on the BBC. Furthermore, according to Equity, the licence fee should continue to rise above RPI annually to provide for innovation and to allow the BBC to fulfil its public service remit. The possible implications of changing the BBC's funding may be judged by comparisons with the relatively poor examples of public service broadcasting found in Australia, New Zealand, Canada and, especially, the USA.^[109] Sir Christopher Bland put it to us that, without licence fee funding, and forced to compete openly on the market, an American-style public service "begging bowl stub" might be the end result.^[110]

129. ITV point to the benefits associated with three strong and separate funding streams for broadcasting in the UK: the licence fee, advertising and subscription; in total amounting to some £10 billion. Were the BBC to carry advertising, it would simply "cannibalise revenues currently available to the commercial sector". According to ITV's analysis, if BBC One and BBC Two were allowed to show as much advertising as their commercial rivals, only 5% of net advertising revenue would be added to the total pot.^[111]

130. The lack of commercial advertising is a key attraction of the BBC and to carry advertising would impact significantly on existing commercial broadcasters. An inescapable conclusion is that the existing market could not sustain the freedom of the BBC to offer advertising time on its channels. Funding the BBC via a direct government grant could lead to uncertainty over long-term funding, and act as a break on creative risk-taking and innovation.

131. S4C benefits from public funding, in the form of grant-in-aid, and selling advertiser airtime. However, there may be difficulties in applying mixed funding mechanisms to larger broadcasting organisations such as Channel 4 or the BBC. For example, it would be essential to ensure that any public funds were not used to subsidise discounts to advertisers. Citing instances of market distortion, the Association of Commercial Television in Europe, the Association Européenne des Radios and the European Publishers Council have advocated a migration to a single funded model for public broadcasters in Europe.^[112] Public Voice has suggested that, while there is no justification for distributing licence fee money to *private* commercial providers (such as ITV) the case for so doing to community and not-for-profit media ought to be examined.^[113]

132. John Hambley told us that the licence fee was liable to go on for quite a long time, though it would not be sustainable in the longer term.^[114] The written evidence he submitted on behalf of Artsworld Channels Ltd noted that the BBC's purpose should be to provide what a civilised society demands and deserves from its broadcasting that cannot be provided by any other means. "If other means are available, as increasingly they are, then compulsory public funding is not justified."^[115] The Artsworld submission adds: "It is no longer necessary to tax citizens to ensure that they can receive television programmes of entertainment, history, art, news, films, opera, religion, sport or DIY. It is no longer reasonable to prosecute, fine or gaol them when they fail to pay an ever-increasing licence fee for BBC programmes they choose not to watch, or for BBC channels they cannot receive."^[116]

133. Some of the objections to the licence fee can be tempered by a common belief that the BBC contributes to the raising of standards across the broadcasting sector. Furthermore, when the BBC is able to return, with digital switchover, to universal service provision then the case for public funding of some kind would be reinforced.²⁸

²⁸ First Report, HC 82 2004-05

4 Public service broadcasting

The BBC's governing principles, closely associated with its first Director-General, John Reith, are "to educate, inform and entertain the whole nation, free from political interference and commercial pressure".

Andrew Graham (Master of Balliol College, Oxford) has identified three essential features of public service broadcasting: "First, it has *purposes* that are different from those of the market. Second, these purposes – in particular, to inform, to educate and to entertain apply *across genres* rather than being restricted to a particular genre. Third, it must be free at the point of use to everyone."²⁹

Though an accepted definition of public service broadcasting remains elusive, the concept is currently embodied by the *Communications Act 2003*. Section 264 of the Act provides a definition of the key features of public service broadcasting. In essence, the PSB remit involves the provision of a balanced diversity of high-quality programming, which meets the needs and interests of different audiences.

More detailed obligations are indicated in subsection (6). These include obligations relating to culture, news and current affairs, sport, education, entertainment, religion and other beliefs, science, social issues, matters of international significance, programming for children, and local programming. The Office of Communications (Ofcom) is required to have regard to the number of programmes within the services which are made outside the M25 area.

The Culture, Media and Sport Committee examined the role and financing of the BBC and other broadcasters in its report on *Public service content*.³⁰ Among the report's conclusions was the following, linking licence fee income to public service output:

68. While we recognise the concerns that the BBC received a lower licence fee settlement than desired, we believe that the BBC can continue its role in providing high quality programming within the resources available to it and we welcome the BBC's plans to become a smaller but more distinctive organisation. However, the increase in market provision of public service content suggests to us that further analysis needs to be undertaken to assess the level of public funding that needs to be made available for public service content. On current trends, we would expect that the case for current levels of public funding will diminish. The BBC has rightly reacted to the arrival of new channels by drawing back from programming that can be broadcast by others. We welcome the BBC's approach, and encourage the BBC Trust to limit the BBC's activities in areas where there is already alternative provision. The BBC Trust should not treat licence fee income as a sum that must necessarily be spent in its entirety, irrespective of others' provision of public service content, and we encourage it to bear in mind its option of not drawing down the full amount of the licence fee in future.

The Committee was relatively unconvinced by a stock argument against funding the BBC (and other public sector broadcasters, notably Channel 4) by general taxation³¹ – the argument that it could compromise the Corporation's political independence. The Committee concluded:

²⁹ Andrew Graham, *The future of communications: public service broadcasting*, June 2000 (see under "expert papers" at: <http://web.archive.org/web/20010721133437/http://www.communicationswhitepaper.gov.uk>)

³⁰ Culture, Media and Sport Committee, *Public service content*, HC 36 2007-08

³¹ By way of example, increasing the basic rate of income tax (for non-savings income) by 1p would yield £4bn. Source: http://www.hmrc.gov.uk/stats/tax_expenditures/table1-6.pdf

155. We believe that the most appropriate source of public funds for public service content is either from the licence fee or from general taxation, although we do not believe that the overall cost to the public should be allowed to increase.

At the moment Ofcom is performing its second review of public service television broadcasting.³² The main highlights of the phase 1 consultation, launched on 10 April 2008 were:

Public service broadcasting is at a crossroads.

Audiences value competition for the BBC, but the underlying economics of commercial public service broadcasting are increasingly difficult.

Audiences place a high value on UK-made public service programming from a mix of providers, but there is risk that this will not be provided to the same degree in the future.

Audiences are increasingly taking advantage of new digital media to access public service content.

A new sustainable model for public service broadcasting is needed, with a range of options for funding and provision considered.³³

In launching the first phase of the review, Ofcom provided the following statutory context:

In accordance with the Communications Act 2003 (the Act), we will carry out our second Review of Public Service Television Broadcasting (PSB Review) between September 2007 and early 2009. The Act calls on us to carry out such a review at least once every five years. It requires us to report on the extent to which the public service broadcasters (PSBs) have fulfilled the purposes of public service television broadcasting, and to make recommendations with a view to maintaining and strengthening the quality of PSB in the future.³⁴

Phase one was launched with the publication of a consultation document, *The digital opportunity*.³⁵ That consultation closed in June and responses to it are available online,³⁶ as is a thirty-page summary of the responses.³⁷

While few would argue against public service *content*, particularly that provided by the market, there is more debate over the roles, and in some cases financing, of the statutory public service broadcasters (BBC, ITV1, Channel 4, Five and Teletext). Ofcom's summary of responses acknowledges particular criticisms by BSkyB:

3.10 The role of digital channels

- The SCBG [Satellite and Cable Broadcasting Group] argued that Ofcom downplayed the role of multi-channels in addressing key consumer groups that public service broadcasters find it difficult to reach. BSkyB submitted a list of market-produced material that meets public purposes and asserted that multi-channels and the internet

³² http://www.ofcom.org.uk/tv/psb_review/

³³ Ofcom news release, *Ofcom launches debate on the future of public service broadcasting and content*, 10 April 2008

³⁴ http://www.ofcom.org.uk/tv/psb_review/psb_2review/summary/

³⁵ http://www.ofcom.org.uk/consult/condocs/psb2_1/

³⁶ http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/

³⁷ http://www.ofcom.org.uk/consult/condocs/psb2_1/responsesummary/

play a far greater role in public service delivery and plurality than Ofcom's analysis suggests.

- BSKyB further argued that – what it saw as – Ofcom's premise that subscription funded content should not be considered public service is flawed, as people are used to paying for entertaining, informative and educational content in other areas (e.g. film, books) and services such as the iPlayer are subscription based because consumers have to pay an ISP for broadband access.
- Several respondents welcomed the contribution of public service content by non-PSBs such as Sky News, Sky Arts, The History Channel, Discovery, Teachers TV and many others. However, other respondents claimed that such public service content does not fulfil the public service purposes as defined in the Communications Act because these broadcasters are not universally available at no extra cost.
- The public service broadcasters also recognised that commercial digital channels now offer a broad range and diversity of services. Five noted however that digital channels do not have the reach and impact of the terrestrial PSB channels. Channel 4 suggested that its own digital channels and other services allow it to maximise the reach and impact of its programming and play a special role in reaching ethnic minority groups and younger audiences.
- It was also argued that niche digital channels offer public service content but lack the investment and innovation of PSB channels.

Public service broadcasting currently benefits in a number of ways from public intervention: the TV licence fee is the most obvious but the commercial public service broadcasters benefit from being gifted spectrum (i.e. space on the airwaves) and from being provided prominence on electronic programme guides. There is some opposition to extending or modifying this to cope with the onset of the digital age (when spectrum will be less scarce and more channels become more widely available free-to-view). Ofcom's summary of responses document notes:

Public service broadcasters and other stakeholders recognised the importance of additional funding sources to support the delivery of public service content in the future. BSKyB, SCBG and a few other respondents however believed that no additional funding should be provided and that any funding shortfalls should be addressed by re-prioritisation by the existing public service broadcasters.

Ofcom's phase 2 consultation document, *Preparing for the digital future*, was published on 25 September 2008. It identifies the following provisional conclusions from phase 1 and the next steps:

1.56 Based on responses to our previous consultation, and the research and analysis we have conducted for this review, our provisional conclusions are:

- the BBC should remain the cornerstone of public service content, and its core programme and services budget should be secure;
- audiences should have a choice of providers in most areas of public service content, which the market alone will not provide. To achieve this, replacement funding of between £145-235 million per annum may be necessary by 2012, in addition to the regulatory assets held by the existing PSBs;
- public service remits should be delivered

- the provision of content for the devolved nations – in particular dedicated news – remains an essential requirement for any future model;
- institutional and competitive funding could both play important complementary roles in the future model for public service content;
- Channel 4 should have a significant public service role in the digital age, building on its current contribution. It needs an economic model and funding mechanism to support this;
- between now and 2014 ITV1 and Five should retain important roles focused on UK origination and news, and (for ITV1) the nations and regions and (for Five) children's content. After 2014, the arguments for retaining their public service benefits and obligations are more evenly balanced; and
- all the funding sources we set out in our first consultation are credible, and a mix of sources may be needed to meet audiences' needs.

1.57 This consultation will run until 4 December 2008. Following responses, we will publish a final statement in early 2009 setting out further details on the long term models we have described here. It will then be for government and Parliament to consider the issues and make final decisions on the long-term questions.

5 Television licence fee statistics

This section provides details of income from the television (TV) licence fee, the cost of collecting the licence fee, licence fee evasion statistics and any attitude and opinion polls relating to the television licence fee

The table below provides details of BBC income from the TV licence fee from 2002/03 to 2007/08 and the cost of collecting the fee.

BBC Licence fee receipt and collection costs 1997/98 to 2007/08

	Licence fee income (£millions)	Collection costs (£millions)	% of licence fee income spent on collection
2002/03	2,659	146	5%
2003/04	2,798	151	5%
2004/05	2,940	152	5%
2005/06	3,101	153	5%
2006/07	3,243	134	5%
2007/08	3,369	123	4%

Sources :BBC Annual Reports

The number of people proceeded against for TV licence evasion in magistrates' courts in England and Wales between 2002 and 2006 (the most recent figures available) is shown below. The number of people receiving a fine as well as those imprisoned for failure to meet such fines is also shown.

Offences relating to TV licence evasion, England and Wales 2002 to 2006

	Proceeded against	Fined	Imprisoned
2002	110,138	94,569	14
2003	93,754	78,813	20
2004	115,597	96,155	28
2005	139,052	117,907	29
2006	129,878	113,874	24

Source: HC Deb, 7 July 2008, c1317W

Ministry of Justice, Offender Management Caseload Statistics, Table 7.9

Opinions on the cost of the licence fee were collected in a 2006 DCMS commissioned survey of around 7,000 UK residents³⁸. The survey found that respondents were willing to pay a maximum of £138.24 per year for current BBC services and would be willing to pay up to £162.66 per year for current services and proposed new activities.

A more recent Media Guardian poll by Ipsos MORI (18 August 2008)³⁹ found that 41% of respondents agreed the licence fee is an appropriate way of funding the BBC, compared with 37% who disagreed.

A third of respondents agreed the licence fee provides value for money while almost half (47%) disagreed. Just under a third (30%) agreed the licence fee ensures the provision of quality programming and services not available anywhere else, with a significantly higher proportion (41%) disagreeing.

³⁸ DCMS (2006) *Willingness to Pay for the BBC during the next Charter period*
http://10.160.3.10:81/PIMS/Parliamentary%20Information/DEPOSITED_PAPER/2007/dep07-174.pdf

³⁹ <http://www.ipsos-mori.com/content/mediaguardian-poll-on-bbc-licence-fee.ashx>