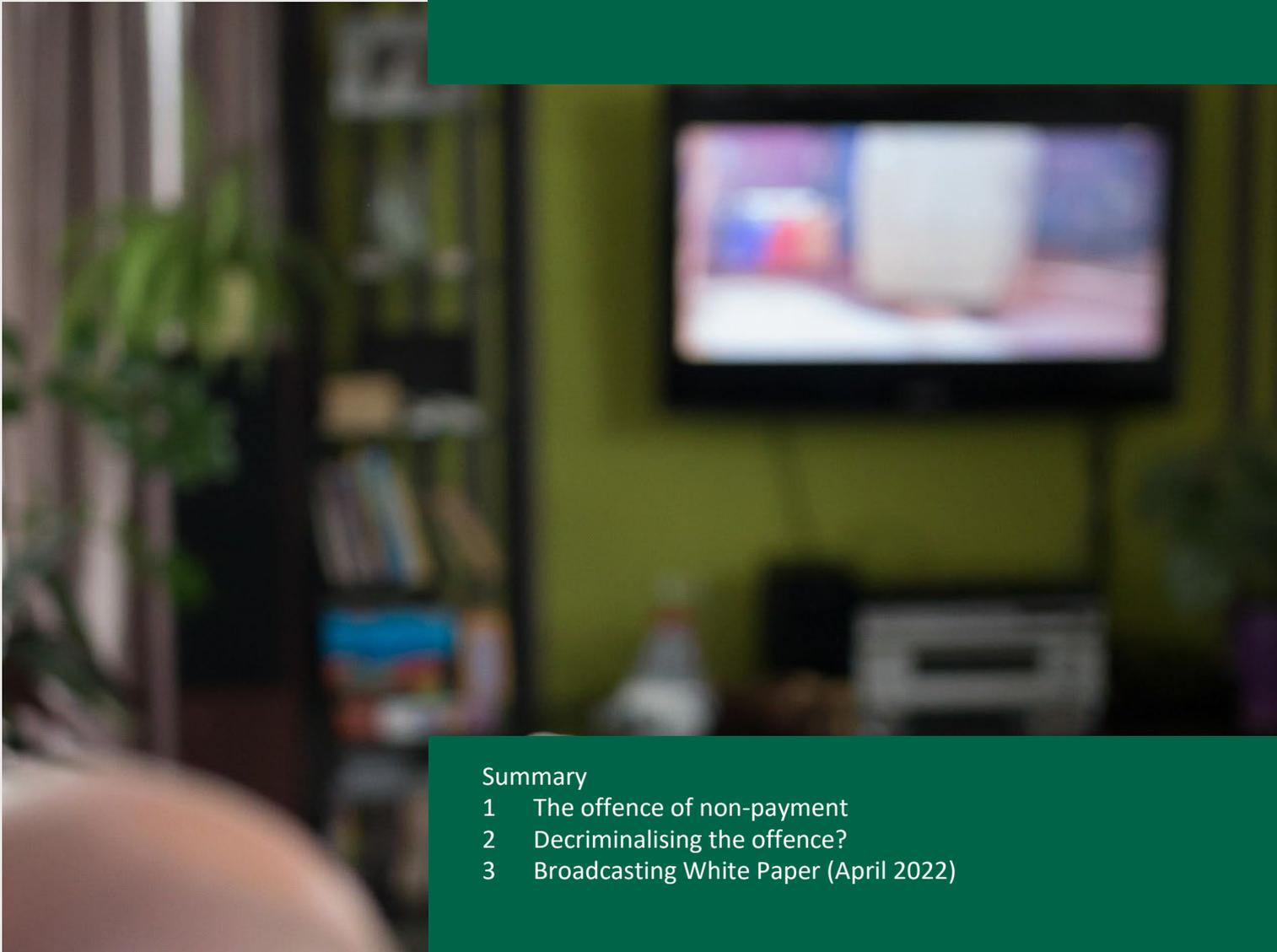


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3 May 2022

TV licence fee non-payment: should it be decriminalised?



Summary

- 1 The offence of non-payment
- 2 Decriminalising the offence?
- 3 Broadcasting White Paper (April 2022)

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Summary

The use of a television receiver without a valid licence can lead to prosecution, a court appearance and a fine of up to £1,000. In some cases, where there is a refusal to pay the fine and where all other enforcement methods have been tried, a person can be sent to jail.

Decriminalising the offence?

Decriminalising non-payment of the licence fee was considered between 2014-15. An [Independent Review](#) (the “Perry Review”, July 2015) recommended the current system of criminal deterrence and prosecution should be maintained for as long as the existing system of licence fee collection was in operation. The Government at the time accepted the recommendation.

DCMS consultation (February 2020)

In February 2020, the Department for Digital, Culture, Media and Sport (DCMS) launched a [consultation on decriminalising the offence](#) (PDF). The DCMS said it was right to look at the issue again given “ongoing concerns that the criminal sanction is unfair and disproportionate”. In reaching a decision, the DCMS would consider:

- whether an alternative, non-criminal enforcement scheme is fairer and more proportionate.
- the cost and difficulty to implement any alternative scheme.
- the potential impact on licence fee payers, particularly the most vulnerable and those with protected characteristics.
- the overall impact on licence fee collection.

The consultation closed on 1 April 2020.

Government response (January 2021)

In its January 2021 response, the DCMS [said it remained concerned that a criminal sanction for non-payment was “increasingly disproportionate and unfair”](#). However, any change to the current system would have wide-ranging impacts for licence fee payers (eg potentially higher fines and costs for people evading payment under a civil regime). Decriminalisation would remain “under active consideration”.

Broadcasting White Paper (April 2022)

In its [Broadcasting White Paper](#) (PDF) of 28 April 2022, the DCMS again said it was concerned that the licence fee was enforced by criminal sanctions. It noted there was the potential for enforcement action to be taken against vulnerable elderly people. The Government also said the “ongoing disparity” in the proportion of sanctions against women was unfair, with 74% of people convicted for TV licence evasion in 2019 being women. The White Paper confirmed that the licence fee model for the BBC would be reviewed ahead of the next Charter period (the current BBC Royal Charter runs to 31 December 2027).

1

The offence of non-payment

A TV licence is needed to:

- watch or record programmes as they're being shown on TV, on any channel.
- watch or stream programmes live on an online TV service (such as ITV Hub, All 4, YouTube, Amazon Prime Video, Now TV, Sky Go, etc.).
- download or watch any BBC programmes on iPlayer.¹

The use of a television receiver without a valid licence can lead to prosecution, a court appearance and a fine of up to £1,000, not including legal costs.² Cases are usually heard in the magistrates' courts. In some cases, where there is a refusal to pay the fine and where all other enforcement methods have been tried, a person can be sent to jail.

The relevant legislation is [Part 4 of the Communications Act 2003](#).

Section 363 states:

- (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...

Section 368 sets out the meanings of "television receiver" and "use":

- (1) In this Part "television receiver" means any apparatus of a description specified in regulations made by the Secretary of State setting out the descriptions of apparatus that are to be television receivers for the purposes of this Part.

¹ This applies to any provider and any device used, including a TV, desktop computer, laptop, mobile phone, tablet, games console, digital box or DVD/VHS recorder. See: TV Licensing website, [Do I need a TV licence?](#) (accessed 3 May 2022)

² [Section 363\(4\) of the 2003 Act](#)

(2) Regulations under this section defining a television receiver may provide for references to such a receiver to include references to software used in association with apparatus.

(3) References in this Part to using a television receiver are references to using it for—

(a) receiving all or any part of any television programme, or

(b) receiving all or any part of a programme included in an on-demand programme service which is provided by the BBC...³

Decriminalising non-payment of the licence fee would require primary legislation.⁴ This could be done under the BBC's existing Royal Charter.⁵

Licence fee collection

The BBC's [Royal Charter](#) (PDF) requires the arrangements for collecting the licence fee to be "efficient, appropriate and proportionate".⁶

The BBC contracts companies to collect the fee under the trade mark "TV Licensing". A May 2019 [Policy for TV Licensing Prosecutions](#) (PDF) sets out the factors that are taken into account in determining whether to prosecute in a particular case. As this explains, decisions to prosecute involve an evidential test and a public interest test.⁷

A [TV Licensing Prosecution Code](#) (PDF)(2020) outlines the prosecution process in England and Wales.⁸ The Code also explains how a person can avoid prosecution in certain circumstances.

Statistics

In 2019/20, TV Licensing found 174,416 people watching television without a licence.⁹ The evasion rate was between 6.5 and 7.5%.¹⁰

There are no routinely published statistics on imprisonment for non-payment of a fine for not having a TV licence. However, some figures have

³ Subsection 3 was added by [the Communications \(Television Licensing\) \(Amendment\) Regulations 2016](#) so that a TV licence is required to stream or download any programmes in an on-demand programme service provided by the BBC

⁴ [HL Deb 23 January 2020 c1161](#)

⁵ Ibid

⁶ [Cm 9365](#) (PDF), December 2016, Clause 20(7)(b)

⁷ TV Licensing, [Policy for TV Licensing Prosecutions](#) (PDF), May 2019, paras 6-7

⁸ Prosecution Codes for Scotland and for Northern Ireland are available from the [TV Licensing website](#) (under the heading "What is your Prosecution Code?") (accessed 3 May 2022)

⁹ ["Government publishes response to decriminalising TV licence evasion"](#), DCMS press release [online], 21 January 2021 (accessed 3 May 2022)

¹⁰ Ibid

been released in response to parliamentary questions.¹¹ In 2020, there were no prison admissions associated with non-payment of a fine.¹² Since 2014, no one over the age of 75 has been imprisoned for non-payment.¹³

¹¹ See, for example, [HL6018 \[on licence fee non-payment and imprisonment\]](#), answered 21 February 2022

¹² [PQ 8549](#), answered 11 June 2021

¹³ [PQ 268358](#), answered 27 June 2019

2

Decriminalising the offence?

In spring 2014, when the Deregulation Bill was before Parliament, there was cross-party support for decriminalising the offence of failing to pay for a TV licence.¹⁴ This resulted in [section 77 of the Deregulation Act 2015](#) which required the Secretary of State for Digital, Culture, Media and Sport to carry out a review of the sanctions for non-payment. Under section 77 of the Act, the review would begin within three months of Royal Assent (the Act received Royal Assent on 26 March 2015), be completed within twelve months, and laid before both Houses of Parliament. However, on 9 September 2014, Sajid Javid, the then Secretary of State, announced that a review into TV licence enforcement would begin before Royal Assent:

The government is committed to launching a review of decriminalisation once the Deregulation Bill receives Royal Assent.

But we can't afford to wait that long.

This needs to begin now.

Very shortly I will be publishing the terms of reference for a review of TV licence enforcement.

I expect it to begin taking evidence in the autumn...¹⁵

¹⁴ [Public Bill Committee 25 March 2014 cc584-94](#); [HL Deb 5 February 2015 cc797-815](#) ; [HC Deb 10 March 2015 cc177-185](#)

¹⁵ [Sajid Javid's speech at the Royal Television Society conference](#), Gov.UK, 9 September 2014 (accessed 3 May 2022)

2.1

Independent Review of TV Licence Enforcement 2014-15

The TV Licence Enforcement Review was led by David Perry QC and looked at options for changing the current enforcement measures, including the decriminalisation of TV licence evasion offences, and whether these options would represent an improvement to the existing system.¹⁶

Consultation on licence fee enforcement (February 2015)

A [consultation was launched in February 2015](#), allowing the public to feed their views into the Review.¹⁷ The consultation set out six policy options:

1. Do nothing: to retain the current criminal enforcement system.
2. Reform of current system: leave the current offence as it stands but reform the current criminal enforcement system.
3. Out of court settlement: retention of the criminal offence, with an option for disposal by way of an out of court settlement.
4. Fixed monetary penalty: retention of the criminal offence, with an option for disposal by way of a fixed monetary penalty.
5. Civil monetary penalty: decriminalise and enforce via a civil infraction.
6. Civil debt: decriminalise and enforce as a civil debt.

The consultation ran until 1 May 2015.¹⁸ A selection of [responses is available from GOV.UK](#).¹⁹

BBC response

In its April 2015 response, the BBC said [failure to hold a TV licence, when one is needed, should remain a criminal offence](#).²⁰ The BBC argued the existing criminal framework helped to ensure value for money by keeping evasion and collection costs down.²¹ It also claimed a move to civil enforcement could raise issues of fairness and proportionality. A key concern would be that increased evasion and costs “could lead to a sense of unfairness” among licence fee payers, “particularly if the resulting reduction in revenue to the

¹⁶ The Review’s [terms of reference](#) (PDF) are available online

¹⁷ DCMS, [TV Licence Enforcement Review: consultation](#) (PDF), 12 February 2015

¹⁸ [“Independent review into TV Licence Enforcement seeks views”](#), DCMS news story [online], 12 February 2015 (accessed 3 May 2022)

¹⁹ GOV.UK, [TV Licence Enforcement Review](#) (accessed 3 May 2022)

²⁰ BBC, [TV Licence Enforcement Review consultation – submission from the BBC](#) (PDF), April 2015, para 1.6 (accessed 3 May 2022)

²¹ *Ibid*, paras 2.1-2.3

BBC necessitated cuts to content and services”.²² According to the BBC, a civil model would be less targeted than the criminal system “where penalties are only sought and applied where necessary as a last resort”.²³

Perry Review (July 2015)

The [Perry Review](#) was published in July 2015.²⁴ This found the current regime represented a “broadly fair and proportionate response” to the problem of evasion and provided “good value for money” for both licence fee payers and taxpayers. It recommended, among other things, that while the current licence fee collection system was in operation, the existing system of criminal deterrence and prosecution should be maintained.²⁵

Government response

The Government’s response was published in October 2015.²⁶ By this time, the process for reviewing the BBC’s Royal Charter was underway.²⁷ The then Secretary of State, John Whittingdale, said the Perry Review had made a “thorough, insightful and informative contribution” to the Charter Review debate.²⁸

The Government’s proposals for the BBC’s Charter were set out in a May 2016 White Paper. This acknowledged there was support for decriminalising non-payment of the licence fee. It also noted the Perry Review’s conclusions.²⁹ The Government said it agreed with the Review’s assessment that the current system represented “a broadly fair and proportionate response to the problem of licence fee evasion and provides good value for money (both for licence fee payers and taxpayers)”. However, the Government also added: “...it is not the case that the criminal sanction is endorsed; rather it is necessary because of the characteristics of the licence fee framework”.³⁰

²² Ibid, para 3.4

²³ Ibid, para 3.5

²⁴ DCMS, [TV Licence Fee Enforcement Review](#) (PDF), July 2015 (accessed 3 May 2022)

²⁵ Ibid, p8

²⁶ DCMS, [Response of the Secretary of State for Culture, Media and Sport to the TV Licence Fee Enforcement Review](#) (PDF), October 2015, p6

²⁷ See Library Paper, [BBC Charter renewal](#) (PDF), CBP 3416

²⁸ DCMS, [Response of the Secretary of State for Culture, Media and Sport to the TV Licence Fee Enforcement Review](#) (PDF), October 2015, p6

²⁹ DCMS, [A BBC for the future: a broadcaster of distinction](#) (PDF), Cm 9242, May 2016, p99

³⁰ Ibid, p99

2.2

Government consultation on decriminalising licence fee evasion (February 2020)

On 5 February 2020, the DCMS published a consultation on whether to decriminalise licence fee evasion and introduce a civil enforcement scheme.³¹ In reaching a decision, the DCMS said it would consider:

- whether an alternative, non-criminal enforcement scheme is fairer and more proportionate.
- the cost and difficulty to implement any alternative scheme.
- the potential impact on licence fee payers, particularly the most vulnerable and those with protected characteristics.
- the overall impact on licence fee collection.³²

The consultation closed on 1 April 2020.

Why look again at decriminalisation?

The DCMS said it was right to look again at decriminalisation given “ongoing concerns about whether the criminal sanction is unfair and disproportionate”.³³

The consultation document referred to changes to the broadcasting landscape since the Perry Review was published. For example, a TV licence was not needed to watch or download iPlayer content in 2015. In addition, the BBC had announced changes to eligibility for free TV licences for the over-75s.³⁴

The consultation noted the current criminal sanction was considered disproportionate for some social groups, including women and those on low incomes. Decriminalisation might reduce the impact of any disparity by changing the consequences for evasion.³⁵ The change to licences for the over-75s could disproportionately affect elderly vulnerable people.³⁶

In addition, the Government had concerns about TV Licensing’s enforcement approaches: when combined with the threat of criminal prosecution, these could “appear disproportionate, heavy-handed and may cause considerable stress and anxiety, in particular to the most vulnerable in society”.³⁷

³¹ DCMS, [Consultation on decriminalising TV licence evasion](#) (PDF), February 2020

³² Ibid, p4

³³ [HL Deb 23 January 2020 c1160](#)

³⁴ For further detail, see the Library Paper, [Free TV licences for the over-75s](#) (PDF), CBP 4955

³⁵ DCMS, [Consultation on decriminalising TV licence evasion](#) (PDF), February 2020, paras 38-9

³⁶ Ibid, para 6 and paras 44-5

³⁷ Ibid, paras 40-2

How would civil enforcement work?

The consultation document summarised two possible non-criminal enforcement schemes.

A civil monetary penalty

A statutory obligation to have a TV licence could be introduced. There would be a financial penalty for failure to comply with the obligation. At present, civil monetary penalties include penalty charge notices for traffic infractions (e.g. parking fines and unpaid congestion charges). The consultation explained:

Following receipt of a penalty notice, the recipient has a period of time to pay the amount claimed (typically 28 days, potentially with a discount for early payment). As with a parking charge notice, an individual would have the opportunity to challenge the penalty notice, and if unsuccessful, a right to appeal that decision (potentially through an independent adjudicator).

Under this option, if a penalty notice remained unpaid, the licensing authority could take steps to enforce the charge. The majority of unpaid penalty charge notices for parking and congestion charge infractions are passed to private enforcement agents (bailiffs). Alternatively, the licensing authority could apply to the court for enforcement. Additional enforcement procedures available through the court include the use of attachment of earnings orders and charging orders...³⁸

Civil debt

The licence fee could be treated as a civil debt recoverable through the civil courts. This is the case with unpaid utility bills where a debtor may be taken to the County Court. If liability is proven, an order may be made requiring payment of the debt and any costs incurred.³⁹ Another option would be to enable the debt to be pursued through the Magistrates' Court, as with unpaid council tax. The enforcement methods available would depend on the value of the debt and the court used, but they could include taking control of goods by enforcement agents (bailiffs), the use of attachment of earnings orders and charging orders.⁴⁰

Impacts of moving to civil enforcement

The consultation document referred to the possible impacts of moving to a system of civil enforcement:

³⁸ Ibid, paras 52-5

³⁹ Ibid, para 56

⁴⁰ Ibid, para 56-8

- **evasion rates** - moving from a criminal to a civil system of enforcement could create an impression that non-payment of the licence fee was regarded as less important.⁴¹
- **set up and administration costs** - in addition to likely “significant” set-up costs, the ongoing cost of enforcement could be higher, especially as the current procedure for handling licence fee evasion prosecutions is “extremely efficient” and the reduction in cost to the Magistrates’ Courts will be “very small”. The BBC had estimated that moving to a civil enforcement scheme could cost £45 million more in collection costs.⁴²
- **impact on individuals** – under a civil enforcement scheme, people could pay more when facing enforcement action. Depending on the scheme chosen, they could be liable for court fees, as well as other enforcement costs such as fees for private enforcement agents.

In addition, again depending on the type of scheme introduced, unpaid debt could be entered onto the Register of Fines, Orders and Judgements. This could impact on a person’s ability to obtain credit. It is also likely to lead to the use of enforcement agents (bailiffs) to enforce the debt, “which may cause additional anxiety for individuals who may already be vulnerable”.⁴³

What did the BBC say?

According to the BBC’s March 2020 response, the current licence fee system remained “fair, effective and good value for money”.⁴⁴ The BBC claimed the consultation failed to address “the fundamental question of how a new system would be fairer and more effective for everyone” and did not set out detailed models to assess. There should therefore be a second consultation to explore the issues in more detail.⁴⁵ The response also said that:

- a civil system would be likely to hit the poorest hardest.
- a new system would cost the BBC more than £1 billion over the remainder of the Charter period from 2022 to 2027. This would require significant cuts to BBC programmes and services.
- a decision on moving to a new system should only be taken as part of the April 2022 licence fee funding settlement.
- the BBC agreed with the Perry Review’s conclusion that a move to a decriminalised method of enforcement would only become

⁴¹ Ibid, para 60

⁴² Ibid, para 64

⁴³ Ibid, paras 68-9

⁴⁴ BBC, [Response to the Government’s consultation on decriminalising TV licence evasion](#) (PDF), 31 March 2020, p3

⁴⁵ Ibid, p4

practicable if there was a change to the BBC's funding model, or to the way the licence fee was collected.

- the licence fee model remains in place for the current Charter period ie until December 2027. The BBC was happy to debate the future of the licence fee at the right time in the Charter cycle.⁴⁶

The BBC acknowledged the current system of licence fee collection could be improved and that it was “happy” to work with the Government on proposals to help the most vulnerable.⁴⁷

Government response (January 2021)

The [Government's response was published in January 2021](#). This noted the consultation had received 154,478 responses:

- 42,697 from individuals.
- 111,700 attached to a campaign (38 Degrees, the TaxPayers' Alliance, or We Own It).
- 81 from organisations or stakeholders.

Most responses that gave an opinion were opposed to decriminalisation of non-payment. Individual responses were split: 17,652 for decriminalisation with 19,199 against. Responses from campaigns showed 18,869 for and 92,831 against. There were 21 stakeholder responses in favour of decriminalisation, with 45 against, and 15 offering no overall view.⁴⁸

The DCMS said it remained concerned that a criminal sanction for non-payment was “increasingly disproportionate and unfair in a modern public service broadcasting system”. It noted some respondents opposing the current system had highlighted the stress and anxiety that it can cause, including on the most vulnerable in society.

However, the response said an alternative civil sanction would have wide-ranging impacts for licence fee payers. As any alternative would have to be sufficiently robust to prevent non-payment, this would likely mean higher financial penalties and costs. The consultation also highlighted potentially significant impacts in terms of the nature, cost and difficulty of implementing an alternative sanction.⁴⁹

The Government had therefore not reached a final decision on decriminalisation. It would be kept “under active consideration”, with further work carried out on alternative enforcement schemes.

⁴⁶ Ibid, pp4-5

⁴⁷ Ibid, p4

⁴⁸ DCMS, [Government response to the consultation on decriminalising TV licence evasion](#) (PDF), January 2021, paras 3-4; for further detail on what respondents said, see paras 22-67 of the DCMS response.

⁴⁹ Ibid, paras 3-4, footnote removed

DCMS Committee report (March 2021)

In its March 2021 [report on public service broadcasting](#), the Digital, Culture, Media and Sport Committee called on the Government to remove the uncertainty on decriminalisation as this could lead to an increase in licence fee evasion.⁵⁰

In its June 2021 response, the Government [explained why it was keeping decriminalisation under review](#):

...Responses to the consultation showed that a significant number of people oppose the criminal sanction with some highlighting the considerable stress and anxiety it can cause for individuals, including the most vulnerable in society, such as older people. This is more strongly noted for those with particular protected characteristics and the most vulnerable, recognising the additional stress and anxiety it can cause. For example, people aged 75 and over now eligible to pay for a TV licence—following the BBC's decision of 10 June 2019 to limit eligibility for free licences—may now face worry and stress about the threat of a criminal prosecution.

That is why the Government set out earlier this year that it is keeping the issue of decriminalisation under active consideration. It is one of many important issues that must remain an ongoing part of the Government's wider roadmap for reform of the BBC, which also includes the ongoing licence fee settlement negotiations and the mid-term review of the BBC Charter. The Government may in future undertake a further, technical consultation on the possible alternative civil sanctions to set out in more detail how alternative schemes could work in practice.⁵¹

The Government noted the Committee's concern about licence fee evasion, but said the BBC Board was "ultimately responsible for ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate".⁵²

⁵⁰ Ibid, para 64

⁵¹ [The future of public service broadcasting: Government Response to Committee's Sixth Report of Session 2019–21](#) (PDF), HC 273, 17 June 2021, pp5-6

⁵² Ibid, p6

3

Broadcasting White Paper (April 2022)

The Government's [Broadcasting White Paper](#) (PDF), published on 28 April 2022, considers BBC funding.⁵³ The Government again said it was concerned that the licence fee was enforced by criminal sanctions.⁵⁴ It noted there was the potential for enforcement action to be taken against vulnerable elderly people. The Government also said the “ongoing disparity” in the proportion of sanctions against women was unfair, with 74% of people convicted for TV licence evasion in 2019 being women.⁵⁵

The White Paper confirmed that the licence fee model for the BBC would be reviewed ahead of the next Charter period (the current BBC Royal Charter runs to 31 December 2027).⁵⁶

According to a [PQ response of 24 January 2022](#), the BBC had not taken any enforcement action against over-75s for TV licence evasion at that time.⁵⁷

⁵³ DCMS, [Up Next: The Government's vision for the broadcasting sector](#) (PDF), 28 April 2022, pp16-7

⁵⁴ *Ibid*, p17

⁵⁵ *Ibid*, p17

⁵⁶ *Ibid*, p17

⁵⁷ [PQ 107594](#), answered 24 January 2022

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