



BRIEFING PAPER

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

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Summary

At present, using 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 looked at in 2014-15. An [independent review](#) (the "Perry Review", July 2015) recommended that 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)

On 5 February 2020, the Department for Digital, Culture, Media and Sport (DCMS) launched a [consultation](#) on decriminalising the offence. The DCMS said that 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; and
- the overall impact on licence fee collection.

The consultation closed on 1 April 2020. The Government is analysing the responses.

What has the BBC said?

The BBC's [response](#) was published on 31 March 2020. This sets out the BBC's position that the "current licence fee system remains fair, effective and good value for money".

Related Library Briefings

- [Free TV licences for the over-75s](#) (CBP 4955, 31 March 2020)
- [TV licence fee statistics](#) (CBP 8101, 14 January 2020)

1. The offence of non-payment

A TV licence is needed to:

- watch or record programmes as they're being shown on TV or live on an online TV service;
- download or watch 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* (as amended). [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.
- (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

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 11 February 2020]

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

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(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](#) requires that arrangements for collecting the licence fee should be "efficient, appropriate and proportionate".⁶

The BBC contracts companies to collect the fee under the trade mark "[TV Licensing](#)". The [Policy for TV Licensing Prosecutions](#) (May 2019) 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

The [TV Licensing Prosecution Code](#) (2019) outlines the prosecution process. It also explains how a person can avoid prosecution.

Statistics

There are no routinely published statistics on imprisonment for non-payment of a fine for not having a TV licence. However, some figures have been released in response to parliamentary questions. A March 2020 [response](#) showed that:

- in 2018, 5 people were sentenced to prison for the non-payment of a fine associated with using a TV without a licence;
- the number has declined since the 1990s, when the annual numbers were in the hundreds.⁸

A June 2019 [response](#) stated that, since 2014, no one over the age of 75 had been imprisoned for non-payment of a fine.⁹

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](#), December 2016, Clause 20(7)(b)

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

⁸ [PQ 26808](#), answered 12 March 2020

⁹ [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. An Appendix to this Paper summarises the debate.

[Section 77](#) of the *Deregulation Act 2015* required the Secretary of State to carry out a review of the sanctions for non-payment. This is looked at in the following section.

2.1 TV Licence Enforcement Review 2014-15

In September 2014, the Secretary of State announced an independent review into TV licence enforcement:

(...) 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, and to conclude early in the next Parliament....¹⁰

The 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.¹¹

Consultation (February 2015)

A [consultation](#) was launched in February 2015, allowing the public to feed their views into the Review.¹² 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.

¹⁰ [Sajid Javid's speech at the Royal Television Society conference](#), Gov.UK, 9 September 2014

¹¹ The Review's [terms of reference](#) are available online

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

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The consultation ran until 1 May 2015.¹³ A selection of [responses](#) is available online.

BBC response

In its April 2015 [response](#), the BBC said that failure to hold a TV licence, when one is needed, should remain a criminal offence.¹⁴

The BBC argued that the existing criminal framework helped to ensure value for money by keeping evasion and collection costs down.¹⁵

The BBC also claimed that 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 BBC necessitated cuts to content and services”.¹⁶

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”.¹⁷

Perry Review (July 2015)

The [Perry Review](#) was published on in July 2015.¹⁸ This found that 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.¹⁹

Government response

The Government published its [response](#) in October 2015. By this time, the process for reviewing the BBC’s Royal Charter was underway.²⁰ The then Secretary of State, John Whittingdale, praised the Perry Review for having been “carried out in an appropriate, fair, and professional manner.” He said that it had made a “thorough, insightful and informative contribution” to the Charter Review debate. Mr Whittingdale explained that the recommendations would be considered as part of the Charter Review.²¹

The Government’s proposals for the BBC’s Charter were set out in a May 2016 [White Paper](#). This acknowledged that there was support for decriminalising non-payment of the licence fee. It also noted the Perry Review’s conclusions.²² The Government said that it agreed with the

¹³ [“Independent review into TV Licence Enforcement seeks views”](#), DCMS News Story, 12 February 2015

¹⁴ BBC, [TV Licence Enforcement Review consultation – submission from the BBC](#), April 2015, para 1.6

¹⁵ Ibid, paras 2.1-2.3

¹⁶ Ibid, para 3.4

¹⁷ Ibid, para 3.5

¹⁸ DCMS, [TV Licence Fee Enforcement Review](#), July 2015

¹⁹ Ibid, p8

²⁰ See Library Paper, [BBC Charter renewal](#), CBP 3416, 28 December 2016

²¹ DCMS, [Response of the Secretary of State for Culture, Media and Sport to the TV Licence Fee Enforcement Review](#), October 2015, p6

²² DCMS, [A BBC for the future: a broadcaster of distinction](#), Cm 9242, May 2016, p99

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.²³

2.2 DCMS consultation (February 2020)

On 5 February 2020, the DCMS launched a [consultation](#) on whether to decriminalise licence fee evasion and introduce a civil enforcement scheme. In reaching a decision, the DCMS said that 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; and
- the overall impact on licence fee collection.

The consultation closed on 1 April 2020.

Why look again at decriminalisation?

The DCMS said that it was right to look again at decriminalisation given “ongoing concerns about whether the criminal sanction is unfair and disproportionate”.²⁴

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 has announced that free TV licences for all those aged over-75 will end. Only those aged over-75 who are in receipt of pension credit will be eligible for a free licence. The BBC has estimated that up to 3.75 million people may need to buy a licence as a result of the change.²⁵

The document noted that the current criminal sanction was seen as 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.²⁶ The changes to free licences for the over-75s could also disproportionately impact on elderly vulnerable people.²⁷

In addition, the document referred to Government concerns about TV Licensing’s enforcement approaches: when combined with the threat of criminal prosecution, these can “appear disproportionate, heavy-handed

²³ Ibid, p99

²⁴ [HL Deb 23 January 2020 c1160](#)

²⁵ For further detail, see the Library Paper, [Free TV licences for the over-75s](#) (CBP 4955, 31 March 2020)

²⁶ Ibid, paras 38-9

²⁷ DCMS, [Consultation on decriminalising TV licence evasion](#), February 2020, para 6 and paras 44-5

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and may cause considerable stress and anxiety, in particular to the most vulnerable in society”.²⁸

According to the Government, the current system could also be disproportionate in cases where people are unaware that they need a licence: “there can be some confusion over which activities require a TV licence and which do not, especially when such services are offered on the same platform”.²⁹

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.³⁰

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.³¹ 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.³²

²⁸ Ibid, paras 40-2

²⁹ Ibid, para 43

³⁰ Ibid, paras 52-5

³¹ Ibid, para 56

³² Ibid, para 56-8

Impacts of moving to civil enforcement

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

- **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.³³
- **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.³⁴
- **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”.³⁵

What has the BBC said?

According to the BBC’s [response](#) to the consultation, the “current licence fee system remains fair, effective and good value for money”.³⁶

The response claimed that 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.³⁷

In its response the BBC said, among other things, 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;

³³ Ibid, para 60

³⁴ Ibid, para 64

³⁵ Ibid, paras 68-9

³⁶ BBC, [Response to the Government’s consultation on decriminalising TV licence evasion](#), 31 March 2020, p3

³⁷ Ibid, p4

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- the BBC agreed with the Perry Review's conclusion that a move to a decriminalised method of enforcement would only become 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 i.e. until December 2027. The BBC was happy to debate the future of the licence fee at the right time in the Charter cycle.³⁸

The BBC did acknowledge that the current system of licence fee collection could be improved. It was happy to work with Government on proposals to help the most vulnerable and those on lower incomes.³⁹

³⁸ Ibid, pp4-5

³⁹ Ibid, p4

Appendix: the Deregulation Bill – what was said on the licence fee?

In spring 2014, when the *Deregulation Bill* was before Parliament, cross-party support emerged for decriminalising the offence of failing to pay for a TV licence. The debate is summarised below as it may be of interest given the current consultation.

In March 2014, at Committee stage of the *Deregulation Bill*, Andrew Bridgen (Conservative) tabled a new clause that would have substituted a civil offence for the criminal one in the 2003 Act. Mr Bridgen explained that his purpose in proposing the clause was:

first, to test the sentiment of the House and its appetite for decriminalising non-payment of the TV licence fee; and secondly, to start a debate about the wider issues and with the stakeholders.⁴⁰

Since it attracted the support of 148 other Members, Mr Bridgen judged that his new clause had achieved its purpose and he did not press it to a vote.

Two new clauses attracted cross-party support and were added to the Bill at Committee Stage:

- **new clause 19** requiring the Secretary of State to carry out a review of the sanctions for licence fee non-payment, looking at the option of switching to a civil penalty system of fines, within three months of the Bill being passed.⁴¹
- **new clause 20** introducing a power for the Secretary of State, through secondary legislation, to change the sanctions that apply to the failure to have a TV licence. The power provided for the sanctions to be changed either by replacing the criminal regime with a civil regime, or by creating a civil regime as an alternative to prosecution for such offences. The power would be exercised in light of the findings of the review provided for in new clause 19.⁴²

In his speech in support of the clauses, Mr Bridgen pointed out that cases involving non-payment of the licence fee made up one in nine of the cases heard by magistrates.⁴³ He also suggested that people were getting a criminal record “for the only crime of being poor”. The BBC, he argued, should see the move “as an opportunity not a threat” and a means to “reignite” its links with licence fee payers rather than “subjugating” them.⁴⁴

⁴⁰ New clause 1 at [PBC 25 March 2014 c585](#); For a list of the 149 Members see the [Order Paper](#) for that day

⁴¹ This became [clause 59](#) of the Bill as introduced into the Lords

⁴² This became [clause 60](#) of the Bill as introduced into the Lords

⁴³ [PBC 25 March 2014 c588](#)

⁴⁴ [PBC 25 March 2014 c594](#)

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Oliver Heald, the then Solicitor-General, said that the Government supported the “key policy principles” contained in the new clauses.⁴⁵

Labour also supported the new clauses. Chi Onwurah said:

... The licence fee is key to the BBC’s independence and remains the best funding model for it. The Labour Party fully supports a universal model: universal funding and universal service. Nobody wants people to be imprisoned for not paying.

On that basis, we support the clauses to review the penalties and consider possible alternatives...⁴⁶

Both clauses were agreed to by the Committee without a vote and added to the Bill.⁴⁷

Amendments in the Lords

At Report stage in the House of Lords, a new cross-party amendment was tabled to ensure that any potential changes to the licence fee enforcement system would not take effect until at least 1 April 2017 (the date when the BBC’s licence fee settlement expired). The intention was that the next government would thoroughly consider any impact on the BBC’s income from decriminalising non-payment before any action was taken.⁴⁸

For the Government, Lord Gardiner of Kimble, spoke against the amendment. He said that any changes would be unlikely to be finalised, in any case, before 1 April 2017. However, to tie any changes to a specific date would be a constraint that could delay “improvements” to the present regime.⁴⁹

The Government was defeated on division by 178 votes to 175.⁵⁰ The amendment returned to the Commons for further consideration where the Government disagreed with it and successfully substituted two new amendments of its own.⁵¹ One of these required the Secretary of State, within three months of the review reporting, to set out whether the Government intended to decriminalise or not, and committed the Government to indicate the timetable it planned to follow upon the completion of the review. This became [section 77\(3\)](#) of the *Deregulation Act 2015*.

The other amendment followed very closely the wording of the earlier Lords amendment and provided that any Regulations that altered the enforcement regime “may not be made so as to come into force before 1 April 2017”.⁵² This became [section 78\(11\)](#) of the 2015 Act.

⁴⁵ [PBC 25 March 2015 c599](#)

⁴⁶ [PBC 25 March 2015 c605](#)

⁴⁷ [PBC 25 March 2015 cc607-8](#)

⁴⁸ Baroness Howe of Idlicote introduced her amendment at [HL Deb 5 February 2015 cc797-9](#)

⁴⁹ [HL Deb 5 February 2015 c812](#)

⁵⁰ [HL Deb 5 February 2015 c815](#)

⁵¹ [HC Deb 10 March 2015 c185](#)

⁵² [HL Bill 102](#), 10 March 2015

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