



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Government Response to the Lords Committee Report on Charter Review

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
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RESPONSE TO LORDS COMMITTEE REPORT ON CHARTER REVIEW

The Government published the BBC Charter Review Green Paper in March last year, and has consulted widely on its contents ahead of the forthcoming White Paper publication. The Government welcomes the Select Committee's Report, and is grateful to the Committee for its contribution to the wider debate on the future of the BBC. The Report raised a number of important points and the Government has found it extremely useful as it has considered the outstanding issues ahead of the White Paper's release.

This current Charter Review process is more open and transparent than any of the Charter Reviews that have gone before it. It has engaged in unprecedented levels of public consultation and research. It has secured valuable contributions from Select Committees in both Houses on the key issues. As was the case with the Commons Select Committee Report ahead of the Green Paper, the Government has paid close attention to the points made during the debates, and to the views of the Committee, and has borne them in mind throughout the drafting of the BBC Charter Review White Paper.

The Government set out in the Green Paper its decision to establish the BBC by way of another ten year Charter, and to continue to fund it through the licence fee, making it clear that this was the best way to give the BBC the independence and certainty it needed for the next ten years.

The current Board of Governors currently has to carry out two potentially conflicting roles – running the BBC and assessing how well it is performing – and that is a model that has increasingly prevented the Governors from exercising their functions of governance, regulation and accountability as effectively as they need to.

The Green Paper set out the Government's decision to abolish the existing BBC Governors and replace them with two formally constituted bodies specific to the BBC. The new Charter will establish a formally constituted Executive Board responsible for the delivery of all of the BBC's activities and accountable to a new BBC Trust for its performance. The new BBC Trust itself will, as explained in the response to recommendation 80, act as the sovereign body in relation to the BBC and have ultimate responsibility for the licence fee. The Trust will be responsible for setting the BBC's performance framework and assessing performance against it; approving strategies and high level budgets; and holding the Executive Board to account for delivery. The Green Paper was clear about the need for the two functions to be more clearly separated in future, and there will be a clear structural separation between the functions of the two bodies.

Many bodies are currently involved in the governance and regulation of the BBC, including the current Governors, Ofcom, OFT, the NAO and the EU. These arrangements have built up over the many years of the BBC's existence. The main change under the new arrangements will be separating the responsibility for setting the BBC's overall direction and holding the BBC management to account, which will be the job of the new Trust, from that for providing support and guidance to the management, which will pass largely to the non-executives on the Executive Board. The Executive Board will be responsible for delivery of the BBC's services.

Although the Green Paper set out firm views in some areas, it sought views on others, and was keen to engage further with industry and the public before forming conclusions on how the BBC could be made more accountable; how it should be organised; and whether licence fee collection could be more efficient – and enforcement less burdensome – amongst other issues.

The Select Committee's report contained a number of recommendations. This response focuses on addressing those recommendations highlighted within the body of the report, whilst taking into account the other recommendations in the summary and any other relevant issues contained in the section concerned:¹

Standards in Public Life

29. We therefore recommend that the BBC should take measures to ensure that the Nolan principles of standards in public life are strictly observed throughout the BBC. Those responsible for BBC programming should stand down from reporting on an issue if they have a direct conflict of interest. They should be required to publicly declare relevant interests that could be reasonably perceived to influence their reporting.

The Green Paper makes clear that the responsibility for upholding standards of accuracy and impartiality would remain a core responsibility of the new BBC Trust. It will be for the Trust to define how it should be delivered within the framework of the Charter and the Agreement.

Establishment of the BBC and Parliamentary Scrutiny

32. We do not believe that the Government's proposals in the Green Paper will reduce the BBC's vulnerability to political pressure. We therefore recommend that the Government adopt our recommendations so as to secure a strong BBC, truly independent of Government.

42. We recommend that the BBC be established by statute so that its constitution is subject to parliamentary scrutiny. We note that the House of Commons Committee came to the same conclusion and we urge the Government to reconsider its proposal to persist with a Royal Charter.

43. We therefore recommend that a short interim Charter be granted to the BBC while legislation is being prepared....

... We recommend that it should not be possible to amend the Agreement between the BBC and the Secretary of State without approval of both Houses of Parliament. In addition, if it is necessary to grant another Charter while legislation is being prepared, the Government should undertake that the Charter will not be amended without the approval of both Houses of Parliament.

The Government has scrutinised carefully these proposals but its considered view is that the best way of giving the BBC the independence and stability it needs will be to renew its Royal Charter for ten more years. The alternative, an Act of Parliament, risks making the BBC more open to *ad hoc* Government and Parliamentary intervention while removing the flexibility that exists to negotiate changes to the accompanying Agreement during the life of the Charter. After ten years, the extent of change will require a further thorough review of the BBC's role and purpose. The Government's public consultation emphasised the importance of the BBC's independence from Government.

The Government has made it clear that it wishes to provide at least the same degree of Parliamentary scrutiny as that provided last time, though remains mindful that the public does not want to see Parliament given any increased power over the BBC.

44. We recommend that a permanent House of Lords Select Committee on Broadcasting and Communications should be established.

¹ The numbers by the recommendations correspond to the paragraph numbers in the Report. In cases where two or more recommendations can be addressed by the same response, the recommendations have been grouped, with an accompanying explanatory note.

This is a matter for the House Authorities.

Governance of the BBC

80. We recommend first that there should be one Chairman of the BBC, i.e. the Chairman of the BBC Board, and second that the management committee (called the Executive Board in the Green Paper) should be chaired by the Director-General.

The Government does not agree with the Committee's proposals on governance of the BBC. As stated in the Green Paper, it will create a new 'BBC Trust' that will embody the public interest, reflect the interests of licence fee payers and safeguard the independence of the BBC. The new Charter will also establish a formally-constituted Executive Board, responsible for the delivery of all the BBC's activities and accountable to the Trust for its performance.

The Executive Board will be chaired by the Director General or, at the discretion of the Trust, a non-executive. He or she will be appointed by the Trust which will act as the sovereign body in relation to the BBC and have ultimate responsibility for the licence fee. The arrangements ensure there is only one Government-appointed Chair, which will make the Trust a powerful advocate for the public interest, able to safeguard the BBC's independence.

Appointments

88. We believe that the chairman of the BBC should be chosen on the basis of a recommendation by a truly independent panel. To this end we recommend that there be a duty on the Secretary of State to appoint a selection panel with a majority of non-political members and with a balance between its members who have explicit political allegiances. The panel should be chaired by a non-political member who is not a civil servant. This panel should operate according to Nolan principles and should recommend a short-list of one to the Prime Minister.

89. We recommend that other members of the BBC Board (or the BBC Trust in the Government's model) should be appointed in a similar manner to that described above with consultation of the BBC Chairman.

The Government agrees that the integrity of the appointments process is critical. The selection of the Chairman of the BBC and members of the BBC Board will be conducted according to the Nolan principles, in agreement with the Office of the Commissioner for Public Appointments. The Government is confident that these standards enable appointments to be made in a fair and transparent way, on the basis of merit, with an appropriate degree of independent scrutiny.

Although the Government does not agree with the Committee's overall proposals on BBC governance, it does nevertheless note that the Committee's views at paragraph 99 about the range of skills, expertise and experience that should be made available to Trust members is consistent with what it has said in the Green Paper, and it will set out its conclusions on this issue in the White Paper.

Regulation of Content

108. A condition of Ofcom being given this new responsibility [...for adjudicating on appeals of complaints relating to the BBC's output...] must be that the Ofcom Content Board is significantly strengthened...

...We therefore recommend that the Content Board should be given its own budget and staff with specific skills in the area of content regulation. It should be re-established as a semi-autonomous body in the mould of the Consumer Panel and should operate in a similarly open and transparent manner.

Under the current Charter and Agreement, as revised at the time of the Communications Act 2003, Ofcom was given a number of responsibilities to regulate the BBC, notably in relation to the maintenance of all content standards other than impartiality and accuracy. Responsibility for ensuring the BBC's impartiality and accuracy was reserved to the Governors because they are so closely bound up with their over-riding role of ensuring the BBC's editorial independence. On other matters, Ofcom is able to monitor and adjudicate on the BBC's compliance with its Programme Code, including the Fairness Code, and consider complaints in these areas. In case of a breach, Ofcom has the power to issue an adverse adjudication, direct the BBC to broadcast a correction or statement of findings, or fine the BBC.

The Government is satisfied that the structure for Ofcom established under the Communications Act is appropriate to its responsibilities for the BBC and that the Content Board is able properly to consider complaints about the BBC's output. The status of the Content Board was considered in detail during the passage of the Communications Act and it was established on a different basis from the Consumer Panel. The Consumer Panel has a large measure of independence and operates in an advisory capacity. The Content Board is able to undertake appropriate executive functions of Ofcom. It must therefore operate fully within the duties and functions assigned to Ofcom. Giving it its own statutory responsibilities would in effect establish a second regulator: this would undermine the notion of a converged regulator, risk decisions of the Content Board contradicting those of the main Board and introduce the risk of double jeopardy. The Government's view, and Parliament's decision, was that there should be a single regulator, with Ofcom remaining responsible and accountable for all its work, including those functions delegated to the Content Board.

109. Ofcom's role should be to adjudicate on appeals against decisions on complaints made by the BBC Board. Ofcom's duties should be similar to those of a Court of Appeal. The BBC should respond to all complaints in the first instance. This could be secured by complainants first contacting the BBC, who would inform complainants of the opportunity to appeal to Ofcom if the BBC did not resolve the complaint in a fair and timely way. Similarly Ofcom would refer to the BBC all complaints about the BBC which it had received directly and would only take-up complaints if the complainant rejected the resolution offered by the BBC.

The Government agrees that complaints about programmes are best dealt with by the broadcaster responsible, with Ofcom's role principally one of considering appeals; the provisions of the Communications Act were designed to facilitate that. In the case of the BBC, complaints have been considered by the Executive with an opportunity for appeal to the Governors on serious complaints. The new governance arrangements will establish a clearer and more distinct role for the BBC Trust which should provide greater confidence to complainants that their concerns will be considered independently of the interests of the Executive.

Further details of how these arrangements will be implemented, and how appeals will be dealt with under the proposed new governance structure, will be included in the forthcoming White Paper.

Accountability

111. We recommend that the BBC Board should be responsible for ensuring the BBC secures value for money and the Board should be accountable for its use of public money.

118. We recommend that the NAO should have full right of access to the BBC and the power to conduct and independently select the subject of Value for Money Reviews. It should report the results to Parliament.

137. We recommend that the criteria used in setting the level of the licence fee should be open and transparent. The role of the NAO should also be expanded to include responsibility for assessing the efficiency of the BBC and evaluating its funding requirements when the proposed level of the licence fee is set. It should be given the access necessary to do this. The NAO should advise Parliament accordingly.

The Government expects the Trust to demand the highest standards of financial transparency from the BBC in its annual reporting to ensure that the BBC complies with best practice in other public and commercial bodies. The Trust will also have a responsibility to ensure that the BBC is efficient and provides value for money to licence fee payers.

Following the Communications Act 2003, the BBC Governors began to conduct an annual series of published value for money studies that are agreed with (and in some cases conducted by) the National Audit Office (NAO). Ultimately, increased powers of access could be passed to the NAO. The Government is considering such options further in the course of Charter Review, while being mindful that the public does not want to see Parliament given any increased power over the BBC. The Government will set out its conclusions in the White Paper.

The Government's objectives in setting the level of the licence fee are clear; providing value for money for licence fee payers, while at the same time providing for a strong BBC, independent of Government, in line with the framework to be set out in the Charter and Agreement.

Funding the BBC

120. Licence fee settlements above RPI should only be agreed if there are exceptional reasons to justify the fact that they exceed the rate of inflation (see para 200 for our proposals as to how the BBC's current licence fee bid should be handled).

The Government is currently conducting a funding review to determine the level of the licence fee to apply from April 2007. The Government has engaged independent consultants to scrutinise the assumptions underlying the BBC's proposals – it is clear that the level arrived at will need to be fully justified. It will announce the outcome in due course.

132. 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.

The Government welcomes the Committee's support for the licence fee. It is currently conducting a detailed review to establish the future level of the licence fee. Since technology is advancing rapidly, there will be a further review of methods of funding during the lifetime of the next Charter.

As stated in the Green Paper, this review is currently envisaged to take place towards the end of switchover to ensure that there is adequate time for planning and implementation should it be decided that changes are desirable. The Government will consider the Committee's recommendation that this review should await completion of digital switchover. It is worth noting that there have also been arguments that the review should happen earlier during the switchover process. The Green Paper makes clear, in any case, that the Government will retain the flexibility to alter this timing if the need arises.

Collecting and Enforcing the Licence Fee

138. We believe the costs of BBC licence fee collection and enforcement appear excessive and we recommend that the BBC continues to improve the cost efficiency of its licence fee collection and benchmarks its performance against other similar systems, such as that in Germany.

The cost of television licence fee collection and enforcement has fallen substantially in real terms since the BBC assumed responsibility for the administration of the licensing system in 1991. The estimated combined cost of collection and evasion, as a percentage of total licence fee income, has fallen from 18.9 per cent in 1991-92 to 10.2 per cent in 2004-05.

The Government agrees that there is a need to consider the scope for further efficiency improvements in the collection and enforcement arrangements. This should include making full use of new technology where this offers improved cost-effectiveness. The use of appropriate benchmarks, whether domestic or international, may also be helpful although, as pointed out in the Government's recent letter to the Committee, direct international comparisons are not always straightforward.

In the Green Paper, the Government undertook to consider whether, as well as making licence fee collection more efficient, enforcement might be less onerous. Last November, in its White Paper 'Supporting Magistrates' Courts to Provide Justice', the Department for Constitutional Affairs announced the Government's intention to consult on possible alternative processes for handling TV licensing cases.

Role of the BBC

166. We recommend that the BBC should be conscious of its public service obligations when deciding whether to bid for imported programmes, especially when another UK free-to-air channel is aiming to procure the same product.

The Government agrees.

The Government also welcomes the Committee's comments at paragraph 165, with regard to the BBC ensuring its output fulfils the full range of public purposes as a whole, and its ensuring that every BBC programme displays several of the desired characteristics, without each and every BBC programme necessarily being required to meet the full range of public purposes or programme characteristics. The Government will set out its policy in more detail in the White Paper.

Production in the Nations and Regions

181. We recommend that the BBC, ITV and independent production companies should work together to create shared centres of regional excellence.

The Government agrees that this is desirable. As stated in the Green Paper, the Government welcomes the BBC's recent announcement that it will consider moving a significant amount of production to cities outside London, particularly to a new hub in Manchester. It is, however, considering the potential costs and benefits of the proposals closely as it conducts work to set the future level of the licence fee and expects the BBC, where appropriate, to look to increase the benefits of such a move by coordinating its approach with others such as ITV, to focus activity in the same areas of the country.

The Government also notes the Committee's comments at paragraph 183 with regard to the BBC's devolving programme production and commissioning across the United Kingdom, and regional production quotas beyond the existing "out-of-London" quotas. It is considering the Committee's suggestion carefully, and will make its conclusions clear in the White Paper.

The World Service

189. We recommend re-prioritisation of the World Service's activities should continue and we encourage the Foreign and Commonwealth Office to focus World Service resources where it judges there is most need.

On 25 October, the BBC World Service announced a significant reprioritisation of its vernacular radio services and the planned launch of an Arabic TV service. The Government welcomed these changes. The Foreign & Commonwealth Office and the BBC World Service remain firmly committed to working together to ensure that services are targeted at countries where there is the greatest need and where they can have the biggest impact.

Building Digital Britain

200. Given the financial benefit that the Government will accrue we do not believe that the costs of promoting and coordinating digital switchover and providing targeted help for the vulnerable and disadvantaged should fall on the licence fee payer. Such costs should be covered by the Government (i.e. the general tax payer). Switchover is a Government policy which applies to, and affects, all broadcasters and all viewers and listeners.

Digital switchover will enable the coverage of digital terrestrial television to match that of the analogue terrestrial network, benefiting licence payers who receive analogue terrestrial services now but who do not have the option of receiving the BBC's digital services and other digital channels on digital terrestrial. The Government believes it appropriate for the BBC to meet the costs of developing its digital terrestrial network for digital switchover. It is also right that BBC meets a significant share of the costs of informing licences fee payers affected by switchover so that they know what is happening, and when and what they have to do in order to continue receiving television services. The task of informing the public about switchover will be led by Digital UK on a platform-neutral basis.

All licence fee payers will benefit from digital switchover – whether because of the extension of digital terrestrial coverage or from the development of new services from released spectrum. But there will be a minority of viewers who may face difficulties in coping with the move to digital-only broadcasting. The help schemes that will be made available will ensure that existing BBC television services remain accessible to all viewers when digital switchover takes place in their television region. Given the importance of ensuring universality of access to BBC services, the Government believes it is appropriate for the BBC, as part of its role in building digital Britain, to fund the costs of providing assistance as part of the wider leadership role in the completion of digital switchover.

Research and Development

209. We recommend that the BBC should maintain a strong Research and Development Department.

The Government agrees. As the Green Paper made clear, the BBC has pioneered many of the innovations in British broadcasting and has played a leading role in developing the technology and standards for different digital platforms, particularly around pioneering interactive digital terrestrial television services. The Government believes that the BBC has a continued role to play as a “centre of excellence” in this field for the broadcasting industry as a whole.

The Government does, however, welcome the work the BBC has undertaken as part of its Technology Review, particularly around its plans to focus its research and development more sharply on those areas where the market cannot provide, or where the BBC is in the best position to assume leadership and develop the market – including working more closely with partners where possible.

Impact on the Market – The Public Value Test

228. We therefore recommend that if a market impact assessment indicates that the launch of a new BBC service will risk stifling a new market then the new service should not be launched.

As the Government stated in the Green Paper, all proposals for new services and major changes to existing services should be subject to a public value test, including an assessment of market impact. The Government will announce further details in the White Paper.

The Government also made clear in the Green Paper that it would consider whether the public value test should set a threshold beyond which the market impact of a service might be deemed completely unacceptable – for instance if it risked foreclosing a new market or significantly lessening competition. It will set out the conclusions of that consideration in the White Paper.

The Government notes the Committee’s view at paragraph 176 that, as with all new BBC services, new local services should be subject to rigorous independent market impact assessments, that their remit should be defined in service licences, and that the BBC Board should define the terms of the service licences. The Government will set out more details about the proposed service licences along with the additional detail on public value tests in the White Paper, but it does welcome the BBC’s commitment to subject this proposal to a full public value test before deciding whether to proceed to full implementation.

Cross Promotion

230. We believe that there is value to the licence fee payer in being informed of services provided by the licence fee. However we agree with the Government that research on the value of cross promoting BBC publicly funded services should be commissioned and we recommend that the findings of that research should be made public. The BBC should take the research findings into account.

Since the Green Paper was published, Ofcom has published a report on promotional activity by all TV broadcasters, including the BBC, which includes detailed information on the extent and nature of promotional activity, and viewers’ attitudes towards it. In the light of that, and additional research published by the BBC ahead of the Green Paper, the Government does not propose to undertake any further research itself. The Government is considering the issue and will set out its position in the White Paper.

The Government notes the Committee’s proposal at paragraph 243 regarding the need for a revision of the BBC Fair Trading Commitment, and that the BBC has stated that it is planning to revise the Commitment shortly. It will comment further on these issues in the White Paper.

The Fair Trading Regime

244. We therefore recommend that the BBC's fair trading rules should be subject to approval by Ofcom as the lead sectoral competition regulator.

The Government is grateful to the Committee for its suggestions in this area. It will take these into account before reaching its final decisions, which will be set out in the White Paper.

With regard to the Committee's proposal at paragraph 245 about the BBC being required to provide information relevant to fair trading and competition matters to Ofcom on request, Ofcom already has powers to require the BBC to provide it with information where it is exercising its competition powers under the competition legislation. As already indicated, the Government is considering whether or not Ofcom should have a formal role in agreeing the BBC's fair trading rules.

The Government agrees with the Committee's recommendation at paragraph 249 about it being important to ensure strict separation between the management of commercial and public service activities within the BBC.

Commissioning of Independent Content

267. The management of WOCC should be the responsibility of the BBC. The BBC Board should have a duty to monitor it carefully and to publish a bi-annual report on its operation. We recommend that the BBC should set indicative targets within the WOCC for sourcing from small and regional companies.

The Government has acknowledged the benefits that retaining a critical mass of in-house production in the BBC would safeguard, whilst at the same time recognising the additional value – particularly in terms of creativity and innovation – that greater opportunities for independent producers could deliver to the viewer. It welcomes the BBC's commitment to increasing competition in programme supply, and supports the principles behind the idea of a window of creative competition as a means of safeguarding the in house element, while guaranteeing independent producers a minimum level of commissions along with additional opportunities to bid for more on the basis of quality. The Government is considering this issue further and will report its conclusions in the White Paper.

The Government welcomes the Committee's suggestion at paragraph 279 regarding support for British film. It will take this into account in its considerations.

273. We therefore recommend that the 10 per cent voluntary quota for independent radio production should be made mandatory. The BBC should consider the 10 per cent quota as a floor and not a ceiling and should operate a competitive commissioning process to secure the best programming available.

As stated in the Green Paper, the Government believes that the same principle should apply to radio production as in TV – where possible, it wants to encourage competition, because it is likely to bring the best programmes to listeners. Given the BBC's current position as the only significant purchaser of independently produced material, it may not be possible to create a thriving and competitive production market through Government intervention in this area. Nevertheless, as in television, there remains a question as to whether the BBC's recent moves are sufficient, or whether the quota might instead be increased or made binding. The Government is considering this issue as part of Charter Review and will report its conclusions in the White Paper.

276. We therefore recommend a 25 per cent independent production quota for BBC's Online commissions (excluding news)...

...We recommend that the BBC Board have a duty to secure fulfilment of the online independent production quota, to monitor commissioning of independent online content and to report bi-annually.

As stated in the Green Paper, the BBC currently operates a voluntary 25% quota for external production of online content, in line with the conclusions of Philip Graf's independent review of BBC Online. The Government is considering whether any changes are required to that approach as part of Charter Review, and will announce its conclusions in the forthcoming White Paper.



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