



Department
for Culture
Media & Sport

TV Licence Fee Enforcement Review

Presented to the Houses of Parliament pursuant to section 77 of the
Deregulation Act 2015

July 2015

©Crown copyright 2015

We can also provide documents to meet the specific requirements for people with disabilities.
Please email enquiries@culture.gsi.gov.uk

Department for Culture, Media & Sport
Printed in the UK on recycled paper

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this document should be sent to us at enquiries@culture.gsi.gov.uk

This document is also available from our website at www.gov.uk/dcms

Print ISBN 9781474122078

Web ISBN 9781474122085

ID 16061503 07/15

Contents

Foreword	3
Executive Summary	5
Chapter 1: Introduction and Background to the Review	9
Chapter 2: Current Law and Enforcement Regime	14
Chapter 3: Consultation Options	22
3a. Option 1 - Retain the Current Criminal Enforcement System	23
3b. Option 2 - Reform of current system	34
3c. Option 3 - Out-of-court settlement	48
3d. Option 4 - Fixed Monetary Penalty	56
3e. Option 5 - Civil Monetary Penalty	64
3f. Option 6 - Civil Debt	71
Chapter 4: Other options for change	76
Chapter 5: Conclusions and Next Steps	79
Annexes	
A: Terms of Reference	81
B: Cost-Benefit Analysis	82
C: Jurisdictional Differences	101
D: Summary of Legal Framework	102
E: Analysis of Key Evidence	107
F: Summary of Consultation Process and Responses Received	112

Foreword

In October 2014, I was appointed by the Secretary of State to undertake an independent review of the enforcement regime for television licence evasion. Under the law as it currently stands, the installation or use of a television receiver without a licence is an offence under section 363 of the Communications Act 2003. The offence is punishable by way of a fine up to a maximum of £1000. Concerns about the operation of the criminal offence have been expressed in Parliament and elsewhere. The importance attached to these concerns is evidenced by the enactment of section 77 of the Deregulation Act 2015, which imposed a duty on the Secretary of State to review the criminal enforcement of licence fee evasion and to consider proposals for reform, including possible decriminalisation.

This is not the first time that this complex issue has received detailed consideration. In his Review of the Criminal Courts of England and Wales (2001), Sir Robin Auld recommended that the use of a television without a licence should remain a criminal offence, but that it should be dealt with in the first instance by a 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. This recommendation was considered by the Home Office and a number of drawbacks to such a fixed penalty scheme were identified (chiefly that it might lead to an increase in evasion and be costly to implement).

More recently, in February 2015, the House of Commons Select Committee Report 'Future of the BBC' criticised the criminal offence as anachronistic and out of proportion with responses to non-payment for services such as gas, electricity and water, but concluded that decriminalisation was not feasible under the current system of licence fee collection.

Following a lengthy process of review, during which I have been assisted by a wide range of individuals and organisations, I have concluded that, in the overall public interest, the current system of criminal enforcement should be maintained, at least while the method of licence fee collection remains in its present form. Any significant change to the current system of enforcement, including a move towards decriminalisation, carries the risk of an increase in evasion and would involve significant cost to the taxpayer and those who pay the licence fee. While my principal conclusion is that the current system of criminal deterrence and prosecution should be maintained, I have, where possible, made suggestions for improvements to be made.

It is significant that this Review has taken place shortly in advance of an in-depth review of the BBC's Royal Charter. The Charter Review will look in detail at the BBC's operations, as well as the mechanism for collecting the licence fee. I recognise in this report that any change to the method of licence fee collection is likely to have an impact on the viability of introducing a non-criminal scheme of enforcement. It is to be hoped that the recommendations and observations made in this report will be of assistance to those involved in the Charter Review.

During the course of the Review I received unfailingly courteous and encouraging support from officials in the Department for Culture, Media and Sport. The Review Team comprised Sophie Marment, Genevieve Mitchell, Dan Lihou, Tessa Gilder-Smith, Vivek Kumar and Lawrence Bird. To each of them I owe an enormous debt of gratitude.

The views expressed in this Report are my own.

David Perry QC

Executive Summary

A television licence is required to watch live or nearly live broadcast television content on any electronic device in the United Kingdom. Responsibility for collecting the licence fee lies with the BBC, which operates under the trading name TV Licensing.¹

Section 363 of the Communications Act 2003 provides that a person who installs or uses a television receiver without being authorised by a licence is guilty of an offence. The offence is punishable by way of a fine up to a maximum of £1000.

This report considers whether the sanctions currently in place for TV licence evasion are appropriate and fair, and whether the regime represents good value for licence fee payers and taxpayers.

The obligation to conduct a review of the sanctions regime is contained in section 77 of the Deregulation Act 2015. Section 77 was enacted as a result of concerns expressed by Parliamentarians and others that the criminal nature of the current regime represents a disproportionate response to the problem of licence fee evasion. Section 77, among other things, requires this Review to “examine proposals for decriminalisation of offences under section 363”.

The Review’s objectives were identified in the Terms of Reference:

- To examine whether the sanctions for contravening this offence are appropriate, fair, and whether the regime represents value for money for licence fee payers and taxpayers.
- To identify and assess options for amending the current enforcement regime, including those for decriminalisation of TV licensing offences, and whether these options would represent an improvement, based on a number of key considerations (set out below).
- To make recommendations to the Government by the end of June 2015.

The key considerations were identified as follows:

- a. Value for money for licence fee payers and taxpayers in enforcement of the failure to have a TV licence, including operational, revenue and investment costs of the enforcement regime to the BBC and to the court system.
- b. Fairness for all licence fee payers, and effectiveness in deterring evasion.
- c. Proportionality and ease of enforcement.

¹ TV Licensing has contracted most of its day-to-day activities to Capita Business Services Ltd (‘Capita’), which carries out enquiries in relation to licence fee evasion. Collection of the licence fee, by the sale of licences, takes place by way of over-the-counter services provided by PayPoint plc (‘PayPoint’) in the UK, and by the Post Office in the Isle of Man and Channel Islands. Marketing and printing services are contracted to Proximity London Ltd.

- d. The degree to which the regime is easy to understand by all.
- e. Where appropriate, practical considerations for effective transition from the current regime to a different one.

The Review was announced on 9 September 2014 and the public consultation document was published on 12 February 2015. The consultation period ran from 12 February to 1 May 2015. For the purposes of the public consultation, the Review Team developed six policy options, which ranged from preserving the current system, to outright decriminalisation with enforcement taking place through a civil (not criminal) process. This broad range of options ensured that all possibilities for reform were the subject of consideration during the course of the Review process.

In addition to the consultation process, the Review gathered evidence² through interviews with representatives of the BBC, consumer groups, Government organisations, individuals involved in the administration of criminal justice, representatives of the devolved nations and the Crown Dependencies of Jersey, Guernsey and the Isle of Man, as well as other experts.

Following a detailed assessment of the various policy options, and having regard to the key considerations set out in the Terms of Reference, the Review has concluded that there should be **no fundamental change in the sanctions regime as it applies to the current licence fee collection system.**

The current regime represents 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). The principal reason for reaching this conclusion is that within the constraints of the current licence fee collection system, any change would risk undermining the deterrent effect provided by the criminal offences and would almost certainly add complexity to the enforcement regime, with a corresponding increase in the burden of cost.

The Culture, Media and Sport Select Committee has also recently concluded that decriminalisation of licence fee evasion is not feasible, at least not under the present scheme of licence fee collection.³ The mechanism by which the licence fee is collected is a matter that will be the subject of further consideration in the forthcoming review of the BBC's Royal Charter.⁴

On the basis of the evidence available to the Review, it is concluded that many of the concerns expressed in relation to the criminal offence provide no compelling basis for change. In broad terms,

² This Review uses the term 'evidence' to describe all the information submitted to the consultation and gathered by the Review Team, rather than in any technical or forensic sense.

³ 'Future of the BBC', Culture, Media and Sport Select Committee 2015:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcmums/315/315.pdf>.

⁴ The BBC is governed by a Royal Charter, rather than an Act of Parliament, to underline the BBC's independence. The Charter and accompanying Framework Agreement are drawn up by the Government and, together, they set out how the corporation should be run, structured and funded and what its purpose should be. The current Royal Charter came into full effect on 1 January 2007 and expires on 31 December 2016. Charter Review is the process by which the Government considers all aspects of the operation of the BBC and may renew the Charter should it choose to do. At the time of writing this report it is expected that the Government will soon announce details of the Charter Review.

the current enforcement regime is operated fairly and efficiently by TV Licensing and the BBC and it has proved to be successful in reducing levels of evasion.

That said, there is scope to improve the current system in advance of any changes that might follow the Charter Review, particularly in relation to the transparency of the prosecution process and the tone of TV Licensing's written communications. The recommendations contained in the Review are designed, among other things, to address some of the criticism levelled at the current system of enforcement and to improve the fairness and effectiveness of the process of investigation and prosecution.⁵

It is also recommended that TV Licensing explore ways to target unlicensed household visits more effectively.⁶

One matter that emerged from the Review process is that in 2012, 70% of those prosecuted for TV licence evasion were women.⁷ On the evidence available it has not been possible to reach any definitive conclusion to explain the reason for this gender imbalance. There is no evidence of any discriminatory enforcement practices on the part of TV Licensing. It is recommended that the gender disparity in TV licence prosecutions should be the subject of investigation and consideration in the forthcoming Charter Review.

The Review also considers that the investigation and enforcement process would be more efficient if cable and satellite companies were required to share their subscription information with TV Licensing and a recommendation is made to this effect.⁸

The Review also received a body of evidence to the effect that payment of the licence fee should be made easier, in order to assist those on low incomes. This could be achieved by amending the regulations⁹ which govern the BBC's ability to offer flexible payment plans. The Review agrees with this view and has made a recommendation to this effect.¹⁰

When, as part of Charter Review, consideration is given to the future method of licence fee collection, it would be helpful to improve public understanding of the activities covered by the licence and how the licence fee is spent. As a result of developments in technology, the expression "TV Licence" is a misnomer. Steps should be taken to address the confusion that currently surrounds the licence fee, both in terms of the activities it covers and the use to which it is put.¹¹

In addition, consideration should be given to the question of whether non-linear viewing (such as 'on-demand' or 'catch-up' broadcasting services) should be included in the licence fee framework, which it currently is not.¹²

⁵ See recommendation 7.

⁶ See recommendation 2.

⁷ The proportion of fines imposed for failure to hold a TV licence in 2012 by gender was 32% male 68% female - <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014> (table B4a).

⁸ See recommendation 5.

⁹ Communication (Television Licensing) Regulations 2004.

¹⁰ See recommendation 4.

¹¹ See recommendation 8.

¹² See recommendation 9.

The forthcoming Charter Review is likely to look again at the mechanisms by which the licence fee is collected. Should there be any change in the method of collection (for example, by way of a household tax or broadcasting levy, as is the case in Germany), a move to another method of enforcement will become more practicable and the question of decriminalisation will again fall for consideration.

SUMMARY OF RECOMMENDATIONS	
1	While the current licence fee collection system is in operation, the current system of criminal deterrence and prosecution should be maintained.
2	TV Licensing should explore ways to target unlicensed household visits more effectively, to increase the likelihood of an enquiry officer making contact with occupiers.
3	The BBC and the Department for Culture, Media and Sport should explore ways to investigate and consider the gender disparity in TV licence prosecutions.
4	The Department for Culture, Media and Sport, in conjunction with the BBC, should explore ways of amending the current regulations to allow simple and flexible payment plans for those facing difficulty in paying the licence fee.
5	Consideration should be given to the introduction of a requirement for cable and satellite TV companies to share their subscription information with TV Licensing in order to improve the investigation and enforcement process.
6	TV Licensing should consider increasing the transparency of its prosecution and enforcement policy, and provide clearer guidance to those at risk of prosecution. This guidance could take the form of a code detailing the steps that will be taken before prosecution, including the public interest considerations that will be applied when deciding whether to prosecute. Any such code should be published and made available to suspected evaders at the earliest possible opportunity in the enforcement process.
7	TV Licensing should consider changing the tone and content of its written communications with households so as to ensure that they are expressed in reasonable terms and can be easily understood.
8	When considering the structure of licence fee collection as part of the forthcoming Charter Review, a move towards a simpler system would assist in improving public understanding of what the licence fee covers.
9	The Charter Review should look at non-linear viewing as a matter of urgency. Consideration should be given to the inclusion of non-linear viewing within the licence fee framework.

Next Steps

This report will be presented to Ministers of the Department for Culture, Media and Sport for their consideration. The Secretary of State will lay the report before both Houses of Parliament and it will be presented to the BBC Trust. In accordance with section 77 of the Deregulation Act 2015,¹³ the Secretary of State will set out the response and steps to be taken within three months of the Review being completed.

¹³ Deregulation Act 2015.

Chapter 1: Introduction and background to the Review

Introduction

1. This Review was established to consider whether the sanctions currently in place for failure to hold a TV licence are appropriate and fair, and whether the regime represents good value for licence fee payers¹⁴ and taxpayers. Under the current law, by reason of section 363 of the Communications Act 2003, TV licence fee evasion is a criminal offence triable summarily (in the Magistrates' Court) and punishable by a fine of up to £1,000.¹⁵

Background

2. The television licence fee was introduced in June 1946 to cover the costs of operation of the 405-line (monochrome analogue television) service. Prior to this, the licence fee covered only radio services. In 1968, following the introduction of colour transmissions, a colour television supplement was added to the licence fee. The function of collecting and enforcing the television licence fee was carried out by the Home Office until 1991, when these responsibilities were assumed by the BBC. The investigation into and enforcement of the criminal offence is now carried out by "TV Licensing". "TV Licensing" is a trading name of the BBC, and includes some companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system.¹⁶
3. The current licence fee is £145.50, for colour, or £49.00 for black and white. Over 25 million licences are issued each year,¹⁷ generating revenue in 2013/14 of £3.7 billion.¹⁸
4. A licence is required by anyone in the UK who installs or uses a TV receiver. In this context "use" means viewing live (or nearly live¹⁹) television broadcasts on any device and derived from any source, not solely programmes broadcast by the BBC. The licence fee is paid to the BBC and the revenue derived from the sale of licences is used largely to fund the BBC's television, radio and online services, although it also provides funding for other services such as the Welsh

¹⁴ In this report, as in the BBC's Royal 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.

¹⁵ Section 363 is set out in full at Annex D.

¹⁶ The BBC is a public authority in respect of its television licensing functions and retains overall responsibility for these activities.

¹⁷ 2013/14: 25,419,296 (<http://www.tvlicensing.co.uk/about/foi-licences-facts-and-figures-AB18>).

¹⁸ BBC Annual Report and Accounts 2013/14: <http://www.bbc.co.uk/annualreport/2014/home>.

¹⁹ This includes watching live TV broadcasts on a delay, but does not include 'on demand' services:

<http://www.tvlicensing.co.uk/check-if-you-need-one/topics/technology--devices-and-online-top8>.

broadcaster S4C, the nationwide digital switchover and infrastructure projects such as the delivery of superfast broadband.²⁰ The TV licence fee can be paid by way of an annual one-off payment or by quarterly, monthly, or weekly instalments, and there are various payment methods available to customers.²¹ TV Licensing takes active steps to contact unlicensed households to ensure that individuals are aware of the obligation to hold a licence and also the options available for payment.

5. In 2013, there were 178,332 prosecutions for failure to hold a TV licence.²² This represented approximately 11.5% of all defendants proceeded against before the Magistrates' Court.²³ While this is a significant number, it appears that the cases account for only a minute fraction of court time (0.3% on the figures available).²⁴
6. These cases resulted in 153,369 convictions, which equates to a conviction rate of 86%.²⁵ The most common sentence for the offence is a fine, although some cases are dealt with by way of a conditional or absolute discharge. Very few people actually appear at court as the vast majority of defendants make a written plea of guilty, which is permitted by the Magistrates' Court Act 1980.²⁶ In some instances cases are withdrawn if the evader purchases a licence.

Motivation for Review

7. A duty was placed on the Secretary of State for Culture, Media and Sport to carry out a review of the sanctions appropriate for the contravention of section 363 of the Communications Act 2003, by section 77 of the Deregulation Act 2015. One of the issues raised during Parliamentary debates on the Deregulation Bill was a concern that the criminal nature of the current regime is not a proportionate response to the problem of licence fee evasion. In particular, it was suggested that the availability of a criminal prosecution, with a financial penalty on conviction, and the possibility of imprisonment in default of payment, was not comparable to the sanctions for non-payment of utility service bills, such as water, gas and electricity.²⁷ Concerns were also expressed regarding the fairness of the current enforcement regime as applied to some social

²⁰ BBC Annual Report and Accounts 2013/14: <http://www.bbc.co.uk/annualreport/2014/home>.

²¹ Payment options include direct debit, credit and debit cards, cheques and postal orders, cash (via Paypoint) and TV Licence payment cards. The payment options are prescribed in regulations (Communications Regulations (TV Licensing) 2004).

²² <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013> "Outcomes by offence".

²³ <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014> shows 1,546,140 Magistrates' Court cases in 2013. 178,332 of 1,546,140 = 11.5%.

²⁴ Figures provided to the BBC by the Department of Constitutional Affairs in 2005. No more recent figures are available as this information is not gathered by the Ministry of Justice.

²⁵ "Offences by outcome", as above. 153,369 of 178,332 = 86%.

²⁶ Magistrates' Court Act 1980, Section 12(4).

²⁷ However it is to be noted that, unlike these services, TV Licensing is not able to disconnect a non-payer's supply or monitor TV usage by way of a pre-payment meter, and so does not have the means with which to encourage payment before resorting to the court process.

groups, in particular women (who form the majority of defendants in prosecutions for licence evasion) and those on low incomes.²⁸

8. The Review's Terms of Reference also required consideration to be given to the question of whether improvements could be made to the efficiency of the current system of investigation and prosecution. It has been suggested in some quarters that savings in time and money could be achieved by effecting a less radical change than decriminalisation. For example, some have advocated the adoption of a system similar to the one operated in Scotland, where a fiscal fines system is operated by the Procurator Fiscal for a range of summary offences including cases of TV licence evasion.²⁹
9. Set against these concerns, the BBC has argued that the current enforcement regime is designed to provide, and does in fact provide, an effective deterrent to evasion and the existence of the criminal offence has ensured a low rate of evasion at around 5% for the past five years.
10. The Review has sought to analyse the merits of these competing arguments. This analysis has been conducted on the basis of the evidence provided to the Review by a number of interest groups and individuals and in accordance with the key considerations set out in the Review's Terms of Reference.³⁰
11. The House of Commons Culture, Media and Sport Committee has also recently published a detailed report on the future of the BBC. The Committee's report includes a valuable discussion of the future of the licence fee and the issue of decriminalisation. The Committee accepted that decriminalisation was not a feasible option under the current system of licence fee collection. Certain observations made by the Committee, relevant to this Review, are addressed in Chapter 4.

Charter Review

12. One highly influential factor behind this Review's principal recommendation that the sanctions regime should not be the subject of any significant change is the forthcoming review of the BBC's Royal Charter. The close proximity of the Charter Review has obvious implications for the long-term viability of any changes to the sanctions regime: the Charter Review will involve an in-depth exploration of the BBC's operations, and this will involve a review of the BBC's funding, including both the mechanism for collecting the licence fee and the process of enforcement. Any reform of the current regime (such as a move to decriminalisation) carries the risk of becoming outdated as a result of further reform. If changes are to be made to the BBC's funding model, the scheme of enforcement will fall for reconsideration and the case for reform may become stronger.

²⁸ BBC evidence to the Review. In 2014, 70% of those prosecuted for TV licence fee evasion were women.

²⁹ This fiscal fines system operates as an alternative to prosecution in the sense that, whilst the fiscal fines system does not alter the criminal nature of the offence, it provides for an out-of-court disposal by way of financial penalty; this reduces the number of cases coming before the criminal courts. However, the typical settlement is £75, around half the cost of buying an annual licence. The viability of adopting this option, among others, has been explored in the course of the Review.

³⁰ The key considerations are set out above at page 4.

Review Methodology

13. The Review Team developed six policy options for the purposes of public consultation. These options were intended to provide the widest possible scope for potential reform. They ranged from retaining the criminal offence to outright decriminalisation with the civil courts as opposed to the criminal courts being used to collect unpaid licence fees.
14. The consultation document was published on 12 February 2015, and by the end of the consultation period, 1 May 2015, responses had been received from members of the public and a number of organisations.³¹
15. In addition to the consultation process, the Review held a number of meetings with the BBC, consumer groups, Government organisations, individuals involved in the administration of criminal justice, representatives from the devolved nations, the Crown Dependencies of Jersey, Guernsey and the Isle of Man, as well as others including experts in the field of broadcasting.^{32,33}
16. The views expressed by those who participated in the Review represented a broad range of opinion and the key points to emerge from the evidence are considered in the discussion of the six options in Chapter 3.
17. It was envisaged at the time of consultation process that the Review would have the benefit of a behavioural research paper, addressing the impact that decriminalisation would have on the level of evasion. As things transpired, this proved to be impracticable and, in the absence of its own behavioural research, a behavioural analysis survey conducted by Harris Interactive (commissioned by the BBC) was provided to the Review Team. This survey found that the existence of the criminal offence is in itself a strong factor in deterring evasion. It also found that the criminal penalties, such as the risk of prosecution or imprisonment, provide the most effective deterrent to evasion, after a large fine or monetary penalty (in the region of £1000; significantly higher than the current average fines). The survey further predicted that evasion rates would rise significantly under a civil model of enforcement. The Review Team conducted a quality assurance review of the survey and concluded that it was reliable.³⁴
18. As this Review has been conducted by an independent reviewer, it was not necessary to carry out an Impact Assessment in advance of the consultation. Notwithstanding the independent nature of the Review, a limited assessment of the impact of the various options is set out at

³¹ Details can be found at Annex F.

³² Details can be found at Annex F.

³³ It is important to note that this Review took place over the course of the 2015 general election. The roles of a number of individuals involved in the Review have changed as a result of the election. Most pertinently John Whittingdale MP was interviewed in his capacity as Chair of the House of Commons Culture, Media and Sport Select Committee, but is now the Secretary of State for Culture, Media and Sport and will be receiving this report. There have also been changes to the Ministerial teams of other Departments which provided evidence to this Review, such as the Ministry of Justice.

³⁴ This quality assurance review is set out in Annex E of this report together with a review of existing literature on the behavioural impacts of changes in enforcement.

Annex B. It will be the responsibility of the Department for Culture, Media and Sport to consider the impact of the recommendations contained in this Report, should the Secretary of State choose to accept any or all of them.

Chapter 2: Current Law and Enforcement Regime

What is a TV Licence?

A TV licence is a legal permission to install or use television receiving equipment (such as televisions, computers, laptops, tablets, mobile phones, games consoles, digital boxes and DVD/VHS recorders) to watch or record television programmes as they are being broadcast. This applies regardless of which television channels a person receives or how those channels are received. The licence fee is not a payment for BBC services (or any other television service), although licence fee revenue is used to fund the BBC along with other services, such as the delivery of superfast broadband.³⁵

Who Needs a TV Licence?

Everyone in the UK who installs a television receiver or watches or records a TV programme **as it is broadcast** needs to be covered by a TV licence, regardless of the device used to receive the broadcast.

A single TV licence covers all devices used at a single site, whether home or business (and, for the most part, portable devices used away from that site).³⁶ There are different rules for businesses with multiple premises, or properties such as hotels.

The watching of non-linear broadcasting does not require a TV licence. Non-linear broadcasting is television programming shown at a different time than when it is broadcast, and includes ‘**on demand**’ programming, catch-up television, streaming or downloading programmes after they have been broadcast on live television, and programmes available online before being broadcast on television.³⁷

A person who installs or uses television-receiving equipment without a TV licence is guilty of a criminal offence under the Communications Act 2003 and is liable to a level 3 fine³⁸ (currently a maximum of £1000³⁹).

³⁵ www.tvlicensing.co.uk.

³⁶ <http://www.tvlicensing.co.uk/check-if-you-need-one/topics/technology--devices-and-online-top8>.

³⁷ Regulation 9(3) of the Communications (Television Licensing) Regulations 2004 provides that “receiving a television programme service includes a reference to receiving by any means any programme included in that service, where that programme is received at the same time (or virtually the same time) as it is received by members of the public by virtue of its being broadcast or distributed as part of that service”.

³⁸ Section 363 of the Communications Act 2003.

³⁹ The Legal Aid, Sentencing and Punishment of Offenders Act 2012 contains a power to increase the maximum fine level for offences in this band from £1000 to £4000. In the previous Parliament, the Coalition Government (2010-2015) did not increase the fine level, but this could of course be a matter which a Government may seek to change.

Current Framework

19. The cost of a colour TV licence is £145.50 and the cost of a black and white licence is £49.00. Concessions are available for blind people, those aged 75 and over, and those living in qualifying residential care accommodation. The level of the television licence fee, the available concessions and various payment methods are set out in regulations, principally the Communication (Television Licensing) Regulations 2004 (as amended).⁴⁰
20. The process by which the Government sets the level of the licence fee is known as the licence fee settlement. The Government consults the BBC over its costs and expenditure, and then determines the licence amount. The last licence fee settlement was in 2010, at which time the licence fee was frozen at its current level until 31 March 2017.
21. The licence fee is paid by an individual to TV Licensing, which transfers the sums received into the Consolidated Fund.⁴¹ The BBC receives its funding in the form of a grant from the Department for Culture, Media and Sport in an amount equal to the revenue derived from the TV licence fee, less any administrative costs.⁴²
22. The BBC uses its grant to fund nine television channels and 57 radio stations; it also provides a number of other services such as BBC Online and iPlayer. Under the 2010 licence fee settlement, the BBC assumed a number of additional responsibilities, including an obligation to provide funding to the BBC World Service and the Welsh public service broadcaster S4C.⁴³ In addition, the 2010 settlement provided for an annual payment from licence fee revenue specifically for the development of superfast broadband. This annual payment of £150m is paid to Broadband Delivery UK.⁴⁴
23. Licence fee collection is managed by the BBC Executive Board,⁴⁵ while responsibility for overseeing the licence fee collection arrangements, and ensuring these are efficient, appropriate and proportionate, is vested in the BBC Trust.⁴⁶ The Trust's responsibility was first

⁴⁰ A full list of the amending regulations can be found at Annex D.

⁴¹ Section 365 of the Communications Act 2003. The Consolidated Fund is a fund into which all public revenue is paid and which provides the supply for all public services. The basis of the financial mechanism by which the Consolidated Fund is operated is governed by the Exchequer and Audit Departments Act 1866 and it is administered by the Treasury.

⁴² The BBC receives grant-in-aid from DCMS equal to the revenue from the TV licence fee (less the Department's expenses in administering the licensing system - see clause 75 of the BBC Framework Agreement of 30 June 2006).

⁴³ The detail of how the BBC must carry out these obligations is set out in the BBC Framework Agreement: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement_amend_sep11_sum.pdf.

⁴⁴ Broadband roll-out and use agreement (16 July 2012) between BBC Trust and DCMS - http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/local_television/broadband_agreement.pdf.

⁴⁵ The 'BBC Executive' refers to the Executive Board of the BBC, made up of the organisation's Directors and responsible for the operational management of the BBC.

⁴⁶ The 'BBC Trust' is the governing body of the BBC. It sets the strategic objectives for the BBC Executive and monitors its performance.

set out in the 2006 Royal Charter and, under the terms of the Charter, the Trust is required to ensure that the arrangements for the collection of the licence fee by the BBC Executive are efficient, appropriate and proportionate.⁴⁷ In order to fulfil this function, the Trust committed to regularly review the BBC Executive’s licence fee collection strategy, as part of the BBC’s annual report and accounts.

<p>What does the licence fee pay for?</p> <p>BBC services:</p> <p>57 radio stations</p> <p>9 television channels</p> <p>BBC Online, iPlayer & Red Button</p> <p>BBC World Service</p> <p>BBC Monitoring</p> <p>Non-BBC services:</p> <p>Funding for S4C</p> <p>Funding for Broadband and local TV</p>	<p>The BBC Executive must maintain value for money and secure the finances intended to fund BBC services for the public at large. The BBC’s collection strategy needs to be designed to help people pay for their licence by ensuring the system is as customer focused as possible. At the same time it must ensure that it fulfils its responsibility to the vast majority of households who pay their licence fee, by vigorously pursuing those that deliberately evade payment.</p> <p>- BBC Trust Review of TV Licence Fee Collection 2009</p>
--	---

24. Until June 2013,⁴⁸ retailers who sold or rented television receiving devices or equipment were required to record the name and address of the purchaser or hirer and pass on these details to TV Licensing. A failure to comply with this requirement was a criminal offence.⁴⁹ This information was used by TV Licensing to target potentially unlicensed usage and was sometimes used as evidence in criminal prosecutions.⁵⁰

Current Enforcement Regime

Investigation

25. The investigation into and enforcement of the TV licence offence is carried out by TV Licensing, which in turn has a contract with Capita Business Services Ltd ('Capita'). Capita carries out the day-to-day operational enforcement activities through its enquiry officers.

⁴⁷ The BBC Trust has a specific duty under the BBC’s Royal Charter 2006 (Article 24(2)(m)) to ensure that the arrangements for the collection of the licence fee by the BBC Executive are efficient, appropriate and proportionate.

⁴⁸ This requirement was removed by the Enterprise and Regulatory Reform Act 2013, as the Coalition Government concluded that it “placed an undue administrative burden on retailers.”

⁴⁹ Section 5 of the Wireless Telegraphy Act 1967 (now repealed).

⁵⁰ BBC Trust Review of TV Licence Fee Collection 2009: Dealer notifications in 2007/08 resulted in 299,000 licences being sold and 61,000 change of address notifications.

26. Proof of the offence requires evidence that a person has contravened the prohibition in section 363 of the Communications Act 2003, and this is usually obtained during the course of an investigation conducted by an enquiry officer: either by the officer witnessing the commission of an offence or by way of an admission made to the officer by an individual.
27. In order to assist its investigations, TV Licensing has compiled a database of unlicensed addresses. These addresses are the primary target of investigations. Where a TV licence is not required at a particular address (because no individual within a household has installed or uses a device to watch live television), the householder may inform TV Licensing of that fact by submitting a 'no licence needed' declaration. This declaration will remove the household from the list of addresses to be contacted for a period of two years.⁵¹
28. The process of investigation usually involves a number of contacts with an unlicensed household, initially by letter, followed by a telephone call or visit from an enquiry officer, to confirm whether or not a licence is required at the particular premises.
29. The primary purpose of household visits is to ensure compliance with the law, and "enable TV Licensing to remove premises which do not require a TV licence from their enquiries, thus allowing resources to be concentrated on those [which do]".⁵²
30. All household enquiries are undertaken in accordance with TV Licensing's standards of conduct, and (in England and Wales) having regard (where relevant) to the Police and Criminal Evidence Act 1984 and its Codes of Practice.⁵³ The procedure to be followed by enquiry officers is set out in Capita's TV Licensing Visiting Procedures Manual.⁵⁴
31. The Visiting Procedures Manual sets out in some detail the procedures for household visits, the appropriate means of gathering evidence and the appropriate means of communicating with those in residence. During an enquiry visit, the officers must first establish whether or not they are speaking to an appropriate person (an adult who normally resides at the address). Officers are required to introduce themselves and explain the purpose of their visit using an established identification and verification policy. The Visiting Procedures Manual prescribes a strict process for the conduct of enquiries, including the information that must be given to or that may be requested from the 'customer'. There is also a clear requirement to "treat each visit confidentially and to make the enquiry without causing offence."⁵⁵
32. The enquiry officer can request permission to enter the premises in order to establish whether TV receiving equipment is present or in use; they cannot enter unless permission is given and must leave immediately if this permission is withdrawn.⁵⁶ The officer is provided with a standard

⁵¹ Although visits may be made to confirm the veracity of the declaration.

⁵² <http://www.tvlicensing.co.uk/about/foi-administering-the-licence-fee-AB20>.

⁵³ In other jurisdictions, investigations are carried out in accordance with the requirements of local law.

⁵⁴ Capita TV Licensing England & Wales Visiting Procedures, 2014.

⁵⁵ Capita TV Licensing England & Wales Visiting Procedures, 2014.

⁵⁶ Capita TV Licensing England & Wales Visiting Procedures, 2014.

form which is used to record the details of the visit. This form is retained by the officer (and a copy provided to the customer) for subsequent enforcement purposes and for possible later use in court, should it become necessary. At the conclusion of the visit the appropriate person is invited to sign the form to indicate agreement with any recorded statement of facts. As soon as there are reasonable grounds for suspecting that the person in question has committed an offence the officer must administer a caution.⁵⁷

33. In certain limited circumstances, a search warrant may be issued by a Magistrates' Court to authorise access to a property.⁵⁸ Such a warrant is only available where there are reasonable grounds for believing that an offence has been committed and where TV Licensing is able to satisfy the court that it has no alternative means to obtain relevant evidence. TV Licensing must also demonstrate that it has exhausted all reasonable means to gain the cooperation of the occupant and that access will not otherwise be granted to the relevant premises.⁵⁹ A search warrant authorises a single entry and search of the premises within one month of the warrant being issued.
34. The search will usually be carried out by two enquiry officers, supported by a police officer.⁶⁰ The officers are empowered to examine electronic devices to establish whether or not they are capable of receiving television broadcasts. Capita's policy is that a search must cease once sufficient evidence has been gathered.⁶¹

Prosecution

35. Where evidence is obtained of the commission of an offence, TV Licensing will usually encourage compliance with the law before embarking on a prosecution. According to the BBC, its primary concern, at least in the case of first-time offenders, is to ensure compliance with the obligation to obtain a licence, and prosecution is a matter of last resort. Thus, subject to any other relevant considerations, where a householder agrees to purchase a licence, it is likely that no further enforcement action will be undertaken.⁶²
36. Criminal prosecutions are brought only if the evidence is of sufficient quality to meet the evidential test set out in the Code for Crown Prosecutors (that is, where the evidence is sufficient to provide a realistic prospect of conviction). Once the evidential test is satisfied, TV Licensing applies the public interest test, namely whether it is in the public interest to prosecute. The public interest test involves weighing factors both for and against prosecution, and taking into account all relevant circumstances.

⁵⁷ The caution refers to the officer informing the individual that they do not have to say anything, but it may harm their defence if they do not mention when questioned something which they later rely on in court and that anything they do say may be given in evidence.

⁵⁸ Section 366 of the Communications Act 2003.

⁵⁹ Section 366 of the Communications Act 2003.

⁶⁰ The BBC advises that this is not a statutory requirement but is TV Licensing's preferred policy. On very rare occasions a search may go ahead without a police officer, if none is available.

⁶¹ Capita TV Licensing England & Wales Visiting Procedures, 2014.

⁶² BBC consultation response.

37. As a ‘summary only’ offence, prosecutions for TV licence payment evasion are brought in the Magistrates’ Court. TV Licensing acts as the prosecuting authority and is responsible for presenting the case in court.
38. In 2013, in England and Wales there were 178,322 prosecutions for the evasion offence and 153,369 people were convicted.⁶³ Of these, 152,664 were fined.⁶⁴ It is important to note that **the offence is not punishable by way of imprisonment**: the maximum penalty is currently a fine not exceeding £1,000.⁶⁵ Despite the large number of cases, prosecutions take up only 0.3% of court time. Many defendants plead guilty by post and prosecutions are usually listed at a single sitting devoted exclusively to hearing such cases. The Magistrates’ Court Sentencing Guidelines⁶⁶ set out common aggravating and mitigating factors and a basis for assessing the level of any fine. The average level of the fine imposed for licence evasion in England and Wales is £170.⁶⁷ According to figures provided by the Ministry of Justice, 70% of those prosecuted are female.
39. The TV licence offence is not a “recordable offence” so those found guilty do not receive a centrally-recorded criminal record.
40. Non-payment of a fine may ultimately result in the court ordering a period of imprisonment in default of payment, however **a period of imprisonment may only be imposed as a measure of last resort, where there is a wilful refusal or culpable neglect on the part of the offender⁶⁸, and where all other enforcement methods have been tried or at least considered.**⁶⁹ The use of imprisonment in the case of unpaid fines is designed to enforce the Magistrates’ Courts’ order and is not a punitive measure imposed in respect of the evasion offence.
41. In 2013, 32 people were imprisoned for non-payment of a fine imposed following conviction for TV licence evasion.⁷⁰

⁶³ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013> “Outcomes by offence”.

⁶⁴ “Outcomes by offence”, as above. 86% of the cases brought to court result in a conviction. 99.5% of those convicted are fined and the vast majority of the remainder are dealt with by way of a conditional or absolute discharge.

⁶⁵ Section 363 of the Communications Act 2003.

⁶⁶ When sentencing offences committed after 6 April 2010, every court is under a statutory obligation to follow any relevant Sentencing Council guidelines unless it would be contrary to the interests of justice to do so. In this case, the Sentencing Guidelines Council’s ‘Magistrates’ Court Sentencing Guidelines’ (updated October 2014).

⁶⁷ Ministry of Justice consultation response (2013 figures).

⁶⁸ Magistrates’ Court Act 1980 sections 75 to 91.

⁶⁹ This is explained in more detail in Annex D.

⁷⁰ The statistics in relation to those imprisoned for wilful refusal or culpable neglect to pay the fine do not give any indication whether the defendants in the cases in which imprisonment was ordered were also imprisoned for other matters or had other outstanding fines. This is addressed in our consideration of Option 1.

Recent Procedural Reforms

42. The Criminal Justice and Courts Act 2015 provides a new single justice procedure⁷¹ which aims to ensure that the Magistrates' Court is able to deal more effectively with straightforward, uncontested cases. This procedure offers an alternative form of proceedings by which cases will be brought before the court at the earliest opportunity and dealt with on the papers by a single justice.⁷² In other words, the cases are not heard in open court with the result that court time is saved.
43. The same legislation also introduced a 'criminal courts charge', that is a charge levied against all adult offenders convicted of a criminal offence.⁷³ The charge levied against persons convicted of the TV licence fee evasion offence following a plea of guilty is £150.⁷⁴ The revenue is retained by the Ministry of Justice. Those convicted following a trial will be required to pay £520.⁷⁵ The rationale behind the criminal courts charge is that adult offenders should pay towards the cost of running the criminal justice system. This cost, unlike the fine element of the penalty, is *not* subject to means-testing.⁷⁶ The criminal courts charge has been included in our Cost-Benefit Analysis (Annex B), but its potential impact on TV licence fee evasion cases is not yet clear. It is inevitably the case that the charge will add to the financial burden imposed on defendants and this is a matter of concern, at least in the case of those on low incomes.

Devolved Administrations and Crown Dependencies

44. There are several differences in the enforcement procedures as they apply across the various part of the UK and the Crown Dependencies of Jersey, Guernsey and the Isle of Man.⁷⁷
45. In Scotland, evasion cases are investigated by TV Licensing, but prosecutions are brought by the Procurator Fiscal. Under powers provided by statute,⁷⁸ the Procurator Fiscal may decide to use an out-of-court disposal option which means that a defendant may avoid prosecution by agreeing to pay a fixed sum of money. In Scotland significantly fewer cases are dealt with by the courts as a majority of defendants utilise this out-of-court disposal option. The advantages and disadvantages of adopting this approach in England, Wales, Northern Ireland and the Crown Dependencies (Jersey, Guernsey and the Isle of Man) are discussed further in Chapter 3.

⁷¹ Criminal Justice and Courts Act 2015, section 48 (inserting section 16A into the Magistrates' Court Act 1980) in force April 2015 <http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>.

⁷² Ministry of Justice consultation response.

⁷³ Criminal Courts and Justice Act 2015, section 54 (inserting sections 21A to 21F into the Prosecution of Offences Act 1985).

⁷⁴ The Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015.

⁷⁵ The Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015.

⁷⁶ The legislation (CJC Act 2015) requires the courts not to take the charge into account when determining other financial imposition amounts.

⁷⁷ Section 363 of the Communications Act 2003 applies throughout the United Kingdom and has been extended to Jersey, Guernsey and the Isle of Man by Orders of Council.

⁷⁸ Section 302 of the Criminal Procedure (Scotland) Act 1995.

46. In Northern Ireland and the Crown Dependencies there are some slight variations in the enforcement regime. In Jersey, for example, TV Licensing provides information obtained from its investigations to the local police authority which then conducts its own investigation; any prosecutions are taken forward by the Centenier.⁷⁹
47. The level of fines imposed in these jurisdictions is broadly comparable to the level in England and Wales, although the out-of-court disposal in Scotland involves a typical payment of £75.⁸⁰

⁷⁹ The differences in enforcement across the relevant jurisdictions can be found at Annex C.

⁸⁰ Evidence provided by the Crown Office and Procurator Fiscal Service (COPFS): in 2013/14, 94% of cases of TV licence fee evasion in Scotland resulted in a payment of £75 (12603 of the 13431).

Chapter 3: Consultation Options

48. Part of the Review process involved identifying and assessing possible options for amending the current regime of criminal enforcement, including decriminalisation of the TV licence evasion offence. Six possible options were identified. The assessment process involved considering whether the adoption of any of the options would represent an improvement on the current regime.
49. The assessment was carried out by reference to the key considerations as set out in the Terms of Reference:
- a. value for money for licence fee payers and taxpayers in enforcement of the failure to have a TV licence, including operational, revenue and investment costs of the enforcement regime to the BBC and to the court system;
 - b. fairness to all licence fee payers, and effectiveness in deterring evasion;
 - c. proportionality and ease of enforcement;
 - d. the degree to which the regime is easy to understand by all; and
 - e. where appropriate, practical considerations for effective transition from the current regime to a different one.
50. The Review Team intentionally developed a broad range of policy options to ensure that the possibility of reform was fully and properly explored in the course of the Review. The six options are set out below in summary form:

1	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: retain the criminal offence, with an option for disposal by way of an out-of-court settlement.
4	Fixed monetary penalty: retain 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.

51. Each of these options is analysed in more detail in the sections which follow.

3a. OPTION 1

Retain the current criminal enforcement system

52. Under Option 1 the current criminal offence and existing sentencing powers would be retained as they are at present. The operation of the current system of criminal enforcement is explained in Chapter 2 above. In summary, the current system of dealing with TV licence evasion is based on the existence of a criminal offence, punishable by way of a fine. This is intended to serve the public interest by providing a powerful deterrent to evasion. The offence is triable only in the Magistrates' Court. The conviction rate is 86%. In the vast majority of cases offenders are fined and the average fine is £170.⁸¹

Overview

53. Taking into account all the evidence available to the Review, and having regard to the key considerations set out in the Terms of Reference, we have concluded that the current sanctions regime provides a broadly fair and proportionate response to the problem of licence fee evasion. The factors that have been most influential in reaching this conclusion are as follows:
- i) The need for an effective deterrent in the interest of licence fee payers in particular and taxpayers in general.
 - ii) The current high level of compliance with the legal obligation to hold a TV licence.
 - iii) The relatively low cost of enforcement and prosecution.
 - iv) The difficulties associated with identifying evasion, and the efficiencies of using the Magistrates' Court for the purposes of prosecution and enforcement of the financial penalty.
 - v) The difficulties that would arise if any of the other options were otherwise to be adopted.
54. We should make clear that this conclusion is based on problems associated with providing an effective deterrent and efficient system of enforcement under the existing model of licence fee collection. The case for reform, including possible decriminalisation, will become more powerful if changes are made to the mechanism by which the licence fee is collected. This will be one of the matters considered in the forthcoming Charter Review.
55. While we have concluded that the current system of enforcement should be maintained, the case has been made for improvements in certain aspects of the current enforcement process and these improvements are addressed in our discussion of Option 2 below.
56. We discuss the factors that have informed our conclusion in relation to Option 1 in the following paragraphs.

⁸¹ Ministry of Justice consultation response (2013 figures).

Deterrence

57. Since 1991 the BBC has had significant success in reducing the evasion rate.⁸² In England and Wales it has been maintained at around 5% since 2005 (levels of evasion are higher in Scotland and Northern Ireland).⁸³ The BBC maintains that this is one of the lowest evasion rates in Europe, and lower than a range of countries comparable to the UK in terms of their public service broadcasting infrastructure and legal systems. It is certainly lower than Italy (26%), Ireland (12%) and Poland (65%).⁸⁴
58. The existence of the criminal offence is intended to provide a strong deterrent to evasion. The BBC has argued that a strong deterrent is necessary because it is easy to commit the evasion offence and investigation can be difficult. In support of its argument, the BBC emphasised that unlike providers of utility services, such as water, gas and electricity, it cannot meter its supply of broadcast, switch off its services or control access to its programmes.
59. The arguments advanced by the BBC are supported by a research study undertaken by Harris Interactive.⁸⁵ This research study suggests that the public identifies a large fine (around £1,000), together with other factors (including the risk of prosecution), as the most effective deterrent against evasion.⁸⁶ The study suggests that evasion rates would increase if the current model is replaced by either a purely civil or hybrid model (such as out-of-court settlements) involving a fine or payment of, say, £150. Increases in evasion rates are predicted even if the current model is replaced with either a purely civil or hybrid model involving larger fines or payments of over £300.
60. The same study suggests that the existence of a criminal offence is in itself a strong factor in deterring evasion (with 54% purchasing a licence 'because it's the law' or 'it's illegal not to')⁸⁷ and evasion rates would increase significantly under a civil model as they are less effective at making people pay.⁸⁸
61. There is no doubt that the mere existence of the criminal offence plays a significant part in deterring licence fee evasion, and a move from the current system of criminal enforcement carries the risk of an increase in the scale of evasion, with a corresponding loss of revenue to the BBC.

⁸² BBC Trust Review of Licence Fee Enforcement, 2009.

⁸³ BBC Trust Review of Licence Fee Enforcement, 2009.

⁸⁴ <http://www.tvlicensing.co.uk/cs/media-centre/news/view.app?id=1362435051910>.

⁸⁵ It is to be borne in mind that the research study was commissioned by the BBC, but was quality assured by analysts from the Department for Culture, Media and Sport, who agreed that it is a robust study.

⁸⁶ The study is analysed in more detail at Annex E.

⁸⁷ Harris Interactive Behavioural Research, BBC consultation response.

⁸⁸ Harris Interactive Behavioural Research.

Compliance with the legal obligation

62. Since the BBC assumed responsibility for licence fee collection from the Home Office, the evasion rate has reduced from 12.7% (in 1991) to around 5%⁸⁹ (in England and Wales). This is a notable reduction as even a small increase in evasion has significant cost implications: the current 5% evasion rate equates to approximately £200m of lost income for the BBC.⁹⁰
63. TV Licensing and Capita argue that without the deterrent effect of the criminal sanction and the powers currently available to investigators, the process of enforcement would become even more difficult and expensive for licence fee payers.

Cost

64. Under the current system the principal cost to the taxpayer is the cost of court time. The total number of TV licence evasion prosecutions brought to court in 2013 was 178,332, which represented 11.5% of all Magistrates' Court cases in that year.⁹¹ Despite the large number of cases, they appear to be dealt with efficiently, and take up only 0.3% of court time,⁹² with many defendants pleading guilty by post. TV licence evasion prosecutions are usually listed to be heard at a single sitting devoted exclusively to hearing such cases.⁹³ The courts have similar procedures for hearing traffic offences which are considered to deliver fair and efficient outcomes.⁹⁴
65. The Ministry of Justice has expressed the view that the proportion of Magistrates' workload taken up with TV licence prosecutions is "relatively minor" and the extent to which judicial and administrative resources could be reduced is "limited with minimal scope for cash savings."⁹⁵ It estimates that the annual cost to the taxpayer of TV Licensing prosecutions is no greater than £5m a year and, further to this, the government and courts receive the revenue of the fines (where recovered), which reduces the cost to the taxpayer even further.
66. An estimated £26m of TV Licensing evasion fines are imposed each year,⁹⁶ and although the actual figure collected is lower,⁹⁷ court time and enforcement costs are largely met by the amounts recovered. The Ministry of Justice expects that there will be further savings in court time as a result of amendments to the system of summary justice effected by the Criminal

⁸⁹ BBC Trust Review of Licence Fee Enforcement, 2009 (the figure has remained at around 5% since 2009).

⁹⁰ Cost-Benefit Analysis (Annex B).

⁹¹ <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014>.

⁹² Figures provided to the BBC by the Department of Constitutional Affairs in 2005.

⁹³ The Review visited a Magistrates' Court on two occasions and observed a number of TV licence fee evasion cases.

⁹⁴ Ministry of Justice consultation response.

⁹⁵ Ministry of Justice consultation response.

⁹⁶ Ministry of Justice consultation response.

⁹⁷ The Ministry of Justice advises that fines are sometimes revised once means to pay information is provided and, for a variety of reasons, a number may be cancelled or administratively written off for a variety of reasons. In 2012 around a third of fines imposed for TV Licence Fee evasion were collected within 12 months.

Justice and Courts Act 2015, and the introduction of the criminal courts charge is likely to reduce the burden on the taxpayer even further.

67. So far as costs to the licence fee payer are concerned, the BBC spends around 2.7% of TV licence fee revenues on investigating and prosecuting licence fee evasion.⁹⁸ This figure, which amounts to £102m,⁹⁹ is a significant fall from the 6% spent when the scheme of prosecution and enforcement was administered by the Home Office.¹⁰⁰
68. During interviews, BBC representatives told us they consider the current system to be both efficient and fair. We were informed that collection costs were reduced by £9m between 2013 and 2014 and that the contract with Capita is designed to deliver £220m of savings between 2012 and 2020.¹⁰¹ The Ministry of Justice also expressed the view that the current scheme is fair and provides good value for money.

Difficulties in investigation

69. The investigation process is undertaken by TV Licensing and Capita on behalf of the BBC. TV Licensing and Capita informed us that the offence can be difficult to detect and enquiry officers, with only limited powers of investigation, have to rely to a very great extent on evidence obtained as a result of their household visits. These visits can sometimes be difficult and are often contentious. The BBC drew our attention to the fact that proving the offence had become even more difficult in recent years, because of the expanding range of devices that are capable of being used as television receivers.¹⁰²

Efficiencies arising from the use of the criminal courts

70. Although investigations into evasion can be difficult, the court process is relatively straightforward and the financial penalties are relatively easy to enforce. As noted, despite the number of cases, the process of hearing licence fee evasion takes up very little in terms of court time.¹⁰³ In order to facilitate enforcement of the financial penalty, the Magistrates' Court will frequently be provided with information by the defendant which enables it to determine whether an attachment of earnings or benefits order would be an effective method of recovering any fine.

⁹⁸ BBC Annual Report and Accounts 2013/14.

http://www.bbc.co.uk/annualreport/2014/executive/finances/licence_fee.html.

⁹⁹ BBC Annual Report and Accounts 2013/14.

http://www.bbc.co.uk/annualreport/2014/executive/finances/licence_fee.html.

¹⁰⁰ House of Commons Culture, Media and Sport Committee, 'Future of the BBC', Fourth Report of Session 2014/15, p82.

¹⁰¹ BBC Annual Report and Accounts 2013/14 -

http://www.bbc.co.uk/annualreport/2014/executive/finances/licence_fee.html.

¹⁰² BBC consultation response.

¹⁰³ BBC consultation response.

71. Under the current system the BBC has no responsibility for the enforcement of fines, with the result that the enforcement cost is not passed on to the licence fee payer. The BBC will frequently recover some of its investigation and prosecution costs by way of an order for costs against the convicted defendant. In 2012/13 the BBC was awarded £13.1m in costs and recovered £9.5m, a recovery rate of 73%.¹⁰⁴

Difficulties of reform

72. The two most significant difficulties that pose an obstacle to reform are the increased risk of evasion and the costs (investment and operational) involved in implementing an alternative scheme of enforcement. These issues are addressed under Options 3 to 6 below.

Arguments Against Criminal Enforcement

73. Having set out the principal reasons for recommending the continuation of the current sanctions regime, in this section we consider the arguments advanced against criminal enforcement.
74. The principal argument advanced against the continuing existence of a criminal offence is that the criminal law is an inappropriate mechanism through which to address the problem of TV licence evasion. This argument has three principal strands. First, the use of the criminal law is in itself disproportionate and unfairly stigmatises those who cannot pay the licence fee. Second, TV licence fee evaders are sent to prison and this is a disproportionate response to the problem posed by evasion. Third, a disproportionate number of prosecutions are brought against women and those on low incomes.

The use of the criminal law

75. The argument against the use of the criminal law deserves careful consideration. The criminal law involves the use by the state of coercive powers and penalties. The mere existence of a criminal offence requires strong justification, either in terms of the harmful nature of the prohibited conduct, or in terms of deterring conduct in which the public as a whole has an interest. Increasingly, at least in England and Wales, the criminal law has been used in the public interest as a regulatory device, extending to conduct lacking any form of moral turpitude.
76. The TV licence evasion offence is a form of regulatory crime and its existence may be justified on two broad bases. First, evasion imposes an additional financial burden on the licence fee payer. For this reason alone it is necessary to mark the importance of compliance with the legal obligation and deter evasion. Second, the general public has an interest in maintaining the quality of programmes and other broadcasting services, and the existence of the criminal offence reflects the significance attached to this important public interest.

¹⁰⁴ BBC consultation response.

The operation of the offence

77. In its support for the existing sanctions regime, the BBC emphasised that the current enforcement system was being operated, so far as possible, to reduce the burden on the courts and to encourage the purchase of TV licences. There are, moreover, restrictions on the institution of criminal prosecutions and a prosecution will not be brought unless there is a realistic prospect of conviction and it is in the public interest to prosecute. The offence must then be proved ‘beyond reasonable doubt’. The BBC maintains that this leads to fewer members of the public being proceeded against than would be likely under a civil enforcement system operating where proof on the ‘balance of probability’ is sufficient.¹⁰⁵ This is explored in more detail under Options 5 and 6.
78. We were informed by TV Licensing and Capita that, as a general rule, TV Licensing will not initiate criminal proceedings, or will discontinue proceedings already begun, if the individual subject to investigation or prosecution is a first-time offender and agrees to buy a TV licence.¹⁰⁶ This is true for the vast majority of cases, though this policy is not extended to those first-time offenders wilfully trying to avoid prosecution (for example, by making a false ‘no licence needed’ declaration, or causing a search warrant to be issued). It is not clear whether this policy is always understood by defendants and the Review has concluded that the exercise of the discretion not to prosecute is capable of being made more transparent. This is explored in more detail when considering Option 2.

Imprisonment not an available penalty

79. During the course of the Review it appeared that some of the criticisms of the current regime were based on a number of misconceptions. First, there appears to be a widespread, though erroneous, belief that the offence is punishable by a period of imprisonment. As we have noted, the maximum penalty is a fine of £1000 and the average fine imposed on convicted defendants is £170.
80. Given what appears to be a widespread belief that TV licence fee evaders receive sentences of imprisonment, it is important to emphasise that this is not the case. Imprisonment is available in certain limited circumstances where a fine is unpaid and where the offender either wilfully refuses to pay or is guilty of culpable neglect.
81. The sentencing process is explained in the following paragraphs.

¹⁰⁵ BBC consultation response.

¹⁰⁶ BBC evidence to the Review.

Means

82. The sentencing guidelines applicable to Magistrates' Courts¹⁰⁷ are designed, among other things, to ensure consistency in sentencing. When determining the level of a fine, the sentencing court is required to take account of a number of factors (including the seriousness of the offence and whether it is a first-time offence) and also the financial circumstances of the offender. This means that the fine should be an affordable sum having regard to the offender's income and outgoings. The court has the power to order payment of a fine by instalments; the lowest starting point for payment of fines is £5 per week, and it is generally recognised that the maximum weekly payment by a person in receipt of state benefits should rarely exceed this amount.¹⁰⁸

Wilful refusal or culpable neglect

83. Imprisonment for non-payment of fines is only available following a formal inquiry into the offender's ability to pay. This inquiry, at which the defendant is present and entitled to legal representation, often takes place some considerable time after the imposition of the fine and inevitably after the time for payment has expired. It is conducted by the Magistrates' Court (not by TV Licensing), as part of the process of the court enforcing its own orders. It is only where it is established that the failure to comply with the court order is wilful and culpable, in other words, where the individual has the means to pay the fine, but deliberately chooses not to do so or recklessly disregards the court's order to pay, that he or she may be in jeopardy of being sent to prison. These matters must be established beyond reasonable doubt.
84. In addition, before imposing a sentence of imprisonment, the court must consider or try all other methods of enforcement. The other methods of enforcement include applications for deductions from benefit, attachment of earnings, money payment supervision orders and distress warrants. It is only where these other methods of enforcement are considered to be inappropriate or futile that the court is permitted to impose a sentence of imprisonment.
85. It follows that imprisonment is only used as a sanction of last resort, and is not a punitive measure imposed in respect of the evasion offences.
86. We were also informed that as a matter of practice the Magistrates' Court will take active steps to refer individuals in financial difficulties to sources of help such as the Citizen's Advice Bureau for advice and assistance in dealing with debt, in an effort to avoid imposing a period of imprisonment.

¹⁰⁷ Sentencing Guidelines Council, Magistrates' Court Sentencing Guidelines (October 2014).

¹⁰⁸ Unless on universal credit, in which case we are informed by the Ministry of Justice that deductions may be higher.

The sentence of imprisonment for failure to pay a fine issued by the Magistrates' Courts is a last resort and can only be issued if:

1. there has been a means hearing (to establish that/how much the defendant can pay);
2. the default is due to wilful refusal or culpable neglect;¹⁰⁹ and
3. the court has considered or tried all other methods of enforcing payment and concluded that they are inappropriate or would be unsuccessful.¹¹⁰

The use of imprisonment

87. A strong theme of the public's consultation responses was that the use of imprisonment as a punishment for TV licence fee evasion is disproportionately harsh. As noted above, this criticism reflects a common misunderstanding.
88. In 2013 there were 32 people¹¹¹ committed to prison for wilful and culpable neglect to pay a court-imposed fine where the fine in question had been imposed for TV licence fee evasion (of 153,369 were found guilty, a rate of 0.02%).¹¹² It is not possible to say, on the statistics available, whether these committals to prison were the result solely of a failure to pay a fine imposed for licence evasion. The Ministry of Justice referred to the possibility that sentences may have been imposed for non-payment of other outstanding fines that were consolidated with the fine imposed for TV licence fee evasion,¹¹³ or the offenders may have been sentenced for other offences.¹¹⁴
89. Many of those who understood the distinction between the maximum penalty for the offence, and the availability of imprisonment as the ultimate sanction for wilful and culpable neglect to pay a court-imposed fine, nevertheless felt that the use of imprisonment in these circumstances was disproportionate. However, the availability of imprisonment is not an anomaly. Committal to prison can be used as a sanction of last resort for the enforcement of any Magistrates' Court fine, and, as explained above, the use of imprisonment in the case of unpaid fines is designed

¹⁰⁹ This is explained in more detail at Annex D.

¹¹⁰ Sentencing Guidelines Council, Magistrates' Court Sentencing Guidelines, October 2014.

¹¹¹ Justice Statistics Analytical Services - Ministry of Justice. This figure has been drawn from administrative IT systems which, as with any large scale recording system, are subject to possible errors with data entry and processing.

¹¹² Published figures relate to all prosecutions brought under Wireless Telegraphy Acts, overwhelmingly S.363 Communications Act 2013 prosecutions -

www.gov.uk/government/uploads/system/uploads/attachment_data/file/311319/8-outcomes-by-offence.xls.

¹¹³ Ministry of Justice consultation response.

¹¹⁴ This was a view expressed by other contributors to the Review. As a matter of practice, it is not unusual for offenders receiving custodial sentences for an offence to request that other matters be dealt with as part of that sentence, including outstanding and defaulted fines. In these circumstances, courts may impose additional days to a sentence, often to be served concurrently and the offender serves a single sentence. It is certainly possible that this has occurred in the case of offenders who have defaulted or outstanding fines for TV licence fee evasion. It is therefore difficult to assess why certain fine defaulters were sent to prison, and the review received no responses from any individual who had served a custodial sentence arising from failure to pay a fine for licence evasion.

to enforce the Magistrates' Court's order: it is not a punitive measure imposed in respect of the evasion offence. In this context, it is also relevant to observe that **decriminalisation would not necessarily lead to the removal of imprisonment as a matter of last resort**: imprisonment is available for non-payment of statutory civil debts such as council tax.¹¹⁵

Not a recordable offence

90. The second misconception is that it is widely believed that a conviction for the offence contrary to section 363 is a 'recordable offence'. In fact, the offence is not a 'recordable offence', with the result that it is not included in the record kept on the Police National Computer. While some stigma inevitably attaches to a criminal conviction, the nature of the offence and the fact that conviction does not give rise to a criminal record reduces the force of the 'stigma' argument.

Disproportionate impact on women and those on low incomes

91. Statistics provided to the Review by the Ministry of Justice show that more women than men are convicted of TV Licensing offences.¹¹⁶ This imbalance has been advanced as one of the key criticisms of the offence by Parliamentarians such as Andrew Bridgen MP.¹¹⁷ The exploration for this imbalance and how it might be the subject of further consideration is dealt with in our analysis of Option 2. For the purposes of considering Option 1, it is relevant to note that the Review found no basis to conclude that TV Licensing intentionally targets women, or that its practices are directly or indirectly discriminatory. The cause of the gender imbalance is difficult to discern, although a number of possible explanations have been advanced. We have recommended that this matter should be explored by TV Licensing in conjunction with the Department for Culture, Media and Sport, and a recommendation to this effect is set out below.¹¹⁸
92. Concern has also been expressed that the use of imprisonment unfairly affects those who cannot afford to pay the licence fee. As we have made clear, TV Licensing plays no part in the process of fine enforcement. Imprisonment is used as a matter of last resort in the cases of those who wilfully refuse to pay a court imposed fine or are guilty of culpable neglect. There are nevertheless residual concerns about the impact of the offence on low income households, particularly as the burden of prosecution on some social groups is likely to increase as a result of the introduction of the criminal courts charge. These concerns are considered in more detail under Option 2 where we address TV Licensing's prosecution policy.

¹¹⁵ Non-payment of council tax is dealt with as a civil debt but a non-payer may still be sent to prison. As with non-payment of fines, imprisonment is a matter of last resort, after a means inquiry has been concluded and after it has been proved that the default in payment was either wilful or the result of culpable neglect. The BBC's consultation response noted that non-payment of council tax led to 107 people being imprisoned in 2012, whereas for non-payment of a fine relating to TV licence fee the figure was 51 (and in 2013 had fallen to 32).

¹¹⁶ The proportion of fines imposed for failure to hold a TV licence in 2012 by gender was 32% male 68% female – table B4a of <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014>.

¹¹⁷ <http://www.conservativehome.com/platform/2014/03/from-andrewbridgenmp-2.html>.

¹¹⁸ See recommendation 3.

The Scope of the Offence

93. One issue that we wish to highlight in relation to the operation of the criminal offence arises from the uncertainty surrounding its scope in light of recent developments in technology.
94. It is well-known that a TV licence is required in order to watch live television broadcasts and that not having a TV licence as required amounts to a criminal offence. There is however some confusion surrounding the requirement to hold a licence when using an electronic device other than a television. There have been changes to the licence fee framework over the years which has contributed to this confusion. For example, a licence was not required in order to watch satellite transmissions which originated outside the UK until 2003.¹¹⁹ There have also been changes and revisions to address technological developments, and this has added to the complexity of the legal framework.
95. Research conducted by the BBC has demonstrated that many members of the general public feel that the rules surrounding the requirement to hold a TV licence for the use of computers and mobile phones are unclear. **Around one in three respondents to the BBC Trust’s consultation claimed that it is not clear when a licence is required, or mentioned particular areas of confusion in their response.**¹²⁰
96. One area which seems to be in need of clarification arises from the fact that the current obligation is focused solely on ‘live’ television, which means television programming which is received at the same time or virtually the same time as it is broadcast.¹²¹ The importance of this concept has increased with the growing availability of ‘on demand’ services, whereby electronic devices can be used to watch programmes at times other than at the time of their first broadcast.
97. The current obligation has created a distinction between linear viewing (traditional television broadcasting), which must be licensed, and non-linear viewing (such as ‘on demand’ or ‘catch up’ services), which need not be. The existence of this distinction has created what has become known as the ‘iPlayer loophole’: those who watch only ‘on demand’ can access broadcasting services (including BBC services), but are not required to hold a licence.
98. Whether or not the offence should be extended to cover non-linear viewing is a difficult subject outside the scope of this Review, though it clearly has implications for evasion, and adds to the complexity of investigation.

¹¹⁹ Communications Act 2003.

¹²⁰ BBC Trust Review of Licence Fee Enforcement, 2009.

¹²¹ Regulation 9(3) of the Communications (Television Licensing) Regulations 2004 provides that “receiving a television programme service includes a reference to receiving by any means any programme included in that service, where that programme is received at the same time (or virtually the same time) as it is received by members of the public by virtue of its being broadcast or distributed as part of that service”.

99. What is apparent from our Review is that the term ‘TV licence’ is a misnomer and has added to the public’s confusion. This term is probably too entrenched in public consciousness to be changed, at least in the short-term, although a more accurate description might be ‘broadcasting charge’ or ‘broadcasting levy’.

Conclusion

100. For the reasons set out above, having taken into account the evidence provided to the Review, and having regard to the key considerations set out in the Terms of Reference, we have concluded that the current enforcement regime is appropriate and fair and represents value for money for licence fee payers and taxpayers.

Recommendation 1:

While the current licence fee collection system is in operation, the current system of criminal deterrence and prosecution should be maintained.

3b: OPTION 2

Reform of current system: leave the current offence as it stands, but reform the current criminal enforcement system.

101. Option 2 would involve retaining the current criminal offence while at the same time making improvements to the system of enforcement and prosecution, in order to address some of the concerns that gave rise to the Review.

Overview

102. On the basis of the evidence available to the Review, and having regard to the key considerations set out in the Terms of Reference, we have concluded that many of the concerns expressed in relation to the criminal offence (such as that it leads to the imprisonment of licence fee evaders), provide no compelling basis for change (at least not under the current model of licence fee collection). In broad terms, the current enforcement regime is operated fairly and efficiently by TV Licensing on behalf of the BBC and provides good value for the licence fee payer and taxpayer.
103. That said, there is scope to improve the current system of enforcement (pending any changes that might result from the Charter Review), particularly in relation to the transparency of the prosecution process and the tone of TV Licensing's written communications. It is also recommended that TV Licensing explore ways to target visits to unlicensed households more effectively. The recommendations set out below are designed to address some of the concerns that have been expressed in relation to the current sanctions regime and to improve the fairness and effectiveness of the process of investigation and prosecution.
104. One matter that emerged from the Review process is that in 2012, 70% of those prosecuted for TV licence evasion were women.¹²² On the evidence available it has not been possible to reach a definitive conclusion as to why this imbalance exists, although there is no evidence of any intentionally discriminatory enforcement practices on the part of TV Licensing. It is recommended that the gender disparity in TV licence prosecutions should be the subject of investigation and further consideration in the forthcoming Charter Review.
105. The Review has concluded that the investigation and enforcement process would be more efficient if cable and satellite companies were required to share their subscription information with TV Licensing, and a recommendation is made to this effect.
106. The Review received a body of evidence to the effect that payment of the licence fee should be made easier to assist those on low incomes and that this could be achieved by amending

¹²² The proportion of fines imposed for failure to hold a TV licence in 2012 by gender was 32% male 68% female. Table B4a of <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014>.

the regulations¹²³ which govern the BBC’s ability to offer flexible payment plans. The Review agrees with this view and has also made a recommendation to this effect.¹²⁴

Discussion

107. The BBC has made major improvements in efficiency since it took over responsibility for licence fee collection from the Home Office. It has reduced the evasion rate from 12.7% (in 1991) to around 5%¹²⁵ in England and Wales, although levels of evasion are higher in Scotland and Northern Ireland.¹²⁶ This is a notable improvement as even a small change in the level of evasion has significant cost implications: the current 5% evasion rate equates to approximately £200m of lost income for the BBC.¹²⁷
108. The evasion rate of 5% is lower than most other countries with similar TV licensing systems, although it is still thought by some to be unacceptable, representing as it does the cost of evaders using BBC services which have been paid for by licence fee payers. Recovering £200m of lost revenue could mean maintaining the cost of the licence fee at its current level, alternatively, it could provide a significant amount of additional funding for the BBC to provide additional services: either would represent a significant benefit to licence fee payers.

Evasion rates across Europe (2013): ¹²⁸	BBC services costing under £200m a year: ¹²⁹
<ul style="list-style-type: none"> ● Poland - 65% ● Italy - 26% ● Ireland - 12% ● Sweden - 12% ● Norway - 9% ● United Kingdom - 5% ● Austria - 3% 	<ul style="list-style-type: none"> ● BBC3 - £109.3m ● CBBC - £101m ● BBC News channel - £66.2m ● BBC ALBA £8m ● BBC Radio 1 - £52.8m ● BBC Radio 4 - £120.6m ● BBC Online - £174.4m

Household visits

109. In the course of its own review in 2009, the BBC Trust noted that over 60% of visits to unlicensed properties are repeated because the initial visit does not result in contact being made with an occupant. According to TV Licensing’s data collection, once such contact has been made the likelihood is that the occupant will purchase a licence within 28 days.¹³⁰ The Trust has suggested

¹²³ Communication (Television Licensing) Regulations 2004.

¹²⁴ See recommendation 4.

¹²⁵ BBC Trust Review of Licence Fee Enforcement, 2009.

¹²⁶ Evidence provided to DCMS by the BBC, evasion rates 2014: UK 5.4%, England and Wales 5.2%, Scotland 7.3% (taken from BBC consultation response and other BBC evidence).

¹²⁷ Cost benefit analysis (Annex B).

¹²⁸ <http://www.tvlicensing.co.uk/cs/media-centre/news/view.app?id=1362435051910>

¹²⁹ BBC Annual Report and Accounts, 2013/14.

¹³⁰ BBC Trust Review of Licence Fee Enforcement, 2009.

that by using the existing database to target unlicensed addresses, and by striving to ensure that contact is made with the occupant, TV Licensing could increase the number of licences issued at an early stage of the enforcement process, thus avoiding the need to initiate criminal proceedings.¹³¹

- 110. More focused targeting of unlicensed households would reduce the number of unnecessary visits and thus reduce the burden on TV Licensing; it would also benefit those members of the public who currently receive visits even though they have or do not need a TV licence.
- 111. Any step that will increase compliance with the obligation to hold a licence and reduce the number of prosecutions is to be welcomed. We agree with the suggestion made by the BBC Trust and recommend that TV Licensing should explore ways to target household visits more effectively.

Recommendation 2:

TV Licensing should explore ways to target unlicensed household visits more effectively, to increase the likelihood of an enquiry officer making contact with occupiers.

Efficiencies in licence fee collection

- 112. As noted above, the costs incurred by the BBC in collecting the licence fee have been reduced with the result that in 2013/14, for the first time, these costs were less than 3% of licence fee income.¹³² The Culture, Media and Sport Select Committee has noted that this compares favourably to the peak of 6% collection costs when the enforcement scheme was administered by the Home Office.¹³³ The current contract with Capita is structured to deliver savings of £220m over 8 years.¹³⁴
- 113. The evidence available to the Review suggests that the current court process is efficient, and will be further streamlined by amendments to the system of summary justice by the Criminal Justice and Courts Act 2015. The Ministry of Justice informed us that future automation of many of the (currently manual) administrative processes carried out by the courts will lower the cost of fine enforcement and increase the amount collected by way of fines.¹³⁵

¹³¹ BBC Trust Review of Licence Fee Enforcement, 2009.

¹³² BBC Annual Report and Accounts 2013/14.

¹³³ House of Commons Culture, Media and Sport Committee, 'Future of the BBC', Fourth Report of Session 2014/15.

¹³⁴ BBC Annual Report and Accounts 2013/14.

¹³⁵ Ministry of Justice consultation response.

114. Overall, it appears that the current enforcement system provides good value for licence fee payers and taxpayers and improvements made in recent years by the BBC and Ministry of Justice have increased its efficiency further.
115. The BBC Trust has made clear its commitment to maintaining value for money and helping people to pay for TV licences as the following extract from its 2009 review of licence fee collection makes clear.

BBC Trust review of TV licence fee collection (2009)

“The BBC Executive must maintain value for money and secure the finances intended to fund BBC services for the public at large. The BBC’s collection strategy needs to be designed to help people pay for their licence by ensuring the system is as customer focused as possible. At the same time it must ensure that it fulfils its responsibility to the vast majority of households who pay their licence fee, by vigorously pursuing those that deliberately evade payment.”

Gender disparity

116. In its consideration of the current sanctions regime, the Review explored whether there is any inbuilt bias in the process of investigation and prosecution which unfairly impacts on women or other groups, such as those on low incomes.
117. Statistics compiled by the Ministry of Justice demonstrate that more women than men are prosecuted for TV licence offences.¹³⁶ The BBC also provided statistics which reveal that of those interviewed in the course of the enforcement process 67% are female, and of those prosecuted 70% are female.¹³⁷ These figures are stark and clearly indicate that women are significantly more at risk of prosecution than men.
118. It was suggested by the BBC and Ministry of Justice that one possible explanation for this gender disparity is that more women than men are present at homes when enquiry officers are carrying out their investigations during daytime hours. This suggestion prompted the Review Team to obtain evidence in relation to the visiting practices. This evidence demonstrated that TV Licensing (in an effort to ensure that officers are not unfairly targeting any particular group of individuals, either by gender or otherwise) stagger their investigations and visits take place during both daytime and primetime viewing (evenings and weekends).¹³⁸
119. The evidence revealed that the number of women prosecuted is higher than for men across all visiting hours, and contributors to the Review attributed this to what was characterised as a

¹³⁶ The proportion of fines imposed for failure to hold a TV licence in 2012 by gender was 32% male 68% female. Table B4a of <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014>.

¹³⁷ BBC evidence to the Review.

¹³⁸ BBC evidence to the Review.

cultural phenomenon, namely that women are more likely than men to deal with household callers.¹³⁹ The significance of this point is that TV Licensing prosecutions must be brought against an individual evader, rather than a household, and it is likely that the person who first speaks to the enquiry officer is the person most at risk of prosecution. That said, it has not been possible to find any definitive reason for the existence of the gender disparity in prosecutions.

Percentage of TV licence fee evasion cases involving females in 2014¹⁴⁰

Visit Time Slot	Interview Under Caution	Prosecution
Non-Prime Time	68%	70%
Prime Time 16:00-18:00	69%	72%
Prime Time 18:00-21:00	66%	71%
Prime Time Weekends	63%	69%
Total	67%	70%

120. While we have found no evidence to suggest that enforcement activity is unfairly and intentionally targeted at women, or any other group, the disparity in the number of prosecutions brought against women is striking and further work is required to understand this imbalance. This issue is linked to TV Licensing's discretion not to prosecute or to discontinue prosecutions in the public interest. We make further recommendations in relation to this in the sections that follow. At this point we simply note the importance of any decision to prosecute and the care that is to be exercised in ensuring that any prosecution is brought only where it is justified as being in the public interest.

Recommendation 3:

The BBC and the Department for Culture, Media and Sport should explore ways to investigate and consider the gender disparity in TV licence prosecutions.

Low Income Groups

121. The BBC provided evidence to suggest that licence fee evasion is not more prevalent in less well-off households.¹⁴¹ According to research conducted by TV Licensing, the socio-economic profiles of unlicensed addresses reflect those of the general population as a whole and not any

¹³⁹ It may also be the case that more women assume responsibility for household bills such as TV licences, but we have no basis either to confirm or refute this assumption.

¹⁴⁰ BBC evidence to the Review.

¹⁴¹ It was suggested to us by some consultation respondents (John Whittingdale MP, Andrew Bridgen MP, Christians Against Poverty) that the current enforcement regime has an unfair impact on those on low incomes, but this was not supported by information we received from the BBC and Ministry of Justice.

particular social group.¹⁴² We were also informed that enforcement activity was not more likely to take place in areas with a prevalence of lower income households.

122. The BBC also provided information confirming that there is a range of payment options available to the public, including payments by instalments, designed to assist those on low incomes.¹⁴³ The BBC Trust has noted however, that whilst the payment options offer customers an element of flexibility, the payment plans are more rigid than they would like and have the potential to create difficulties for those on low incomes. For example, under a cash payment scheme, the first year's licence must be paid for within 6 months, and the BBC's own research suggests that this is not as helpful as "other annual instalment plans, such as utilities bills, where payment is spread evenly over 12 months".¹⁴⁴
123. The various payment schemes were explained in the BBC Trust Review of Licence Fee Enforcement, 2009:

Payment schemes¹⁴⁵

As an alternative to paying the licence fee up front in one lump sum there are a number of instalment plans to help spread the cost. The rules surrounding these plans are set and regulated by the Department for Culture, Media and Sport. The plans enable people to pay six months in advance and six months in arrears. This is achieved by collecting full payment for the first licence over the first six months and then spreading the cost of subsequent licences over 12 months.

Whilst the up-front loading of costs also helps protect the BBC from the loss of people who start to pay for their licence in instalments but stop before the whole amount has been collected, the Trust believes that by making these schemes as attractive and simple as possible people are less likely to opt out of them.

Under the cash payment plan scheme, weekly or monthly payments can be made by phone, online or at a PayPoint outlet and are designed to spread the cost of a licence into manageable instalments. The payment cycle is as follows:

- Year 1, first six months: the customer is issued with a full year's licence at the start, which is paid for over six months, so the customer is in arrears for the first six months, at the end of which the Year 1 licence is fully paid for.
- Year 1, second six months: the customer makes half-rate payments and is now saving towards the Year 2 licence, so is paying in advance. By the end of the second six months, the customer has paid for half of the Year 2 licence.
- Year 2, first six months: the customer is issued with a full year's licence at the start, but has paid for only half of it, so is paying in arrears. The half-rate payments continue and at the end of the six months, the Year 2 licence is fully paid for.
- Year 2, second six months: the customer starts saving towards the Year 3 licence, continuing with the half-rate payments, so is paying in advance. By the end of the year, half of the Year 3 licence will have been paid for, and so on.

Customers who fall behind with payments will get arrears letters and may also get phone calls and texts from Capita agents acting on behalf of TV Licensing. If payments for arrears are not forthcoming, a customer may

¹⁴² BBC evidence to the Review.

¹⁴³ BBC evidence to the Review.

¹⁴⁴ BBC Trust Review of TV Licensing Fee Collection, 2009.

¹⁴⁵ BBC Trust Review of TV Licensing Fee Collection, 2009.

be passed to Capita's debt collection agency, which does not buy the debt but manages it on behalf of TV Licensing.

Unlike the monthly Direct Debit and Cash Payment Plan the quarterly Direct Debit scheme does not require any up-front payments. However, in order to join this scheme the licence fee payer is required to pay a £5 annual charge on top of the licence fee because most of the payment for the licence is in arrears.

124. As well as creating a barrier for some would-be licence fee payers, this payment system is complicated and unnecessarily confusing. However the requirements of the instalment schemes are contained in regulations¹⁴⁶ over which the BBC and TV Licensing have no control. The BBC has indicated its willingness to work with Government to explore a simplified approach with “increased flexibility in the instalment schemes, to allow TV Licensing to adapt payment plans to suit the individual and help them to stay licensed”.¹⁴⁷
125. This is a desirable objective and the introduction of a simple instalment scheme, tailored to the needs of individual households, would help those who wish to adhere to the law, but who at present are unable to take advantage of the pre-payment schemes. This would also ensure that TV Licensing's enforcement activities are appropriately focused on those who are intentionally refusing to comply with their legal obligation and using services paid for by others.

Recommendation 4:

The Department for Culture, Media and Sport, in conjunction with the BBC, should explore ways of amending the current regulations to allow simple and flexible payment plans for those facing difficulty in paying the licence fee.

Minority groups

126. The Review has also considered whether the enforcement process unfairly targeted immigrants and black and minority ethnic groups. An equality analysis¹⁴⁸ carried out by TV Licensing in November 2011 showed that race does not influence household visit selection; it is the case, however, that certain areas with a high BME population were found to display many of the characteristics that influence visit selection. A more recent study, completed in 2014, confirmed this finding, but noted that areas with a higher BME population tend to have a lower contact rate (that is the rate of visits where contact is made), with the result that fewer statements are obtained from householders and fewer cases progressed to prosecution.¹⁴⁹
127. The weight of the evidence available to the Review suggests that there is no targeting of minority groups and that the BBC and TV Licensing have various strategies in place to monitor diversity and actively engage with minorities.

¹⁴⁶ Communications (Television Licensing) Regulations 2004.

¹⁴⁷ BBC consultation response.

¹⁴⁸ BBC evidence to the Review.

¹⁴⁹ BBC evidence to the Review.

128. The BBC provided evidence showing good levels of communication with non-English speakers. TV Licensing provides information, available online and in leaflet form, in 15 languages other than English and Welsh.¹⁵⁰ It also provides a phone translation service for use by non-English speakers which allows customers to set up or pay for a TV licence in more than 180 languages.¹⁵¹
129. Enquiry officers are equipped with information cards in several languages, and if a customer is unable to understand English and there is no suitable interpreter available, officers are instructed not to complete a statement. The Visiting Procedures Manual states that interviews under caution can take place in other languages and sign language, though interpreters are not provided by TV Licensing.¹⁵²
130. Research conducted by the BBC Trust in 2009 acknowledged difficulties in communicating with communities which are less likely to be online, and that new arrivals to the UK are not always aware that the law requires a TV licence for watching live television broadcasts, including their own national TV programmes via satellite. It has been recommended by the BBC Trust that this should remain an area of focus for TV Licensing. We endorse this approach and in light of the Trust's awareness of the issue, it is not necessary to make any formal recommendation in this regard.

BBC diversity engagement case studies

“The BBC Executive already has a system of partnerships with stakeholder organisations which exist to help them reach a wide range of audiences. Its programme for new migrants includes grass-roots communications activity in local communities, contacting third-party groups who can pass on information to individuals, such as community groups, employers, local authorities and housing associations.”

- **BBC Trust Review of Licence Fee Collection 2009**

“TV Licensing’s extensive social inclusion programme targets hard-to-reach and low income communities, helping to raise awareness of when a licence is needed, the many ways to pay, and the consequences of watching TV while being unlicensed. TV Licensing does this by engaging with national and local organisations which provide trusted advice and support to people in these communities. A large part of this involves partnering with advice organisations and debt management charities. In 2013/14 it worked with nearly 70 national and 360 local groups of all kinds: housing associations; money advice organisations; and minority group organisations.”

- **BBC consultation response, 2015**

¹⁵⁰ All visits, correspondence, calls and emails are offered in Welsh if required (Capita TV Licensing England & Wales Visiting Procedures, 2014).

¹⁵¹ BBC consultation response.

¹⁵² Capita TV Licensing England & Wales Visiting Procedures, 2014.

Requirement to purchase a licence

131. One of the factors included in our Terms of Reference concerned the ease with which the obligation to hold a licence is enforced. In this context one of the issues raised for our consideration was the inability to compel defendants convicted of the evasion offence to buy a licence, with the possibility that the evader will remain unlicensed, which raises the possibility of further offending and the risk of further prosecution. Accordingly, the Review considered whether it would be feasible to introduce a requirement to buy a licence as part of the current penalty for the offence, or to permit the BBC to impose charges for periods when the evader was unlicensed, thus allowing the BBC to recoup the lost revenue (if backdated) or lessen the loss from evasion (if forward-facing).
132. On analysis, it appears that the difficulties associated with introducing a requirement to buy a licence as part of the penalty for the offence are twofold. First, the convicted evader may no longer be subject to the obligation to hold a licence, or may dispute that this is the case, in which event it would be necessary for the Magistrates' Court to make a determination on the issue. Second, it is difficult to envisage how the obligation would be enforced without adding to the complexity of the enforcement process. For these reasons, we have concluded that to introduce such a requirement would be impractical and, given the continuing obligation to hold a licence, would serve no useful purpose.
133. An additional difficulty in relation to backdating is that it would require proof of the period during which evasion has occurred. In the case of Vehicle Excise Duty evasion, an assumption is applied and backdating takes place to the expiry of the previous licence.¹⁵³ However it would not be proportionate to apply the same or similar reasoning to TV licences because parts of the unlicensed period may have been legally unlicensed, or at least arguably so.
134. In summary, it would present a great many evidential difficulties to attempt to establish the exact period of unlicensed use and to introduce an assumption in relation to unlicensed use would create a risk of unfairness. The anti-TV licence pressure group TV Licence Resistance¹⁵⁴ argued that: "any form of automatic assumption about the length of time for which a household was unlicensed would be intrinsically unfair because: (a) TV might not have been watched during some or all of the unlicensed period, and (b) the responsibility for the licence may have changed (possibly informally) during the unlicensed period".
135. The Review has concluded that any attempt to enable the BBC to recover lost revenue by charging for the periods when the evader was unlicensed or compelling the evader to purchase a licence would either be unworkable or unfair, and accordingly the position should remain as it is.¹⁵⁵ We do, however, emphasise that the priority should always be to encourage compliance

¹⁵³ Vehicle Excise and Registration Act 1994, section 31.

¹⁵⁴ A pressure group which argues for the abolition of the licence fee system.

¹⁵⁵ The Magistrates' Court Sentencing Guidelines make it clear that an aggravating feature of the offence is the period of unlicensed use and a period in excess of 6 months is likely to result in a higher financial penalty.

with the law and that where an evader agrees to buy a licence, a prosecution may not be necessary in the public interest. We address this issue in more detail below.

Access to additional data sources

136. Under the current enforcement system, TV Licensing has access to only a limited amount of information (such as the database of unlicensed addresses) on which to base its investigations. It has been suggested that providing the BBC with additional sources of information may result in a more efficient collection of the licence fee, thus reducing the level of evasion.
137. During the course of the Review, the BBC and Ministry of Justice identified a number of sources of information, access to which might increase TV Licensing’s ability to reduce evasion. One suggestion was to reinstate the requirement for retailers to notify TV Licensing of the purchase of electronic devices capable of playing or recording television programmes. The general consensus of those who contributed to the Review is that this is unlikely to be effective for the simple reason that many people now watch television on a range of devices (tablets, laptops and mobile devices) and, as these devices are capable of being used for purposes other than watching television, it would be ineffective to use sales data as a source of any useful information. It was also argued that such a requirement would place a disproportionate burden on retailers.
138. The BBC suggested that access to council tax data or the electoral roll would be helpful in identifying unoccupied premises and the identities of adult residents of occupied premises.¹⁵⁶ While the BBC accepted that such access would have to be subject to strict data controls, public responses expressed concern about this proposal and the Review has concluded that it would not be appropriate to make any recommendations to this effect.
139. Another possibility, raised by the BBC and TV Licensing, was the use of information derived from pay-TV providers (for example, cable or satellite subscriptions) which could provide a clear indication of TV usage. It was felt that this would be less intrusive than access to council tax or electoral roll data, with the potential to be particularly helpful in increasing the effectiveness of investigations. Having access to this type of data would have the added advantage of making the investigation process less onerous to householders, in that it would allow more targeted and possibly less intrusive investigations.
140. It is of interest to note that the Republic of Ireland has recently announced that it may grant An Post (the Irish Television Licensing authority) access to cable or satellite subscription information, thus enabling it to check the information against its database of licence fee payers. The Irish Government has made it clear that access to the information will be available “solely for statutory functions in relation to licence fee collection and the commercial confidentiality of the information will have to be safeguarded”.¹⁵⁷

¹⁵⁶ BBC consultation response.

¹⁵⁷ <http://www.irishtimes.com/business/retail-and-services/government-launches-crackdown-on-tv-licence-fee-evasion-1.1859274>.

141. We have concluded that enabling the BBC to have access to pay-TV subscription information would be a proportionate response to the difficulty of identifying evasion and would have the additional advantage of making the enforcement process more targeted and possibly less intrusive.

Recommendation 5:

Consideration should be given to the introduction of a requirement for cable and satellite TV companies to share their subscription information with TV Licensing in order to improve the investigation and enforcement process.

Notification that no licence is required

142. The Review considered whether the introduction of a negative notification requirement, as is currently the case for untaxed vehicles (through a Statutory Off Road Notification, or SORN),¹⁵⁸ would be a practical addition to the enforcement regime. This proposal would aim to increase the efficiency of enforcement through more targeted investigations.
143. Under the current regime, those households which do not require a licence are encouraged to inform TV Licensing of this fact (through a 'no licence needed' declaration), but there is no legal obligation to do so. The consensus of those who contributed to the Review was that a notification obligation would not make any significant improvement to the system of investigation and the additional regulations and costs involved, particularly the unnecessary burden to householders, would not be justified. It would also require the introduction of an additional offence - failure to inform TV Licensing of the fact that a television licence is not needed - which is undesirable having regard to the likely benefit. For these reasons the review concluded that it would not be appropriate to introduce any such negative notification requirement.

The prosecution process

144. Under the current prosecution policy operated by TV Licensing, a first-time offender may often avoid prosecution by buying a licence at any point up to the Magistrates' Court hearing. Whilst individuals are informed of this by letter following the enquiry officer's visit, the policy is not publicly available and consequently not generally known. When informed of the existence of this policy, participants in the Review were of the clear opinion that the policy should be more widely-known. They also argued that this process offered individuals many of the benefits that would be more formally available through other systems (such as an out-of-court settlement (Option 3) or a fixed penalty notice scheme (Option 4), without the need for more radical and potentially costly reform.

¹⁵⁸ Vehicle enforcement policy table: <https://www.gov.uk/government/publications/vehicle-enforcement-policy>.

145. The desirability of publicising the policy was acknowledged by the BBC, and it was suggested that the public interest test applied by TV Licensing when considering prosecution “already amounts to a de facto out-of-court settlement system”.¹⁵⁹ The BBC expressed a willingness to increase the perceived fairness of the current regime, and that one way of doing this was to make the operation of the public interest test more transparent. In particular, the BBC suggested that TV Licensing should publish a code which sets out the steps it will take before instigating a prosecution (including the considerations it will apply in deciding whether it is in the public interest to prosecute), and to make this available to suspected evaders on the occasion of household visits, rather than by letter as currently is the case.
146. For its part, TV Licensing had been opposed to this level of transparency and expressed a concern that it could increase evasion, or at least encourage periods of evasion. Despite this concern, given that the threat of prosecution remains, and any deliberate attempt to exploit the policy would be a factor in favour of prosecution, it seems unlikely that evasion will increase. This is particularly so given that a policy of encouraging compliance rather than resorting to prosecution is already in operation, and the only difference is that it will be publicised. We are of the view that the increased transparency could go some way to addressing the concerns expressed over perceived unfairness in the enforcement process. The stance now adopted by the BBC indicates support for a change in approach.
147. Set against this, one member of the public argued that an out-of-court system would be preferable, as he felt that TV Licensing should not have the power to ‘sell justice’ by deciding either not to prosecute or to discontinue an existing prosecution in circumstances where a TV licence is purchased by the evader. While we acknowledge the sentiment behind this point of view, it seems to us that the purchase of a TV licence is a legitimate public interest factor for TV Licensing to take into account when exercising its prosecutorial discretion. We also consider that TV Licensing’s principal concern, so far as possible, is to ensure compliance with the law: if this can be achieved without resort to prosecution, then so much the better for the public, the individual and the BBC.
148. We also consider that the publication of a prosecution policy will assist in ensuring that all cases are the subject of careful consideration before a prosecution is instituted.

Recommendation 6:

TV Licensing should consider increasing the transparency of its prosecution and enforcement policy, and provide clearer guidance to those at risk of prosecution. This guidance could take the form of a code detailing the steps that will be taken before prosecution, including the public interest considerations that will be applied when deciding whether to prosecute. Any such code should be published and made available to suspected evaders at the earliest possible opportunity in the enforcement process.

¹⁵⁹ BBC consultation response.

Tone of TV Licensing communications

149. In response to the consultation a number of individuals expressed dismay at the manner in which some investigations are conducted and the tone of TV Licensing’s communications. One contributor to the Review labelled the conduct of enquiry officers “heavy-handed and threatening”. While this was not the view of the majority of participants, those who did advance criticisms spoke in terms of “harassment”, particularly in relation to letters received from TV Licensing, which it was felt were unnecessarily hostile and aggressive.

Case study – TV licence appeal (2013-15)

The Review Team examined the findings of a TV licence appeal provided by the BBC Trust. This contained a complaint arising from “threatening” language in TV Licensing’s correspondence. The Trust’s response noted that the language had been amended since receipt of the complaint and it was now more direct and understandable, and included more explicit instructions about the steps to be taken by customers encountering difficulties in maintaining payments. However a subsequent letter, sent before the customer’s licence had expired, contained references to a debt collection agency. The Trust ruled that it was unacceptable to raise referral to debt collection agencies with a fully-licensed member of the public, and asked the BBC Executive to make relevant changes to its systems.¹⁶⁰

150. The BBC Trust conducts an annual review to ensure that the enforcement arrangements put in place by the BBC Executive are “efficient, appropriate and proportionate”.¹⁶¹ In the course of its 2009 review, The Trust noted that TV Licensing’s dealings with the public should not be accusatory, and should “aim to be polite, firm and informative”. It was acknowledged, however, that “this is not always the case” and that the public found them to be “too harsh”. It concluded: “The BBC Executive must improve the tone of the early stages of TV Licensing’s correspondence with the public”.¹⁶² It is to be noted that TV Licensing conducted a “major overhaul” of their correspondence in July 2014, but dissatisfaction with the tone and content of TV Licensing’s letters remained a consistent theme among some of the responses provided by members of the public in their consultation responses.

Recommendation 7:

TV Licensing should consider changing the tone and content of its written communications with households so as to ensure that they are expressed in reasonable terms and can be easily understood.

¹⁶⁰ BBC Trust evidence to the Review.

¹⁶¹ BBC Trust Review of TV Licence Fee Collection, 2009.

¹⁶² BBC Trust Review of TV Licence Fee Collection, 2009.

Conclusion

151. This Review has been undertaken within the existing licence fee structure. The principal recommendation is that the current enforcement system should be maintained, at least while the current licence fee collection system is in place. That said, there is scope to improve the current system and address some of the concerns raised in the consultation process, particularly in relation to the transparency of the prosecution policy. We are confident that these changes could be implemented while maintaining the deterrent effect of the criminal offence and without adding unnecessary additional cost to the licence fee payer or taxpayer.
152. We recommend that:
- TV Licensing should explore ways to target unlicensed household visits more effectively to increase the likelihood of an enquiry officer making contact with occupiers.
 - The BBC and the Department for Culture, Media and Sport should investigate and give further consideration to the gender disparity in TV licence prosecutions.
 - The Department for Culture, Media and Sport, in conjunction with the BBC, should explore ways of amending the current regulations to allow simple and flexible payment plans for those facing difficulty in paying the licence fee.
 - Consideration should be given to the introduction of a requirement for cable and satellite TV companies to share their subscription information with TV Licensing, in order to improve the investigation and enforcement processes.
 - TV Licensing should consider increasing the transparency of its prosecution and enforcement policy and provide clearer guidance to those at risk of prosecution. This guidance could take the form of a code detailing the steps that will be taken before prosecution, including the public interest considerations that will be applied when deciding whether to prosecute. Any such code should be published and made available to suspected evaders at the earliest possible opportunity in the enforcement process.
 - TV Licensing should consider changing the tone and content of its written communications with households, so as to ensure that they are expressed in reasonable terms and can be easily understood.

3c: Option 3

Out-of-court settlement: retain the criminal offence, with an option for disposal by way of an out-of-court settlement.

153. Option 3 would retain television licence evasion as a criminal offence while allowing a monetary penalty to be imposed by way or an out-of-court settlement. This type of out-of-court settlement scheme is currently used by the Procurator Fiscal in relation to the vast majority of TV licence evasion cases in Scotland.¹⁶³ A similar scheme is operated by the DVLA in respect of certain vehicle offences.¹⁶⁴ It is envisaged that TV Licensing would offer individuals the opportunity to accept an out-of-court settlement (payment of a sum of money by way of a penalty) as an **alternative** to prosecution. If the offer is not accepted, the case proceeds to prosecution in the normal way. If the offer is accepted, payment of the total amount is made within a specified period, usually within 3 to 4 weeks.

Overview

154. At first sight, Option 3 appears to provide an attractive alternative to the current scheme of prosecution, while falling short of outright decriminalisation. However, on closer consideration, the adoption of such an out-of-court settlement scheme raises a number of difficulties. First, there is no equivalent of the Procurator Fiscal in England and Wales and the scheme would have to be administered by TV Licensing (or possibly by another agency specifically created for the task). Second, if the scheme were to be administered by TV Licensing, it would be for TV Licensing to set the figure of the out-of-court settlement (unless it were prescribed by statute or contained in regulations), and it would be for TV Licensing to decide on the cases in which it was appropriate to make the offer of settlement. Third, whether or not the scheme is administered by TV Licensing, the creation of such a scheme would require the investment of resources and training which is likely to be costly. Fourth, setting the figure of the out-of-court settlement amount is likely to be difficult and controversial. Fifth, the implementation of such a scheme carries the risk of increased evasion, although the extent of the risk is likely to depend on the amount fixed as the settlement figure. Sixth, an out-of-court settlement scheme may impact unfairly on defendants who cannot afford to pay the full amount of the penalty within 28 days. Finally, even if such a scheme were to be implemented, it might soon become overtaken by events following the forthcoming Charter Review. It is for these reasons that the Review made no recommendation in relation to Option 3.
155. In the following paragraphs we consider the merits of Option 3 based on the evidence provided to the Review and having regard to the key considerations as set out in the Terms of Reference.

¹⁶³ Section 302 of the Criminal Procedure (Scotland) Act 1995. The Procurator Fiscal has the power to offer. Fiscal fines for almost all offences which could otherwise be tried summarily.

¹⁶⁴ <https://www.gov.uk/government/publications/vehicle-enforcement-policy>.

Discussion

156. On its face, this option would seem to provide greater value for money for the taxpayer, as there would be fewer cases proceeding to the Magistrates' Court for prosecution. The out-of-court settlement would allow individuals an additional opportunity to avoid the court process by paying an agreed amount to the BBC. In Scotland, the vast majority of TV Licensing cases are dealt with in this way, with a consequential saving in court time and resources. The Voice of the Listener and Viewer¹⁶⁵ supported the adoption of an out-of-court settlement scheme: "We believe it would be preferable if licence fee evasion cases were disposed of via an out-of-court fine, avoiding the necessity of a court hearing. This would mean significantly fewer cases would be dealt with through the courts, which would reduce costs both for offenders and the courts. It would also reduce the inconvenience for individuals caused by loss of income or travel costs attending court."¹⁶⁶ Andrew Bridgen MP commented that the out-of-court settlement system appeared to be a more efficient system than the one currently in place.¹⁶⁷
157. The Ministry of Justice agreed that there could be a cost saving by using a system of out-of-court settlement, but argued that the saving would be limited (on the basis that the existing system is efficient and does not impose a significant burden to the taxpayer in terms of cost). Significantly, the Ministry of Justice believes the cost saving would only accrue if evasion remained at the current level, while anything more than a minimal increase in the rates of evasion would offset the savings in costs.¹⁶⁸ Additionally the Ministry of Justice noted that the court would no longer receive fine revenue and whether or not it would result in a saving to the taxpayer would depend on a number of factors (the acceptance rate, enforcement costs and level of the penalty). These factors are considered below.
158. In addition to the potential benefit to the taxpayer, Option 3 also has the potential to provide good value for licence fee payers. TV Licensing would no longer be taking on the role of prosecuting a large number of cases through the Magistrates' Court; prosecutions would only take place in those cases where the out-of-court settlement had been rejected or those in which it was inappropriate to proceed by way of such a settlement.
159. An idea of the possible scale of the cost saving can be gleaned from the operation of the out-of-court settlement system in Scotland, where TV Licensing passes its cases to the Procurator Fiscal and where, from that point onwards, any prosecution costs are incurred by the Crown Office. In 2014, the costs of prosecution incurred by TV Licensing were 38% lower per case in Scotland than in England and Wales.¹⁶⁹ It is the case, however, that the taxpayer bears the burden of funding the Procurator Fiscal.

¹⁶⁵ A consumer group representing listeners and viewers on a range of broadcasting issues.

¹⁶⁶ Voice of the Listener and Viewer consultation response. The number of cases brought to the Magistrates' Court in 2013/14 was 178,332, this represents an estimated 0.3% of court time.

¹⁶⁷ Andrew Bridgen MP evidence to the Review.

¹⁶⁸ Ministry of Justice evidence session.

¹⁶⁹ In 2014 the cost to TV Licensing of prosecution in Scotland was £74.90 compared to £120.81 for England and Wales. BBC evidence provided to the Review.

160. Despite the superficial value of comparisons with the scheme operated by the Procurator Fiscal, the Scottish example needs to be approached with a degree of caution as there is no equivalent of the Procurator Fiscal in England and Wales. It follows that an out-of-court settlement scheme in England and Wales would have to be administered by TV Licensing (or possibly another agency) with the result that the cost of enforcement would be borne by the licence fee payer (or possibly the taxpayer).¹⁷⁰ A number of consultation respondents expressed the view that TV Licensing should not be given the power to administer the out-of-court settlement, nor should TV Licensing be able to set the level of the payment.¹⁷¹ Others focused on the fact that such a scheme would require the BBC to take on a very different role and possibly impact on how it is perceived as an organisation by the public. The BBC Executive stated that to administer an out-of-court settlement system would present a number of difficulties as TV Licensing does not have the expertise to set and enforce fiscal fines. For these reasons, the BBC Executive suggested that it would be more appropriate for any such scheme to be administered by an independent adjudicator.¹⁷² However the creation of a new administrative body would involve additional costs in each of the separate jurisdictions.
161. Quite apart from the potential cost arising from the implementation of such a scheme, there are other potential difficulties. These arise principally from trying to estimate the number of evaders likely to agree to the out-of-court settlement, the potential problems involved in recovery of the penalty, and the problems involved in setting the amount of the out-of-court penalty.

Number of evaders diverted

162. As the Ministry of Justice recognized, the taxpayer would only benefit from the adoption of a scheme of out-of-court settlements if a large number of cases were diverted from the Magistrates' Court. However, if fewer evaders than expected accepted the offer of the settlement, or the evasion level increased, which in turn led to more cases being investigated and prosecuted, this would have a negative impact on the value of such a scheme to the taxpayer. Several public consultation responses raised these or similar concerns.

Recovery of the penalty

163. An additional difficulty is the uncertainty of whether a move to an out-of-court settlement scheme would result in the successful collection of penalty monies. As is currently the case with court-imposed fines, defaults in payment are likely to occur. In the event of default, there would be a reduction in the revenue available to the taxpayer and a cost burden arising from the process of enforcement.¹⁷³ The revenue derived from the DVLA out-of-court settlement scheme appears

¹⁷⁰ This would also be the position in other jurisdictions, whether or not administered by TV Licensing.

¹⁷¹ Andrew Bridgen MP and John Whittingdale MP evidence to the Review.

¹⁷² BBC Executive evidence to the Review.

¹⁷³ Ministry of Justice consultation response.

to be significantly less than that received from prosecutions and the compliance rate with court fines appears to be higher.¹⁷⁴

Level of penalty

164. A crucial element, in terms of feasibility, is the level of the financial penalty imposed by way of settlement. The significance of this point is that the level of the settlement will have a direct bearing on the incentive to obtain and pay for a licence rather than evade.
165. The Ministry of Justice argued that the settlement would need to be set at a level high enough to deter evasion (that is, higher than the cost of a TV licence) and cover the running costs of the scheme, but low enough to encourage individuals to take up the offer.¹⁷⁵ The problem is that if the penalty is set too high, the evader would see the courts as the preferred option as it may be possible to receive a lower means-tested penalty. On the other hand if the penalty is set too low any increase in evasion would have a significant impact on revenue;¹⁷⁶ this would significantly reduce any benefit that might otherwise accrue to the licence fee payer. As the average fine under the current system is £170¹⁷⁷ the settlement figure would need to be lower than this amount but higher than the current level of the colour licence fee at £145.50.¹⁷⁸
166. The level of the financial penalty is £75 in Scotland and, as the BBC has pointed out, evasion levels in Scotland are higher than in England and Wales.¹⁷⁹

¹⁷⁴ Evidence provided by the Ministry of Justice (in reference to an earlier Home Office review).

¹⁷⁵ This was also the view of the Home Office in an earlier review.

¹⁷⁶ BBC evidence submitted to the Review. Each 1% rise in evasion rate would amount to £39m in lost revenue for the BBC.

¹⁷⁷ Ministry of Justice consultation response.

¹⁷⁸ The Ministry of Justice suggested that there was potential for orchestrated campaigns to evade the fee if the out-of-court settlement were to cost less than buying a licence, as individuals may choose to run the risk of being caught and then pay the out-of-court settlement rather than paying for the higher cost of a licence. Ministry of Justice consultation response.

¹⁷⁹ The evasion rates in Scotland (7.3%) is significantly higher than in England (5.2%). The BBC attributes this, at least in part, to the out-of-court settlement scheme. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 amended the Criminal Procedure (Scotland) Act 1995 so that an offer of fiscal fine was deemed accepted if the alleged offender failed to provide notice of refusal within 28 days of the offer. This change in legislation led to an increase in the number of cases that received a fiscal fine. Prior to this an offer of fiscal fine that was not accepted required the Procurator Fiscal to review the case for prosecution or other measures. And prior to 2007 evasion rates in Scotland were lower than their current rate, at 5.9%. However this was still around 1% higher than in England and Wales. Despite evidence that since 2007 evasion has increased at a higher rate in Scotland, with a notable increase of 2% between 2010 and 2011, this Review has not seen any evidence to suggest that this is necessarily causally related to the use of the out-of-court settlement system. Although the research conducted by Harris Interactive would support such a view, there are possible alternative explanations for the difference: for example, the perception of the BBC in Scotland, socioeconomic factors, or technical factors such as improvements in the measurement of evasion in 2010. It is the case, however, none of these explanations is supported by evidence sufficient to enable clear conclusions to be drawn. If this option were to be considered, more research into the impact of the out-of-court settlement system in Scotland would be

Deterrence

167. Although the out-of-court settlement system retains the possibility of a criminal prosecution, the BBC Trust felt that any move away from the scheme of enforcement as it currently operates would create a perception that the offence was now considered to be ‘less serious’ than was previously the case and this might lead to an increase in evasion.¹⁸⁰
168. Harris Interactive conducted a piece of behavioural research which explored whether a scheme similar to the out-of-court settlement scheme in Option 3¹⁸¹ would have an impact on evasion. This research predicted that under such a scheme, evasion would rise from the current rate of 5% to 6%. Such an increase would represent £39m in revenue lost to the BBC.

Low income groups

169. A number of consultation respondents saw Option 3 as having the potential to operate unfairly in respect of those on low incomes. It was felt that an out-of-court settlement penalty was disproportionately weighted against those in financial difficulty as they would be more likely to decline the offer of a settlement amount that had to be paid in a single sum and would instead elect to proceed to the Magistrates’ Court.
170. Means-testing would be a possible way of addressing this problem, but this would add a further layer of complexity and increase the costs of administering the scheme. On the other hand, not to means-test is likely to have an effect on the rate of acceptance; individuals not able to pay the settlement amount in a single one-off payment will elect to face a prosecution. It may, of course, be possible to introduce a scheme of instalment payments (as exists under the current scheme for court-imposed fines), but this too would add yet another layer of complexity and increase the cost of administering the scheme.¹⁸² A review by the Home Office concluded that an out-of-court settlement regime offering a range of payment schemes could not be operated efficiently.¹⁸³

helpful. Sources - BBC evidence to the Review; ‘TV licence evasion in Scotland’, May 2015; BBC Trust review of TV licence collection, 2009. This is also discussed in Annex B.

¹⁸⁰ BBC Trust evidence to the Review.

¹⁸¹ The Harris Interactive research paper on behavioural changes did not explore specifically an out-of-court settlement, but the ‘hybrid’ model is similar enough that we can use it as a proxy. In the Harris hybrid model, first-time offenders receive a monetary penalty while multiple offenders are prosecuted through the criminal courts. This bears a similarity to an out-of-court settlement scheme, wherein offenders who refuse or are not offered an out-of-court settlement would be prosecuted through the Magistrates’ Court as under the current process.

¹⁸² The out-of-court settlement system in Scotland does allow for payment of the settlement amount to be made by instalments, however, these must be made within 28 days (Crown Office and Procurator Fiscal Service evidence to Review). The DVLA scheme does not offer any flexibility in payment as, in the event of default, this would create potential difficulties in enforcement.

¹⁸³ Ministry of Justice evidence to the Review.

171. The Voice of the Listener and Viewer argued that the inability to make payments by way of instalments was a significant disadvantage as “it might make the payment of fines less sustainable for those who are less well off.”¹⁸⁴
172. Christians Against Poverty¹⁸⁵ felt that while overall an out-of-court settlement scheme represented an improvement on the current regime involving the payment of court fines in England and Wales, it had the disadvantage that “a person’s means are not assessed with an out-of-court settlement, so those on low income would be particularly impacted by this system.”¹⁸⁶ Christians Against Poverty also felt this option was weighted unfairly against some vulnerable people, and noted that “If a person...fails to understand how to react to the demands, they will still end up in the Magistrates’ Court. Therefore, this system is still...complex and disproportionate.”¹⁸⁷ It was also suggested that a maximum 28 days in which to make payment did not provide sufficient flexibility for those on low incomes, who would be forced to default to the Magistrates’ Court system where they might receive a lower, means-tested fine.

Burden of proof

173. An additional point raised in the course of the Review is fairness to those who are accused of evasion. Christians Against Poverty argued that “there may be lower evidence requirements for out-of-court penalties to be issued, meaning that more mistakes will be made, adversely impacting those who have not evaded.”¹⁸⁸ However, as any out-of-court settlement scheme would operate using the evidential and public interest test, as in the current system, this concern, while well-motivated, does not appear to raise any significant practical difficulty.

Practical considerations: Crown Dependencies

174. There are a number of considerations to be taken into account concerning the practical applicability of the out-of-court settlement system to the Crown Dependencies of Jersey and Guernsey. Whilst there is no equivalent to the Procurator Fiscal in England and Wales, there is a process similar to the out-of-court settlement in operation in Jersey. The out-of-court settlement closely resembles the Parish Hall inquiry where there is a power vested in the Centenier¹⁸⁹ to levy a fine summarily. Whilst the power to levy a fiscal fine is not currently available for TV Licensing offences, it would be possible to achieve this through an Order in Council and to do so would be “entirely consistent with existing Jersey legal structures and the jurisdiction of the Centeniers.”¹⁹⁰

¹⁸⁴ Voice of the Listener and Viewer consultation response.

¹⁸⁵ A debt counselling charity.

¹⁸⁶ Christians Against Poverty consultation response.

¹⁸⁷ Christians Against Poverty consultation response.

¹⁸⁸ Christians Against Poverty consultation response.

¹⁸⁹ A Centenier is a senior member of the Honorary Police of Jersey. In addition to general policing matters, the Centenier in Jersey remains the only officer entitled to charge and bail offenders. The Centenier presides at Parish Hall Enquiries and acts as prosecuting officer before the Magistrates’ Court.

¹⁹⁰ Government of Jersey consultation response.

175. There are no legal barriers to implementing such a scheme in the Bailiwick of Guernsey, however the Government of Guernsey felt that the decision on whether to permit an out-of-court settlement in any case, and any discretion as to the quantum of penalty, would have to be exercised locally rather than by TV Licensing or UK officials.

Current prosecution policy

176. The BBC argued that as, under the current system of enforcement, prosecutions for first-time offenders are often discontinued, an out-of-court settlement system might actually remove an opportunity for individuals to avoid a monetary penalty. The Ministry of Justice also made the point that TV Licensing already discontinues a number of prosecutions where the evader purchases a licence.

“TV Licensing currently has the ability to accept the purchase of a TV licence whenever it identifies a person who has evaded paying the TV licence fee. It is the experience of the Magistrates’ Courts that it is rare for the [sic] TV Licensing to proceed with a prosecution where a TV licence is subsequently purchased.¹⁹¹ The majority of the 13% of prosecutions that are not found guilty will be where a TV Licence is purchased after proceedings have been initiated.”

- **Ministry of Justice consultation response**

177. It is the case, however, as we have noted above,¹⁹² that these opportunities are neither widely publicised nor generally known.

Key considerations

178. When judged against the key considerations set out in the Terms of Reference the weight of the evidence available to the Review suggests that the introduction of the out-of-court settlement scheme would involve significant investment and operational costs which would fall to the taxpayer and the licence fee payer. It also carries the risk of an increase in licence evasion with a corresponding loss of revenue. While such a scheme could provide a proportionate response to the problem of licence evasion simply in terms of penalty, there are practical difficulties arising from the implementation and operation of such a scheme, and these difficulties would outweigh any potential advantages.

Conclusion

179. In Scotland the out-of-court settlement system administered by the Procurator Fiscal is available for a range of offences. A number of consultation respondents were in favour of Option 3 as they felt it would offer better value for money for the taxpayer and provide an additional

¹⁹¹ This policy generally applies only to first-time offenders.

¹⁹² See discussion of Options 1 and 2.

opportunity for individuals to avoid prosecution.¹⁹³ Despite these arguments, the evidence we have examined makes clear that the current system already offers a number of opportunities for evaders to avoid prosecution and it has been made clear that the primary concern of TV Licensing is not to prosecute, but to encourage compliance with the law. Putting an out-of-court settlement system in place would, to a certain extent, formalise existing arrangements, but with significant practical ramifications. The principal risk is that it will add complexity to the enforcement regime and impose a significant cost burden on the licence fee payer and taxpayer. There is also a possibility that the introduction of an out-of-court settlement scheme would not significantly reduce the burden on the courts; evaders may choose not to pay the penalty, in which case a prosecution would follow. It is also the case that an out-of-court settlement scheme is less likely to be attractive to those on low incomes. Accordingly, we have concluded that Option 3 would not provide a viable mechanism for the efficient and fair disposal of TV licence evasion cases.

¹⁹³ For example the Voice of the Listener and Viewer consultation response and Andrew Bridgen MP evidence to the Review.

3d. OPTION 4

Fixed monetary penalty: retain the criminal offence, with an option for disposal by way of a fixed monetary penalty.

180. Option 4 would retain TV licence evasion as a criminal offence, while allowing a fixed monetary penalty to be imposed as a formal alternative to prosecution. This option is similar to Option 3 in that the rationale for each is that they are intended to provide a swift and effective out-of-court disposal, thus reducing the burden on the courts. However, unlike Option 3, Option 4 involves the possibility of an out-of-court disposal by way of a fixed monetary penalty in every case of evasion. Under Option 4, a penalty notice (or a notice of an intention to impose a fixed penalty) would be issued by the authorised enforcement agency (TV Licensing) at the point at which an offence is committed, for example, at the time a TV Licensing enquiry officer witnesses an offence on the occasion of a household visit. In the event of default of payment the fixed penalty notice would be enforced without resort to prosecution or, as an alternative, the case would proceed to the Magistrates' Court in the usual way.¹⁹⁴
181. There are a number of offences for which fixed penalty notices are available and a sample of the offences together with the amount of the fixed penalty appear in the following table:

Offence	Offence creating provision	Amount
Disorderly behaviour	Public Order Act 1986, section 5	£80
Drunk and disorderly	Criminal Justice Act 1967, section 91	£80
Sale of alcohol to drunk person on relevant premises (not including off-licences)	Licensing Act 2003, section 141	£80
Sale of alcohol to persons under 18 (staff only, licensees should be subject to a summons)	Licensing Act 2003, section 146	£80
Brakes, steering or tyres defect	Road Traffic Act 1988, section 41A	£60
Driving other than in accordance with licence	Road Traffic Act 1988, section 87(1)	£60
Failing to comply with traffic sign	Road Traffic Act 1988, section 36	£60
Failing to supply details of driver's	Road Traffic Act 1988, section 172	£120

¹⁹⁴ Under a number of existing fixed penalty notice schemes if the penalty is not paid then, after a specified time, a fine is registered in an amount in excess of the original fixed penalty. In other schemes the fixed penalty is subject to a right to dispute guilt in court.

identity		
No test certificate	Road Traffic Act 1988, section 47	£30
Pelican/ zebra crossing contravention	Road Traffic Regulation Act 1984, section 25(5)	£60
Railway fare evasion (where penalty notice scheme in operation by train operator)	Railways (Penalty Fares) Regulations 1994	£20 or twice the full single fare to next stop, whichever is greater
Seat belt offences	Road Traffic Act 1988, section 14	£30
Speeding	Road Traffic Regulation Act 1984, section 89(1)	£60

182. In recent years the use of fixed monetary penalties has become increasingly common and the Regulatory Enforcement and Sanctions Act 2008 provides that a Minister of the Crown may by order confer on a regulator (as defined in the Act) the power by notice to impose a fixed monetary penalty on a person in relation to a relevant offence (also defined in the Act).¹⁹⁵ The Act also provides that the power may only be conferred in relation to a case where the offence is capable of being proved beyond reasonable doubt.¹⁹⁶
183. According to Ministry of Justice guidance, the aim of a penalty notice is to offer a “quick and effective alternative disposal option for dealing with low-level... offending. To deliver a swift and simple method of deterrence... to reduce the amount of time...attending court, while simultaneously reducing the burden on the courts.”¹⁹⁷

Overview

184. As in the case of Option 3, Option 4 appears at first sight an attractive alternative to the current system of criminal prosecution. There are, however, a number of potential problems. First, there is the issue of an increased risk of evasion. The proportion of individuals who elect to pay the penalty amount in full and thus avoid prosecution is crucial to the success of a fixed penalty scheme. If the proportion is high this can lead to a saving in court time and costs; if the proportion is low the process will simply add an additional layer of complexity and bureaucracy to the process of enforcement and operational costs may increase. This means that the amount of the penalty would have to be fixed at a level so as to encourage acceptance while at the same time providing a disincentive to evasion. As is the case with Option 3, this would suggest a figure

¹⁹⁵ Regulatory Enforcement and Sanctions Act 2008, section 36.

¹⁹⁶ Regulatory Enforcement and Sanctions Act 2008, section 39.

¹⁹⁷ Ministry of Justice Penalty Notice for Disorder Guidance, 2014, p1.

somewhere between the current cost of a colour licence (£145.50) and the average level of fine (£170). Such a figure may not provide an attractive alternative option when the amount has to be paid in full within a limited period, but setting a figure lower than £145.50 runs the risk of increasing evasion with a corresponding loss of revenue.

185. There is also the problem of administrative complexity. Under the scheme provided by the Regulatory Enforcement and Sanctions Act 2008, the regulator/prosecutor must first serve a notice of an intention to impose a fixed penalty. This notice of intent offers the individual an opportunity to discharge liability for the fixed monetary penalty by payment of a prescribed sum (which must be less than or equal to the amount of the penalty). If the individual does not discharge his or her liability, he or she may make representations in relation to the proposed imposition of the fixed monetary penalty. The regulator must, at the end of the period for making representations and objections, decide whether to impose the penalty. Where the regulator decides to impose such a penalty, the individual on whom it is imposed may appeal against the decision to impose it. The appeal lies either to the First-Tier Tribunal or another tribunal created under an enactment. Where the fixed monetary penalty is not discharged, it remains possible for criminal proceedings to be instituted for the offence.¹⁹⁸
186. As is apparent, the creation of a scheme for fixed monetary penalties for TV licence fee evasion may involve significant investment cost (at least in the short term) with no guarantee that it would be effective or reduce to any significant extent the involvement of the courts. There will also be costs involved in the process of enforcement. Another significant objection to the fixed monetary penalty scheme is that it would take time to implement, by which time the basis of licence fee collection may have changed as a result of the forthcoming Charter Review. For these reasons, the Review does not recommend the implementation of Option 4.
187. In the paragraphs that follow we discuss the merits or otherwise of implementing Option 4 having regard to the evidence available to the Review and the key considerations contained in the Terms of Reference.

Value for money

188. Under Option 4, value for money to the taxpayer lies in the fact that cases would be diverted from the Magistrates' Court, thus reducing the burden on the criminal justice system. The fixed monetary penalty notice (or a notice of intention to issue a fixed monetary penalty notice) would be issued at the time of the commission of the offence and, if the penalty is accepted, no further investigation or prosecution would be necessary. Those wishing to contest liability would be entitled to challenge the notice or decline to pay the amount, in which case the question of liability would have to be determined, either by adjudication or prosecution. Andrew Bridgen MP

¹⁹⁸ In some fixed penalty notice schemes if the penalty is not paid then, after a specified time, a fine is registered at an amount significantly in excess of the original penalty and enforcement of the amount due can then take place.

expressed the view that this system would be more efficient than the current system of enforcement.¹⁹⁹

189. The introduction of a fixed penalty notice scheme for TV licence evasion is likely to be costly for the BBC as it would need to invest in the scheme and administer its operation. This would add to the financial burden on the licence fee payer. It is possible that the long-term savings would eventually cover the costs of the system, but this is dependent on the success of the scheme. It also depends on the current licence fee collection model remaining in place over the long term.
190. The BBC has stated that it would expect its collection costs to be higher using this model than under the current system and noted that it is not clear that enforcement costs would be recoverable through the fixed penalty process.²⁰⁰
191. As in the case of Option 3, the Ministry of Justice agreed that there could be a cost saving by using a system of fixed penalties, but argued that the saving would be limited (on the basis that the existing system is efficient and does not involve a significant cost burden to the taxpayer). Significantly, the Ministry of Justice believes the cost saving would only accrue if evasion remained at the current level, while anything more than a minimal increase in the rates of evasion would offset the savings in costs.²⁰¹ Set against the fact that cases would be diverted from the Magistrates' Court, the court would no longer receive fine revenue and the amount recovered by TV Licensing through settlements would depend on a number of factors (uptake of the fixed penalty, recovery of the penalty and level of the fixed penalty). Each of these factors is addressed below.

Uptake of the fixed penalty

192. Any financial benefit to the taxpayer would be achieved only by diverting a significant number of offenders from the Magistrates' Court. If the diversion were ineffective, that is if only a small number of individuals elected to pay the fixed penalty, the process would add additional cost and complexity to the process of enforcement with no corresponding benefit. Similarly, if the evasion level increased and more cases were investigated and prosecuted, the cost to the taxpayer and licence fee payer would increase. The Voice of the Listener and Viewer²⁰² argued that this option risks adding an additional layer of bureaucracy and complexity to the existing sanctions regime.

¹⁹⁹ Andrew Bridgen MP evidence to the Review.

²⁰⁰ BBC consultation response.

²⁰¹ Ministry of Justice evidence-gathering session.

²⁰² Voice of the Listener and Viewer consultation response.

Recovery of the fixed penalty

193. As in the case of Option 3, the recovery rate of the fixed penalty would be an important factor in the efficient operation of the scheme. Any significant level of default could possibly mean that enforcement would have to take place, as it does at present, through the Magistrates' Court.
194. On the basis of the information provided to the Review it cannot be said that moving to a fixed penalty scheme would necessarily lead to an improvement in the collection rate of penalties, and there is a risk of reduction in the overall revenue to the taxpayer should the rate of collection remain static, or if the level of the penalty is set at a level lower than the current average fine.²⁰³

Level of the fixed penalty

195. As with Option 3, the level of the penalty would need to be set at a figure high enough to deter evasion and cover the running costs of the scheme. At the same time the amount would have to be reasonable enough to encourage acceptance of the penalty.²⁰⁴ As the average fine is currently £170²⁰⁵ it would have to be lower than this but higher than the level of the current colour licence fee at £145.50.²⁰⁶
196. The current penalty tiers in other fixed penalty schemes are generally in the range of £60-£90 and a sum of this magnitude is unlikely to provide an adequate deterrent when set against the cost of a TV licence. While a higher figure could be set for TV licence offences, this would involve a fixed monetary penalty considerably higher than those available in most other comparable schemes.

Deterrence

197. Under the fixed penalty system, while the criminal deterrent remains in place the risk exists that it will be undermined, although the extent of this risk is linked to the level of the fixed penalty. Some respondents to the Review were of the opinion that Option 4 retained the deterrent value of a criminal sanction, given the possibility of instituting a prosecution and in such a scheme any unpaid penalties would be enforced through the Magistrates' Court (in the same way as an unpaid fine).²⁰⁷
198. Some respondents felt that a lower penalty would impact on public perception of the seriousness of the offence and may therefore encourage greater evasion. Research conducted

²⁰³ Ministry of Justice consultation response: 92% of Fixed Penalty Notices for driving offences were paid in 2012. 51% of all Penalty Notices for Disorder were paid in 2013 with a further 30% registered as fines.

²⁰⁴ Ministry of Justice evidence to the Review. Also supported by Ministry of Justice consultation response.

²⁰⁵ Ministry of Justice consultation response (2013 figures).

²⁰⁶ Ministry of Justice evidence-gathering session: the Ministry of Justice suggested that there is a risk of higher levels of evasion if the penalty amount were to be set at a figure less than the licence fee.

²⁰⁷ Voice of the Listener and Viewer consultation response.

by Harris Interactive which explored whether a scheme similar to that of Option 4²⁰⁸ would have an impact on evasion, concluded that evasion could rise from the current rate of 5% to 6%. This potential increase would cost the BBC an extra £39m in lost revenue.

199. The BBC Trust felt that any move away from the scheme of enforcement as it currently operates would create a perception that the offence is considered to be ‘less serious’ than was previously the case and this might lead to an increase in evasion.²⁰⁹

Additional concerns

200. Some of those who participated in the Review raised additional concerns in relation to the adoption of Option 4. These issues concerned the possibility of TV Licensing issuing notices without proper consideration, and fairness to vulnerable individuals.
201. Andrew Bridgen MP and the Centre for Citizenship expressed concerns that TV Licensing might be tempted to issue penalty notices more freely, or on an inadequate evidential basis, thus increasing “the possibility that an individual might elect to pay the fixed penalty rather than face the trouble, expense and embarrassment of a court appearance.”²¹⁰ The BBC also expressed the view that the adoption of Option 4 might ultimately result in more enforcement activity.
202. Both the Ministry of Justice and the Centre for Citizenship raised concerns that the adoption of this option might lead to a perception on the part of the public that the BBC was using the legal system as a means of raising revenue (particularly if the number of cases increased).²¹¹ By way of analogy, the use of parking charge notices has led to some Local Authorities being accused of profiteering, and it was suggested that the BBC and TV Licensing might be exposed to damaging allegations of this or a similar nature.
203. One particular difficulty identified with Option 4 is that the fixed monetary penalty has the potential to impact unfairly on those on lower incomes. The initial penalty is a fixed amount which cannot be means-tested and the issuer has **no discretion in the level of notice imposed. This is not the case with the existing procedures where the Magistrates’ Court will take into consideration a range of factors, including ability to pay, when setting the level of any fine.**²¹² The fixed penalty system is designed to produce single, one-off payments, with the result that those on low incomes may not be in a position to avoid prosecution.

²⁰⁸ The Harris Interactive research paper on behavioural changes did not explore specifically a fixed penalty scheme, but the ‘hybrid’ model is similar enough that we can use it as a proxy. In the Harris hybrid model, first-time offenders receive a monetary penalty, while multiple offenders are prosecuted through the criminal courts. This bears a similarity to a fixed monetary penalty scheme, wherein offenders who do not pay the fixed monetary penalty would be prosecuted through the Magistrates’ Court as under the current process.

²⁰⁹ BBC Trust evidence to the Review.

²¹⁰ Centre for Citizenship consultation response.

²¹¹ Centre for Citizenship consultation response.

²¹² Ministry of Justice consultation response.

204. A number of respondents to the consultation highlighted this as a concern²¹³ and some felt that any penalty should be set at a level not to disadvantage those on low incomes²¹⁴ there would otherwise be an incentive to elect prosecution with a view to being sentenced by way of a means-tested fine.²¹⁵ Some members of the public who responded to the consultation felt that any potential saving in court time was outweighed by the potential impact upon those on low incomes.²¹⁶ For example, Christians Against Poverty felt that this option failed to provide those in financial difficulty with appropriate assistance, particularly as the penalty would need to be paid in full within 28 days. The Money Advice Trust response to the consultation highlighted concerns that this type of system would have a negative impact on those who are unable to pay.²¹⁷

Implementation

205. The implementation of Option 4 would require significant investment. In addition to the involvement of the BBC, it is likely that Her Majesty's Courts and Tribunals Service (HMCTS) would have to process the fixed penalty notices. HMCTS currently processes fixed penalty notices in four operational units across England and Wales, with 73 full-time (equivalent) staff. This fields 980,000 compliant (80-85%) notices per year, paying £95m into the Consolidated Fund.²¹⁸ Whilst this is a large scale operation, there is a question of capacity if TV licence fee offences were to be dealt with through a fixed penalty scheme. In addition the administrative system for recording fixed penalty notices would require new IT systems with all that entails for additional set-up costs.²¹⁹ TV Licensing enquiry officers would need to be trained in the operation of the system as they would be required to explain the process and its implications and carry out the necessary identity checks.²²⁰

Practical considerations: Crown Dependencies

206. In the States of Jersey there is no equivalent of the Regulatory Enforcement and Sanctions Act 2008, and to implement a fixed monetary penalty scheme solely for the purpose of dealing with the TV licensing offence would require domestic legislation.²²¹

²¹³ For example, consultation responses of TV Licence Resistance and the Voice of the Listener and Viewer.

²¹⁴ TV Licence Resistance consultation response.

²¹⁵ Ministry of Justice evidence-gathering session.

²¹⁶ Under the Penalty Notice for Disorder scheme, the Ministry of Justice Penalty Notice for Disorder Guidance (2014) provides that a fixed penalty may not be appropriate where an officer 'believes the person presents a considerable risk of not paying the penalty.' This illustrates the dilemma and the problem of devising a scheme that operates fairly to all groups.

²¹⁷ Money Advice Trust consultation response.

²¹⁸ HMCTS evidence submitted to the Review.

²¹⁹ Ministry of Justice evidence to the Review.

²²⁰ Ministry of Justice Penalty Notice for Disorder Guidance, 2014.

²²¹ Government of Jersey evidence to the Review.

207. In the case of the Bailiwick of Guernsey, the option could be implemented by way of local legislation, but, as the Guernsey authorities made clear, such a penalty would be administered by and be payable to the Guernsey authorities, not to the Consolidated Fund.²²²

Key considerations

208. When judged against the key considerations set out in the Terms of Reference, the implementation of Option 4 would involve significant operational and investment costs which would have to be borne by the taxpayer and the licence fee payer. It also carries the risk of increased evasion. Whilst the use of a fixed penalty notice might otherwise be regarded as a proportionate response to the problem of licence evasion, it would add an additional layer of complexity to the enforcement regime and any advantages that might accrue from its implementation are outweighed by the problems identified above.

Conclusion

209. As in the case of Option 3, Option 4 proceeds on the basis that it would be highly desirable to divert TV licence fee evaders from the criminal justice system. The difficulty lies in implementing a scheme that is both fair to all and efficient.
210. On the basis of the evidence available to the Review, the implementation of a fixed penalty scheme is unlikely to bring any significant improvement to the current system of prosecution and may in fact create a number of significant practical difficulties.
211. For the reasons set out above and taking into account the key considerations set out in the Review's Terms of Reference, the introduction of a fixed penalty scheme would not provide an effective solution to the problem of TV licence fee evasion. In addition, there is a risk that the implementation of a fixed penalty scheme would become outdated as a result of any changes made to the licence fee collection model, following the forthcoming Charter Review.

²²² Government of Guernsey evidence to the Review.

3e. OPTION 5**Civil monetary penalty: decriminalise and enforce via a civil infraction.**

212. Option 5 involves the repeal of the TV licence evasion offence, the creation of a statutory obligation to have a TV licence and enforcement of this obligation through the imposition of a civil monetary penalty.
213. A civil monetary penalty is neither a fine nor a criminal conviction: it is instead a penalty for failing to comply with a statutory obligation.
214. Civil monetary penalties are currently levied in the case of parking, congestion charging and bus lane contravention. By way of example, Local Authorities are vested with the power to issue monetary penalties (known as penalty charge notices) to individuals who contravene parking regulations. Following receipt of the notice, individuals have 28 days in which to pay the amount claimed, but may receive a reduction for early payment (usually if payment is made within 14 days).²²³
215. Under Option 5, if the penalty remained unpaid it would be treated as a civil debt. An individual would have the opportunity to make an informal challenge to the notice and if unsuccessful, the individual would have a right of appeal and it is envisaged that this appeal would be to an independent adjudicator. Enforcement of the penalty would take place in the civil court system and thus would involve conventional methods of enforcement, such as the employment of bailiffs, seizure of property, and the use of attachment of earnings and charging orders.

Overview

216. The attraction of the civil monetary penalty is that it would involve the decriminalisation of licence fee evasion and the removal of all TV licence fee evasion cases from the criminal courts. The problems associated with Option 5 arise from the radical nature of the change from criminal to civil enforcement. The principal difficulties are threefold. First, the possible risk of increased evasion (as a result of the removal of the criminal deterrent); second, the investment costs involved in establishing a system of civil enforcement; and third, the operational costs involved in recovering what are likely to be small or even nominal amounts of debt. During the course of the Review concerns were also expressed about the possible impact on low income households. The BBC argued that, as TV Licensing would be responsible for the process of enforcement, this might bring about a change in the relationship between the BBC and the public.

²²³ Traffic Management Act 2004; Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

217. In addition to the difficulties identified by contributors to the Review, the mechanism for collecting the licence fee may be altered as a result of the forthcoming Charter Review, and such a scheme might well become outdated even before it has had time to prove its worth.
218. Of all the options, Options 5 and 6 had the least support from those who contributed to the Review and we have concluded that decriminalisation is not a viable alternative to the current system of enforcement, at least under the current system of licence fee collection.
219. In the paragraphs that follow we discuss the merits or otherwise of implementing Option 5 having regard to the evidence available to the Review and the key considerations contained in the Terms of Reference.

Discussion

220. There was little support for this option among those who contributed to the Review, although John Whittingdale MP and Andrew Bridgen MP drew our attention to the fact that there is support within Parliament for a civil enforcement regime. Furthermore, they pointed out that the Deregulation Act 2015 provides that no change to the current system is to be implemented before April 2017,²²⁴ and this would provide sufficient time for an orderly implementation to take place.
221. The principal attraction of Option 5 is that it would remove all TV licence fee evasion cases from the criminal justice system. As noted above, the use of imprisonment as the ultimate sanction for non-payment of a fine (originating from failure to hold a TV licence) is seen by many as a failing of the present system, so the move to a civil system of enforcement was seen by some consultation respondents as a positive step. A statutory obligation to pay the licence fee coupled with a system of debt recovery was felt by some members of the public to be a more proportionate response to the problem of licence fee evasion. As licence fee evasion would be removed from the court system, resort to court proceedings would only be necessary in the event of non-payment. Set against this, the County Court would assume responsibility for dealing with claims for recovery of the debt and TV Licensing would be required to assume responsibility for enforcement. The Ministry of Justice, in its evidence to the Review, stated that in each calendar year, the County Court manages over a million similar types of money claim (a claim for a fixed amount of money) and has in place efficient systems for dealing with multiple applications of claims of a similar nature.
222. TV Licence Resistance argued in its consultation response that if “done correctly”, there could be some merit to the implementation of Option 5, “especially if the reform takes account of the issues with obtaining evidence of evasion, and imposes upon the BBC an independent appeals body (which could also help address the issue of non-accountability)”.²²⁵ TV Licence Resistance also felt that, under the current system, the threat of court appearances and criminal offence is

²²⁴ Deregulation Act 2015, section 78 (ii).

²²⁵ TV Licence Resistance consultation response.

“exploited” by the BBC, and a benefit of this option would be to remove “opportunities for threat and misinformation.”²²⁶

223. Treating the licence fee as a civil debt would provide some savings to the taxpayer, who would not be required to meet the costs of the civil proceedings. On the other hand, the cost to the licence fee payer is likely to increase significantly, for reasons explained below.
224. Criticism of Option 5 came from a number of respondents who noted that the removal of criminal sanctions would not necessarily be an improvement. The BBC argued that enforcement mechanisms would include the use of debt collection agencies and the use of bailiffs (whereas in the current system the use of bailiffs appears to be rare and their use is controlled by the court²²⁷).²²⁸ The Money Advice Trust echoed these concerns and contended that this model represented “the worst of both worlds.”²²⁹ The Voice of the Listener and Viewer argued that the civil enforcement system could be seen as “more punitive than the current system which leaves an offender with neither a centrally-recorded criminal offence [*sic*] nor a reduced ability to borrow money.”
225. Several contributors to the Review argued that the move to a civil system would be complex and costly. It would require legislation and would require TV Licensing to change its operational practices to a very considerable extent.
226. There are also some practical implementation issues for the Crown Dependencies. The Government of Jersey noted that an independent appeals body would need to be established for cases within Jersey.²³⁰ The Government of Guernsey also expressed reservations about the practicality of this option because it would require the establishment of an appeals body within each of the constituent parts of the Bailiwick (i.e. Alderney, Sark and Guernsey).²³¹
227. It was also argued that the use of a civil process could “result in much larger numbers of households and businesses being penalised for licence fee evasion.”^{232,233}

²²⁶ TV Licence Resistance consultation response.

²²⁷ Ministry of Justice Freedom of Information Request, Outstanding Court Fines for HMCTS <https://www.justice.gov.uk/downloads/information-access-rights/foi-disclosure-log/courts-tribunals/outstanding-court-fines.doc>.

²²⁸ BBC consultation response.

²²⁹ Money Advice Trust consultation response.

²³⁰ Government of Jersey evidence to the Review.

²³¹ Government of Guernsey evidence to the Review.

²³² BBC consultation response.

²³³ Both the BBC and TV Licence Resistance raised concerns about the fact that this is a lower threshold, and could lead to an increase in the number of evasion cases: for example, those who have let their licence expire and are delaying a renewal could reasonably be assessed as still requiring a licence on the balance of probabilities, whereas under the current system there would be an investigation and assessment before prosecution (which would involve opportunities to buy a licence to avoid prosecution).

228. Other respondents raised concerns about the potential negative impacts on an individual's credit rating. For example, the BBC Trust suggested that this could be a very damaging consequence for some people which could have lasting repercussions for their financial security. Set against this, Callcredit²³⁴ argued that the scheme might actually help to prevent individuals from falling into debt.²³⁵

Deterrence

229. A consistent theme expressed in the course of the Review was that a civil enforcement system would be likely to have a reduced deterrent effect (compared to the current system of enforcement) and that this would have a detrimental effect on compliance with the obligation to hold a TV licence. The risk of an increased level of evasion under a civil model was emphasised in an expert consultation response²³⁶ and the research commissioned by the BBC suggests that the existence of a criminal offence is in itself a strong factor in deterring evasion (with 54% purchasing a licence 'because it's the law' or 'it's illegal not to').²³⁷ The same research suggested that evasion rates would increase significantly under a civil model as they are less effective at making people pay.²³⁸
230. Several of those who contributed to the Review cited the experience of licence fee decriminalisation in Japan, where evasion rates rose to 25% (though it is to be noted that this coincided with a number of high profile scandals at the public service broadcaster, which may also have contributed to the scale of evasion).²³⁹
231. The issue of deterrence is also linked to the scale of any civil penalty. It would have to be set at a level high enough to deter evasion, while at the same time low enough to encourage acceptance at an early stage of the enforcement process. The Harris Interactive behavioural research study found that at all levels of monetary penalty tested - including £500, approximately 3 times the current average fine - evasion remained higher under a civil model than under the current model (5%), although the difference is more pronounced and grows more rapidly at lower levels, suggesting that under a civil penalty model the level of penalty would have to increase in order to keep evasion at a similar rate to current levels.²⁴⁰ This could have an unfair impact on those on low incomes and state benefits.

²³⁴ Callcredit Information Group, a consumer data group comprising a number of companies including Callcredit, a UK credit reference agency.

²³⁵ Callcredit consultation response.

²³⁶ Patrick Barwise consultation response; Mr Barwise is a leading figure in marketing and consumer representation, and contributed to one of the Review's evidence-gathering sessions.

²³⁷ Harris Interactive Behavioural Research, BBC consultation response.

²³⁸ Harris Interactive Behavioural Research.

²³⁹ This was also discussed in the Culture, Media and Sport Select Committee's 2015 'Future of the BBC' report: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomeds/315/315.pdf>.

²⁴⁰ The Harris Interactive study is reviewed in more detail at Annex E.

232. The BBC estimates a doubling in the financial impact of evasion under a civil enforcement regime, from the current level of around £213m to £409m.²⁴¹ The BBC Executive, in the course of its evidence to the Review, raised concerns that the likely increased evasion rate and subsequent costs meant that “a civil model could lead to a sense of unfairness amongst licence fee payers”,²⁴² a view echoed by a respected academic.²⁴³ The Producers’ Alliance for Cinema and Television (PACT)²⁴⁴ agreed that increased costs to the BBC under this model would have a negative impact on the BBC’s ability to invest in programme content, and would therefore represent worse value for money for licence fee payers.²⁴⁵
233. The Scottish Courts and Tribunals Service voiced concerns over the administrative costs that this option would impose, estimating that bringing small claims to courts in place of their existing fiscal fine system would result in a 44% increase in the number of small claims representing additional court and judicial staff costs of £211,000 annually.²⁴⁶
234. This system would also require the establishment of an independent appeals body, the set-up and administration costs of which would be passed on to the taxpayer or licence fee payer.
235. The Government of Guernsey suggested that legal fees incurred by TV Licensing in pursuing cases within the Bailiwick courts would vastly outweigh the likely amounts recovered.

Low income households

236. A number of consultation responses raised concerns about the impact that implementation of Option 5 might have on low income households. It was argued that while it would be possible to discount the amount payable in return for early settlement, immediate payment even of the discounted amount may not be feasible for certain members of the community.
237. The organisation Christians Against Poverty was critical of the possible impact on those who struggle with debts and the limited amount of time within which to make a payment. It was felt that this could result in escalating debts and that the “regime would still penalise those on low income [*sic*] and in financial difficulty, and would not include the flexibility needed to show adequate forbearance and sensitivity.”²⁴⁷

Comparison with utility bills

238. A number of respondents to the Review questioned the comparison between non-payment of utility bills and non-payment of the licence fee. While it is correct that non-payment of utility bills

²⁴¹ This figure is based on behavioural research commissioned from Harris Interactive, which forecasts that under a civil model evasion would rise to 9%. (Harris Interactive Behavioural Research).

²⁴² BBC consultation response.

²⁴³ Patrick Barwise consultation response.

²⁴⁴ PACT, a trade association representing independent UK television and film companies.

²⁴⁵ PACT consultation response.

²⁴⁶ Scottish Courts and Tribunals Service consultation response.

²⁴⁷ Christians Against Poverty consultation response.

such as gas, electricity and water is treated as a civil debt, unlike these utilities, TV Licensing is not able to install a pre-payment meter or disconnect a non-payer's supply and so would not have a 'final option' with which to encourage payment before resorting to enforcement activities.

Conditional access technology

239. During the course of the Review, we explored whether the use of conditional access technology could go some way to reducing the risks of evasion if a civil system were to be introduced. However, Lord Grade informed us that conditional access technology is not sufficiently advanced to make this feasible and it will be some years before suitable equipment is developed to enable broadcasters to control access to their programmes in a suitable manner.

Enforcement difficulties

240. The Ministry of Justice suggested that this type of civil penalty arrangement was not ideally suited to TV licence fee enforcement. This arises because of the difficulty of establishing evasion (which would be necessary to prove the existence of the debt), particularly if TV Licensing did not have those powers of investigation (such as the availability of search warrants) available under the current regime.

Other concerns

241. The BBC raised concerns about a potential conflict of interest in its operations, in that it would be responsible for collecting evidence, deciding on whether to apply a penalty, and pursuing the civil action.²⁴⁸ While this would be balanced by the creation of an independent adjudicator to manage appeals, it nevertheless represents a significant increase in TV Licensing's role and responsibilities.
242. The BBC Trust shared concerns that where the penalty was not paid it would have to be pursued through the civil courts as a civil debt, and this would require the BBC to initiate proceedings and pursue them through to enforcement. There is a concern that this would alter the BBC's relationship with the public and be damaging to its image and reputation.
243. The Ministry of Justice and the Centre for Citizenship raised concerns that this system could lead to a perception that the BBC was using the legal system as a means to raise revenues (particularly if the number of cases increased).²⁴⁹ By way of analogy, the use of parking charge notices has led to some Local Authorities being accused of profiteering, and it would be undesirable to expose the BBC and TV Licensing to allegations of this or a similar nature.
244. The principal objections to the adoption of Option 5 were the costs of establishing a new system of civil enforcement, the costs involved in collecting the debt and the risk that the level of evasion would increase. Concerns over the costs of a civil option were expressed during evidence

²⁴⁸ BBC consultation response.

²⁴⁹ Centre for Citizenship consultation response.

sessions by the Ministry of Justice, the BBC Trust and the BBC Executive. In their consultation response the BBC noted that this model would “increase licence fee evasion and collection costs, likely significantly, reducing value for money for both licence fee payers and taxpayers.” The BBC argued that in the event of non-payment the debtor would be pursued by the civil claimant (the BBC), with the result that the BBC would be liable for all the costs of the proceedings as well as the costs of enforcement. The BBC (supported by The Voice of the Listener and Viewer) contended that the collection of civil penalties would be both expensive and difficult to achieve. Of particular concern was the commercial benefit of pursuing certain cases, with the result that a certain level of evasion might be tolerated or written off, on the grounds that enforcement was simply not cost-effective.²⁵⁰

Key considerations

245. Having regard to the key considerations as set out in the Terms of Reference, and having taken into account the evidence available to the Review, it is apparent that the implementation of Option 5 would involve significant investment costs and lead to an increase in operational costs. These costs would be borne by the licence fee payer and the taxpayer. It would also carry the risk of a rise in the rate of evasion with a corresponding loss of revenue to the BBC. While a move to a civil system of enforcement may be desirable in the long term, the implementation of such a system under the current system of licence fee collection would be neither efficient nor effective.

Conclusion

246. Option 5 had only limited support from those who contributed to the Review. The evidence we have examined suggests that the implementation of a civil monetary penalty would not be feasible under the current system of licence fee collection. Accordingly, we have concluded that Option 5 would not provide a viable mechanism for the efficient and fair disposal of TV licence evasion cases.

²⁵⁰ In its consultation response the BBC made reference to fact that the DVLA has written off around one-third of penalties for non-renewal of vehicle tax because they were too difficult to collect (and of the two thirds that were pursued, less than half were paid). The DVLA Annual Report and Accounts confirms that in 2010/11 it collected £31m fine and penalty income (of £49m gross collectable) and wrote off £18m (36.73%).

3f. OPTION 6

Civil debt: decriminalise and enforce as a civil debt.

247. Option 6 would involve treating the licence fee as a civil debt recoverable through the civil courts. This is currently the position in the case of non-payment of utility bills, where, as a matter of last resort, the debtor may be proceeded against in the County Court where, if liability is proved, an order may be obtained requiring payment of the debt.

Overview

248. The arguments against the implementation of this option were similar to those advanced against Option 5; the risk of increased evasion and cost. Under a civil system of enforcement, TV Licensing would bear the burden of costs, including the costs of enforcement, unless and until they were recovered from the defendant at the conclusion of the civil proceedings.
249. It was also pointed out that the analogy with non-payment of utility bills is not altogether apt: the TV licence is not a payment for services and if this option were to be implemented it would require legislation to characterise the licence fee as a civil debt. One of the key difficulties associated with Option 6 is that TV Licensing would only be able to bring proceedings to recover the debt attributable to the period of evasion, which would have to be established by satisfactory proof. The consequence of this is that the amount owing might only be a small or nominal sum and in many cases it would make no commercial sense to pursue the case to court.
250. In addition to the difficulties identified by contributors to the Review, the mechanism for collecting the licence fee may be the subject of change following the Charter Review, and such a scheme might well become outdated even before it has had time to prove its worth.
251. It was for these principal reasons that we made no recommendations in relation to Option 6.
252. In the paragraphs that follow we discuss the merits or otherwise of implementing Option 6 having regard to the evidence available to the Review and the key considerations contained in the Terms of Reference.

Discussion

253. As in the case of Option 5, there was little support for this option among those who contributed to the Review, although John Whittingdale MP and Andrew Bridgen MP drew our attention to the fact that there is support within Parliament for a civil enforcement regime. Furthermore, they pointed out that the Deregulation Act 2015 provides that no change to the current system

is to be implemented before April 2017,²⁵¹ and this would provide sufficient time for implementation to take place.

254. A civil system of debt recovery was felt by a number of consultation respondents to be a more proportionate response to the problem of TV licence evasion and for many individual respondents the removal of the possibility of imprisonment would be a positive step.²⁵²
255. Christians Against Poverty described Option 6 as “the most appropriate, fair and cost-effective” option, noting good practice established in the consumer credit industry which could be used to inform fair collection activity. It was also argued that Option 6 provides “adequate opportunities for people to dispute the debt or accept their liability and arrange payment before court action and enforcement agent fees are incurred.” However it was also noted that “if unpaid licence fees were liable for statutory interest and charges, monetary penalties could escalate quickly and become unaffordable.”²⁵³
256. Though it had concerns with each of the options, the Money Advice Trust²⁵⁴ cited this option as “the least punitive approach” for those struggling to manage their debts wisely, particularly as County Courts were seen as being well able to deal with debt repayment issues (such as payment by instalments).²⁵⁵ The fact that this system might have a negative impact on an evader’s credit rating was seen by Callcredit as a potentially positive step, as it would help to protect individuals from getting into debt in the future. Callcredit also suggested that were TV licence fee payment information to be shared as part of an individual’s credit rating, this could have the positive benefit of building the credit rating of those “people who currently pay their TV licences as required, yet find it difficult to secure mainstream and lower cost credit and banking facilities.”²⁵⁶
257. It was also argued that the BBC would have more options through which to pursue non-payment, for example by the use of bailiffs.
258. The Government of Jersey noted that in terms of implementation this would be the least problematic of the alternative options.²⁵⁷

²⁵¹ Deregulation Act 2015, section 78 (ii).

²⁵² As discussed under Option 1, we believe that the current system is more fair and proportionate than it is perceived to be, and the existence of the criminal is not disproportionate. Nor is the use of imprisonment to enforce court-imposed fines. Furthermore, non-payment of a number of civil debts (including Council Tax) can also be enforced by imprisonment.

²⁵³ Christians Against Poverty consultation response.

²⁵⁴ A debt advice charity.

²⁵⁵ Money Advice Trust consultation response.

²⁵⁶ Callcredit consultation response, 2015.

²⁵⁷ Government of Jersey evidence to the Review.

Deterrence

259. Set against these points, it was argued that the process of moving from a criminal to a civil system of enforcement could create the impression that non-payment of the licence fee is now regarded as being less important, thus increasing the risk of evasion. The BBC cited research suggesting that the existence of a criminal offence is in itself a strong factor in deterring evasion (with 54% purchasing a licence ‘because it’s the law’ or ‘it’s illegal not to’).²⁵⁸ The same research suggested that that evasion rates would increase significantly under a civil model.²⁵⁹
260. The BBC Executive raised concerns that the likely increased evasion rate and subsequent costs meant that “a civil model could lead to a sense of unfairness amongst licence fee payers”, a point echoed by one of the experts who contributed to the Review.²⁶⁰

Costs

261. In addition to the increased risk of evasion, concerns surrounding the costs of moving to a civil system were expressed by the Ministry of Justice, the BBC Trust and the BBC Executive. In its consultation response the BBC noted that a civil model would “increase licence fee evasion and collection costs, likely significantly, reducing value for money for both licence fee payers and taxpayers.” Concerns were raised by the BBC (echoed by The Voice of the Listener and Viewer) that the collection of civil debts would be both expensive and difficult to achieve, which could raise questions about the benefit of pursuing certain cases and put the BBC in a position of having to write off a certain level of evasion on the grounds that enforcing would not be cost-effective.²⁶¹ PACT warned that the increased costs to the BBC under this model would have a negative impact on the BBC’s ability to invest in programme content, and would therefore represent worse value for money for licence fee payers.
262. The Scottish Courts and Tribunals Service voiced concern over the administrative costs that this option would impose, estimating that bringing small claims to courts in place of their existing fiscal fine system would result in a 44% increase in the number of small claims and represent additional court and judicial staff costs of £211,000 annually.²⁶²
263. The Government of Guernsey suggested that legal fees incurred by the BBC in pursuing cases within the Bailiwick courts would vastly outweigh the amounts likely to be recovered.

²⁵⁸ Harris Interactive Behavioural Research & BBC consultation response.

²⁵⁹ Harris Interactive Behavioural Research.

²⁶⁰ Patrick Barwise consultation response.

²⁶¹ If evasion were to rise, the financial impact on the BBC would be significant (around £39m for each 1% increase in evasion) and value for money for the licence fee payer greatly reduced.

²⁶² Scottish Courts and Tribunal Service consultation response.

Comparison with utility bills

264. A number of respondents to the Review questioned the comparison between non-payment of utility bills and non-payment of the licence fee. While it is correct that non-payment of utility bills such as gas, electricity and water is treated as a civil debt, unlike these utilities TV Licensing does not have the ability to install a pre-payment meter or disconnect a non-payer's supply and so would not have a 'final option' with which to encourage payment before resorting to enforcement activities.

Other concerns

265. The BBC Trust suggested that the impact of a civil debt system could be very damaging for some individuals, with the potential for lasting repercussions on their financial security.
266. It was also suggested that the use of civil proceedings would make the approach to enforcement less targeted and "result in much larger numbers of households and businesses being penalised for licence fee evasion."^{263,264} In civil proceedings evasion would only need to be proved on the "balance of probabilities", whereas criminal proceedings are brought only where the tests in the Code for Crown Prosecutors are satisfied and, where a prosecution is brought, the offence must be proved beyond reasonable doubt.
267. The BBC argued that without the powers of investigation currently available under the criminal regime (such as the availability of search warrants) the investigation of evasion would become more difficult. It was also suggested that the BBC's role in enforcing the debt carries the risk of damaging the BBC's relationship with the public.
268. The BBC Trust echoed this concern and argued that by assuming the responsibility of enforcement from the state the BBC would have to become a different kind of agency, and this had the potential to damage its relationship with the public, particularly if it were perceived to be institutionally unsympathetic. The BBC also raised concerns about the potential conflict of interest that could arise from its responsibilities for collecting evidence, pursuing civil action and enforcing the debt.

Practical considerations

269. One of the key difficulties inherent in Option 6 is that in order to enforce a civil debt, the BBC would have to provide evidence of the period of time for which the individual had been unlicensed, and the amount of the debt would be in a sum corresponding to the period of evasion. It would be difficult to prove the period of unlicensed use with the result that the amount of the debt is likely to be small or nominal.

²⁶³ BBC consultation response.

²⁶⁴ Both the BBC and TV Licence Resistance raised concerns that this option could lead to an increase in enforcement activity.

270. It would of course be possible to legislate for an assumed figure to be the amount recoverable, as is the case with Vehicle Excise Duty, where liability is backdated to the expiry of the last excise licence.²⁶⁵ However, to adopt such a scheme in the case of the TV licence fee would present real difficulties, particularly as parts of the unlicensed period may have been legally unlicensed. TV Licence Resistance maintains that “any form of automatic assumption about the length of time for which a household was unlicensed would be intrinsically unfair either because TV might not have been watched during some or all of the unlicensed period, or responsibility for the licence may have changed (possibly informally) during the unlicensed period.”
271. The Ministry of Justice identified this inability to establish the period of evasion to a satisfactory level of proof as the major issue for pursuing enforcement via a civil debt and felt it would be unfeasible without using a ‘stand-in’, which would be considered unfair.²⁶⁶
272. The Government of Jersey noted that there are no private sector bailiffs operating within Jersey, and that there have been recent difficulties in the enforcement of small debts within their jurisdiction.

Key considerations

273. Having regard to the key considerations in the Terms of Reference and based on the evidence available to the Review, the implementation of Option 6 would involve significant operational costs and investment which would be borne by the licence fee payer and the taxpayer. It would also carry the risk of a rise in the rate of evasion with a corresponding loss of revenue to the BBC. While a move to a civil system of enforcement may be desirable in the long term, the implementation of such a system under the current system of licence fee collection would be neither efficient nor effective.

Conclusion

274. Option 6 had only limited support from those who contributed to the Review. The evidence we have examined suggests that the implementation of a scheme of civil debt enforcement would not be feasible under the current system of licence fee collection. The principal objections arise from the potential cost, especially the cost to the licence fee payer of the costs of enforcement and a possible rise in evasion. Accordingly, we have concluded that Option 6 would not provide a viable mechanism for the efficient and fair disposal of TV licence evasion cases.

²⁶⁵ Vehicle Excise and Registration Act 1994, section 31.

²⁶⁶ Ministry of Justice evidence-gathering session.

Chapter 4: Other Options for Change

Culture, Media and Sport Committee Recommendations

275. The Culture, Media and Sport Committee (CMS) is a Parliamentary Select Committee which oversees the work of the Department for Culture, Media and Sport. In February 2015 it published a report entitled 'Future of the BBC'. This wide-ranging and detailed report, based on a year-long evidence-gathering process, contains a helpful discussion of matters relevant to the forthcoming review of the BBC's Royal Charter, including the future of the licence fee and decriminalisation of licence fee evasion.
276. The clear view of the CMS Committee is that the current criminal offence is overdue for reform and licence evasion should be decriminalised. The CMS Committee acknowledged, however, that decriminalisation is not feasible under the current model of licence fee collection as it would carry an increased risk of evasion and possible significant loss of revenue to the BBC. On the question of reform, the CMS Committee concluded that any change in the enforcement regime should be tied to reform of the funding mechanism which might involve, for example, a move to a broadcasting levy or the introduction of controls governing access to television broadcasts.
277. While this Review has reached the same overall conclusion as the CMS Committee, it has done so for different reasons. The CMS Committee concluded that decriminalisation is necessary in order to address the unfairness of the current system and that a change in the licence fee collection model would facilitate this reform. By way of contrast, this Review has concluded that the current enforcement regime is more fair and proportionate than is generally supposed. The weight of the evidence provided to the Review also suggests that decriminalisation, which appears at first sight to be an attractive step, would have significant cost implications to the licence fee payer and taxpayer, at least in the short term.
278. We agree that if changes are to be made to the method by which the licence fee is collected, then the balance is likely to tilt in favour of decriminalisation. That said, any reform of the licence fee collection model is a matter for the Secretary of State to consider in light of the forthcoming Charter Review and any conclusions reached as a result of that Review.
279. To the extent that some of the issues raised in the CMS Committee report touch upon the current Review, these are addressed in the following paragraphs.
280. The CMS Committee concluded: **“the justification for criminal penalties for non-payment of the TV licence fee and the way TV licensing enforcement is carried out is anachronistic and out of proportion with responses to non-payment for other services.”**²⁶⁷

²⁶⁷ 'Future of the BBC', Culture, Media and Sport Select Committee 2015, p3:
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcmumed/315/315.pdf>.

281. This was a view shared by some of those who gave evidence to the Review. However, the evidence we have received justifies the use of a criminal sanction for licence evasion. As the CMS Committee appears to have acknowledged, the current system of licence fee collection requires the existence of a powerful deterrent in the overall public interest. In the case of the TV licence, there is no mechanism for the removal of broadcasting services from non-payers.
282. These considerations apart, the CMS Committee has provided a powerfully reasoned argument that the criminal sanction is likely to become unnecessary if reform of the funding model removed the need for a criminal deterrent.
283. The CMS Committee also acknowledged: **“...the possibility, based on the evidence presented and international experience, that decriminalisation could lead to an increase in evasion and potentially, therefore, a reduction in the BBC's income.”**²⁶⁸
284. This is also one of the conclusions reached by this Review and the weight of the evidence supports the concern expressed by the CMS Committee. This Review has also concluded that the increased costs of implementing and enforcing a civil option would have significant adverse financial implications for the taxpayer and licence fee payer, and that for these reasons the two decriminalisation options (Options 5 and 6) are impractical under the current system of licence fee collection. The removal of powers of investigation currently available to the BBC under the criminal regime would also make the BBC's investigatory role more difficult, and the BBC's role in enforcing the civil penalty or civil debt would carry the risk of damaging the BBC's relationship with the public.
285. The CMS Committee expressed a belief that **“there is a strong case for making non-payment a civil matter pursued through the civil courts in the same way as non-payment of council tax, parking fines and utility bills.”**²⁶⁹
286. The weight of the evidence provided to the Review supports the Committee's conclusion that decriminalisation is not feasible under the current licence fee collection model.
287. The analogy with utility bills has been addressed earlier; the short point is that the enforcement of amounts owing to utility companies is much simpler than enforcing the requirement to hold a TV licence, where the period of unlicensed viewing is difficult to establish and there is no ability to meter or remove the availability of access to television broadcasts.
288. Non-payment of council tax is enforced by the Local Authority applying for a liability order from the Magistrates' Court. The Local Authority can then seek to recover the debt by reductions from wages or benefits or by using bailiffs. Imprisonment is also available as a sanction for non-payment council tax.²⁷⁰

²⁶⁸ 'Future of the BBC', Culture, Media and Sport Select Committee 2015, p79, par 224.

²⁶⁹ 'Future of the BBC', Culture, Media and Sport Select Committee 2015, p122, par 40.

²⁷⁰ Council Tax (Administration and Enforcement) Regulations 1992, part VI.

289. The BBC's consultation response noted that non-payment of council tax led to the imprisonment of 107 people in 2012, whereas for non-payment of a fine relating to TV licence fee the figure was 51 (which in 2013 had fallen to 32).²⁷¹ Additionally, moving to a civil system would involve increased enforcement costs, which would have to be met by licence fee payers.
290. One of the suggestions made by the CMS Committee was that: **“decriminalisation of the licence fee could be linked to introducing controls for access to television services or moving to a German-style broadcasting levy.”**²⁷²
291. It is apparent that the CMS Committee linked the issue of decriminalisation of licence fee evasion to other mechanisms that would remove the risk of evasion or make the licence fee easier to collect. The type of funding model that might eventually be adopted is beyond the scope of this Review and will fall to be considered in the forthcoming review of the BBC's Royal Charter. It is to be noted, however, that a move to a universal broadcasting levy would meet many of the concerns that currently stand in the way of reform.

Conclusion

292. The CMS Committee conducted a thorough and carefully reasoned review of the future of the BBC. The Committee and this Review have reached the same overall conclusion: decriminalisation of licence evasion, while ultimately a desirable aim, is not a feasible option under the current licence fee system.

²⁷¹ BBC consultation response. Figures updated using Magistrates' Court volume statistics provided to the Review by the Ministry of Justice.

²⁷² The German equivalent of the licence fee is a universal broadcasting levy which requires all households to pay a charge, regardless of whether or how they consume broadcasting services (with some concessions).

Chapter 5: Conclusions and Next Steps

Conclusion

293. This Review recommends **no fundamental change in the sanctions regime under the current licence fee model**. The current regime represents a broadly fair and proportionate response to the problem of licence fee evasion and provides good value for both the licence fee payer and taxpayer. Within the constraints of the current licence fee collection system, there is no practical alternative that will work as efficiently and effectively.
294. There is some scope, however, to improve the current system and these improvements will go some way to meeting the concerns arising from the operation of the current regime, particularly in relation to the transparency of the prosecution process and tone of TV Licensing’s communications.
295. A full list of recommendations can be found in the Executive Summary.

Future Considerations

296. Although the principal recommendation is for the criminal offence to remain as it is, a number of issues have arisen for consideration during the course of the Review. These issues would benefit from consideration in the forthcoming review of the BBC’s Royal Charter.

Funding model

297. It has been concluded that the strong deterrent value of the criminal offence is required because of the structure of the current licence fee funding model. In the event of changes being made to the model, it would be desirable to reconsider whether the criminal offence remains necessary.
298. It is beyond the scope of this Review to express any views on the shape that an alternative funding model might take. It does, however, seem reasonable to suggest that future reviews should give consideration to the complexity of the licensing framework. It should be capable of being easily understood by the public. Removing the confusion that has built up over the years through technological advances and an increasing number of regulations would be desirable. One element in particular that seems overdue for change would be to remove from the licence any reference to “television”. The licence covers many different aspects of broadcasting and this should be reflected in how it is styled.

Recommendation 8:

When considering the structure of licence fee collection as part of the forthcoming Charter Review, a move towards a simpler system would assist in improving public understanding of what the licence fee covers.

Non-linear viewing

299. Another issue which falls outside the scope of this Review, but which has an increasing impact on the viability of the current scheme of licensing, is non-linear viewing.²⁷³ As discussed under Option 1, non-linear, or non-live, viewing allows an increasing number of people legally to access television broadcasts without a licence, and places an increasing burden on the licence fee payer.

Recommendation 9:

The Charter Review should look at non-linear viewing as a matter of urgency. Consideration should be given to the inclusion of non-linear viewing within the licence fee framework.

Next Steps

300. This report will be presented to Ministers of the Department for Culture, Media and Sport for their consideration. The Secretary of State will lay the report before both Houses of Parliament and it will be presented to the BBC Trust. In accordance with section 77 of the Deregulation Act 2015,²⁷⁴ the Secretary of State will set out the response and steps to be taken within three months of the Review being completed.

²⁷³ Linear viewing refers to traditional television broadcasting. Non-linear viewing refers to viewing of TV programmes after they have been broadcast, for example by recording using DVR, or streaming via the internet using Video on Demand services such as BBC iPlayer.

²⁷⁴ Deregulation Act 2015.

ANNEX A: TERMS OF REFERENCE – REVIEW OF TV LICENCE FEE ENFORCEMENT

Background

A television licence is required in order to watch all live or nearly-live broadcast television content on any device in the UK. The BBC is tasked with collection of the licence fee, a function currently subcontracted to a private company under the brand 'TV Licensing'. Failure to hold a TV licence when required is an offence under section 363 of the Communications Act 2003, punishable by a fine of up to £1000.

1. Objectives

- a. To conduct a review into the enforcement regime for failure to have a TV licence, to:
 - examine whether the sanctions for contravening this offence are appropriate, fair and whether the regime represents value for money for licence fee payers and taxpayers; and
 - identify and assess options for amending the current enforcement regime, including those for decriminalisation of TV Licensing offences, and whether these options would represent an improvement, based on the key considerations below (2a-e).
- b. To make recommendations to the Government by the end of June 2015

2. Key considerations

In assessing the objectives above (1a –b), the review will consider the following factors:

- a. Value for money for licence fee payers and taxpayers in enforcement of the failure to have a TV licence, including operational, revenue and investment costs of the enforcement regime to the BBC and to the court system.
- b. Fairness for all licence fee payers, and effectiveness in deterring evasion.
- c. Proportionality and ease of enforcement.
- d. Degree to which the regime is easy to understand by all.
- e. Where appropriate, practical considerations for effective transition from the current regime to a different one.

3. Process

The review should seek evidence from a wide range of stakeholders, including the public, the BBC, Government stakeholders, the courts, and other interested parties.

4. Output

A report setting out an assessment of the current and proposed enforcement regimes, key findings, conclusions and any other supporting information to be submitted to the Government by the end of **June 2015**. The Secretary of State will lay this report before both Houses of Parliament and it will be presented to the BBC Trust.

ANNEX B: COST-BENEFIT ANALYSIS

This document is intended to provide qualitative and quantitative analysis to inform the final report of the TV Licence Fee Enforcement Review. It is an updated version of Annex B of the consultation document, which contained a provisional analysis.

This updated cost-benefit analysis contains information, gathered prior to and during the consultation period, which has helped to inform the Review's final recommendations.

There remain some costs and benefits which have not been possible to quantify and where this is the case these are set out in qualitative terms.

Methodology

Basis of analysis

The foundation of the analysis is the process underlying each option, from investigation and prosecution to outcome. The process for each option has distinctive costs and benefits: by estimating these at each point we can build a picture of the overall net impact of the options to each affected group. The groups primarily affected are the Government (of each jurisdiction), the BBC²⁷⁵, and the licence fee evader (the individual). Business licence fee payers are affected but to a much lesser extent, and therefore for simplicity we have focused our analysis on the individual or household licence fee payer.

Evasion rate and the number of people prosecuted

A crucial underlying figure for the analysis is the evasion rate and the number of individuals prosecuted for TV licence evasion. The current rate of evasion in the UK is around 5%.²⁷⁶ This equates to approximately £200m of lost income to the BBC, based on the current level of the licence fee at £145.50.²⁷⁷ Between 2010 and 2012, the number of individuals prosecuted averaged just over 150,000.²⁷⁸ For the purpose of this analysis we assume that the evasion rate and the number of prosecutions will stay constant over time, in the absence of any changes to enforcement.

Each of the alternative options involves changes in the way evaders are investigated, prosecuted or penalised. Annex E provides a brief review of the literature regarding the relationship between changes to the formulation of the law and crime rates. It also includes an analysis of the research produced by Harris Interactive for the BBC. Having carried out quality assurance on the Harris Interactive research we have used their findings to inform assumptions about how evasion rates might change under each option.

The Harris Research used discrete choice modelling to estimate the evasion rates for three models – current, civil, and hybrid. The 'current' model was designed to resemble the current system. The 'civil' model assumes a flat fine for anyone without a television licence after 4 months, without the possibility of prosecution in a criminal court. The 'hybrid' model maintains the criminal offence, but assumes that first-time offenders receive a fixed penalty and are not prosecuted, while repeat offenders are prosecuted and can receive a variable fine up to a maximum of £1000. The model used

²⁷⁵ TV licence fee evasion is dealt with by TV Licensing, a registered brand name of the BBC. We refer to this as the BBC for simplicity.

²⁷⁶ <http://www.tvlicensing.co.uk/cs/media-centre/news/view.app?id=1362435051910>.

²⁷⁷ http://www.bbc.co.uk/annualreport/2014/executive/finances/licence_fee.html.

²⁷⁸ http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131128w0001.htm#wa_st_43.

a baseline evasion rate of 5% (the current rate), so the results of their study should be viewed as relative to this base.

The research was commissioned before the consultation was published, so the models used in the research do not align entirely with the options described in the consultation document. Options 1 and 2 do not make significant changes to the current system, so are not expected to result in any significant change in evasion. Options 3 and 4 do not align perfectly to the hybrid model in the research, but there are enough similarities between the two options and the hybrid model to allow it to be used as a proxy for these options.²⁷⁹ Options 5 and 6 can both be equated to the 'civil' model. Evasion rates under the 'civil' model are dependent on the fine level; for Option 5 this is uncertain, so we have included both a £150 and a £500 penalty in the analysis. Option 6 is assumed to be the equivalent of a £150 penalty under the civil model.²⁸⁰

The table below sets out the six Review options alongside their associated Harris research model, and the estimated potential change in evasion rates.²⁸¹ We have also estimated the potential change in revenue to the BBC as a result of the projected change to evasion rates.²⁸²

Option	Equivalent Harris Option	Estimated Potential Change in Evasion	Estimated Impact on Licence Fee Revenue
1 – Retain the current system	Criminal	0%	0
2 – Reform the current system	n/a	0%	0
3 - Out-of-court settlement	Hybrid	1% increase	-£39m
4 - Fixed Monetary Penalty	Hybrid	1% increase	-£39m
5 – Civil Monetary Penalty	Civil (£150/£500 fine)	3.9%/0.4% increase	-£156m/-£16m
6 – Civil Debt	Civil with £150 fine	3.9% increase	-£156m

Option 1. Retain the current criminal enforcement system

Under the current system, the case is prosecuted by the BBC (as TV Licensing) after the BBC has investigated the defendant privately (which attracts its own costs). The case is then heard with other similar cases in a Magistrates' Court (around 15% of cases are withdrawn²⁸³), which has a time and

²⁷⁹ More information can be found in the Option 3 and Option 4 sections below.

²⁸⁰ This conclusion is explained in more detail in the Option 6 section below.

²⁸¹ It should be noted that in the Harris Interactive research and report, the term 'fine' is used in a general sense, and that therefore throughout this document the term 'fine' appears in relation to Harris research where it may in fact refer to another type of penalty, such as a civil debt or out of court settlement.

²⁸² BBC evidence submitted to the Review. Each 1% rise in evasion rate would amount to £39m in lost revenue for the BBC.

²⁸³ http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131128w0001.htm#w_a_st_43.

cost implication for the court. However, despite the large number of cases, they are dealt with efficiently and take up only 0.3% of court time.

Of the defendants found guilty, around 99.5% are fined.²⁸⁴ Her Majesty's Courts and Tribunals Service (HMCTS) incurs the cost of enforcing the fine, but also collects the fine revenue. Not all fines are successfully enforced, so although HMCTS will incur enforcement costs for all cases, it receives fine revenue from only a portion of cases, some of which is paid into the Consolidated Fund.²⁸⁵

The BBC is able to apply for a refund of its enforcement costs, which are added to the amount the defendant has to pay (though as these are not always recovered, the BBC does not recover its full costs). In the BBC consultation response it is noted that the BBC was awarded £13.1m in costs 2012/13, but only received £9.5m: a recovery rate of 73%.²⁸⁶ It also suggests that the average cost order made during that period was around £87.²⁸⁷

As well as costs and the fine, the financial penalty will generally include a victim surcharge (a minimum of £20) and the recently introduced criminal courts charge²⁸⁸ of around £150 (for those who plead guilty; proceeding to trial will incur a higher cost²⁸⁹). This cost will be repaid to the court and (unlike the fine element of the penalty) is not subject to means-testing.

In the consultation document we estimated the average cost of a case to the court system. A key part of this model was the cost of sitting in a Magistrates' Court per day, from which we could estimate the average cost of a case. This model assumed that the time taken to hear a licence fee case in court would be equivalent to that of the average Magistrates' Court case. The BBC stated in its consultation response that this was an over-estimate as the average licence fee evasion case is much faster to process than the average of all cases, particularly as many licence fee cases are dealt with in bulk and are uncontested. We have taken this view into account and have produced an amended 'cost to the court' figure. This is based on the consultation response from the Ministry of Justice, which provides a more robust figure of £28 per case.

The defendant is not required to pay any backdated, outstanding licence fee as part of the punitive measure, thus the BBC does not recoup lost licence fee revenue.

Costs to the Government

- **Court costs:** The Ministry of Justice has calculated the average cost of hearing TV licence fee evasion cases at approximately £28 per case. This is likely to be an over-estimate (as it includes assessment of some more complex cases) and the cost is likely to fall as a result of planned efficiencies.²⁹⁰ To find the cost to the Magistrates' Courts of enforcing fines we used the total cost of enforcement in a year and the number of cases being enforced to find a per-

²⁸⁴ http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131128w0001.htm#wast_43 .

²⁸⁵ The Consolidated Fund is a fund into which all public revenue is paid and which provides the supply for all public services. The basis of the financial mechanism by which the Consolidated Fund is operated is governed by the Exchequer and Audit Departments Act 1866 and it is administered by the Treasury.

²⁸⁶ BBC consultation response.

²⁸⁷ £13.1m/150,000=£87.

²⁸⁸ Criminal Courts and Justice Act 2015. The charge will be levied against all offenders convicted of a criminal offence on or after 13 April 2015.

²⁸⁹ Ministry of Justice consultation response

²⁹⁰ The Ministry of Justice informed us that amendments to the system of summary justice by the Criminal Justice and Courts Act 2015 are likely to lower the costs of cases including those involving TV licence fee evasion. The Ministry of Justice also notes that future automation of many of the (currently manual) administrative processes carried out by the courts will lower the cost of fine enforcement and increase the amount collected by way of fines.

case-per-year cost.²⁹¹ We then factored in the average time taken to enforce the fine, which gave an average cost of enforcement per case: £59.²⁹² Summing the two (cost of a case plus cost of enforcement) gives the total average cost of a case to the court system of £87. Thus we estimate that TV licence enforcement costs the court system £13m a year (based on 150,000 cases).

- **Imprisonment:** in 2013/14 32 individuals were imprisoned for defaulting on fines imposed for TV licence fee evasion. The average period of committal was approximately 3 weeks, which the Ministry of Justice has estimated cost Her Majesty's Prison Service (HMPS) approximately £22,000, or £100 per prisoner per day.²⁹³

Benefits to the Government

- **Fine revenue:** 99.5%²⁹⁴ of those prosecuted are issued a fine. In 2013 the average fine was £169.37.²⁹⁵ The revenue from this is shared between the courts and the Government. However not all of the fine revenue imposed by the courts is fully recovered. As this depends on a great many factors it is difficult to quantify, but we can use the BBC's cost recovery rate (73%) as a proxy. We could therefore estimate £25.3m²⁹⁶ as the amount of fine revenue received.
- **Criminal courts charge:** as this is a new charge it is difficult to say how collection will operate, but we could estimate this at around £16.4m in revenue.²⁹⁷ This calculation uses the BBC's 73% fine repayment as a proxy in order to provide a quantitative estimate, however as we do not have any data on the payment rate, this may be an over-estimate as it will be the last monetary charge collected. Additionally some defendants will opt for a trial and face a higher charge, but that figure is uncertain so has been excluded for simplicity.

Costs to the BBC

- **Investigation and prosecution:** the BBC will incur costs for investigation and prosecution, which vary according to each case. The BBC spends 2.7% of the licence fee on licence enforcement; in 2013-14, this was £102m.²⁹⁸

Benefits to the BBC

- **Costs awarded:** the BBC applies for a refund of its prosecution costs, which is granted by the court in a portion of cases, but not always recovered. The cost of prosecution to the BBC in

²⁹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323112/hmcts-annual-report-2013-14.PDF

²⁹² Information on the enforcement costs of all Magistrates' Court fines was provided to the Review by the Ministry of Justice. Cost of enforcement per year (47.1m) / no. of cases heard (1.2m) * time taken to enforce (1.5 years) = £59

²⁹³ Based on average annual cost per prison place of £25,000, and an average sentence served of 52%. (3/52*£25,000*52%*32 = £22,000) Ministry of Justice response to the consultation.

²⁹⁴ http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/131128w0001.htm#wa_st_43

²⁹⁵ <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2014>

²⁹⁶ (150,000 * 99.5% * £169.37) = £25.3m

²⁹⁷ At £150, with 150,000 cases a year, and assuming again a 73% collection rate, this can be estimated at £16.4m.

²⁹⁸ http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_Financial_statements_201314.pdf.

England and Wales is around £120 per case. In 2012/13, it was awarded £13.1m in costs by the courts (around £87 per case). Of this, it actually received £9.5m: £63 per case.²⁹⁹

Costs to the individual

- **Fine:** as noted above, the average fine issued in 2013/14 was £169.37.
- **Costs:** individuals found guilty can be issued costs on top of the fine amount, including prosecution costs (~£87), the victim surcharge (~£20) and the new criminal courts charge (£150). Thus we can estimate court costs of around £247.
- **Time:** the individual will also face personal costs for attending court, such as travel and loss of income.

Affected Group	Costs	Benefits
Government	Court costs - £13m per annum (pa) Imprisonment - £22,000 pa	Fine revenue - £25.3m pa Criminal courts charge - £16.4m pa
BBC	Investigation and prosecution - £102m pa	Court costs returned - £9.5m pa
Individual	Fine - £169.37 Court costs (~£247) Travel and loss of income.	

This cost-benefit table will act as the counterfactual against which all of the other options will be measured. Similar tables for the remaining options will indicate whether the costs and benefits are higher or lower than this counterfactual (and include any new costs/benefits).

Option 2. Reform of the current system: leave the current offence as it stands, but reform the current criminal enforcement system

Option 2 would not make substantive changes to the process of enforcement; this option would involve retaining the current criminal offence while at the same time making improvements to the system of enforcement so as to address some of the concerns that gave rise to the Review. The Review makes a number of recommendations which are discussed in the text of the main report. However, only one of the recommendations has potentially significant cost implications.

Recommendation 6:

TV Licensing should consider increasing the transparency of its prosecution and enforcement policy, and provide clearer guidance to those at risk of prosecution. This guidance could take the form of a code detailing the steps that will be taken before prosecution, including the public interest considerations that will be applied when deciding whether to prosecute. Any such code should be published and made available to suspected evaders at the earliest possible opportunity in the enforcement process.

²⁹⁹ BBC consultation response.

Evidence gathered during the review has demonstrated that there are opportunities to divert evaders from prosecution throughout the existing enforcement process. The current system affords evaders more flexibility than is perhaps generally acknowledged. By improving public knowledge of these opportunities to avoid prosecution, there could potentially be an increase in at least the number of delayers, and potentially also the number of evaders. Any rise in the evasion rate would be troubling for the BBC as each additional 1% rise in evasion is estimated to cost the BBC £39m. However, as the report concludes, given that the threat of prosecution remains, and any deliberate attempt to exploit the policy would be a factor in favour of prosecution, it seems unlikely that evasion will increase. This is particularly so given that a policy of encouraging compliance rather than resorting to prosecution is already in operation, and the only difference is that it will be publicised.

Some of the changes outlined in the other recommendations could also have an impact on the costs of the BBC, for example any work done to alter the tone and content of its written communications with households could potentially increase the BBC's administration and investigation costs. However the other changes outlined for this option are not substantive enough, and do not affect key variables (such as method of enforcement) enough to significantly affect the cost-benefit analysis.

Option 3. Out-of-court settlement: retain the criminal offence, with an option for disposal by way of an out-of-court settlement.

This option would offer evaders the opportunity to avoid prosecution by paying the BBC an agreed amount as an out-of-court settlement. If the individual decided not to take up the settlement, the case would be pursued through the Magistrates' Court in the usual manner.

There is uncertainty over the proportion of individuals likely to accept an out-of-court settlement, and this would have a significant bearing on the eventual costs. The level of the settlement would need to be set at a level high enough to deter evasion (that is, higher than the cost of a TV licence) and to cover the running costs of the scheme, but low enough to encourage individuals to take up the offer. This would suggest a figure between £145.50 (the current licence fee) and lower than £169.37 (the current average fine).

However, as a comparative example, in most parking and waiting offence cases the maximum level of penalty is £60-£90.³⁰⁰ A figure this low carries the risk of increasing evasion, as it is lower than the cost of a TV licence.

If the individual chose not to accept the settlement, they would be prosecuted in the Magistrates' Court as under the current system. Therefore this Option would seem to provide greater value for money for the taxpayer, as there would be fewer cases proceeding to the Magistrates' Court for prosecution. However it is hard to say what percentage of individuals this will be, and comparisons with similar systems in use are difficult as data is fragmented. Significantly, the Ministry of Justice believes that although there could be a cost saving by using a system of out-of-court settlement, the saving would be limited (on the basis that the existing system is efficient and does not impose a significant burden on the taxpayer in terms of cost) and would depend on evasion remaining at the current level. It also noted that the court would no longer receive fine revenue and whether or not it would result in a saving to the taxpayer would depend on a number of factors (the acceptance rate, enforcement costs and level of the penalty).³⁰¹

³⁰⁰ In the case of parking related PCNs, the offence is halved if paid within 14 days.

http://www.theaa.com/motoring_advice/legal-advice/penalty-charge-notice.html.

³⁰¹ Ministry of Justice evidence-gathering session.

Another concern raised about an out-of-court settlement scheme is the potential rise in delayed paying, as any additional unlicensed time is a further loss of revenue for the BBC. The option to agree an out-of-court settlement before criminal action is taken could provide an incentive for individuals to delay buying a licence until they are threatened with legal action, particularly if the level of the settlement was lower than that of the licence fee (as is the case in Scotland).

Scotland

The Scottish Government uses an out-of-court settlement scheme for TV licence evasion. The average fiscal fine issued for TV licence fee evasion in Scotland is £75³⁰², within the £60-£90 band mentioned above for parking offences, but below the TV licence fee of £145.50. Comparing the evasion rates in Scotland and the rest of the UK before and after 2008 (when the fiscal fines system in Scotland was strengthened³⁰³) provides some indication of the difference in evasion between an alternative civil penalty method and a criminal method. However, direct comparison will be misleading as there are fundamental differences between England and Wales and Scotland that will undermine the value of any comparison.³⁰⁴

The table below provides the evasion rates in Scotland as compared to the rest of the UK (roUK) from 2005 to 2014, along with a ratio of evasion in Scotland to the rest of the UK. The graph below shows how evasion has changed over time, and how the relationship between evasion in Scotland and the rest of the UK has evolved.

Year	Evasion rate (%)		
	Scotland	Rest of the UK	Ratio S/RoUK
2005	5.10	4.10	1.24
2006	4.90	4.01	1.22
2007	5.30	4.41	1.20
2008	5.50	4.47	1.23
2009	5.90	4.80	1.23
2010	5.90	4.82	1.22
2011	7.10	5.00	1.42
2012	7.80	5.36	1.46
2013	7.30	5.46	1.34
2014	7.30	5.16	1.42

It is important to note that although there was an increase in evasion in Scotland in 2011, this was also the case for the rest of the UK.

It is not clear why there appears to be a jump in evasion rates in 2011 as there are no obvious changes to policy which would lead to this. One possible contributing factor, along with a ratio of

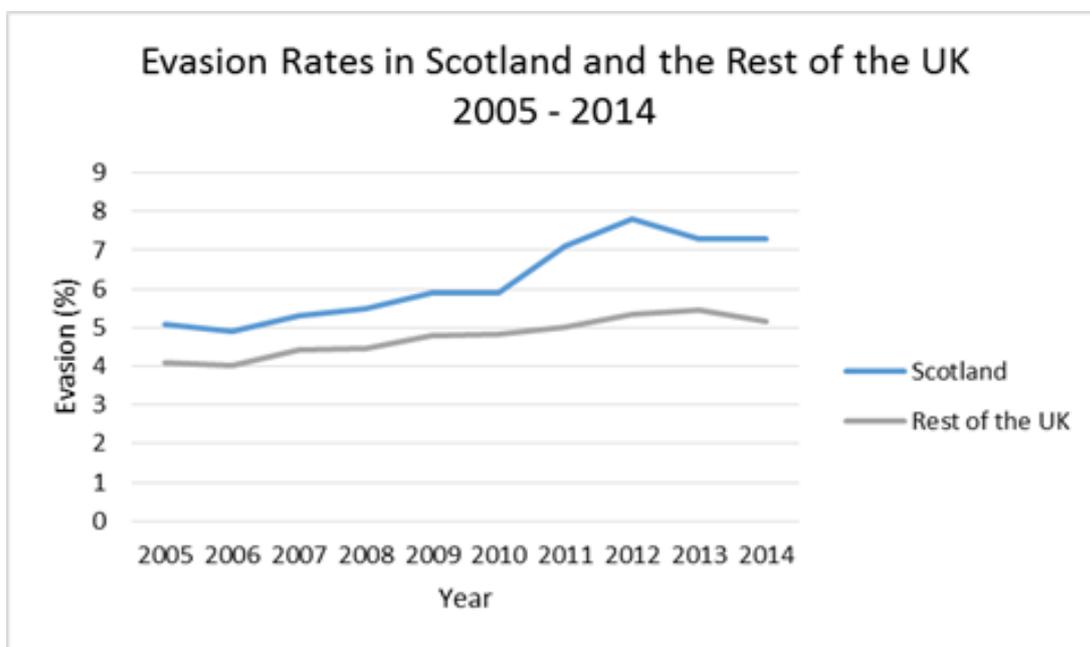
³⁰² Evidence provided by the Crown Office and Procurator Fiscal Service (COPFS): in 2013/14, 94% of cases of TV licence fee evasion in Scotland resulted in a payment of £75 (12603 of the 13431).

³⁰³ BBC evidence to the Review: The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 amended the Criminal Procedure (Scotland) Act 1995 so that an offer of fiscal fine was deemed accepted if the alleged offender failed to provide notice of refusal within 28 days of the offer. This change in legislation led to an increase in the number of cases that received a fiscal fine and a reduction in the number of cases that were not proceeded against. Prior to this an offer of fiscal fine that was not accepted required the Procurator Fiscal to review the case for prosecution or other measures.

³⁰⁴ This is discussed in more detail in Chapter 3 of the report.

evasion in Scotland to the rest of the UK. The graph below shows how evasion has changed over time, and how the relationship between evasion in Scotland and the rest of the UK has evolved. It is important to note that although there was an increase in evasion in Scotland in 2011, this was also the case for the rest of the UK.

It is not clear why there appears to be a jump in evasion rates in 2011 as there are no obvious changes to policy which would lead to this. One possible contributing factor could be the UK-wide census in 2011, which led to a relatively significant re-estimation of population figures and therefore could impact on any models which draw on population estimates.



Behavioural research and implications for evasion

The Harris Interactive research paper on behavioural changes did not specifically explore an out-of-court settlement like that in Option 3, but the ‘hybrid’ model in the Harris Interactive research is similar enough that we can use it as a proxy.

In the hybrid model, first-time offenders receive a monetary penalty while multiple offenders are prosecuted through the criminal courts. This bears a similarity to an out-of-court settlement scheme, wherein offenders who refuse or are not offered an out-of-court settlement would be prosecuted through the Magistrates’ Court as under the current process.

The Harris Interactive hybrid model predicted that evasion would rise from the current rate of 5% to 6%. We therefore estimate that under Option 3 evasion would increase to 6%, costing the BBC an extra £39m in lost revenue.

Costs to the Government

- **Court costs:** The out-of-court settlement is designed to remove offenders from the court system, so the cost to the Government will depend on the number of offenders who accept the

settlement and therefore do not proceed to prosecution. However as the court system deals with TV licence fee evasion cases very efficiently, this potentially reduced number of cases may not have a significant impact in terms of savings to the taxpayer.

- **Imprisonment:** it is unclear whether this system would lead to an increase or decrease in the numbers of individuals imprisoned, or the duration of imprisonment, and therefore the total costs. We have therefore maintained the estimated cost from Option 1 of approximately £22,000, or £100 per prisoner per day.

Benefits to the Government

- **Settlement revenue:** the Government would receive the revenue from the settlements issued. This would be calculated as the level of the penalty multiplied by the number of people who pay it in order to avoid prosecution. As both these figures are uncertain, we have not quantified this revenue.
- **Criminal courts charge:** as cases which are diverted from the Magistrates' Court will not incur this charge, the Government would receive less revenue from this charge in accordance with the number of cases diverted from prosecution.

Costs to the BBC

- **Set-up and administration:** the BBC would have to invest in the establishment of an out-of-court settlement scheme and bear the ongoing costs of administration, which may be significant.
- **Evasion:** the predicted increase in evasion from 5% to 6% would mean a loss of £39m in licence fee revenue for the BBC.
- **Delayed payment:** the number of people delaying purchase of a licence could increase under this option, which means a further loss of revenue for the BBC for the unlicensed time.

Benefits to the BBC

- **Prosecution:** the BBC bear the costs of prosecution if the case proceeds through the court system, as in the current system of enforcement. However we expect that this would be lower than under the current system as a number of offenders would avoid prosecution by paying a settlement (though as this number is uncertain, we cannot estimate the cost impact). As with the current system, the BBC would likely not recover all of its prosecution costs.
- **Settlement level:** the BBC might benefit from the ability to set the level of the settlement. This would mean that the BBC were able to raise the level of the settlement in order to cover the increased costs of running the scheme (or the loss of revenue from increased evasion). However if it were to rise above the level of the average fine (£169.37) it is unlikely that this option would be used by defendants, and they would revert to the Magistrates' Court (and the costs/benefits outlined in Option 1).

Costs to the individual

- **Costs of proceeding to Magistrates' Court:** if the individual was not offered or did not accept the settlement, the case would proceed to court, with the fine and costs as described in Option 1.

Benefits to the individual

- **Settlement:** if the individual accepted the settlement, this would potentially be lower than the average fine. As discussed above, it would be sensible to suggest a figure between £145.50 (the current licence fee) and £169.37 (the current average fine).
- **Court (and related) costs:** those who accept an out-of-court settlement do not attend a Magistrates' Court and so do not pay court costs or lose any income.

Affected Group	Costs	Benefits
Government	<p>Court costs – likely lower than £13m per annum (pa).</p> <p>Imprisonment – unknown. Assume £22,000 pa.</p>	<p>Settlement revenue – unknown, dependent on level and acceptance rate.</p> <p>Criminal courts charge - depends on acceptance rate, likely lower.</p>
BBC	<p>Administration and set-up costs.</p> <p>Likely increase in evasion - loss of £39m licence fee revenue pa.</p> <p>Potential loss of revenue through increase in delayed payment.</p>	<p>Prosecution – costs likely lower as fewer cases in courts.</p> <p>Court costs returned – unknown (dependent on the settlement rate).</p> <p>Flexibility to set level of settlement.</p>
Individual	<p>Settlement: unknown, potentially between £145.50 and £170.</p> <p>Court costs (if settlement not accepted).</p> <p>Travel and loss of income (if settlement not accepted).</p>	<p>Court costs (£0 if settlement accepted).</p> <p>Travel and loss of income (£0 if settlement accepted).</p>

Option 4. Fixed monetary penalty: retain the criminal offence, with an option for disposal by way of a fixed monetary penalty

Option 4 would retain TV licence evasion as a criminal offence, while allowing a fixed monetary penalty to be imposed as a formal alternative to prosecution. This option is similar to Option 3 in that the rationale for each is that they are intended to provide a swift and effective out-of-court disposal, thus reducing the burden on the courts. However, unlike Option 3, Option 4 involves the possibility of an out-of-court disposal by way of a fixed monetary penalty in every case of evasion, and the level of the penalty is fixed.

Under Option 4 a penalty notice (or a notice of an intention to impose a fixed penalty) would be issued by the authorised enforcement agency (TV Licensing) at the point at which an offence is committed, for example, at the time a TV Licensing enquiry officer witnesses an offence on the

occasion of a household visit. In the event of default of payment the fixed penalty notice would be enforced without resort to prosecution or, as an alternative, the case would proceed to the Magistrates' Court in the usual way.

Behavioural research and implications for evasion

The Harris Interactive research paper on behavioural changes did not specifically explore a fixed monetary penalty scheme like that in Option 4, but the 'hybrid' model in the Harris research is similar enough that we can use it as a proxy.

In the Harris hybrid model, first-time offenders receive a monetary penalty while multiple offenders are prosecuted through the criminal courts. This bears a similarity to a fixed monetary penalty scheme, wherein offenders who refuse to pay the fixed monetary penalty would be prosecuted through the Magistrates' Court as under the current process.

The Harris hybrid model predicted that evasion would rise from the current rate of 5% to 6%. We therefore estimate that under Option 4 evasion would increase to 6%, costing the BBC an extra £39m in lost revenue.

Costs to the Government

- **Court costs:** the fixed monetary penalty scheme is designed to remove offenders from the court system, so the cost to the Government will depend on the number of offenders who accept the penalty and therefore do not proceed to prosecution. However as the court system deals with TV licence fee evasion cases very efficiently, this potentially reduced number of cases may not have a significant impact in terms of savings to the taxpayer.
 - We can assume that the cost of this system will be the same as the current system: ~£87 per case. However the number of cases taken through the court process will likely be less than in the current system: data from other civil claims made in this way (for example a fixed monetary penalty) suggests around 65%³⁰⁵ of individuals pay the claim at the first stage. If we use this as a proxy, we can estimate that the full Magistrates' Court costs would only apply to the remaining 35%: a total cost of £4.6m. However the court system takes on the burden of administration costs for the remaining 65%. As discussed in Chapter 3 of the report, this would require significant investment.
 - Importantly, the behavioural research suggests that this Option would lead to a 1% increase in evasion, which implies a rise in the number of cases (and subsequently increased costs to the Government). However it is not possible to estimate this directly as there are a number of uncertainties around its impact.
- **Imprisonment:** it is unclear whether this system would lead to an increase or decrease in the numbers of individuals imprisoned, or the duration of imprisonment, and therefore the total costs. We have therefore maintained the estimated cost from Option 1 of approximately £22,000, or £100 per prisoner per day.

³⁰⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115726/fixed-penalty-notice-1011-tabs.xls. (2010)

Benefits to the Government

- **Penalty revenue:** revenue from the penalty paid into the Consolidated Fund (the Government's general bank account). It is uncertain at this stage what the level of the penalty would be, although, as noted in the main report analysis, it would need to be at a sufficient level to provide a deterrent.
- **Criminal courts charge:** this is fairly uncertain, but if we assume that 35% of cases proceed to court, then we can estimate this as £5.7m.³⁰⁶

Costs to the BBC

- **Set-up and administration:** the BBC would have to invest in aspects of establishing the scheme and administer its operation (for example, training enquiry officers to issue penalties), which could be significant.
- **Enforcement:** The BBC has stated that it would expect its collection costs to be higher using this model than under the current system and noted that it is not clear that enforcement costs would be recoverable through the fixed penalty process.
- **Evasion:** the predicted increase in evasion from 5% to 6% would mean a loss of £39m in licence fee revenue for the BBC.

Benefits to the BBC

- **Prosecution:** the BBC bear the costs of prosecution if the case proceeds through the court system, as in the current system of enforcement. However we expect that this would be lower than under the current system as a number of offenders would avoid prosecution by paying a settlement (though as this number is uncertain, we cannot estimate the cost impact). As with the current system, the BBC would likely not recover all of its prosecution costs.

Costs to the individual

- **Costs of proceeding to Magistrates' Court:** if the individual refused to pay the penalty, the case would proceed to court, with the fine and costs as described in Option 1.

Benefits to the individual

- **Penalty:** if the individual accepted the penalty, this would potentially be lower than the average fine. As discussed above, it would be sensible to suggest a figure between £145.50 (the current licence fee) and £169.37 (the current average fine).
- **Court (and related) costs:** those who accept a fixed monetary penalty do not attend a Magistrates' Court and so do not pay court costs or lose any income.

³⁰⁶ If we assume that 35% of cases proceed to court, then the Government could receive the £150 charge in $(35\% \times 150,000) = 52,500$ cases, which, with the previously assumed 73% collection rate, totals $(£150 \times 52,500 \times 73\%) = £5.7\text{m}$. Note that the 73% is in relation to BBC fine revenue, so this is only a proxy.

Affected Group	Costs	Benefits
Government	<p>Court costs – cost of hearing only 35% of cases potentially reduced from £13m to £4.6m pa (though could be higher).</p> <p>Administration – unknown but potentially significant costs of administering the FPN for 65% of cases</p> <p>Predicted 1% rise in evasion: unknown additional costs</p> <p>Imprisonment – unknown. Assume £22,000 pa</p>	<p>Penalty revenue – unknown, dependent on level and acceptance rate.</p> <p>Criminal courts charge - likely reduced from £16.4m, potentially to £5.7m.</p>
BBC	<p>Administration and set-up costs</p> <p>Enforcement costs – potentially higher</p> <p>Likely increase in evasion - loss of £39m licence fee revenue.</p>	<p>Prosecution costs – potentially lower as fewer cases in the Magistrates' Court.</p>
Individual	<p>Penalty – unknown, potentially between £145.50 and £170</p> <p>Court costs (if penalty not accepted).</p> <p>Travel and loss of income (if penalty not accepted).</p>	<p>Court costs (£0 if penalty accepted).</p> <p>Travel and loss of income (£0 if penalty accepted).</p>

Option 5. Civil monetary penalty: decriminalise and enforce via a civil infraction

Option 5 involves the repeal of the TV licence fee offence, the creation of a statutory obligation to have a TV licence and enforcement of this obligation through the imposition of a civil monetary penalty. A civil monetary penalty is neither a fine nor a criminal conviction: it is instead a penalty for failing to comply with a statutory obligation. The scale of the penalty would be crucial: it would have to be set at a level high enough to deter evasion, while at the same time low enough to encourage acceptance at an early stage of the enforcement process. Treating the licence fee as a civil debt would provide some savings to the taxpayer, who would not be required to meet the costs of the civil proceedings. On the other hand, the cost to the licence fee payer is likely to increase significantly, for reasons explained below.

Under Option 5, if the penalty remained unpaid it would be treated as a civil debt. The civil claimant (the BBC) would be responsible for pursuing the claim, and therefore the BBC would be liable for all costs, including enforcement of the civil penalty; it can seek to recover its costs, but these come directly from the individual, not from the courts. The high cost of enforcement means there is an added risk for the BBC in pursuing the case beyond the first claim stage. The percentage of

individuals who pay after the first claim is important as it has an impact on the overall costs and benefits to all parties, but particularly for the BBC.

An individual would have the opportunity to make an informal challenge to the notice and if unsuccessful, the individual would have a right of appeal and it is envisaged that this appeal would be to an independent adjudicator. Enforcement of the penalty would take place in the civil court system and thus would involve conventional methods of enforcement, such as the employment of bailiffs, seizure of property, and the use of attachment of earnings and charging orders.

The crucial point here is that the BBC would have to make a judgment about whether to continue to pursue individual cases: as it is responsible for all costs there would be a greater focus on the point at which the cost of the enforcement process outweighs the benefit (the likelihood of successfully enforcing the penalty).

There could also be a change in long-term behavioural patterns associated with this option as a result of increased risk for the BBC and decreased risk for the consumer.

Behavioural research and implications for evasion

The Harris research's 'civil' model is comparable to this option, thus we could use the results from the Harris research to inform our estimates of any changes in evasion from this option. Crucially, the research showed that evasion under this model is determined mainly by the fine³⁰⁷ or penalty level. At a penalty level of £150 evasion is projected to increase to 8.9%, costing the BBC £156m a year in lost revenue. With a fine of £500 however, evasion increases only to 5.4% (compared with the 5% baseline in the model), a loss of £16m revenue. However it should be noted that a £500 penalty is significantly higher than the current average fine (£170).

Responsibility for licence fee evasion cases would be transferred from the criminal court system to the civil courts. The civil courts have existing frameworks for dealing with similar types of money claims, so this could be dealt with efficiently. There will be costs to the BBC for each case, and higher costs for those where the penalty was not paid and which had to be pursued through the courts as a civil debt. This cost would be significant as the BBC would need to fund all methods of enforcement of the debt.

Costs to the Government

- **Set-up and administration:** there will be a cost associated with either setting up or using an existing appeals process, which would fall to either the Government or the BBC.
- **Criminal court charge:** if the offence was decriminalised the criminal courts charge would not apply, representing an estimated (see above) loss of revenue of £16.4m.

Benefits to the Government

- **Criminal court efficiency:** removing TV licence fee evasion cases from the Magistrates' Court would improve efficiency, although to a very minor extent (0.3%) as they are dealt with very efficiently under the current system.

³⁰⁷ It should be noted that in the Harris Interactive research and report, the term 'fine' is used in a general sense to refer to both criminal and civil monetary penalties. We have chosen to refer to this as a penalty, for consistency with the report. The current maximum fine is £1000, while the average fine is around £170.

- **Civil court costs:** although the civil courts would face greater case numbers, the BBC would be responsible for the court fees (recoverable from the individual) and the Ministry of Justice believes that the cost of enforcing civil penalties is fully recovered by HMCTS.³⁰⁸

Costs to the BBC

- **Collection costs:** the costs involved in collecting the licence fee are likely to increase.³⁰⁹
- **Set-up and administration:** the costs of administering the penalty scheme would likely fall to the BBC.
- **Court costs:** in the event of non-payment the BBC is responsible for all costs related to pursuing the debt, as well as costs of enforcement. Some would be recovered through penalty revenue and civil debts successfully enforced, but we anticipate that this would be a significant burden for the BBC.
- **Evasion:** the Harris model predicts that under a civil model evasion will increase. At a penalty level of £150 evasion is predicted to increase to 8.9%, which would cost the BBC around £156m a year in lost revenue. Where the penalty level was £500, evasion was predicted to increase to 5.4%, which would cost the BBC around £16m a year in lost revenue.
- **Cost-benefit ratio:** the increased pressure on the BBC raises concerns about the commercial benefit of pursuing certain cases, with the result that a certain level of evasion might be tolerated or written off, on the grounds that enforcement is simply not cost-effective.
- **Set-up and administration of appeals body:** there will be a cost associated with either setting up or using an existing appeals process, which would fall to either the Government or the BBC.

Benefits to the BBC

- **Penalty revenue:** the BBC will receive the revenue from the penalty, however this depends on the level of the penalty and the number of cases diverted from the courts by the penalty.
- **Civil debt repayment:** the BBC will also receive the revenue of those cases which it successfully pursues (including court costs).

Costs to the individual

- **Costs of proceeding to civil court:** if the individual refused to pay the penalty, the case would proceed to the civil court, with a potential civil debt and costs to pay.

Benefits to the individual

- **Penalty:** if the individual accepted the penalty, this would potentially be lower than the civil debt they would receive if the case moved to a civil court.
- **Court (and related) costs:** those who accept the penalty do not attend a civil court and so do not pay court costs or lose any income.

³⁰⁸ Ministry of Justice consultation response.

³⁰⁹ BBC and Ministry of Justice evidence to the Review.

Affected Group	Costs	Benefits
Government	Criminal courts charge – loss of £16.4m pa. Potential cost for set-up/ administration of appeals body.	Court costs – reduced from £13m to £0. Imprisonment – reduced from £22,000 to £0.
BBC	Collection costs – likely increase Administration and set-up costs (scheme and potentially appeals body) Court costs – likely significant increase Likely increase in evasion - loss of up to £156m licence fee revenue pa.	Penalty and civil debt revenue - unknown
Individual	Penalty – unknown, potentially between £145.50 and £170 Court costs (if penalty not accepted). Travel and loss of income (if penalty not accepted).	Court costs (£0 if penalty accepted). Travel and loss of income (£0 if penalty accepted).

Option 6. Civil debt: decriminalise and enforce as a civil debt

Option 6 would involve treating the licence fee as a civil debt recoverable through the civil courts. This is currently the position in the case of non-payment of utility bills, where, as a matter of last resort, the debtor may be proceeded against in the County Court where, if liability is proved, an order may be obtained requiring payment of the debt. The exact legal structure of this option would have an impact on the cost-benefit analysis.³¹⁰

It is likely that under such an option the BBC would be responsible for pursuing the debt through the civil courts. In this way it is similar to Option 5 (without the initial civil monetary penalty offer), in that the burden of cost is mainly with the BBC, and there is an inherent risk of not receiving revenue should enforcement fail.

This option broadly aligns with the Harris Interactive behavioural research ‘civil’ model, although it is hard to provide any estimate for the level of civil debt as this would likely involve an assumption as to the period of unlicensed use.³¹¹ Nevertheless, for the purposes of this analysis we have used £150 as a suggested model (being the level of the civil penalty in the Harris civil model and broadly similar to the cost of an annual TV licence). Using that figure we could therefore assume that the rise in evasion

³¹⁰ For example, if it were treated as a priority debt, the use of imprisonment as an ultimate sanction for non-payment would still be available.

³¹¹ One of the key difficulties inherent in Option 6 is that in order to enforce a civil debt, the BBC would have to provide evidence of the period of time for which the individual had been unlicensed and the amount of the debt would be in a sum corresponding to the period of evasion. It would be difficult to prove the period of unlicensed use with the result that the amount of the debt is likely to be small or nominal.

observed in the Harris model would apply for Option 6: an increase to 8.9%, which would cost the BBC an additional £156m in lost revenue per year.

The table below represents the potential costs and benefits under a non-statutory system. If the debt were treated as a priority debt, there would be other costs associated with sentencing and imprisonment.

Costs to the Government

- **Criminal court charge:** if the offence was decriminalised the criminal courts charge would not apply, representing an estimated (see above) loss of revenue of £16.4m.

Benefits to the Government

- **Criminal court efficiency:** removing TV licence fee evasion cases from the Magistrates' Court would improve efficiency, although to a very minor extent (0.3%) as they are dealt with very efficiently under the current system.
- **Civil court costs:** although the civil courts would face greater case numbers, the BBC would be responsible for the court fees (recoverable from the individual) and the Ministry of Justice believes that the cost of enforcing civil penalties is fully recovered by HMCTS.³¹²

Costs to the BBC

- **Collection costs:** the costs involved in collecting the licence fee are likely to increase.³¹³
- **Court costs:** the BBC would be responsible for all costs related to pursuing the debt, as well as costs of enforcement. Some would be recovered through penalty revenue and civil debts successfully enforced, but we anticipate that this would be a significant burden for the BBC.
- **Evasion:** the Harris model predicts that under a civil model evasion will increase, at a penalty level of £150 evasion is predicted to increase to 8.9%, which would cost the BBC around £156m a year in lost revenue.
- **Cost-benefit ratio:** the increased pressure on the BBC raises concerns about the commercial benefit of pursuing certain cases, with the result that a certain level of evasion might be tolerated or written off, on the grounds that enforcement is simply not cost-effective.

Benefits to the BBC

- **Penalty revenue:** the BBC will receive the revenue from the penalty, however this depends on the level of the penalty and the number of cases diverted from the courts by the penalty.
- **Civil debt repayment:** the BBC will also receive the revenue of those cases which it successfully pursues (including court costs).

³¹² Ministry of Justice consultation response.

³¹³ BBC and Ministry of Justice evidence to the Review.

Costs to the individual

- **Costs of proceeding to civil court:** if the individual refused to pay the penalty, the case would proceed to the civil court, with a potential civil debt and costs to pay. This figure is unknown.

Benefits to the individual

- **Court (and related) costs:** those who accept the penalty do not attend a civil court and so do not pay court costs or lose any income.

Affected Group	Costs	Benefits
Government	Criminal courts charge – loss of £16.4m pa.	Court costs – reduced from £13m to £0. Imprisonment – reduced from £22,000 to £0.
BBC	Collection costs – likely increase Administration and set-up costs Court costs – likely significant increase Likely increase in evasion - loss of up to £156m licence fee revenue pa.	Penalty and civil debt revenue - unknown
Individual	Penalty – unknown Court costs (if penalty not accepted). Travel and loss of income (if penalty not accepted).	Court costs (£0 if penalty accepted). Travel and loss of income (£0 if penalty accepted).

Risks and Assumptions

In calculating the costs and benefits, we have (for the purposes of simplicity) not accounted for wider factors which we believe would have a negligible impact (for example, inflation, population growth, technological change). We have also assumed that a number of variables (such as court administration costs and wages) will remain constant.

The analysis was informed by data from England and Wales, and has not gone into detail on the jurisdictional differences in the devolved administrations and Crown Dependencies (with the exception of the Scottish out-of-court settlement system discussed in Option 3), in order to focus the analysis and make comparison between the options more clear. Further details on the jurisdictional differences in enforcement can be found at Annex C, and relevant evidence is discussed in Chapter 3 of the report.

This analysis relies in part on the behavioural research study carried out by Harris Interactive, which informed a portion of the cost-benefit analysis for most options. This research was commissioned by the BBC, however, as we explain in Annex E, the Review team scrutinised the work and carried out quality assurance, concluding that the research a reliable source.

ANNEX C: JURISDICTIONAL DIFFERENCES

	England & Wales	Scotland	Northern Ireland	Jersey	Guernsey	Isle of Man
Investigating authority	TV Licensing	TV Licensing who pass information to Procurator Fiscal who decides whether or not to prosecute.	TV Licensing	TV Licensing pass information onto police who conduct their own investigation.	TV Licensing pass cases to an Inspector in the Guernsey prosecution unit. Evidence reviewed by law officers.	TV Licensing
Prosecuting authority	TV Licensing	Procurator Fiscal	TV Licensing	Centenier	Police and law officers	The Manx Advocate
Relevant Legislation	Communications Act 2003	Communications Act 2003	Communications Act 2003	Broadcasting & Communications (Jersey) Order 2004	Communications (Bailiwick of Guernsey) Order 2004	Communications (Isle of Man) Order 2003
Maximum fine level	£1000	£1000	£1000	£500	£2000	£1000
Case heard by?	Magistrates court	Sheriffs Court	District judge	Magistrates court	Magistrates Court	Magistrates Court
Can the BBC recover costs?	Yes	No	Yes	No	No	Yes
Can the offence be disposed of outside of court?	No	Yes	No	No	No	No

ANNEX D: SUMMARY OF THE LEGAL FRAMEWORK

TV Licensing (England and Wales)

1. The statutory framework for the licensing of TV reception is set out in Part 4 of the Communications Act 2003. Section 363 of this Part provides as follows:

Section 363 Licence required for use of TV receiver

- (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.
- (4) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) Subsection (1) is not contravened by anything done in the course of the business of a dealer in television receivers solely for one or more of the following purposes—
- (a) installing a television receiver on delivery;
 - (b) demonstrating, testing or repairing a television receiver.
- (6) The Secretary of State may by regulations exempt from the requirement of a licence under subsection (1) the installation or use of television receivers—
- (a) of such descriptions,
 - (b) by such persons,
 - (c) in such circumstances, and (d) for such purposes, as may be provided for in the regulations.
- (7) Regulations under subsection (6) may make any exemption for which such regulations provide subject to compliance with such conditions as may be specified in the regulations.

2. A television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence under Part 4 (a 'TV Licence').³¹⁴ The definition of a television receiver is set out in the Communication (Television Licensing) Regulations 2004³¹⁵ and means any apparatus installed or used for the purpose of receiving (whether by means of wireless telegraphy or otherwise) any television programme service, whether or not it is installed or used for any other purpose.

³¹⁴ Section 363(1) of the Communications Act 2003.

³¹⁵ S.I. 2004/692 (as amended by S.I. 2005/606, S.I. 2006/619, S.I. 2007/718, S.I. 2008/643 and S.I. 2009/505 an S.I. 2010/640).

3. References to using a television receiver are references to using it to receive television programmes.³¹⁶ The reference to receiving a television programme service includes a reference to receiving by any means any programme included in that service, where that programme is received at the same time (or virtually the same time) as it is received by members of the public by virtue of its being broadcast or distributed as part of that service.³¹⁷
4. This means a person needs to be authorised by a TV licence to watch or record TV as it is being broadcast or otherwise distributed. This includes the use of devices such as a computer, laptop, mobile phone or digital/personal video recorder.
5. TV licences are issued by the BBC.³¹⁸ A person to whom a TV licence is issued is liable to pay a sum as provided for in the 2004 Regulations (the 'TV licence fee').³¹⁹ The current fee for a 'colour' licence is £145.50.³²⁰ The 2004 Regulations also set out the entitlement for concessions and payment by instalments. The TV licence fee must be paid to the BBC and is recoverable by them. The sums received by the BBC must be paid into the Consolidated Fund.³²¹
6. A person who installs or uses a television receiver without the installation or use being authorised by a TV licence is guilty of an offence. A person found guilty of an offence is liable to a fine not exceeding level 3 on the standard scale (£1000). The offence is dealt with by the Magistrates' Court.³²²

Enforcement

7. 'TV Licensing' is a trademark of the BBC and is used under licence by companies contracted by the BBC to administer the collection of the TV licence fee and enforcement of the TV Licensing system. Capita Business Services Ltd is contracted in relation to the administration and enforcement of the TV licence fee. The BBC retains overall responsibility.
8. The investigation into whether a person has committed a TV Licensing offence is carried out by TV Licensing. Enquiry officers do not need any specific legal powers to carry out their investigation: in particular, they do not have any police powers. They do however comply with a code of conduct, visiting guidelines and, when conducting interviews, have regard to the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice. That is, enquiry officers will give a caution to person concerned - if there are grounds to suspect an offence has been committed before interviewing a suspect enquiry officers will caution the person concerned by informing them that they do not have to say anything, but it may harm their defence if they do

³¹⁶ Section 368(3).

³¹⁷ Regulation 9 of the Communication (Television Licensing) Regulations 2004.

³¹⁸ Section 364.

³¹⁹ Section 365.

³²⁰ Schedule 1 to the 2004 Regulations.

³²¹ Section 365. The BBC receives grant in aid from DCMS equal to the revenue from the TV licence fee (less the department's expenses in administering the licensing system - see clause 75 of the BBC Framework Agreement of 30 June 2006).

³²² Section 363.

not mention when questioned something which they later rely on in court and that anything they do say may be given in evidence.

9. A court may grant a warrant to enter and search a premises if the court is satisfied that there are reasonable grounds for believing that an offence under section 363 of the Communications Act 2003 is being committed and that evidence of the commission of the offence is likely to be on the premises. This is subject to one of the following conditions being met: (a) there is no person entitled to grant entry to the premises with whom it is practicable to communicate; (b) there is no person entitled to grant access to the evidence with whom it is practicable to communicate; (c) entry to the premises will not be granted unless a warrant is produced; or (d) the purpose of the search may be frustrated or seriously prejudiced unless the search is carried out by a person who secures entry immediately upon arriving at the premises. The person is authorised to examine or test any television received found on the premises.³²³
10. The person authorised³²⁴ to enter and search the premises may (if necessary) use such force as may be reasonable to do so. TV Licensing's policy is not to use force and to exercise search warrants in the presence of police officers whenever possible. Police officers may force entry if they deem it necessary.
11. A person who intentionally obstructs a person in the exercise of any power granted by a warrant is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale³²⁵.

Prosecution

12. Prosecutions are brought by TV Licensing (a private prosecution). In deciding whether or not to bring a prosecution TV Licensing adopt the approach in the Code for Crown Prosecutors.³²⁶ TV Licensing must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction (the evidential test); and, where the evidential test is satisfied, TV Licensing must go on to consider whether a prosecution is required in the public interest (the public interest test).

Sentencing

13. A Magistrates' Court must have regard to the Magistrates' Court Sentencing Guidelines³²⁷ when assessing the fine to be imposed when a person has been convicted of a TV Licensing offence.³²⁸ The amount of the fine must reflect the seriousness of the offence and the court must take into account the financial circumstances of the offender; this applies whether it has the effect of increasing or reducing the fine. Normally a fine should be of an amount that is capable

³²³ Section 366.

³²⁴ Only a person so authorised by the BBC or Ofcom can exercise the warrant power (s.366(5) of the Communications Act 2003)

³²⁵ As a result of s.85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 being commenced on 12 March, level 5 fines are now 'unlimited'.

³²⁶ https://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html

³²⁷ https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG_web_-_October_2014.pdf

³²⁸ Section 125 of the Coroners and Justice Act 2009.

of being paid within 12 months. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level.

14. The court will identify an appropriate starting point. For example, the starting point for up to six months unlicensed use is a Band A fine (50% of relevant weekly income with a range of 25% to 75% of relevant weekly income) and over 6 months of unlicensed use a Band B fine (100% of relevant weekly income with a range of 25% to 125%).
15. The court will consider other aggravating factors (e.g. previous convictions) and mitigating factors. In particular, the following factors indicate lower culpability: accidental oversight or belief licence held, confusion of responsibility, licence immediately obtained. The court will consider offender mitigation (e.g. genuine remorse, cooperation) and a reduction for a guilty plea.
16. The court will decide the sentence and give reasons.

Enforcement of a fine

17. The procedure for the enforcement of fines is set out in sections 75 to 91 of the Magistrates' Court Act 1980 and the Courts Act 2003. The enforcement of fines is complex, so what follows can be considered to be a summary of the general process.
18. A court may allow time for payment of a fine or payment by instalments instead of requiring immediate payment. The court will make a collection order with the details about how the fine should be paid. If a person fails to pay the fine (or instalment) in the time allowed by the court, the court can issue a summons or warrant for the person to appear before the court in order to conduct a means inquiry to investigate the person's ability to pay.
19. As a result of the information received at the means inquiry the court has a number of options: the court may grant further time to pay the fine; change the instalment plan; remit some or all of the fine having regard to any change in the person's circumstances since conviction.
20. The court may only order imprisonment following such a means inquiry if it is satisfied that the failure to pay the fine is due to wilful refusal or culpable neglect. 'Wilful refusal' means a deliberate defiance of the court order and 'culpable neglect' means a reckless disregard of the court order. This must be established beyond reasonable doubt.
21. The court must have also considered or tried all other methods of enforcing payment (e.g. money payment supervision order, application for deduction from benefit, attachment of earnings order) and concluded that they are inappropriate or unsuccessful. The warrant of commitment (i.e. imprisonment) must state the grounds on which the court was satisfied that it was undesirable or impracticable to use the other methods of enforcement.

Consequences of a conviction

22. The offence of installing or using a television receiver without a TV licence (section 363 of the Communications Act 2003) is not a recordable offence.³²⁹ A conviction of this offence is unlikely to be recorded on the Police National Computer unless it was dealt with at the same time as a recordable offence.

23. A person is therefore not required to disclose such a conviction if asked to disclose convictions for recordable offences in any job or other application (e.g. insurance). A person is required to disclose such a conviction if asked to disclose all criminal convictions unless the conviction is spent.³³⁰ The rehabilitation period (i.e. the period after which the conviction is spent) for a conviction sentenced with a fine is 12 months from the date of conviction.³³¹

³²⁹ National Police Records (Recordable Offences) Regulations 2000.

³³⁰ There are exceptions - spent convictions must be disclosed in relation to particularly sensitive areas such as work with children and vulnerable adults, work in law enforcement and the legal system.

³³¹ Section 5 of the Rehabilitation of Offenders Act 1975 (as amended).

ANNEX E: ANALYSIS OF KEY EVIDENCE

Literature Review

1. There is no pre-existing evidence which is directly comparable to the issue of decriminalisation of TV licence evasion, however there is some literature which provides evidence on the relationship between law formulation and other crime rates, or crime rates in general. An internal review of this literature³³² suggests that the formulation of the law itself does not have a deterrent effect in itself. Rather, it suggests that it is the methods of enforcement, and likelihood of being caught, that have discernible deterrent effects.
2. These findings would suggest that the biggest behavioural changes seen after any law change would be due to changes in enforcement and detection. For example, the act of changing an offence from a criminal offence to a civil infraction would not change the behaviour of individuals (i.e. the likelihood of evasion) in itself, but the related changes to collection and enforcement would have an impact on behaviour.
3. A short summary of each of the individual studies reviewed is outlined in the table below.

Study reference	Key finding
Robinson, Paul, "Does Criminal Law Deter? A Behavioral Science Investigation" <i>Faculty Scholarship</i> . Paper 31. (2004). http://scholarship.law.upenn.edu/faculty_scholarship/31	This study concludes that changes in the formulation of the law have no deterrent effect; rather it is other factors, such as the method of enforcement, likelihood of conviction etc. that affects crime rates.
Schwartz, Barry "The Effect in Philadelphia of PA's Increased Penalties for Rape and Attempted Rape", <i>Journal of Criminal Law, Criminology & Political Science</i> 59, 509 (1968)	The study suggests that the imposition of stronger penalties had no effect on rates of rape in 1960s Philadelphia.
Lappi-Seppala, Tapio "The Fall of the Prison Population", <i>Journal of Scandinavian Studies in Criminology and Crime Prevention</i> 27 (2000)	This study concludes that a raft of decriminalisation in Finland in the 1950s, designed to reduce the prison population, had no effect on crime rates.
Ross, H. Lawrence "Law, Science, and Accidents", <i>Journey of Legal Studies</i> 1 (1973)	This study, based on the strengthening of penalties for drink-driving, suggests that the reason for the drop in crime rates was not the change to the penalty but the increased police presence on roads. This effect was also observed in another study by Ross, of French driving laws in 1978.

³³² Please note this was not a systematic review, so it is possible that some relevant evidence was not identified.

Andenaes, Johannes "The Scandinavian Experience" in Laurence, Michael D., Snortum, John R., and Zimring, Franklin E. (eds), <i>Social Control of the Drinking Driver</i> (1988) 43.	This study notes that drink-driving rates in Finland fell after a decriminalisation of the offence, thanks to an increase in detection efforts. In other words, reducing the penalty did not increase crime rates because more effort was made to prevent the crime in the first place.
Hood, Roger "Capital Punishment" Pp. 739-776 in <i>The Handbook of Crime and Punishment</i> , ed. by Michael Tonry. New York: Oxford University Press	The author finds no econometric evidence that capital punishment has a deterrent effect on crime.
Steven D Levitt "Why do Increased Arrest Rates Appear to Reduce Crime: Deterrence, Incapacitation, or Measurement Error?" 36 <i>Economic Inquiry</i> 353 (1998)	Levitt finds that arrest rates have a discernible effect on deterrence. He also criticises the methodology of a number of studies that do find a relationship between law formulation and deterrence.
von Hirsch, Andreas, Bottoms, Anthony E., Burney, Elizabeth and, Wikstrom. P.O. (1999) <i>Criminal Deterrence and Sentencing Severity</i> The Institute of Criminology at the University of Cambridge	The studies reviewed in this paper do not provide a basis for inferring that increasing the severity of sentences generally is capable of enhancing deterrent effects. In addition, in reviewing macro-level studies that examine offence rates of a specific population, the researchers find that an increased likelihood (certainty) of apprehension and punishment is associated with declining crime rates.
Cameron, Samuel. "The Economics of Crime Deterrence: A Survey of Theory and Evidence." <i>Kyklos</i> , 41(2), 301-23, 1988	This paper examines why the empirical evidence had (then) been unable to confirm the hypothesised link between certainty and severity of punishment, and crime rates, suggesting that other areas of research could provide the supporting evidence.
Witte, Anne. "Estimating the Economic Model of Crime with Individual Data." <i>Quarterly Journal of Economics</i> , 57-84, February 1980.	Witte found success in this paper where others before did not – testing the economic model of crime. A significant relationship was found in the data between punishment and crime rates.
Trumbull, William. "Estimations of the Economic Model of Crime using Aggregate and Individual Level Data." <i>Southern Economic Journal</i> , 423-39, October 1989.	This paper examines the empirical evidence and concludes that deterrence is the most important factor in explaining the relationship between crime and arrest rates.

Behavioural research on licence fee enforcement, Harris Interactive

Given the lack of directly comparable pre-existing evidence, we deemed it important to consider a study conducted by Harris Interactive in late 2014 which examined views and stated behaviour around licence fee enforcement.³³³ The study used a 25 minute online survey, supplemented by face-to-face hall tests and interviews, to gather the views of 2,692 adults (aged 16-74) across the UK who require and are responsible for paying a TV licence. This sample included many licence fee payers ('payers') as well as 207 people who evaded paying their licence fee ('evaders') and 615 who purposely delayed paying ('delayers').

The study explored:

- Reasons for paying, delaying or evading paying TV licences.
- Views on the most effectiveness of deterrents, particularly (for payers and delayers) which are perceived to be the most effective for making others pay
- Views on different enforcement models: criminal (the current model), civil, and a 'hybrid' model (involving a civil penalty for first-time offenders and a criminal penalty for repeat offenders), including various options within each model, using discrete choice modelling. Participants were presented with 12 different screens, each showing a particular criminal model, a particular civil model and a particular hybrid model whereby they had to select:
 - which would be most likely to make them pay their TV licence;
 - which was the fairest;
 - which was the right penalty; and
 - which was most likely to make other people pay their TV licence.

Unlike the pre-existing literature we had reviewed, this research suggests that the formulation of the law relating to the enforcement of TV licence fee evasion does have a deterrent effect. This difference may be due to the fact that this is survey research examining stated preferences and behaviour, rather than actual observed behaviour. Alternatively it could reflect specific characteristics of licence fee payment (as opposed to other offences) as the literature reviewed did not specifically relate to this offence.

Key findings

- A large fine or penalty in the order of £1000 (significantly higher than average fines under the current model) emerged as the most effective deterrent against licence fee evasion.
- The criminal deterrents of imprisonment, a criminal record and prosecution in the Magistrates' Court were seen as the next most effective.
- Responses to the survey indicate that evasion rates would increase if the current model was replaced with either a civil model or hybrid model involving a £150 fine as the initial penalty.
 - Under the current criminal model, with a fine of up to £1,000 possible, 5% of the UK population evade paying and 8.5% delay paying.
 - If the model was altered to a civil penalty with a fine of £150 evasion rates would increase to 8.9% and delaying to 11.3%.

³³³ As this work was commissioned by the BBC rather than Department for Culture, Media and Sport, we undertook a number of steps to quality assure the work which are described in the next section of this annex.

- o If the model was altered to a hybrid model, whereby first-time offenders received a civil penalty of a £150 fine but repeat offenders would be prosecuted and receive a fine of up to £1,000, evasion rates would increase to 6% and delaying rates to 11%.

Table 1: Predicted changes to evasion and delayed payment rates under civil or hybrid models, according to Harris Interactive study (2015)

	Current model (fine of up to £1000)	Civil model (penalty of £150)	Hybrid model (£150 penalty for first-time offenders)
Evasion rate	5% (actual)	8.9% (predicted)	6% (predicted)
Delayed payment rate	8.5% (actual)	11.3% (predicted)	11% (predicted)

- Under both a hybrid and civil model the fine amount was critical: the survey responses indicate that if a civil penalty of over £300 was set evasion rates would not change significantly from the current rate (5%). If, however, the civil penalty was set at below £100, evasion was predicted to increase to around 14%.
- Survey responses from across the UK indicated that the civil model was perceived to be fairer than both the current and hybrid model, but would be less effective at making people pay.

Overall, this suggests that if the current criminal model is replaced with a civil model, the penalty should be set at £300 or more in order for evasion rates to remain at current levels. However it should be noted that this is significantly higher than the current average fine of £170.³³⁴

Quality assurance

Harris Interactive's behavioural research on licence fee enforcement was commissioned by the BBC, so this was reviewed by analysts from the Department for Culture, Media and Sport's (DCMS) Evidence and Analysis Unit, to ensure that it was suitable for inclusion on the Review. In the first instance, the research report was reviewed by a Government social researcher. Questions and points of clarification from this review were then addressed in a meeting between Harris researchers, DCMS policy and analytical staff and members of the BBC team, which addressed specific aspects of the fieldwork and analysis process. Harris Interactive also submitted additional data to DCMS in order to better inform its understanding of the key findings.

From this process, the Department for Culture, Media and Sport is confident that the research is a robust study. In particular, we are reassured that:

- The questionnaire design was informed by qualitative research which included those who pay their TV licence fee, those who delay paying and those who evade paying.
- The survey sample is large and is representative of the general population (of those who require a TV licence).

³³⁴ Ministry of Justice consultation response.

- o The online survey sample was drawn from a large and established online panel which is also renewed through offline methods to ensure it is representative of the wider UK population.
- o This was boosted by hall test interviews, in which people participated in the survey via the same computer-based method but had been recruited offline, in order to ensure that a sufficient sample of licence evaders and delayers were surveyed.
- The discrete choice modelling technique (which was used to understand participants' views of the different models) is a well-established method used in social and market research.
- The survey studied stated behaviour, which can diverge from observed behaviour, hence the findings from the discrete choice modelling were calibrated to align with observed behaviour. This used an established formula and data from the BBC evasion model which is based on a number of verified data sources and audited by the National Audit Office.

ANNEX F: SUMMARY OF CONSULTATION PROCESS AND RESPONSES RECEIVED

Consultation process

The TV Licence Fee Enforcement Review Consultation Document was published on 12 February 2015, inviting responses to the Review during a consultation period running to 01 May. A wide range of consultation responses were received from members of the public and organisations (see table). During the consultation period the Review team gathered evidence internally and also held interviews and evidence-gathering sessions with a number of key stakeholders (see Appendix 1 for summaries and list of attendees).

After the consultation closed, all responses were analysed by the Review team based on their relevance to the 6 options and 34 questions set out in the Consultation Document, as well as their relevance to the wider Terms of Reference of the Review. The relevant responses³³⁵ were taken into account during the course of the Review, and some key findings have been incorporated into the final report.

Consultation responses

The Review received responses from members of the public by email and post. Consultation responses were also received from the following organisations:

BBC
Callcredit
Centre for Citizenship
Channel 4
Christians Against Poverty
Government of Guernsey (Legal Response)
Government of Jersey
Isle of Man Government
Ministry of Justice
Money Advice Trust
Producers Alliance for Cinema and Television (PACT)
Scottish Courts & Tribunals Service
TV Licence Resistance
Voice of the Listener and Viewer

Additional information was provided to the Review on request from:

³³⁵ The recent House of Commons Select Committee report 'The Future of the BBC' was published shortly before this Review's consultation opened (see Chapter 4). The report brought the public's attention to the debate around the BBC and the future of the licence fee. However, being far more wide-ranging than this Review, the CMS report may have prompted a number of responses to this Review's consultation which were outside the scope of the Review.

BBC Trust
BBC / TV Licensing
Capita
Crown Office and Procurator Fiscal Service (Scotland)
Ministry of Justice
Her Majesty's Courts and Tribunals Service

Annex F - Appendix 1: Interview and Evidence-Gathering Session List of Attendees.

As part of the consultation the Review conducted interviews with selected experts:

Anne Bulford, Sarah Jones, Pipa Doubtfire	BBC Executive
James Purnell & James Heath	BBC Executive
Alex Towers & Nick Prettejohn	BBC Trust
Andrew Bridgen MP	Member of Parliament
John Whittingdale MP	Member of Parliament, (then) Chair of Culture Media & Sport Select Committee
Lord Grade	House of Lords

Four evidence-gathering sessions were also held with the following attendees:

Academics and Consumer Organisations

Patrick Barwise	London Business School
Claire Milne	Consumer Forum for Communications
Richard Collins	City University
Colin Browne	Voice of the Listener and Viewer
Toni Charlton	Voice of the Listener and Viewer
Keith Wilkinson	Digital TV Group (DTG)
Sarah Clarke	Magistrates' Association (Adult Court Committee)
Dia Chakravarty	Political Director, TaxPayers' Alliance

Ministry of Justice and HMCTS

Ben Wood	Head of Crime (Summary Justice), HMCTS
Glenn Palmer	Criminal and Civil Law Policy, Ministry of Justice
Jenny Spowart	Courts Performance, HMCTS
Greg Watkins	Head of Civil Business Improvement, HMCTS
Grant Morris	Head of Criminal Enforcement, HMCTS
Anne Marie Goddard	Team Leader, Enforcement Reform, Ministry of Justice

Keir Hopley	Deputy Director, Civil and Criminal Law Policy, Ministry of Justice
Maia Fallon	Jurisdictional and Operational Support Officer, HMCTS

Devolved Administrations & Crown Dependencies

Carmel McLaughlin	Director, Communications Commission, Isle of Man Government
Paul Miele	Procurator Fiscal Depute, Policy Division, Scottish Government
Peter Willman	Head of Broadcasting and Media Policy, Scottish Government
Stephanie Peat	Telecommunications Policy Advisor, States of Jersey Government
Steven Pallot	Law Officers' Department, States of Jersey Government

BBC Trust & BBC Executive

Paul Wignall	Head of Commercial Management, TV Licensing
Pipa Doubtfire	Head of Revenue Management, TV Licensing
Richard Houston	Senior Policy Adviser, BBC
Jo Smart	Legal Adviser, TV Licensing
James Heath	Director of Policy, BBC
Ron Hand	Field Operations Lead, TV Licensing
Jason Jones	Head of Legal, TV Licensing (Capita)
Paul Edwards	Court Presenter, Capita
Gareth Tuck	Chief Financial Adviser, BBC Trust Unit
Colin Jones	Director of Field Operations, Capita