



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

# **THE DIGITAL SWITCHOVER HELP SCHEME**

A Scheme Agreement Between Her Majesty's Secretary  
of State for Culture, Olympics, Media and Sport and the  
British Broadcasting Corporation

Revised Agreement

*Presented to Parliament by the  
Secretary of State for Culture, Olympics, Media and Sport  
by Command of Her Majesty  
February 2012*



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# THE DIGITAL SWITCHOVER HELP SCHEME

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# THE DIGITAL SWITCHOVER HELP SCHEME

## PART1: INTRODUCTORY PROVISIONS AND DEFINITIONS

### CHAPTER 1: ESTABLISHING PRINCIPLES OF THIS SCHEME

#### 1. Legal basis and extent

- (1) This Scheme is called the Digital Switchover Help Scheme and has been agreed between the Secretary of State for Culture, Olympics, Media and Sport (“the Secretary of State”) and the British Broadcasting Corporation (“the BBC”) pursuant to clause 39 of the Agreement.
- (2) This Scheme applies in relation only to persons who are ordinarily resident in the United Kingdom; and assistance under this Scheme will be provided only at places in the United Kingdom.

#### 2. Responsibilities

- (1) The Secretary of State is responsible for Scheme policy, including determining the criteria by which—
  - (a) eligibility for assistance, and
  - (b) the nature of the assistance which is to be given, will be established.
- (2) The BBC is responsible for ensuring that assistance is provided in accordance with this Scheme, subject in particular to clause 3.
- (3) But, except where this Scheme provides that a particular function may not be entrusted to any other person, this Scheme is not to be taken to require assistance to be provided by the BBC itself.
- (4) Accordingly, the BBC may, if it thinks fit, make arrangements for its functions under this Scheme (including the exercise of any discretion) to be entrusted, whether pursuant to contract or otherwise, to any other person.
- (5) Functions may be so entrusted to another person in their entirety or to such extent as may be provided for by or under such arrangements.
- (6) This clause is without prejudice to the other powers (if any) of the BBC or the Secretary of State to make arrangements for their functions to be carried out, wholly or in part, by or with the assistance of any other person.

#### 3. Scheme expenditure

The arrangements for the funding of the BBC’s expenditure on this Scheme set out in Schedule 1 shall have effect.

#### **4. Scheme Governance**

The arrangements for the governance of this Scheme set out in Schedule 2 (which, in particular, establishes a Project Board and Policy Review Group and makes provision for financial accountability) shall have effect.

#### **5. Meaning of “the Administrator”**

In this Scheme, in relation to any function, references to “the Administrator” are references to the BBC, or to any person to whom the performance of that function has been entrusted by the BBC, as the case may require.

## **CHAPTER 2: DEFINITIONS**

#### **6. Definitions**

(1) In this Scheme—

“the Administrator” is to be construed in accordance with clause 5;

“the Agreement” means the Agreement between the Secretary of State and the BBC dated 30 June 2006, including any amendment to that Agreement made after that date;

“applicant” is to be construed in accordance with clause 11(2);

“assistance” means assistance described in Part 2 and otherwise provided in accordance with this Scheme;

“the BBC” means the British Broadcasting Corporation and (except in clause 2(2)) any subsidiary of the BBC to whom the BBC has entrusted the discharge of any of its functions under this Scheme;

“the Consumer Expert Group” means the body of that name established to advise the Government on consumer needs and expectations in relation to Digital Switchover;

“Digital UK” means the company registered as Digital UK Limited, or any person to whom its functions are transferred;

“DSDNI” means the Department for Social Development in Northern Ireland or any other Northern Ireland department or Minister to which or to whom that Department’s functions in relation to social security are transferred;

“DWP” means the Department for Work and Pensions or any other government department or Minister of the Crown to which or to whom that Department’s functions in relation to social security are transferred;

“home”, in relation to any person, means that person’s ordinary place of residence;

“ITV region” has the meaning given in clause 8(3);

“MOD” means the Ministry of Defence or any other government department or Minister of the Crown to which or to whom that Ministry’s functions in relation to war pensions are transferred;



“a public provider of information” means—

- (a) in relation to social security information, DWP and (in Northern Ireland) DSDNI;
- (b) in relation to war pensions information, the Veterans Agency; and
- (c) in relation to visual impairment information, a local authority and (in Northern Ireland) a Health and Social Services Board or Trust;

“the public service television channels” means the following services, namely, any UK Public Television Service, Channel 3, Channel 4, Channel 5 and (in relation to Wales) any public television service of the Welsh Authority; and “a public service television channel” means any of those services;

“a public television service of the Welsh Authority” has the meaning given in paragraph 24 of Schedule 12 to the Communications Act 2003;

“registered blind or partially sighted” means, in relation to a person, that he is registered as a blind or partially sighted person—

- (a) in England and Wales, in a register compiled under section 29(4)(g) of the National Assistance Act 1948;
- (b) in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994; or
- (c) with a Health and Social Services Board or Trust in Northern Ireland;

“Secretary of State” means the Secretary of State for Culture, Olympics, Media and Sport, or the Secretary of State for any other government department, or any other Minister of the Crown, to whom her functions are transferred;

“the specified charge” means the charge determined by the Secretary of State under Part 3 of this Scheme;

“transmission” means a transmission of electronic signals by wireless telegraphy, otherwise than by means of a satellite (and related expressions shall be construed accordingly);

“transmitter” means a main or relay transmitter used (whether wholly or partly) for transmitting one or more of the public service television channels;

“Veterans Agency” means the Agency of that name which is part of the MOD and which has responsibility for war pensions or any other agency, government department or Minister of the Crown to which or to whom the MOD’s functions in relation to war pensions are transferred or otherwise entrusted.

- (2) In this Scheme references to the reception of public services television channels means—
  - (a) the reception in an intelligible form of those public service television channels; and

- (b) in relation to an eligible person, includes a reference to any special services or facilities (such as audio description or subtitling) normally provided by that service that are needed by that person to ensure that he is able, so far as practicable, to—
  - (i) watch or listen to those television programme services; and
  - (ii) use any facilities normally provided by the service provider in association with those services (such as any interactive functions)
- (3) Clauses 104 to 109 of the Agreement (which make general provision about the interpretation of the Agreement) apply to this Scheme as they apply to the Agreement.

## **PART 2: RIGHTS AND OBLIGATIONS IN RELATION TO ASSISTANCE UNDER THE SCHEME**

### **CHAPTER 1: ELIGIBILITY FOR ASSISTANCE**

#### **7. Definitions for Part 2**

In Part 2 of this Scheme—

“applicable period of availability” has the meaning given in clause 8(4);

“attendance allowance” means the benefit of that name awarded pursuant to Part 3 of—

- (a) the Social Security Contributions and Benefits Act 1992, or
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“civil partner” means a person with whom a civil partnership has been formed within the meaning of the Civil Partnerships Act 2004;

“child” means a person for whom child benefit is payable; “child benefit” means the benefit of that name awarded under—

- (a) section 141 of the Social Security Contributions and Benefits Act 1992, or
- (b) section 137 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; “constant attendance allowance” means—
  - (a) an allowance awarded under Article 14 of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686) or by application of Article 8 of the Naval, Military and Air Forces (Death and Disablement) Service Pensions Order 2006 (S.I. 2006/606);
  - (b) the benefits awarded pursuant to section 104 of, and paragraph 8 of Schedule 6 to the Social Security Contributions and Benefits Act 1992 or section 104 and paragraph 8 of Schedule 6 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

- (c) a payment referred to under section 7(3)(b) of the Industrial Injuries and Diseases (Old Cases) Act 1975 (increase of an allowance under that Act where the person in respect of whom that allowance is payable requires constant attendance as a result of his disablement); or a payment under regulations 19 to 21 of the Social Security (General Benefit) Regulations 1982 or under regulations 17 to 19 or 41 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984;
- (d) a payment under regulation 44 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975 in respect of the need of constant attendance;
- (e) a payment under section 111, and paragraphs 6(4)(b) and 7(2)(b) of Schedule 8 to, the Social Security Contributions and Benefits Act 1992 or under section 111 and paragraph 4(2)(b) of Schedule 8 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
- (f) a payment under Article 8 of the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983 (S.I. 1983/136); “disability living allowance” means the benefit of that name awarded pursuant to Part 3 of—
  - (a) the Social Security Contributions and Benefits Act 1992, or
  - (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“eligible person” means a person eligible for assistance (see clause 8(1));

“income-related employment and support allowance” means an income-related allowance under Part 1 of—

- (a) the Welfare Reform Act 2007, or
- (b) the Welfare Reform (Northern Ireland) Act 2007;

“income-based jobseeker’s allowance” has the meaning given by—

- (a) section 1(1) and (4) of the Jobseekers Act 1995, or
- (b) article 3(1) and (2A) of the Jobseekers (Northern Ireland) Order 1995; “income support” means the benefit mentioned at—
  - (a) section 124 of the Social Security Contributions and Benefits Act 1992, or
  - (b) section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“mobility supplement” means a supplement awarded under Article 25A of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686) or by application of Article 20 of the Naval, Military and Air Forces (Death and Disablement) Service Pensions Order 2006 (S.I. 2006/606);

“notify” means notify in writing (and related expressions shall be construed accordingly); but any requirement to “notify” a person is not to be construed as preventing the Administrator from also contacting that person in some other way (such as by telephone), as well as notifying him;

“partner” means a member of a couple, namely—

- (a) a man and woman who are married to each other and normally live at the same address;
- (b) a man and woman who are not married to each other but normally live together at the same address as husband and wife;
- (c) two people of the same sex who are civil partners of each other and normally live at the same address;
- (d) two people of the same sex who are not civil partners of each other but normally live together at the same address as if they were civil partners.

“pension credit” has the meaning given by—

- (a) section 1 of the State Pension Credit Act 2002, or
- (b) section 1 of the State Pension Credit Act (Northern Ireland) 2002.

## **8. Eligibility criteria**

- (1) For the purposes of this Scheme, but subject to the exclusions set out in clause 9, a person is eligible for assistance (an “eligible person”) if, at the relevant time, one or more of the following apply to that person—
  - (a) he has attained the age of 75 years;
  - (b) he is entitled to disability living allowance, attendance allowance, constant attendance allowance, or mobility supplement; and DWP or DSDNI have confirmed such entitlement before the end of the applicable period of availability;
  - (c) he is registered blind or partially sighted.
- (2) In this Part, references to “the relevant time” are references to any day falling—
  - (a) within the applicable period of availability in relation to the ITV region in which the eligible person’s home is located; but
  - (b) before the time when the applicant receives notification from the Administrator of his determination of the application under clause 14(4).
- (3) In this Scheme, “ITV region” means the geographical area within which analogue terrestrial transmissions of a particular regional Channel 3 service (within the meaning of Part 1 of the Broadcasting Act 1990) are generally received.
- (4) In relation to any ITV region, “the applicable period of availability” is the period which—
  - (a) begins eight months before the date provided by the BBC as the date of the final switching-off of BBC1 analogue terrestrial services from the first transmitter serving that region to be switched off; and
  - (b) ends one month after the last such transmitter has switched off such services.

## **9. Persons excluded from eligibility**

A person is not an eligible person if—

- (a) he is detained in custody throughout the applicable period of availability;
- (b) he dies before a notification is issued to him by the Administrator under clause 14(4)(b);
- (c) he is not ordinarily resident in the United Kingdom;
- (d) he is an asylum seeker within the meaning of section 94 of the Immigration and Asylum Act 1999;
- (e) he has applied for asylum, that application has been refused, and he has not been granted exceptional or discretionary leave to remain or humanitarian protection;
- (f) his home is not covered by a television licence; unless his home only has installed equipment that can be used only to cause the production of sound through a device whose functions are limited to the production, or the production and recording, of sound;
- (g) he has already received assistance under this or any previous version of the Scheme;  
or
- (h) the Administrator has already issued a notification under clause 14(4)(b) to his partner or to a child (or to someone acting on that child's behalf) for whom he or his partner is receiving child benefit and where that child is living at the same address.

## **10. Determination of ITV region**

- (1) It is for the Administrator to determine, for the purposes of this Scheme (for example, in deciding whether to notify a person under clause 29 or to accept an application under clause 14) the ITV region, or ITV regions, in which an eligible person's home is located.
- (2) In making such a determination in relation to an eligible person, the Administrator must in particular take into account—
  - (a) the location of the eligible person's home;
  - (b) any guidance provided by Ofcom or Digital UK and any other person appearing to the Administrator to have relevant information; and
  - (c) if it appears to the Administrator that an eligible person's home is located in more than one ITV region, or is not in an ITV region—
    - (i) the nature, specification and technical configuration (including aerial alignment) of the apparatus which is or could be used to receive digital transmissions at the home;
    - (ii) the preferences of the eligible person;

- (iii) any steps that could reasonably be taken by the eligible person (with or without assistance) to enable transmissions to be received from any transmitter at their home and their cost; and
  - (iv) the need to ensure value for money in the operation of the Scheme.
- (3) For the purposes of paragraph (2) an aerial does not include equipment installed under the Community Television Relay scheme and licensed under the Wireless Telegraphy Act 1949 or the Wireless Telegraphy Act 2006.
- (4) For the avoidance of doubt, it is hereby declared that an eligible person's home may be located in more than one ITV region, but he may not receive assistance in relation to more than one such region.

## **CHAPTER 2: MAKING AND DETERMINING APPLICATIONS**

### **11. Persons who may apply**

- (1) An application for assistance may be made by—
- (a) the person seeking assistance, or (where that person is a child) the adult who receives child benefit for him and who lives at the same address; or
  - (b) any person appearing to the Administrator to be authorised (whether generally, such as under a Power of Attorney, or specifically, such as by a letter of authority signed by a member of the household) to make such an application on behalf of the person seeking assistance.
- (2) References in this Scheme to “an applicant” are to the person making an application for assistance, whether they fall within sub-paragraph (a) or sub-paragraph (b) of paragraph (1).

### **12. When and how applications are to be made**

- (1) Assistance is available in each ITV region for a limited period only, and accordingly, applications for assistance will not be duly made unless made—
- (a) during the applicable period of availability in relation to that ITV region, and
  - (b) in respect of an eligible person whose home is located within that ITV region, and in other respects is made in accordance with the provisions of this Chapter.
- (2) Applications for assistance may be made in response to a communication from the Administrator or on the initiative of an applicant, and may be—
- (a) in writing to the Administrator;
  - (b) by telephone to a call centre designated for the purpose by the Administrator;
  - (c) to an e-mail address specified by the Administrator for the purpose;

- (d) via a website maintained by the Administrator for the purpose; or
  - (e) by any other means which the Administrator may permit either generally or on a case-by-case basis.
- (3) Every such application must be accompanied by, or as the case may be, subsequently supported by, such evidence in relation to any criterion of eligibility that is relevant to the application as the Administrator may reasonably require (whether in general or in relation to a particular application).

### **13. e-Communications**

- (1) The Administrator may notify a person of any matter by e-mail or SMS text message if, but only if, that person has expressly notified the Administrator that he agrees to communications from the Administrator being sent to him in that manner.
- (2) The Administrator is not to be regarded as having received any application or other communication directed to him by telephone, e-mail or SMS text message unless that communication has been directed to him at a telephone number or e-mail address specified by him (whether generally or to a particular person) as one at which he is prepared to accept such communications.

### **14. Determination of applications**

- (1) As soon as practicable after receiving an application for assistance, the Administrator must either—
- (a) accept the application as having been duly made in accordance with this Scheme (and clauses 11 and 12 in particular); or
  - (b) decline to accept the application and notify the applicant of that fact, giving the reasons why the application cannot be accepted and explaining the steps (if any) that can be taken to make the application acceptable.
- (2) Subject to paragraph (3), where an application has been duly made in accordance with this Scheme the Administrator must notify the applicant in accordance with clause 15(1) and (2) within the time scale specified in the Code of Service Standards made under clause 28.
- (3) Where, in the course of determining an application for assistance, it appears to the Administrator that the application cannot be determined without further steps being taken by the applicant (such as the provision of additional information or such evidence as may be duly required under clause 12(3)) the Administrator shall notify the applicant of that fact and of the steps that need to be taken to enable the determination to proceed.
- (4) As soon as reasonably practicable after determining an application, the Administrator must notify the applicant—
- (a) that he (or, as the case may be, the person on whose behalf the application was made) is not an eligible person, giving his reasons for that decision, and providing information about the Scheme's Internal Review procedure and how to apply for an Internal Review of the Administrator's determination; or



- (b) where an application has been made on the initiative of an applicant, that he (or, as the case may be, the person on whose behalf the application was made) is an eligible person.

## **15. Notification**

- (1) The communication from the Administrator under clause 12(2) or a notification under clause 14(4)(b) shall also specify—
  - (a) the types of assistance which the eligible person is to be offered in accordance with clause 17;
  - (b) whether the eligible person is entitled to that assistance free of charge as provided in clause 16(1);
  - (c) if the eligible person is not entitled to the assistance free of charge, the specified charge and the arrangements for paying it as mentioned in clause 16(2).
- (2) Where an applicant has received a notification under clause 14(4)(b) the Administrator must allow him a period of 14 days in which he may notify the Administrator that he does not want to proceed with his application for assistance; and the Administrator must not proceed with the application if he receives such notification.
- (3) In cases where an eligible person dies after the Administrator has issued a notification under clause 14(4)(b);
  - (a) the claim will continue in the name of his surviving partner or child if that surviving partner or child is himself an eligible person living at the same address and (for this purpose) any change in entitlement to income support, income-based jobseeker's allowance, income-related employment and support allowance or pension credit which occurs as a consequence of the death shall be disregarded;
  - (b) if the eligible person's surviving partner or child living at the same address is not an eligible person, at the choice of that surviving partner or child, the Administrator must either continue to provide assistance or refund any charge paid; or
  - (c) if the eligible person is not survived by a partner or child living at the same address the Administrator is not required to continue to provide assistance where the deceased eligible person was entitled to receive such assistance free of charge and shall refund to the estate of the deceased eligible person or to the person who made it any sum paid in respect of the specified charge for that eligible person's claim.

## **16. Entitlement to free or paid-for assistance**

- (1) An eligible person is entitled to receive assistance free of charge if—
  - (a) he (or, as the case may be, a person acting on his behalf as mentioned in clause 11(1)) makes an application for assistance; and
  - (b) at the relevant time (within the meaning given in clause 8)—
    - (i) the eligible person,
    - (ii) his partner, or



- (iii) if the eligible person is a child, the relevant adult, is in receipt of pension credit, income support, income-based jobseeker's allowance, or income-related employment and support allowance.
- (2) An eligible person not entitled to receive assistance free of charge is entitled to receive assistance in return for payment of the specified charge if—
  - (a) he (or, as the case may be, a person acting on his behalf as mentioned in clause 11(1)) makes an application for assistance; and
  - (b) the specified charge for that assistance has been paid.
- (3) In paragraph (2), references to the specified charge having been paid are references to that charge having been paid in such manner and to such person as may be specified by the Administrator; and the Administrator must ensure that there is a range of methods for paying the charge suitable for use by eligible persons (but such methods need not include payment by instalments).
- (4) In paragraph (1)(b)(iii), in relation to an eligible person who is a child, "the relevant adult" means the adult who appears to the Administrator, according to information provided by a public provider of information, to live at the same address as that child and who is either
  - (a) the adult who receives child benefit for that child, or that adult's partner; or
  - (b) an adult who appears to the Administrator otherwise to be responsible for that child.

## **CHAPTER 3: ASSISTANCE UNDER THE SCHEME**

### **17. Types of assistance available**

- (1) The types of assistance to be provided to an eligible person shall be determined in accordance with this clause, but subject to clauses 18 and 19.
- (2) It is for the Administrator to—
  - (a) determine in accordance with Schedule 4 which type of assistance from those described in paragraph 2(1) of Schedule 3 will in his opinion constitute the most cost effective option of assistance which can be provided to eligible persons in a particular ITV region;
  - (b) determine whether any upgrade equipment may be offered to eligible persons choosing the most cost effective option of assistance in that ITV region, and the additional payment required for such equipment;
  - (c) determine in accordance with Schedule 5 whether any alternative assistance as described in paragraph 2(2) of Schedule 3 is to be made available to eligible persons in a particular ITV region; and
  - (d) subsequently, notify the applicant (pursuant to clause 15(1)) of the assistance which can be offered to the eligible person.

- (3) The Administrator’s notification must—
- (a) offer assistance determined in accordance with paragraph (2)(a);
  - (b) provide information about—
    - (i) any upgrade equipment; and the level of the additional payment payable by the eligible person for the provision of that equipment (as determined for the purposes of paragraph (2)(b)), if chosen by the applicant; and
    - (ii) the operation of the upper limit and the circumstances in which a review of the most cost effective option of assistance for the eligible person may occur; and
  - (c) offer assistance determined in accordance with paragraph (2)(c) (if any); and
  - (d) provide information about—
    - (i) that assistance; and
    - (ii) the appropriate payment which will be made to an alternative provider of that assistance, if chosen by the applicant.
- (4) In paragraph (2)(b) the additional payment—
- (a) is the amount by which the cost to the provider of the most cost effective option of assistance of providing the upgrade equipment chosen by the applicant (as determined in accordance with that paragraph) exceeds that of providing the equipment included in the most cost effective option of assistance for eligible persons in that ITV region, as determined in accordance with paragraph (2)(a); and
  - (b) does not include a reference to any sum payable by virtue of regulations made under section 364 of the Communications Act 2003 (TV licence fees).
- (5) In this clause—
- (a) “alternative assistance”, in relation to an eligible person, means such types of assistance described in paragraph 2(2) of Schedule 3 as are to be made available to that person;
  - (b) “alternative provider”, means a provider of assistance comprising television services described in paragraph 2(2)(b) of Schedule 3;
  - (c) “the appropriate payment” means a payment made by the Administrator to an alternative provider, following a referral of an eligible person to that provider by way of alternative assistance, of an amount determined in accordance with paragraph 5(2) of Schedule 3;
  - (d) “upgrade equipment” means any other equipment that the provider of the most cost effective option of assistance may offer to eligible persons in a particular ITV region choosing the most cost effective option of assistance, in return for which an additional payment is due; and
  - (f) “the upper limit” means the maximum cost, as determined by the Project Board from time to time, and in accordance with paragraph 5(2)(c) of Schedule 2 [value

for money], which may be borne by the provider of the most cost effective option of assistance where chosen by an applicant.

- (6) Where—
  - (a) alternative assistance is chosen by an applicant,
  - (b) the Administrator has referred the eligible person to an alternative provider and made the appropriate payment to that provider, and
  - (c) the 14 day period referred to in clause 15(2) has expired, the Administrator shall not be required to take any further action in relation to the delivery of assistance under this Scheme to that eligible person, unless the alternative provider refers the eligible person back to the Administrator in accordance with the provisions of this Scheme.
- (7) It is for the applicant to tell the Administrator which type of assistance offered he has chosen to receive.
- (8) In this clause, in relation to any equipment, “provision” includes the delivery of that equipment to the eligible person’s home.

#### **18. Provision supplemental to clause 17**

When making a determination under clause 17(2)(a), the Administrator must take into account, in relation to the location of the homes of eligible persons—

- (a) the predicted or actual digital terrestrial signals available for reception of the public service television channels after digital switchover at that location;
- (b) any guidance from Digital UK or Ofcom on the availability of digital terrestrial services at that location or generally; and
- (c) the predicted or actual availability of digital television services other than digital terrestrial television at that location.

#### **19. Operation of the Upper Limit**

- (1) The Administrator must review the determination made under clause 17(2)(a) in relation to a particular eligible person where—
  - (a) the Administrator has notified an applicant of the most cost effective option of assistance in accordance with clause 17(2)(a);
  - (b) that person has chosen the most cost effective option of assistance and informed the Administrator of that choice;
  - (c) the provider of the most cost effective option of assistance has subsequently assessed the home of that particular eligible person in relation to the delivery of the most cost effective option of assistance; and—
    - (i) reasonably estimates that the cost of providing the most cost effective option of assistance, to provide for the reception of the public service television channels, exceeds the upper limit as defined in clause 17(5), and
    - (ii) informs the Administrator of that estimate; and

- (d) the Administrator approves the estimate in paragraph (c).
- (2) Where the Administrator—
  - (a) reviews the determination in clause 17(2)(a) pursuant to paragraph (1), and
  - (b) determines that, in the case of the eligible person in question, a type of assistance that is, in that person’s case, cheaper than the most cost-effective option of assistance should be provided, he must re-notify the applicant in accordance with clause 14(4) (b) and clause 15.

**20. Equipment requirements**

- (1) The BBC and the Secretary of State must together draw up and approve an equipment specification, to be known as the “Core Receiver Requirements”.
- (2) The Core Receiver Requirements must include provision that applies to assistance described in paragraph 2(1) of Schedule 3.
- (3) Any equipment offered as part of the most cost effective option of assistance as determined in clause 17(2)(a) must meet in full the Core Receiver Requirements as may be amended from time to time.
- (4) The BBC and the Secretary of State must consult such bodies, including the Consumer Expert Group and other consumer groups, as it considers appropriate in drawing up the Core Receiver Requirements.
- (5) The Policy Review Group must keep the Core Receiver Requirements under review and may from time to time propose amendments for approval by both the BBC and the Secretary of State.
- (6) Any equipment offered under this Scheme must—
  - (a) in general be suitable for an older or disabled person to use; and
  - (b) be covered by a warranty which offers cover, and lasts for a period, which is in accordance with industry best practice, and in relation to equipment described in—
    - (i) paragraph 2(1)(a) and (b) of Schedule 3 that warranty must be offered by the Administrator, and
    - (ii) paragraph 2(1)(c) and (2) of Schedule 3 that warranty must be offered by the equipment supplier.

**20A. Care following assistance**

- (1) Where an eligible person has been provided with equipment as described in paragraph 2(1)(a) or (b) of Schedule 3, aftercare shall be provided to that person for a period of 12 months following the date of the installation of that equipment provided that person remains residing within the ITV region in which the equipment was provided.
- (2) The aftercare provided is in addition to the warranty provided for at clause 20(6)(b)(i).
- (3) In this Agreement, “aftercare” means the provision of advice and support in relation to the equipment provided.

## CHAPTER 4: INTERNAL REVIEWS AND APPEALS

### 21. Internal Review Procedure

- (1) The Administrator must establish an Internal Review procedure to deal with complaints relating to—
  - (a) any decision of the Administrator to decline an application for assistance;
  - (b) any decision of the Administrator not to proceed to determine such an application unless the applicant takes further steps;
  - (c) any determination of the Administrator that the applicant (or, as the case may be, the person on whose behalf the application was made) is not an eligible person;
  - (d) any determination of the Administrator that an eligible person is not entitled to free assistance;
  - (e) any determination of the Administrator as to the types of assistance which an eligible person will be offered;
  - (f) any decision of the Administrator in relation to the provision of assistance by the Administrator, including in respect of the reliability of the equipment supplied by the Administrator; and
  - (g) any decision of the Administrator about the standard of service provided by the Administrator under this Scheme.
- (2) The internal review procedure must include provisions to the effect of those set out in paragraphs (3) to (5).
- (3) A person making such a complaint (“the complainant”) must request an Internal Review within—
  - (a) 28 days of the date on which the Administrator sends a notification under clause 14(4);
  - (b) 28 days of the cause of complaint arising in paragraph (1)(f) or (1)(g); or
  - (c) within the warranty period for the equipment, where the complaint relates to the reliability of the equipment supplied.
- (4) The Administrator may extend the time limit mentioned in paragraph (3) for a complainant to request an Internal Review.
- (5) As part of the Internal Review procedure the Administrator must—
  - (a) take into account any relevant new evidence supplied by the complainant or any other person;
  - (b) notify the complainant of the outcome of the Internal Review within a reasonable time;
  - (c) notify the complainant of the matters specified in clause 15(1)(a) to (c) if relevant to the outcome of the Internal Review; and

- (d) notify the complainant of any further action the Administrator will take, or assistance which will be provided, as a consequence of the Internal Review.

## **22. Appointment of the Appeals Adjudicator**

- (1) The BBC Trust must appoint a person to be known as the Digital Switchover Help Scheme Appeals Adjudicator (“the Appeals Adjudicator”), after having first obtained the approval of the Secretary of State to that appointment.
- (2) The BBC Trust may appoint as Appeals Adjudicator—
  - (a) one or more members of the Trust;
  - (b) one or more members of the Trust Unit; or
  - (c) a person independent of the Trust.
- (3) The BBC Trust may not entrust the appointment of the Appeals Adjudicator to any other person.
- (4) The BBC Trust must ensure that the Appeals Adjudicator is able to hear and determine appeals of the kind referred to in clause 23, in accordance with clauses 24 and 25.
- (5) The Administrator must comply with decisions of the Appeals Adjudicator.

## **23. Matters against which an appeal lies**

Following the notification to him of the outcome of an Internal Review under clause 21(5)(b), a complainant may appeal to the Appeals Adjudicator against—

- (a) any decision of the Administrator to decline an application for assistance;
- (b) any decision of the Administrator not to proceed to determine such an application unless the complainant takes further steps;
- (c) any determination of the Administrator that the complainant (or as the case may be, the person on whose behalf the complaint is made) is not an eligible person;
- (d) any determination of the Administrator that the complainant (or as the case may be, the person on whose behalf the complaint is made) is not an eligible person entitled to free assistance;
- (e) any determination of the Administrator as to the types of assistance which the complainant (being an eligible person) is to be offered;
- (f) any decision of the Administrator in relation to the provision of assistance by the Administrator, including in respect of the reliability of the equipment supplied by the Administrator;
- (g) any decision of the Administrator following a complaint about the standard of service provided by the Administrator under this Scheme;
- (h) any refusal of the Administrator to extend the time limit for a complainant to request an Internal Review; and

- (i) any failure of the Administrator to conduct an Internal Review within a reasonable time or at all.

#### **24. How an appeal is made and determined**

- (1) Any appeal must be submitted to the Appeals Adjudicator within 28 days of notification of the outcome of the Internal Review mentioned in clause 21(5)(b) being sent, or in the case of an appeal under clause 23(i), within a reasonable time.
- (2) Subject to paragraphs (3) to (5) the Appeals Adjudicator will determine his own procedure in consultation with the Council on Tribunals and must issue a final decision within a reasonable time.
- (3) The Appeals Adjudicator must notify the person making the appeal (“the appellant”) and the Administrator of—
  - (a) the procedure to be followed for the appeal; and
  - (b) the fact that the appellant and the Administrator, may each make representations in writing.
- (4) The Appeals Adjudicator must—
  - (a) enquire into any dispute of fact between the appellant and the Administrator;
  - (b) consider any written evidence submitted to him and any responses to that evidence; and
  - (c) if he considers it necessary, arrange a hearing to investigate disputed facts, at which oral representations may be made.
- (5) The Appeals Adjudicator must issue his decision and his reasons for it in writing to the appellant and the Administrator and provide a copy to any other person who reasonably requests it.

#### **25. Powers of the Appeals Adjudicator on determining an appeal**

- (1) On determining an appeal, the Appeals Adjudicator may reach any decision which it would have been open to the Administrator to reach in respect of the matter appealed against.
- (2) The Appeals Adjudicator may substitute his own decision for that of the Administrator.

## **CHAPTER 5: PROVISION AS TO THE DELIVERY OF ASSISTANCE**

#### **26. Duty of the Administrator**

It shall be the duty of the Administrator, as soon as practicable after determining that an eligible person is entitled to assistance, or following a decision to that effect reached in an Internal Review or by the Appeals Adjudicator, to make arrangements for that assistance to be delivered to the eligible person, in accordance with that determination or decision.



# **PART 2A: RIGHTS AND OBLIGATIONS IN RELATION TO ASSISTANCE UNDER THE SCHEME FOR CARE HOME RESIDENTS**

## **CHAPTER 1: ELIGIBILITY FOR ASSISTANCE (CARE HOMES)**

### **26A. Definitions for Part 2A**

(1) In this Part—

“applicable period of availability” has the meaning given in clause 8(4);

“applicant” has the meaning given in clause 26E(3)(a) or (b);

“care home”—

- (a) in the application of this Scheme in England, means a care home within the meaning of the Care Standards Act 2000 as that Act has effect in England;
- (b) in its application in Wales, means a care home within the meaning of that Act as it has effect in Wales;
- (c) in its application in Northern Ireland, means a residential care home or a nursing home within the meaning of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, SI 2003 No. 431 (N.I. 9); and
- (d) in its application in Scotland, means a care home service within the meaning of the Regulation of Care (Scotland) Act 2001;

“care home resident” means a person whose home is in a care home, and who resides there for the purpose of receiving accommodation together with either nursing or personal care;

“Designated Person”, in relation to an ITV region or a part of such a region, means the person from time to time notified by the Secretary of State to the Administrator as the person responsible for the identification of persons resident in care homes in that ITV region or part thereof and for other functions in that connection under this Part; and that person may in particular be—

- (a) the Secretary of State for Culture, Olympics, Media and Sport or another Secretary of State;
- (b) a person engaged for the purpose by a Secretary of State; or
- (c) a devolved administration;

“necessary consent to disclosure” means in relation to any of the specified information relating to any person, the explicit consent of that person or of someone authorised to act on their behalf (whether that person is so authorised generally, such as under a Power



of Attorney, or specifically, such as by a letter of authority signed by a member of that person's family) for that information to be provided to the Administrator for use for purposes connected with the administration of this Scheme, including the provision of assistance under it;

“qualifying criteria” means the criteria mentioned in clause 26B(2); and

“specified information”, in relation to any person, means that person's name, address, date of birth and (where available) National Insurance number.

#### **26B. Eligibility criteria (care homes)**

- (1) A person who is not eligible for assistance in accordance with clause 8 is eligible for assistance under this Part if—
  - (a) before the end of the applicable period of availability, the Designated Person—
    - (i) determines under clause 26C that, at the relevant time, the qualifying criteria apply to that person; and
    - (ii) (accordingly) notifies to the Administrator under that clause the specified information relating to that person;
  - (b) none of the circumstances excluding a person from eligibility set out in clause 9 apply to that person; and
  - (c) on the day on which the Administrator sends to that person a notification under clause 14(4), that person is still a care home resident.
- (2) The qualifying criteria are that the person—
  - (a) is a care home resident; and
  - (b) has been a care home resident in that or another care home for a continuous period of at least six calendar months.
- (3) In this Part, references to “the relevant time” are references to any day falling—
  - (a) within the applicable period of availability in relation to the ITV region in which the eligible person's home is located; but
  - (b) before the time when the applicant receives notification from the Administrator in accordance with clause 14(4).

#### **26C. Determination of residence by the Designated Person (care homes)**

It shall be the duty of the Designated Person, in relation to every ITV region—

- (a) to identify, so far as practicable, all those persons in that region to whom, at the relevant time, the qualifying criteria apply; and
- (b) to notify to the Administrator the specified information relating to each such person, if (but only if) that person or someone authorised to act on that person's behalf has given the necessary consent to disclosure.

#### **26D. Designated Person’s internal review procedure (care homes)**

- (1) The Designated Person must establish an Internal Review procedure to deal with complaints that relate to any determination under paragraph 26B (1)(a)(i) that a person is not a person to whom the qualifying criteria apply at the relevant time.
- (2) The Internal Review procedure must include provisions to the effect that—
  - (a) a person making such a complaint (“the complainant”) must request an Internal Review within 28 days of the date on which the Administrator sends the notification under clause 14(4);
  - (b) the Designated Person may extend the time limit mentioned in sub-paragraph (a) for a complainant to request an Internal Review;
  - (c) no complaint may be made about a determination relating to any person unless the necessary consent to disclosure has been given for the specified information relating to that person; and
  - (d) as part of the Internal Review procedure, the Designated Person must—
    - (i) take into account any relevant new evidence supplied by the complainant or any other person; and
    - (ii) notify the complainant of the outcome of the Internal Review within a reasonable time.
- (3) Following the notification to him of the outcome of an Internal Review under this clause, a complainant (or a person acting on his behalf) may appeal to the Appeals Adjudicator against that outcome; and clauses 24(2) to (5) and 25 shall have effect in relation to such an appeal as they have effect in relation to an appeal against a matter mentioned in clause 23.
- (4) An appeal under paragraph (3) must be submitted to the Appeals Adjudicator within 28 days of notification of the outcome of the Internal Review being sent pursuant to paragraph (2)(d)(ii).

## **CHAPTER 2: MAKING AND DETERMINING APPLICATIONS (CARE HOMES)**

#### **26E. Applications (care homes)**

- (1) Clause 10 applies to the determination of the location of an eligible person’s home where that home is in a care home as it does in any other case under this Scheme.
- (2) In relation to an application for assistance under this Part—
  - (a) paragraphs (3) and (4) below apply instead of clause 11; and
  - (b) paragraph (5) below has effect instead of clause 12(1).
- (3) An application for assistance in a care home under this Part may be made by—

- (a) the person seeking assistance, or
  - (b) any person appearing to the Designated Person to be authorised to make such an application on behalf of the person seeking assistance (whether that person is so authorised generally, such as under a Power of Attorney, or specifically, such as by a letter of authority signed by a member of that person’s family).
- (4) Assistance is available in each ITV region for a limited period only, and accordingly, applications for assistance will not be duly made unless made—
- (a) during the applicable period of availability in relation to that ITV region, and
  - (b) in respect of an eligible person who is a care home resident in a care home located within that ITV region, and in other respects is made in accordance with the provisions of this Part.
- (5) Applications for assistance under this Part may be made to the Administrator by one of the methods mentioned in clause 12(2); and clauses 12(3), 13 and 14 to 20 shall apply to an application under this Part as they apply to an application under Part 2.
- (6) Clause 21 shall apply in relation to an application under this Part as it applies to an application under Part 2, except that it does not apply in relation to any complaint that falls to be dealt with by the Designated Person’s Internal Review Procedure by virtue of clause 26D(3).

## **CHAPTER 3: PROVISION AS TO THE DELIVERY OF ASSISTANCE**

### **26F. Duty of the Administrator**

It shall be the duty of the Administrator, as soon as practicable after determining that an eligible person is entitled to assistance under this Part, or following a decision to that effect reached in an Internal Review or by the Appeals Adjudicator, to make arrangements for that assistance to be delivered to the eligible person, in accordance with that determination or decision.

## **PART 3: SERVICE STANDARDS, CHARGES AND RELATIONS WITH OTHER BODIES**

### **CHAPTER 1: ROLE OF THE PROJECT BOARD**

#### **27. General duty of the Project Board**

It is the duty of the Project Board (see Schedule 2) to ensure that, within, and subject to, the terms of this Scheme, all aspects of this Scheme are operated in a manner that fully supports the needs of the classes of persons (that is to say, older people, disabled people and blind or partially-sighted people – see Part 2) whom this Scheme is intended to help, and their carers (to the extent necessary to enable any carer to assist a person in making and pursuing an application).

## **28. Code of service standards**

- (1) In performing its duty under clause 27, the Project Board—
  - (a) must prepare and publish a code containing the standards of service, including aftercare, to be attained in the operation of this Scheme;
  - (b) may amend the code of service from time to time;
  - (c) must publish the code each time it is amended; and
  - (d) must do all that it can to secure that this Scheme is operated in accordance with the standards contained in the code as published from time to time.
- (2) Before publishing such a code, the Project Board must consult—
  - (a) the Administrator, and
  - (b) the Consumer Expert Group.
- (3) The standards contained in the code (as may be amended from time to time) must be those that seem to the Project Board most likely to secure the following objectives—
  - (a) that the needs of the classes of persons whom this Scheme is intended to help and the persons who may care for them, and any differences in such needs that may exist as between such persons in different communities, are fully understood and reflected in the operation of the Scheme;
  - (b) that the Scheme and any communications made for or in connection with the Scheme by the Administrator—
    - (i) are likely to come to the attention of the classes of persons whom the Scheme is intended to help, and
    - (ii) are made easily accessible to such persons; and
  - (c) that staff engaged in delivering help under the Scheme are well-motivated, are good communicators, and are focused on customer needs.

## **CHAPTER 2: OTHER OBLIGATIONS OF THE ADMINISTRATOR**

### **29. Duty to notify potential claimants**

- (1) The Administrator must do all that he can to secure that, as respects each ITV region, every person notified to him by a public provider of information as being—
  - (a) a person whose home is located in that ITV region and potentially eligible for help under the Scheme, or
  - (b) a person who from the information so provided appears to be authorised to act on behalf of such a person, is contacted during the applicable period for that region, by

means of a letter setting out information about the Scheme and inviting applications for help.

- (2) The Administrator must also do all that he can to secure that no person such as is mentioned in paragraph (1) is contacted—
  - (a) more than three times, or
  - (b) (as the case may be) more than three times in respect of each ITV region in which that person's home is located, unless (whether in response to such a letter or otherwise) the person in question has made a claim for assistance under the Scheme or has otherwise solicited further communications.
- (3) This clause does not apply in relation to any person who is not identified by the Administrator (whether by using information provided by a public provider of information or otherwise) as being contactable at a particular postal address.

### **30. Other obligations of the Administrator**

- (1) The Administrator must do all that he can to secure that—
  - (a) persons receiving help under the Scheme do not suffer any break in the continuity of their reception of television programme services as a result of a failure by the Administrator to carry out his obligations;
  - (b) all persons engaged (whether by him or by any other organisation) to carry out work under the Scheme involving contact with members of the public are appropriately trained to work with the classes of persons whom the Scheme is intended to help and the persons who may care for them;
  - (c) no person is so engaged at a time when he is barred from activities involving children or vulnerable adults; and
  - (d) he deals sensitively with cases where the person entitled to help dies after his or her claim has been determined.
- (2) For the purposes of this clause, a person is barred from activities involving children or vulnerable adults at any time if, at that time, that person is—
  - (a) included in a list maintained under the Protection of Children Act 1999 or Part 7 of the Care Standards Act 2000,
  - (b) disqualified from working with children under Part 2 of the Criminal Justice and Court Services Act 2000,
  - (c) subject to a direction under section 142 of the Education Act 2002, or
  - (d) barred from regulated activity relating to children or adults, within the meaning of section 3 of the Safeguarding Vulnerable Groups Act 2006.

### **31. Setting the specified charge**

- (1) The charge payable by an eligible person who is not entitled to free help will be set from time to time by the Secretary of State and—

- (a) notified to Parliament by written statement; and
  - (b) communicated to the BBC Trust and the Administrator.
- (2) Before setting the charge, the Secretary of State must consult
- (a) the BBC as to the financial and operational implications of any proposed charge; and
  - (b) the Consumer Expert Group.

## CHAPTER 3: RELATIONS WITH OTHER BODIES

### 32. Services other than those provided by the Administrator itself

- (1) It is the duty of the Administrator to enter into appropriate arrangements with the providers of digital television services or equipment for the provision of such services or equipment to eligible persons (as defined in clause 8) (other than where the Administrator secures the provision of a service or equipment by himself providing that service or equipment to eligible persons).
- (2) Any such arrangements must be on terms that are—
- (a) fair, reasonable and non-discriminatory; and
  - (b) (without prejudice to sub-paragraph (a)) broadly the same, as between the different services or equipment other than services or equipment directly supplied by the Administrator.
- (3) The Secretary of State shall appoint, or arrange for the appointment of, an adjudicator to hear and determine any dispute between the Administrator and the provider of any such service as to whether the terms of any arrangements proposed to be made to which both would be parties are fair, reasonable and non-discriminatory. The Administrator must comply with determinations of the adjudicator.

### 33. Digital UK

- (1) The Administrator must make arrangements for the co-ordination and (where appropriate) integration of Digital UK's generic communications with other communications connected with the Scheme.
- (2) The BBC must use all reasonable endeavours to ensure that these arrangements include appropriate provisions for—
- (a) requiring Digital UK to consult the Administrator, the Consumer Expert Group and any other persons specified by or in accordance with the arrangements as to generic communications and their management;
  - (b) requiring Digital UK to consult suppliers of other digital television services or equipment in drawing up generic communications; and

- (c) agreeing with Digital UK a budget for their role under these arrangements, and the manner in which payments are to be made to Digital UK for that purpose.
- (3) In this clause, “generic communications” means any communications that are not specifically directed to a particular individual in connection with that individual’s entitlement (or otherwise) to help under the Scheme and the provision of such help, and includes any activities aimed at raising awareness of the Scheme, such as—
- (a) design of generic communications and developing tools for targeting eligible groups;
  - (b) advertising and public relations campaigns (conducted through any medium); and
  - (c) related research on awareness of the Scheme and the effectiveness of Scheme communications.
- (4) But generic communications do not (in particular) include—
- (a) the assembly and mailing of communications to particular individuals;
  - (b) contact centre operations;
  - (c) handling requests for help;
  - (d) dealing with individual complaints, reviews or appeals.

#### **34. Public providers of information**

- (1) The Administrator must—
- (a) make arrangements for requesting and receiving social security, war pensions and visual impairment information from public providers of information and for safeguarding the security of any information received,
  - (b) subject to paragraph (2), do all that he can to ensure that those arrangements are complied with in the handling of such information for the purposes of the Scheme.
- (2) Where, for reasons beyond its reasonable control, such information is unobtainable or unavailable, the BBC will be relieved of its obligation in clause 2(2) to provide assistance under this Scheme to the extent to which it is no longer possible for it to do so.
- (3) The use of data supplied by DWP for purposes other than a function of the Scheme is not permitted.

#### **35. Provision of Information**

The Administrator must, if so requested by DWP, make arrangements for supplying information about the operation of the Scheme to DWP, its agencies, DSDNI, and the Veterans Agency and comply with any Memorandum of Understanding agreed between DSHS Ltd and DWP.

### **36. Charitable and other not-for-profit organisations**

- (1) The Administrator must make such arrangements, if any, as it considers appropriate for the provision of further help to those who have received help under the Scheme, and for providing funding for the implementation of such arrangements.
- (2) Those arrangements should, so far as possible, be made with charitable and not-for-profit organisations.

## **PART 4: SUSPENSION AND WINDING UP**

### **37. Suspension of Scheme**

- (1) The provisions of this Scheme are conditional on no decision or judgement being made by a competent body in relation to any provision of the EC Treaty or legislation based upon the EC Treaty (“EC law”) in respect of the Scheme which has the direct or indirect effect of preventing or obstructing the operation or funding of the Scheme. If any such decision or judgement is made or threatened by a competent body, the Secretary of State may suspend the continued operation of the Scheme until such time as suitable arrangements have been made or suitable steps have been taken so as to allow the implementation of the Scheme to continue without being prevented or obstructed by the decision or judgement made or threatened under EC Law.
- (2) Any suspension of this Scheme in accordance with this clause is not to be taken as a breach by the BBC or the Secretary of State of their obligations under the Agreement or this Scheme. The costs of any suspension will be met from the provision set aside for the Scheme described in paragraph 3 of Schedule 1.

### **38. Winding up of the Scheme**

This Scheme shall terminate no later than 14 months after the final date set for switchover in the last region in which switchover is to take place.

**JON ZEFF** An official duly authorised to act on behalf of the Secretary of State for Culture, Olympics, Media and Sport

**NICHOLAS KROLL** Director, BBC Trust An officer duly authorised to act on behalf of the BBC Trust

**Date: 24 May 2011**



# SCHEDULE 1: EXPENDITURE, FINANCING AND BORROWING

## 1. Costs of the Scheme

- (1) The costs of the Scheme (including its overheads, financing, administrative and marketing/communication costs) estimated at £603 million in nominal terms over the lifetime of the licence fee settlement (from 2007/8 to 2012/13), will be ring-fenced. These funds must only be used to pay for the Scheme; the BBC will not be required to contribute any more than that amount from its public service and other resources if the licence fee is not increased beyond the “base case” settlement (under which the licence fee would be up-rated by 3/3/2/2/2/0% between 2007/8 and 2012/13).
- (2) In the event that there is a cost overrun above £603m, this will not be at the expense of the BBC’s programmes, services or other resources. The precise mechanism for achieving this, should the need arise or be anticipated, will be determined at the appropriate time.
- (3) If Scheme expenditure is forecast to be less than the estimated budget of £603m, decisions on how this underspend is dealt with will be taken by the Secretary of State in consultation with the BBC. To the extent that the underspend is to be applied to any scheme or project not administered by the BBC then, insofar as it has received funds in accordance with paragraph 3 which have not been required by the Scheme by the end of the financial year to which those funds relate, the Secretary of State may direct the BBC to repay the relevant funds to him (or, at the Secretary of State’s direction, to the Government of Jersey, Guernsey, or the Isle of Man).
- (4) Once such a repayment has been made, the responsibility for those funds and for the value for money which they provide will pass to the Secretary of State or to the Government of Jersey, Guernsey or the Isle of Man, according to which of them has received the repayment.

## 2. Borrowing Limits

The BBC Trust undertakes that the BBC will not plan to have more than £150m borrowing outstanding against its £200m limit for non Scheme-related borrowing, and will only do so in exceptional circumstances determined at the sole discretion of the BBC Trust.

## 3. Financial Arrangements

The Secretary of State has agreed with the BBC Trust that the £603m estimated cost of the Scheme will be divided into annual amounts to be set aside from the licence fee for the purpose of funding the Scheme. In nominal terms, these sums are as follows:

2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
£12.6 m	£67.6 m	£129.6 m	£159.0 m	£160.7 m	£73.5 m

## 4. Extensions to Borrowing

- (1) In accordance with the terms set out in sub-paragraphs (2) and (3), the Government will consider any request for an increase in the additional borrowing limit of £25m (permitted for the Scheme), in any year in which the Trust expects total spending (including overheads

and financing costs) on the Scheme to exceed the agreed provision made (including any provision which may be available from any previous underspends against the agreed provision) by more than the borrowing capacity which is otherwise available.

- (2) Where the Trust's expectation, supported by evidence, is that the total spend over the settlement period will remain within the ring-fence of £603m, the Government will expect to accede to any request, subject to sub-paragraph (4).
- (3) Where the Trust's expectation, supported by evidence, is that the total spend over the settlement period will be in excess of the ring-fence of £603m, the Government will expect to accede to any request, subject to sub-paragraph (4) and to considering:
  - (a) alternative ways of meeting expenditure above the agreed profile, without reducing the funding available for the BBC's programmes and services or reducing its other resources; and/or
  - (b) measures to reduce the expected cost of the Scheme in order to maintain expenditure within the ring-fence limit. The Government will agree with the Trust the impact of any such measures on the costs of the Scheme.
- (4) The Government will otherwise only refuse a request in exceptional circumstances related to the fiscal or macroeconomic position, unrelated to the BBC's position, in which case it will give the Trust its reasons for doing so.
- (5) The Government will complete its consideration of all requests from the BBC within 28 days of receipt.

## **5. Reporting Obligations**

The BBC Trust will report annually on how it has complied with its obligations in relation to the Scheme. The Trust will ensure that the Scheme is operated in a way which provides value for money on behalf of licence fee payers and will discuss with the National Audit Office arrangements for reviewing the value for money of the operation of the Scheme.

## **6. Suspension of Financial and Operational support for the Scheme**

If it appears to the Trust that funding for the Scheme can no longer be provided within the conditions set out in paragraphs 1 to 5 above, and continued funding would thus put at risk the BBC's programmes, services or other resources, the Trust may suspend financial and operational support for the Scheme until those conditions can be met thereby avoiding that risk. The costs of any suspension will be met from the provision set aside for the Scheme described in paragraph 3 of this Schedule. The Trust will give the Government its reasons for suspension.

# **SCHEDULE 2: GOVERNANCE AND ACCOUNTABILITY**

## **SECTION A: STRUCTURES**

### **1. The Project Board**

- (1) A project board will be established in accordance with this Schedule, to be known as the DSHS Project Board (“the Project Board”).
- (2) The Project Board will be constituted as follows—
  - (a) four members appointed by the Executive Board of the BBC, one of whom shall be appointed by the Executive Board to be the chairman of the Project Board;
  - (b) one observer appointed by each of the BBC Trust, DCMS, DWP and Digital UK, respectively; and
  - (c) one Office of Government Commerce adviser appointed by DCMS, to attend as appropriate.
- (3) All decisions taken by the Project Board are to be taken by the members appointed by the BBC Executive Board under sub-paragraph (2)(a) only.
- (4) The members of the Project Board are to carry out only the functions that are delegated to them in their capacity as members of the Project Board, according to this Schedule (see below).
- (5) The BBC Trust will set out in a written instrument—
  - (a) the Project Board’s remit (subject to sub-paragraph (6));
  - (b) details as to the manner in which the Project Board is to fulfil its remit; and
  - (c) particulars of the occasions on which the Project Board is to make reports to the Trust, of the occasions on which or circumstances in which the Trust may require such reports, and of the matters to be contained in any such report.
- (6) The remit of the Project Board includes the functions contained in Part 3 of this Scheme, and must also include—
  - (a) advising the BBC on the selection of one or more contractors to operate the Scheme; and
  - (b) monitoring the Administrator’s performance and securing (in particular) that value for money is achieved.
- (7) The Project Board may invite the Administrator to report to or be represented (or both) at its meetings.

- (8) The Project Board must from time to time consult the Consumer Expert Group about matters relating to the Project Board's remit, and the Consumer Expert Group can request a joint meeting with the Board at least twice a year if the Group considers that there is a need for such a meeting.
- (9) The role of any person appointed to serve in any capacity as part of the Project Board may be undertaken by that person's duly-appointed alternate; and any defect in the appointment of any such person (or alternate) shall not affect the validity of the Project Board's proceedings.

## **2. The Policy Review Group**

- (1) A group to be known as the Policy Review Group will meet regularly; and its remit will be as set out below.
- (2) The Policy Review Group will be chaired by DCMS and its membership will consist of one member appointed by each of the following, that is to say—
  - (a) DCMS;
  - (b) the BBC Trust;
  - (c) the Executive Board of the BBC;
  - (d) DWP; and
  - (e) Digital UK.
- (3) The Policy Review Group may also invite—
  - (a) any other person to attend any of its meetings;
  - (b) any other organisation to appoint a person to be a member of the Group.
- (4) The principal function of the Policy Review Group is to act as an advisory group to be called upon by DCMS to provide its views on complex or controversial issues in connection with a proposal made by the Secretary of State to amend the Scheme.
- (5) If any question arises as to whether consideration of a matter is for the Project Board rather than the Policy Review Group, or vice versa, that question shall be determined by the BBC Trust.
- (6) Any matter referred to the Policy Review Group by the Project Board will be discussed by the Group as soon as reasonably practicable, having regard to the nature and urgency of the matter in question.
- (7) The Project Board will send a representative to every meeting of the Policy Review Group; and that Group will at every meeting receive a report from the Project Board as to the operation of the Scheme in the period since the last report.
- (8) The Policy Review Group must from time to time consult the Consumer Expert Group about matters relating to the Scheme that fall within the Policy Review Group's remit.

- (9) The role of any person appointed to serve in any capacity as part of the Policy Review Group may be undertaken by that person's duly-appointed alternate; and any defect in the appointment of any such person (or alternate) shall not affect the validity of the Policy Review Group's proceedings.

### **3. Decision-making and change management**

- (1) The Secretary of State may, at the suggestion of the Policy Review Group, the BBC, or on his own initiative, but subject to the following provisions of this paragraph, propose a change to the Scheme.
- (2) If the proposed change to the Scheme appears to involve—
- (a) an increase in the costs of the Scheme (whether or not above the total estimated cost, or agreed annual profile, set out in Schedule 1), or
  - (b) a significant practical or legal impact on the operation of the Scheme,
- or both, the proposed change cannot be adopted unless he and the Policy Review Group have first received a report of the kind mentioned in sub-paragraph (3).
- (3) A report under this sub-paragraph is a report approved by the BBC Trust which—
- (a) sets out the costs of the change or (as the case may be) its practical or legal impact, or both, and
  - (b) indicates whether or not the change can be implemented and operated within the total estimated cost, or agreed expenditure profile, set out in Schedule 1;
- (and in the case of a change that cannot be implemented and operated within that total estimated cost or agreed expenditure profile, the matter will fall to be dealt with according to the provisions of Schedule 1).
- (3A) If, and to the extent that, a proposed change involves a matter of Scheme policy within the meaning of clause 2(1), the Secretary of State, having considered the content of—
- (a) any report provided under sub-paragraph (3), and
  - (b) any advice given by the Policy Review Group,
- may make, amend or withdraw the proposed change.
- (3B) In the case of any changes not falling within paragraph (3A), the change must be agreed between the Secretary of State and the BBC, after each has considered any advice given by the Policy Review Group.
- (3C) Where the Secretary of State amends a proposed change, that amended proposal shall be subject to the provisions of this paragraph as if it were a new proposal.
- (4) Any other matter discussed by the Policy Review Group will be dealt with in a manner appropriate to its subject-matter and having regard, in particular, to the extent of any authority delegated to members of the Group by the organisation that appointed them.

#### **4. Changes to the Scheme by the Secretary of State**

- (1) If the condition referred to in sub-paragraph (2) is satisfied, the Secretary of State may amend the Scheme in such a way as she considers necessary to ensure that the Scheme complies with competition law and the law governing State Aids, but only after complying with the provisions of this paragraph.
- (2) The condition is that the Secretary of State considers there is a risk that the Scheme does not comply with competition law or the law governing State Aids (owing to developments in the law, new legal advice or otherwise).
- (3) Before making any amendments to the Scheme under this paragraph, the Secretary of State must—
  - (a) request a report on the changes she proposes from the BBC (which report must be approved by the BBC Trust), and a report on those changes from the Policy Review Group; and
  - (b) provided any such reports are received by her within a reasonable time, take them into account in determining what amendments to the Scheme are necessary and appropriate.
- (4) A report referred to in sub-paragraph (3) may:
  - (a) include information or opinion as to the likely costs of the proposed changes or (as the case may be) their practical or legal impact, or both;
  - (b) indicate whether or not, in the opinion of the author of the report, the changes could be implemented and operated within the total estimated cost, or agreed expenditure profile, set out in Schedule 1.
- (5) If a report approved by the BBC Trust and received by the Secretary of State under this paragraph includes any opinion, supported by evidence, to the effect that the proposed changes to the Scheme would require action in accordance with paragraphs 1(2) or 4(1) of Schedule 1, the Secretary of State must, as soon as practicable after receiving the report, make proposals in writing to the BBC Trust as to what action she thinks would be appropriate.

## **SECTION B: ACCOUNTABILITY**

#### **5. Value for money**

- (1) The BBC Trust is responsible for holding the BBC Executive Board to account for ensuring that value for money is achieved in the operation of the Scheme.
- (2) The BBC Trust will (in particular)—
  - (a) determine performance indicators;
  - (b) determine how it will measure the performance of the Administrator against those indicators; and

- (c) ensure that the Scheme is operated in a way that will provide value for money for licence fee payers.

## **6. The BBC Trust's annual progress report**

The BBC Trust's annual report on digital switchover (which it must produce pursuant to clause 41 of the Agreement) must contain information about the operation of the Scheme, including (in particular) information about performance indicators mentioned in paragraph 5 and the performance of the Administrator.

## **7. Accounts of the Scheme**

- (1) The BBC will prepare annually a statement of accounts for the Scheme which sets out the expenditure incurred by the BBC under this agreement.
- (2) The Trust will require the statement of expenditure to be examined and certified by an external auditor.

## **8. Reports by the Project Board to the Trust**

- (1) Each month, the Project Board must produce and send to the Trust a report on the operation of the Scheme and the costs that the operation of the Scheme has incurred in the period since the last report was produced.
- (2) The Trust may also ask the Project Board to produce and send to the Trust a report on any aspect of the operation of the Scheme and the costs of that aspect of the Scheme that may be specified in the request. The Trust may make such a request whenever the Trust considers it reasonable to do so, and the Project Board must comply with that request.
- (3) A report under this paragraph must contain such information or comment as the Trust may reasonably require, including (if so required) the Project Board's observations on whether value for money has been achieved during the period covered by the report or (as the case may require) in relation to any particular aspect of the operation of the Scheme.

# **SCHEDULE 3: ASSISTANCE UNDER THIS SCHEME**

## **1. Introductory**

- (1) The duty of the Administrator under clause 17(3)(a) to offer assistance from those types of assistance specified in paragraph 2(1) of this Schedule is a duty to offer an eligible person such assistance as the Administrator considers to be the most cost effective option of assistance which can be provided, in accordance with clause 17(2)(a), but subject to paragraph 4 below.
- (2) The duty of the Administrator under clause 17(3)(b) to offer assistance from those types of assistance specified in paragraph 2(2) of this Schedule is a duty to offer an eligible person such assistance as the Administrator considers constitutes alternative assistance which can be provided, in accordance with clause 17(2)(c), but subject to paragraph 4 below.
- (3) The eligible person is not entitled to assistance in respect of more than one television set.



- (4) Expressions used in this Schedule and in clause 17 have the same meaning in this Schedule as they have in that clause.

## **2. Types of assistance**

- (1) The most cost effective option of assistance will in all cases comply with the Code of Service Standards as published in accordance with clause 28 of the Scheme and will consist of—
- (a) the provision of equipment chosen by the applicant from that offered by the Administrator, being equipment that will enable the eligible person to receive the public service television channels at his home by means of free-to-view digital terrestrial television; or
  - (b) the provision of equipment chosen by the applicant from that offered by the Administrator, which will enable the eligible person to receive the public service television channels at his home by means of a free-to-view service (other than free-to-view digital terrestrial television); or
  - (c) the provision of equipment chosen by the applicant from that communicated by the Administrator and offered by another provider of free-to-view services, which will enable the eligible person to receive the public service television channels at his home by means of a free-to-view service.
- (2) Alternative assistance may consist of—
- (a) the provision of equipment as described in sub-paragraphs (1)(a) and (b) where such assistance has not been determined by the Administrator, in accordance with clause 17(2)(a), as the most cost effective option of assistance;
  - (aa) the provision of equipment as described in sub-paragraphs (1)(a) and (b) where such assistance has not been determined by the Administrator, in accordance with clause 17(2)(a), as the most cost effective option of assistance but where such equipment is necessary to achieve the more widespread availability of Teilifís na Gaeilge in Northern Ireland in accordance with the Belfast (Good Friday) Agreement of 1998, and where equipment provided under this clause is to be provided to an eligible person either free or for the specified charge in accordance with clause 16 of the Scheme; or
  - (b) an offer to refer the eligible person to an alternative provider of—
    - (i) other free-to-view services (if any) that are available to him; or
    - (ii) pay-TV services (if any) that are available to him;where the assistance provided by those providers will enable the eligible person to receive the public service television channels at his home and, so far as reasonably possible, comply with the Code of Service Standards as published in accordance with clause 28 of the Scheme.
- (3) Assistance under sub-paragraph (1) must include, and that under sub-paragraph (2) may include, an offer to provide, and where appropriate then provide, supplemental services including one or more of the following—
- (a) assistance to install, and demonstrations of, the use the equipment provided;



- (b) assistance to install, repair, replace, reposition or re-wire a television aerial (other than a set-top aerial), a satellite dish or other equipment, at the eligible person's home so as to enable that person to receive the public service television channels in the relevant ITV region;
  - (c) provision of, and assistance to install, a set-top aerial suitable for the reception of the public service television channels at the eligible person's home by means of digital terrestrial television.
- (4) Assistance under sub-paragraph (3) may consist of such other supplemental services, not mentioned above, as the Administrator may specify in a notification given under clause 17(2)(d).

### **3. Provisions supplemental to paragraph 2**

- (1) The requirement imposed on the providers of the most cost effective option of assistance by sub-paragraph (1) of paragraph 2 and clause 17(3)(a) to offer equipment is not to be taken to require the those providers to offer more than one model of each type of equipment, where any equipment's "type" is defined by reference to its general functionality, but not its specific capabilities.
- (2) In paragraph 2, "free-to-view", in relation to any means of transmitting television programme services in digital form, is a reference to a means of transmitting such services that is not a pay-TV service.
- (3) In paragraph 2, "pay-TV service" means any service (including satellite or cable television and any other means of distributing television programme services)—
  - (a) by which a person may receive television programme services; but
  - (b) in relation to which—
    - (i) a subscription or other recurring payment is, or will be in the future, required as a condition of receiving one or more channels in intelligible form; or
    - (ii) some positive action is required to be taken by a person now or in the future in order to prevent such further charges from being incurred; and
  - (c) which either provides reception of the public service television channels as part of the service, or provides equipment which allows the reception of those channels in addition to any channel for which a payment is required.
- (4) In paragraph 2, in relation to an eligible person, "the relevant ITV region" means the ITV region in which that person's home is located, as determined by the Administrator under clause 10.
- (5) Where an eligible person is offered assistance under clause 15(1) which includes assistance of a type under paragraph 2(2)(b), the Administrator—
  - (a) must contribute either—
    - (i) the value of the appropriate payment (as defined in clause 17(5) and calculated in accordance with paragraph 5), towards the alternative provider's cost of providing that assistance, or
    - (ii) if less, the full cost to the alternative provider of that assistance; and

- (b) is not responsible for meeting any charges due to the alternative provider beyond making the payment mentioned in sub-paragraph (a).

#### **4. Long term residential accommodation**

- (1) This paragraph applies in a case where—
  - (a) the eligible person's home is in long-term residential accommodation within a building with common areas maintained through the payment of service charges, or
  - (b) it appears to the Administrator that the eligible person is not responsible for, or does not or cannot consent to, the installation or maintenance of an external aerial or satellite dish.
- (2) In a case to which this paragraph applies, the Administrator may offer assistance under sub-paragraph (3)(b) or (c) or sub-paragraph (4) of paragraph 2.
- (3) Assistance may only be provided under (3)(b) of paragraph 2 where—
  - (a) the eligible person has obtained any consent necessary to permit the assistance to be provided in that form, or
  - (b) the Administrator is satisfied that the eligible person has made all reasonable attempts to obtain that consent.
- (4) In the case of assistance provided under (3)(b) of paragraph 2, if the Administrator is informed in writing within 6 months after installation of any equipment by a landlord whose consent was required before assistance could be provided in that form that such consent is properly refused, any equipment already installed must be removed by the Administrator, and any consequent damage made good.
- (5) In this paragraph “consent” means—
  - (a) any formal consent required to be obtained under the terms of a lease or tenancy agreement made between the eligible person and a person (whether or not the immediate landlord) who is the owner of the interest in the reversion expectant (whether immediately or not) on the termination of the tenancy, or
  - (b) where a rented property is not held on such a lease, a licence granted by the licensor permitting the provision of the assistance, and
  - (c) any other consent or licence which may be necessary given the nature of the obligations owed by the eligible person to any other person in connection with the accommodation at which the assistance is to be provided.
- (6) Where assistance is provided in accordance with sub-paragraph (3)(b) of paragraph 2, title to any equipment provided in accordance with that assistance passes to the eligible person upon the permanent affixing of that equipment to the fabric of the eligible person's accommodation, and, if such equipment is removed by the eligible person, the Administrator will not be responsible for any making good required by such removal.

**5. Payments to be made to alternative providers (including pay-TV services)**

- (1) Where an eligible person (or a person acting on his behalf as mentioned in clause 11(1)) chooses to receive digital television by means of a service provided by an alternative provider, the Administrator is not responsible for meeting any charges due to the alternative provider of that service beyond the payment he is obliged to make mentioned in subparagraph (2).
- (2) The Secretary of State—
  - (a) shall appoint a suitable expert who shall set, and from time to time review, the criteria to be applied by the Administrator in respect of calculating the appropriate payment to be made to the alternative providers of assistance to eligible persons entitled to help under the Scheme in a particular ITV region; and
  - (b) may, from time to time, notify the suitable expert of any principles which are to be taken into account when setting the criteria in sub-paragraph (2)(a).
- (3) The principles notified to the expert appointed under sub-paragraph (2) must (in particular) secure that the appropriate payment set by the Administrator for a particular ITV region is an amount considered by him to be equal to the estimated average cost of providing the most cost effective option of assistance to eligible persons in that ITV region.
- (4) The expert appointed under sub-paragraph (2) must approve—
  - (a) the level of payments to be made by the Administrator to the alternative providers of assistance in a particular ITV region in accordance with sub-paragraph (3); and
  - (b) the level of the upper limit as defined in clause 17(5).

## **SCHEDULE 4: CALCULATION OF THE MOST COST EFFECTIVE OPTION OF ASSISTANCE**

**1. Considerations relating to the most cost effective option of assistance under the Scheme**

In determining for the purposes of clause 17(2)(a) the most cost effective option of assistance for eligible persons in a particular ITV region, the Administrator shall pay particular regard to the following—

- (a) the most cost effective option of assistance for eligible persons in a particular ITV region must be offered to all eligible persons in that ITV region capable of receiving reception of the public service television channels through that means following digital switchover in that ITV region;
- (b) where it appears, from the predicted or actual availability of the public service television channels after digital switchover in that ITV region, that (for technical reasons only) the most cost effective option of assistance is unable to provide reception of the public service television channels to all eligible persons in that ITV region after switchover, the Administrator may determine which other assistance constitutes the most cost effective option of assistance for those other eligible persons so that

(for technical reasons only) the Administrator is capable of offering one most cost effective option of assistance to each eligible person in that ITV region;

- (c) that acceptance of a most cost effective option should not be dependent upon the acceptance by (or on behalf of) an eligible person of goods or services other than goods or services necessary for the reception of the public service television channels by means of that option; and
- (d) the goods and services (including the reception of particular television channels) comprising the most cost effective option of assistance in a particular ITV region, must not be time limited by the provider of the most cost effective option, insofar as the provision of those goods and services are within the control of that provider.

## **2. Duties on the Administrator in calculating the most cost effective option of assistance**

- (1) In carrying out the calculation for determining what constitutes the most cost effective option of assistance, the Administrator must first calculate the cost to the Administrator of providing those types of assistance as mentioned in paragraph 2(1) of Schedule 3 which are to be offered directly by the Administrator to eligible persons in a particular ITV region, based upon the addresses of eligible persons, taking into account information provided by the BBC, Digital UK, Ofcom and any other person appearing to the Administrator to have relevant information.
- (2) In making this calculation, the Administrator shall—
  - (a) exclude from the calculation any common Scheme costs (start-up, initial mailings, marketing); and
  - (b) include all other relevant costs, including but not limited to equipment, site visits, aerial supply, installation costs and the Administrator's estimate of the net present value of the cost to the Administrator and the eligible person of using each of the forms of assistance over a period of 5 years from the date of installation.
- (3) Subsequent to making the calculation in sub-paragraph (1) the Administrator must use reasonable endeavours to seek information from providers about such types of assistance mentioned in paragraph 2(1) of Schedule 3 as are likely to be available to eligible persons in a particular ITV region; including quotations of the full cost, over a period of 5 years from the date of installation, of providing that assistance.
- (4) Having received the information in sub-paragraph (3), and before the date specified by or in accordance with sub-paragraph (5), the Administrator must make its assessment as to the type of assistance that constitutes the most cost effective option of assistance in that ITV region.
- (5) The date mentioned in sub-paragraph (4) is either—
  - (a) the last day before the commencement of the applicable period of availability in that ITV region, as defined in clause 8(4), or
  - (b) such other date as may be notified to the Administrator by the Project Board in relation to that particular ITV region.

**3. Powers available to the Administrator in calculating the most cost effective option of assistance**

The Administrator may review its determination as to what type of assistance constitutes the most cost effective option of assistance to eligible persons in a particular ITV region where, in the opinion of the Administrator, it is reasonable to do so.

## **SCHEDULE 5: AVAILABILITY OF ALTERNATIVE ASSISTANCE**

**1. Duties on the Administrator in determining alternative assistance**

In determining for the purposes of clause 17(2)(c), the alternative assistance to be made available to eligible persons in a particular ITV region, the Administrator shall use reasonable endeavours to seek information relating to the provision of assistance by alternative providers as mentioned in paragraph 2(2) of Schedule 3 as is likely to be available to eligible persons in a particular ITV region.

**2. Alternative assistance to be made available**

Having received the information in paragraph 1 and before the commencement of the applicable period of availability in each ITV region, as defined in clause 8(4), the Administrator must determine what alternative assistance will be made available in that ITV region.

**3. Powers available to the Administrator in determining alternative assistance**

The Administrator may review its determination as to what alternative assistance will be made available to eligible persons in a particular ITV region where, in the opinion of the Administrator, it is reasonable to do so.



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