



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

# **THE JERSEY DIGITAL SWITCHOVER HELP SCHEME**

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

*Presented to Parliament by the  
Secretary of State for Culture, Media and Sport  
By Command of Her Majesty  
March 2010*



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ISBN: 9780101783125

Printed in the UK by The Stationery Office Limited  
on behalf of the Controller of Her Majesty's Stationery Office

ID 2353777 03/10 2075 19585

Printed on paper containing 75% recycled fibre content minimum.

# THE JERSEY DIGITAL SWITCHOVER HELP SCHEME

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# THE JERSEY DIGITAL SWITCHOVER HELP SCHEME

## PART1: INTRODUCTORY PROVISIONS AND DEFINITIONS

### CHAPTER 1: ESTABLISHING PRINCIPLES OF THIS SCHEME

#### **1. Legal basis, extent and duration**

- (1) This Scheme is called the Jersey Digital Switchover Help Scheme and has been agreed between the Secretary of State for Culture, 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 Jersey and assistance under this Scheme will be provided only at places in Jersey.
- (3) This Scheme comes into force on 26 March 2010.

#### **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 and referred to in Schedule 1 shall have effect.

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

The arrangements for the governance of this Scheme and referred to in Schedule 2 (which, in particular, by reference to Schedule 2 of the Main Scheme, 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;

“Jersey” means the Bailiwick of Jersey;

“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 Channel Islands Region” means the geographical area within which analogue terrestrial transmissions of Channel 3 service on Jersey (within the meaning of the Broadcasting Act 1990) are generally received;

“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;

“HSSD” means the States of Jersey Health and Social Services Department;

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

“a public provider of information” means in relation to—

(a) social security information, SSD;

(b) visual impairment information, the Jersey Blind Society and SSD; and

(c) care home residency information, HSSD;

“the Main Scheme” means the Digital Switchover Help Scheme agreed on 30 April 2007 between the Department for Culture Media and Sport and the BBC and published as CM 7118 and most recently amended on 11 December 2009 and published as CM 7771, as may be further amended from time to time;

“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;

“the public service television channels” means the following services, namely, any UK Public Television Service, Channel 3, Channel 4, Channel 5; and “a public service television channel” means any of those services;

“registered blind or partially sighted” means, in relation to a person, that he is registered as a blind or partially sighted person in a register maintained by or on behalf of the Jersey Blind Society;

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

“SSD” means the States of Jersey Social Security Department;

“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; and

“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(3);

“child” means a person below the upper limit of compulsory school age;

“constant attendance allowance” means an allowance awarded by application of Article 8 of the Naval, Military and Air Forces (Death and Disablement) Service Pensions Order 2006 (S.I. 2006/606);

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

“Family Allowance” means an award of Family Allowance under the Family Allowance (Jersey) Law 1972;

“household” means the persons that are classed as members of the same household under Article 5 of the Income Support (General Provisions) (Jersey) Order 2008;

“Income Support” means an award of income support under the Income Support (Jersey) Law 2007;

“Income Support Law” means the Income Support (Jersey) Law 2007;

“Long Term Incapacity Allowance” means an award of long term incapacity allowance under Article 16 of the Social Security (Jersey) Law 1974;

“mobility supplement” means a supplement awarded 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, who—

(a) normally live together in the same dwelling, and

(b) are married to each other (unless they are living separately in the dwelling under a

formal agreement) or are in a marriage-like relationship (whether or not both persons are of different sexes);

“Protected Payment” means an award of a protected payment under the Income Support (Transitional Provisions) (Jersey) Order 2008.

## **8. Eligibility criteria**

- (1) For the purposes of this Scheme, but subject to the exclusions set out in clause 9, a person living in Jersey is eligible for assistance (an “eligible person”) if, at the relevant time, one or more of the following apply to that person—
  - (a) if at the relevant time he has attained the age of 75 years; or
  - (b) if—
    - (i) at the relevant time he is entitled to, Long Term Incapacity Allowance (with an assessment of a degree of incapacitation of 75% or more), a personal care component of Income Support to the levels set at Regulation 6(b) or (c) of Part 4 of Schedule 1 of the Income Support (Jersey) Regulations 2007 or a mobility component of Income Support in accordance with Regulation 7 of Part 4 of Schedule 1 of the Income Support (Jersey) Regulations 2007;; and
    - (ii) the SSD has confirmed such entitlement before the end of the applicable period of availability; or
  - (c) he is entitled to constant attendance allowance or mobility supplement or
  - (d) at the relevant time 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; but
  - (b) before the time when the applicant receives notification from the Administrator of his determination of the application under clause 14(4).
- (3) “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 for the Channel Islands Region, and
  - (b) ends one month after the last transmitter of analogue terrestrial services has been switched off for the Channel Islands Region.

## **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 Jersey;
- (d) 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;
- (e) he has already received assistance under this or any previous version of this or the Main Scheme; or
- (f) the Administrator has already issued a notification under clause 14(4)(b) to a member of his household

#### **10. Determination of ordinary residence in Jersey**

- (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) whether an eligible person's home (as defined in clause 6) is in Jersey.
- (2) In making such a determination, in relation to an eligible person, the Administrator must take into account—
  - (a) the location of the eligible person's residence;
  - (b) such evidence, in cases of doubt, that the eligible person produces to demonstrate that they are resident in Jersey.

## **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) an adult who is a member of the same household ; 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 the Channel Islands 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 for the Channel Islands region,

- (b) in respect of an eligible person whose home is located in Jersey, and in all other respects is made in accordance with the provisions of this Chapter.
- (2) Applications for assistance may be made—
    - (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) in relation to an application that has been duly made 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 paragraph 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, or
  - (b) that he (or, as the case may be, the person on whose behalf the application was made) is an eligible person,

and in either case the notification must provide information about the Scheme's Internal Review procedure and how to apply for an Internal Review of the Administrator's determination.

## **15. Notification**

- (1) 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 eligible person has received a notification under paragraph 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 to him under clause 14 (4)(b):
- (a) the claim will continue in the name of another member of his household if that member of the household is himself an eligible person and (for this purpose) any change in entitlement to income support or protected payment which occurs as a consequence of the death shall be disregarded;
  - (b) if none of the eligible person's surviving household members is an eligible person, at the choice of those household members, the Administrator must either continue to provide assistance or refund any charge paid; or
  - (c) if the eligible person is not survived by any other household member 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, an adult who is a member of the same household,

is in receipt of income support or a transition only payment in respect of Family Allowance legacy.
- (2) An eligible person who is 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).

## **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 the Channel region;
  - (b) determine whether any upgrade equipment may be offered to eligible persons choosing the most cost effective option of assistance in the Channel 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 the Channel 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 this clause—
- (a) “the additional payment”—
    - (i) 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 the Channel Islands region, as determined in accordance with paragraph (2)(a); and
    - (ii) 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).
  - (b) “alternative assistance”, in relation to an eligible person, means such types of assistance described in paragraph 2(2) of Schedule 3 to the Main Scheme as are to be made available to that person;
  - (c) “alternative provider”, means a provider of assistance comprising television services described in paragraph 2(2)(b) of that Schedule;
  - (d) “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 that Schedule;

- (e) “upgrade equipment” means any other equipment that the provider of the most cost effective option of assistance may offer to eligible persons in the Channel 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 to the Main Scheme (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.

## 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) 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 (or a person acting on his behalf as mentioned in clause 11(1)) 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(3);

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

“care home” means—

- (a) a home to which the Nursing and Residential Homes (Jersey) Law 1994 applies, within the meaning of that Law; or
- (b) any institution that, but for the operation of Article 3(2)(a) or (c) of the Nursing and Residential Homes (Jersey) Law 1994, would be a home to which that Law applies, within the meaning of that Law;

and includes (for the avoidance of doubt) a hospital to the extent that it accommodates a long-stay patient within the meaning of the Hospital Charges (Long Stay Patients)(Jersey) Law 1999;

“care home resident” means a person whose home is in a care home, and who resides there for the purpose of receiving accommodation services within the meaning of the Hospital Charges (Long Stay Patients)(Jersey) Law 1999 or accommodation, board and either nursing or personal care;

“Designated Person” 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 Jersey and for other functions in that connection under this Part; and that person may in particular be—

- (a) the Secretary of State for Culture, Media and Sport or another Secretary of State;

- (b) a person engaged for the purpose by a Secretary of State;
- (c) an employee of the HSSD; or
- (d) a person registered under the Nursing and Residential Homes (Jersey) Law 1994.

“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, or Jersey Social Security Number and whether they qualify for free help or have to pay £40, their date of birth if appropriate, any aliases and the names and addresses of appointees.

**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 Channel Region 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 Jersey—

- (a) to identify, so far as practicable, all those persons in Jersey 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 Jersey 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 the Channel Islands Region, and
  - (b) in respect of an eligible person who is a care home resident in a care home located within Jersey,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**

The Code of Service Standards prepared and published by the Project Board under Clause 28 of the Main Scheme, with any subsequent amendment, applies to this Scheme.

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

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

(1) The Administrator must do all that he can to secure that, as respects Jersey, every person notified to him by a public provider of information as being—

- (a) a person whose home is located in Jersey 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 paragraph (1) is contacted more than three times 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.

or any equivalent legislation in Jersey as may be in force from time to time and notified to the Help Scheme.

### **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 in relation to Jersey, the Secretary of State must consult—
- (a) the BBC as to the financial and operational implications of any proposed charge;
  - (b) the Consumer Expert Group; and
  - (c) the States of Jersey.

## 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 18) (other than where the Administrator secures the provision of a service or equipment by himself supplying 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 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, care home residency information 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 a public provider of information for purposes other than a function of the Scheme is not permitted.

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

The Administrator must, if so requested by a public provider of information make arrangements for supplying information about the operation of the Scheme to that provider and comply with any Memorandum of Understanding as may be agreed between [DSHS Ltd] and the public providers of information.

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

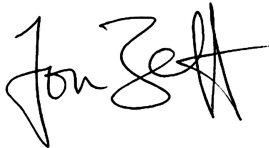
- (1) The Administrator must make such arrangements, as it considers appropriate for the provision of further help to those who have received help under the Scheme, and for providing funding for the implementation of such arrangements.
- (2) Those arrangements should, so far as possible, be made with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

#### **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 Treaty on the Functioning of the European Union or legislation based upon the Treaty on the Functioning of the European Union (“EU 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 judgment made or threatened under EU 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 of the Main Scheme.



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



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

**26 March 2010**

## **SCHEDULE 1**

### **EXPENDITURE, FINANCING AND BORROWING**

#### **1. Expenditure, financing and borrowing**

- (1) The costs of this Scheme (including its overheads, financing, administrative and marketing/communication costs) will be met by the BBC in accordance with Schedule 1 of the Main Scheme, and any amendments thereto.

## **SCHEDULE 2**

### **GOVERNANCE AND ACCOUNTABILITY**

#### **1. Governance and Accountability**

- (1) Schedule 2 of the Main Scheme and any amendments to that Schedule applies to this Scheme as it does to that Scheme, subject to paragraph 2.
- (2) In addition to the constitution of the Project Board specified in Section A of Schedule 2 to the Main Scheme, for the duration of this Scheme the States of Jersey may appoint an observer to the Project Board in accordance with the Main Scheme.

## **SCHEDULE 3**

### **ASSISTANCE UNDER THIS SCHEME**

#### **1. Assistance under this scheme**

- (1) Schedule 3 of the Main Scheme and any amendments to that Schedule applies to this Scheme as it does to that Scheme, subject to paragraph 2.
- (2) For the purposes of this paragraph references to 'relevant ITV region' in Schedule 3 to the Main Scheme are references to the Channel Islands region.

## **SCHEDULE 4**

### **CALCULATION OF THE MOST COST-EFFECTIVE OPTION OF ASSISTANCE**

#### **1. Calculation of the most cost-effective option of assistance**

Schedule 4 of the Main Scheme and any amendments to that Schedule applies to this Scheme as it does to that Scheme.

## **SCHEDULE 5**

### **AVAILABILITY OF ALTERNATIVE ASSISTANCE**

#### **1. Availability of Alternative Assistance**

Schedule 5 of the Main Scheme and any amendments to that Schedule applies to this Scheme as it does to that Scheme.



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